Debate Observation File (by The Netherlands)

Debate 1 Italy I vs France IV

Substantially Italy I

Italy came across as a knowledgeble and competent team both in the presentation as in answering the questions. They had a very well structured presentation and made it clear from the beginning what their standpoint is. We believe they had a very good argument stating that the unanimity holds back any progress in reforming the European family law, but on the other hand we believe that the unanimity requirement not only is a formality. This side of the argument could have been adressed more clearly. At some point in the presentation it became unclear whether the Italian team was for or against enhanced coorperation, but in the end it became clear.

Presentation Italy I

We think the PowerPoint presentation wasn't very helpful in understanding the presentation or emphasizing the most important points that they wanted to make. There was too much text on one PowerPoint. As a team they cooperated very well, and they were really well tuned to each other. In general they spoke clearly and slowly to make their point.

Substantially France IV

At the beginning of the presentation they stated that we have to act, but to us it was not completely clear how or why. However their main point became clear later, namely that unanimity is inevitable because there's not enough civil society/democratic legitamacy to pass laws without a unanimous vote in family matters in the EU. This we felt was a convincing argument. We particularly liked Anna's activistic style of speaking.

Presentation France IV

We found the format and style of the French team enticing, but at the same time in parts it was a bit chaotic leaving us somewhat confused on which standpoint they actually supported. They came across as really convincing in their presentation. Although it was a little bit unstructured in our point of view they seemed to work well together.

OBSERVATION FILE

Italy 1 vs. France 4

Accordingly to article 81 (3) TFUE, the legislative procedure for the adoption of the EU legal instruments in family matters require unanimity. As this is a hard standard to reach, the decisional process could be lengthy, often requiring concessions from the EU judicial cooperation objectives. It is true the unanimity rule is due to the sensitive feature of this domain, revealing and preserving different national conceptions about family. On the other hand, a viable alternative to use is the enhanced cooperation procedure. This allows states to fulfill their national interests but, at a larger scale, it appeared that the use of this procedure could harm the unity of the European area.

I. General assessment/overview of the debate

To begin with, we appreciated the elaborate and comprehensive arguments of both teams. Moreover, the manner in which the debate was conducted underlined the professional skills of the participants. The teams related to one another and, during the debate, approached the important aspects of the theme.

Both teams made reference to the relevant EU legislation and CJEU jurisprudence, establishing a well-determined legal framework of the debate.

1. **For the Italian Team,** we appreciated the presentation which was coherent and clearly structured with the help of visual aids. We also liked the way they worked as a team and the eloquent delivery of the speeches. As an original idea, we liked the reference to the Passerelle clause (art. 81 par. 3 of the TFUE) which is another possible option to derogate from the unanimity rule.

The team made reference to the applicability of the various regulations regarding family law, and identified the main reason why the unanimity rule is in force: the strong traditions in the Member States in relation to family law issues. As practical examples, the Italian Team considered same-sex marriage which is not accepted in all EU Member States and would represent an issue if it were forced upon the Member States through a Regulation. Another practical impediment identified was the minimum duration of the marriage in certain states, as regards the difference between different legislations across Europe.

The Italian Team emphasized upon the necessity to derogate from the general rule of unanimity when it comes to issues concerning fundamental human rights, such as children's rights.

Furthermore, the first team discussed about the disadvantages of Enhanced Cooperation, which is a means of harmonization for the national laws of certain Member States, when there is no consensus amongst all States. The minimum number of States necessary to participate in this form of cooperation is 9.

However, a great disadvantage of Enhanced Cooperation is that is allows for the creation of parallel systems of laws, which represents a fracture in the idea of a united Europe. In this sense, the Rome III Regulation is applicable to only 15 countries, which makes it difficult to apply at a European level. The Italian Team underlined that a uniform law system is necessary in order to combat forum shopping and forum running when it comes to family law issues.

2. **For The French Team** For the French team, we appreciated the practical approach to the debated issue and their sense of teamwork. Furthermore, their structured presentation was accompanied by useful visual aid. We admired the team's creative way of thinking when tackling the problem and accepting that we must follow the present rules in virtue of the principle of legality.

A powerful argument they provided was that the EU can legislate in matters of family law, but **not substantive law**. They argued that this is the *status quo* established by the EU Treaties and, as a consequence, we must follow the existent legal framework.

Another argument presented was the need for predictability and flexibility when it comes to family law matters. The Team ascertained that the EU should consider establishing the general private international law aspects: jurisdiction, applicable law and recognition and enforcement of foreign judgments.

The Team acknowledged the argument first presented by the Italian team that family issues are tied to the freedom of movement of persons, which is a principle of the EU legislation. They argued that the worker who travels to another EU Member States can bring his family along, which means that the issues regarding his family become attached to the idea of economical freedom within the EU.

The French Team stated that the unanimity rule protects the different national traditions and that it is important to preserve these differences. They also argued that Enhanced Cooperation is a backup plan and that it sustains the idea of unanimity. The team encouraged

the use of Enhanced Cooperation and adopted a favorable point of view regarding the utility of the Rome III Regulation. The French Team argued that even though this Regulation has certain drawbacks, as well as the Enhanced Cooperation Procedure, there are no viable solutions.

They also stressed upon the importance of not having a definition of the term 'marriage' and 'nationality' in the Rome 3 Regulation and that this is an indicator that a general consensus cannot be reached.

II. Answering the jury's questions

Both teams answered the questions in a comprehensive and complete manner, focusing on the practical aspects of the problems. Both teams provided examples from their national law and explained how the essence of the debate can be found even at national level.

II. Our opinion

In our view, the principle of legality requires that we do not derogate from the unanimity rule. Of course, we believe that in matters regarding the protection of fundamental human rights, such as the idea of protecting the rights of children, certain derogations could be made, due to the importance of this issue. Nonetheless, although there is no consensus at this point in the EU regarding certain family law matters, we believe there is still room for improvement and harmonization in the future. It is clear that most states become more and more liberal with family law aspects, which means that a minimum set of generally-applied rules can be found and used.

We believe that a uniform system of law is necessary to stop forum-shopping and that this is a problem that needs to be tackled by the international community in the near future. This is why we believe that the Enhanced Cooperation Procedure must be used only when it is necessary and that issues which are very different in the national legislations should not be included in the scope of this form of legislation.

However, regarding both teams, we canot agree with the assumption that there is only a national meaning of the term "best interests of a child", since there are many international instruments in this field, to which all the EU states are members. This is why we believe that these international instruments were neglected in the debate by bothe teams (e.g. – The Hague Convention on the protection of the child's rights).

Romania 2 team

OBSERVATION FILE

Netherlands 1 vs. Spain 1

I. General assessment/overview of the debate

To start with, the main idea that resorted from debate is that the compilation of an EU judicial code would certainly facilitate the effective and prompt functioning of the civil proceedings in cross-border litigations. The creation/consolidation of the common justice area implies the suppression of the incompatibilities between the civil procedural rules applicable in the Member States. In spite of the numerous advantages that such a compilation would bring, there still exist substantial difficulties in achieving this objective. In other words, the teams were supposed to draw the line between dreams and utopia.

Assessment of the debate itself

We appreciated the ellaborate and comprehensive arguments of both teams. Moreover, the manner in which the debate was conducted underlined the great knowledge on the subject chosen.

Both teams made reference to the relevant EU legislation and CJEU jurisprudence, establishing a well-determined legal framework of the debate.

1. For the Dutch team, we appreciated the technical quality of the legal arguments presented, their continuous work to identify what a European codification would imply. They used an analogy with the domestic law in order to have a better undestanding of the steeps needed to achieve this goal.

The oral presentation of their arguments was clear and well structured, also helped by a simple, yet comprehensive visual aid. We also admired their great team work, even in the difficult conditions of the absence of one of their colleague.

Moving to their main arguments, the codification would present numerous advantages for the individual, such as the reduction in terms of volume of the legislation, clarity, cost reduction. They even stated that, this way, there would be a basis for growth for the EU. In fact, they emphasised that, against all odds, this is already happening!

For the Spanish team, we very much admired their pondered approach, a very mature one, in the sense that, of course, there might be a codification at some moment in the future, but we are not there yet. They made a historical presentation of the past attempts to codify everything, thus allowing them to present the reasons for the past insuccess of this process.

The Spanish team presented the legal troubles of having to legislate *ex novo* in the domains that do not have yet a European instrument applicable. One other valid argument was that there might be case-law contrary to the newlly adopted codification. Therefore, exceptions in these instruments would be extented.

They also presented some political troubles that might arrise from a premature codification.

II. Answering the jury's questions

This part of the debate was a very active one, both teams involved in a good discussion with the jury. The Spanish team even managed to deal with a nice question related to the difference between deams and utopia, making refference to the literature therein, in a very convincing way.

Unfortunatelly, none of the teams was able to produce an exemple of inconsistency between different regulations, but we believe this is a great sign for the quality of the EU law!

III. Disputed/debated arguments/ Ideas to ponder at/ Controversial arguments

In our view, the idea of codification is a very valid one. With the modern means od drafting, the codification is an easier task. However, attention must be paid to the need to take it step by step, to allow the institutions and the people to adapt to the new reality.

In our view, only one word missed in this debate: Napoleon.

Romania 2 team

ROMANIA 1

OBSERVATION FILE

ITALY 1 VS. FRANCE 4

I. General assessment/overview of the debate

To begin with, we appreciated the comprehensive arguments of both teams. Moreover, the manner in which the debate was conducted underlined the professional skills of the participants.

II. Assessment of the debate itself

1. **FIRST TEAM** For the Italian team, we appreciated that their presentation contained both advantages and disadvantages for their thesis. They also worked as a good team. They have used a perspective oriented approach of the topic. Also, we consider that they managed to give good answers to the opponent' s team questions. In the closing arguments, they managed to the resume all their arguments very clearly and made valid points.

The Powerpoint presentation was a bit too crowded and the colors of the font were not visible to the public.

2. **SECOND TEAM.** For the French team, we appreciated the dynamic approach. They worked well as a team. We find that the idea of presenting themselves as a lobby group was a good one. They managed to give a very good answer to one of the other's team question, saying that it wouldn't be that much of a problem to have 2 parallel regulations instead of 28.

They ignored the fact that they did not use the microphones and pleaded mainly towards the jurors, so the public didn't hear all shades of their arguments.

III. Answering the jury's questions

Both teams managed to give very good questions to the juror's questions.

ROMANIA 1

OBSERVATION FILE

SPAIN VS. THE NETHELANDS

I. General assessment/overview of the debate

To begin with, we appreciated the comprehensive arguments of both teams. Moreover, the manner in which the debate was conducted underlined the professional skills of the participants.

II. Assessment of the debate itself

1. **FIRST TEAM** For the Netherlands team, we appreciated that their presentation contained both advantages and disadvantages for their thesis. They managed to emphasize the ides which were benefit to their position without ignoring the counterarguments. They managed to do a good job in a two member team. They also have ECJ jurisprudence examples to show the benefits of their thesis.

They pleaded mainly towards the jurors, so the public didn't hear all shades of their arguments.

2. **SECOND TEAM.** For the Spanish team, we appreciated the realistic approach because they recognized that, in the future, this European Codification could be welcomed. They worked well as a team and every member shared his point of view

The background and the font color from the Powerpoint presentation made it difficult to see.

III. Answering the jury's questions

Both teams managed to give very good questions to the juror's questions. The Spanish team tackled the philosophical question impressively well, giving a literature example.

Thibaut Spriet
Bertille Dourthe
Romain Lemoel
FRANCE 2

Observations on the debates

First debate
Italy – France

Both teams made an interesting presentation of the Treaty on the functioning of the European Union in its provisions regarding family matters : they raised at this occasion two questions, the Italian team focused on the issues sparked by a strict application of the unanimity clause regarding family legislation, whereas France pointed out that the tools offered by Article 81 were still useful and that the Treaty still had provisions good enough to lead to an efficient law-making process.
The Italian team precisely said that it was almost impossible to rely on a strict unanimity to legislate in family matters, besides they stated it frustrates the objectives of the judicial cooperation.
To those issued, they imagined that the only way for Member States to reach an agreement was to use either the passerelle clause which allows them to decide through qualified majority voting or to resort to enhanced cooperation, ideas we very much appreciated.
They underlined that enhanced cooperation would lead to the emergence of a single group of Member States moving forward in legislative integration and causing thus a disparity among EU : with two speeds in integration, and even worse, a strong division that might never be solved. That question was indeed addressed to the French team who did not quite answered to that argument saying that it was better for Europe to have two groups of unified legislation even though those groups might never join in a common basis, rather than a multiplication of single, state-based legislations, that create way more difficulty for the citizens. This argument seems pertinent, but it does not solve the problem either...
On that matter, we think that the Italian team's position was very pertinent precisely because the objective of the judicial cooperation is to achieve an actual and efficient mutual trust among countries. This objective is endangered if we create strong divisions, even stronger if they divide Europe in two big parts.

On practical grounds, we regret the Italian team did not go further into the explanation regarding the "frustration" of the objectives of the judicial cooperation insofar as they did not clearly said what this cooperation was all about, neither did they clearly explained what "frustration" was at stake because of unanimity. Besides, the Italian team resorted many times to the concept of "slowness", saying that one of the problem of unanimity was that it slowed down European law making process : when questioned about what they meant by "slow process", they said it had already been 15 years since the Amsterdam Treaty and yet very little had been achieved. We must strongly disagree on this point, since we had many regulations ever since and they cover a very wide range in family matters. We would have mentioned : maintenance regulation, Brussels II recast, and Rome IV Regulation as examples.
This debate was also supposed to be about the various ways we could legislate in Europe in family matters, and we regret that France decided to limit its presentation to Rome III Regulation, and on couples' issues, thus leaving aside major aspects of family law : such as, a adoption, paternity, civil

partnership and patrimonial law concerning family matters. So the French team could not tackle these questions, thus leading a jury member to ask what other fields were to be ruled by European legislation in family matters. We appreciated that a member of the French team mentioned there was a lack of regulation regarding conflicts of law in parental responsibility : we agree on the fact that this is an obvious and urgent need.

Second debate
The Netherlands – Spain

The debate was about the compilation of EU law in one or many judicial code(s).
The Dutch team quickly excluded the possibility of a code for substantive law and rather focused on Private International Law (PIL) with two arguments : the legal basis in EU Treaties allows it, and there is currently an uneven patchwork in the legislation that urgently calls for it. On that issue, the Spain team protested saying that there were no legal provisions in the Treaties for it : the article 81 gave a limited competence to EU in this matter and that this limited field was only restricted to necessary measures to eliminate obstacles in judicial cooperation in civil matters.
We agree on that point and a changing in the Treaties is necessary to operate that codification, because the absence of codification is not an obstacle to the actual, current, cooperation in civil matters. We also liked the Spanish arguments saying that there was no possibility for any codification right now for two main reasons : the first one being that it is too early since we need to have some stable regulations first (and the quick recasting of many current regulations prove that we still don't have a stable basis) and the other one being that a Code is supposed to have a certain stability in itself, which shall obviously not be attained insofar as we keep on changing our regulations and that national laws keep on changing so quickly that a Code would be obsolete in a few years (or even months). So we believe in the symbolic value of a long-lasting Code too.
The Dutch proposed a Codification of all the procedural law of Member States in a single document, which would be interesting to know quickly about the applicable procedural laws in various states, yet we should know better about that document and its legal status : would it be the reference and then escape from States' legislations modifications, or would it be a compendium only used as a reference but leaving to the States the power to change it. They mentioned the small claim regulation as an illustration of the fact that is is currently happening within EU, we liked that example yet we wouldn't have analysed it the same way because that regulation, in imposing a single unified procedure to the States that had none was nevertheless not a Code...
The Spanish presentation of the Storme project was very interesting as we knew nothing about it and we also liked the fact that they mentioned many scholars' ideas.
The use of the Krombach v. Bamberski case law was interesting and the question raised by a jury member as well because it recentered the debate on the issue of public policy and its implications and consequences on judicial cooperation. The Dutch answer was very interesting on this occasion since they demonstrated the systemic influences between substantive and procedural law and how impacts on one side had repercussions on the other.

OBSERVATION FILE

First Working Session

Debating Teams: ITALY 1 vs. FRANCE 4

First of all would like to highlight the overall quality of the debate. Both teams gave us a full and complete picture on this topic and the current debate on the EU-law creation system in family matters.

1) **Position of Italy**: Rejection of unanimity in the adoption of family law rules.

   a. Presentation

      The team had a well structured presentation which was underpinned by an equally well structured power point presentation. The participation of the individual team members was well balanced.

   b. Content

      Following an overview on the Member States' different legislation concerning family law, the Italian team described the instruments of the EU-legislation in family matters and presented in detail the advantages and disadvantages of enhanced cooperation. They suggested to give up unanimity and to switch to ordinary legislation, especially when human rights are involved (e.g. children's rights). They criticized the slow process of the law-making process in family matters linked to the requirement of a unanimous voting.

   c. Overall Appreciation

      They developed their ideas in a comprehensible and consistent way. However, they left open how a family matter case concerning human rights could be identified. As they had to sustain the position that unanimity slows down the law making process in family matters, we think that they did the best defending their position.

2) **Position of France**: Sustaining the existing legislation process in family law.

a. Presentation

France had a very lively presentation at a very high level of English. We like their innovative approach being lobbyists for "the spirit of Art. 81 (3) TFEU".

b. Content

Without detours, they immediately started to defend their thesis. They did not hesitate to deal with the existing clichés. They showed the link between economic liberties and family law and showed that the existing problems can and must be solved step by step, in order to harmonize family law. They pointed out that enhanced cooperation is better than a halt.

c. Overall Appreciation

They demonstrated a broad knowledge on family law. During the discussion they showed their profound knowledge of the functioning of the EU. As the French team stated, Europe cannot be built in a day.

As enhanced cooperation should be the last resort, a compromise could be that ordinary legislation would be implemented in family matters, with the possibility to opt-out.

OBSERVATION FILE

Second Working Session

Debating Teams: NETHERLANDS 1 vs. SPAIN 1

To begin with we appreciated the realistic approach of both teams and also the discussion on dreams and utopia in regard to a aspired codification.

1) **Position of the Netherlands**: The codification of the EU judicial code(s).

   a. Presentation

      The team used a power point presentation which was useful to follow the dabate. Unfortunately one of the team members was ill, so the team had a particularly difficult standing.

   b. Content

      The team showed the range of the EU-PIL (Private International Law) and described the historic legal basis. They gave profound analysis on the gaps with respects to private law, especially on obligation and family law. They also pointed out that the access to justice and the right to be heard can be a problem with the international private law. They did this by referring to an ECJ case. Then they went on to illustrate the advantages of codification. They showed that consolidation is necessary and feasible and pointed out what they mean by consolidation: not codification, but a compilation of the existing framework.

   c. Overall appreciation

      We appreciate the "unromantic" but realistic approach, by pointing out that with the suggested consolidation not all the existing gaps could be filled. We would have been interested in a suggested solution on how to get to a consolidation.

2) **Position of Spain**:

a. Presentation

The team adopted a very realistic and living presentation. They were very passionate and focused. The presentation was well structured and provided the audience with a full and complete picture of their position.

b. Content

They started by questioning whether a code is necessary at all, criticizing convincingly that many countries would make exceptions to such a codification, which would contravene an intended harmonization. Following this, they gave an in-depth analysis of the legal and political trouble that such a compilation would cause. They suggested a future perspective according to which a move forward could only be achieved by a proper EU legislative framework.

c. Overall Appreciation

Their presented future vision was realistic, taking into account the existing gaps. However, while correctly pointing out that in their opinion the EU is lacking the competence for such a codification, they made the argument of slowing down the consolidation process without giving sufficient arguments.

While we appreciate the idea of a codification, the presentations made clear that we are far away from a consolidation and even further away from a codification.

OBSERVATION FILE: SPAIN I

On the debate between Italy I and France IV.

Italy I and France IV debated about cooperation in civil matters in Family Law. They discussed whether unanimity and enhanced cooperation were adequate in order to make progress in this area.

Italy I stood against the rule of unanimity and enhanced cooperation whereas France IV argued against so called "clichés" in this regard.

According to Italy, the evolution of Private International Law in Family matters is much slower because of the rule of unanimity of Article 81.2 of the Treaty of Functioning of the European Union. The rule of unanimity is justified, as they have explained, because of the different concept of family in the Member States. They illustrated this diversity in Family Law with several examples such as same sex couples and the legislation related to divorce and dissolution of marriage. We found really interesting the idea that a progressive converge of legislation is strictly linked to a mechanism of flexibility in the process of creating the law. We also found very illustrating the explanation about the enhanced cooperation. As they explained to us, the enhanced cooperation enables a group of minimum nine States to establish legislative measures between them. But this instrument has also its risks: as the Italian team explained us, the enhanced cooperation may create concentric circles of cooperation and overlaps if different groups of States start regulating the same subject. However, enhanced cooperation needs to be authorized by the Council of the European Union; so we do not really think that this is a situation that may come up.

France IV presented its arguments in an attractive way as if they were a lobby in favor of European Family Law moving forward. They therefore argued against so called "clichés". We found very interesting the discussion related to cliché 2 in which they showed us that the European Union Treaties are not broken tools. The French team also answered the statements about enhanced cooperation and they defined this way as "the pragmatic way". France IV also makes a very interesting criticism to Rome III. We agree with the idea that the concept of marriage should be defined: nevertheless, we also think this is a very difficult homework for the legislative, as in some countries same sex marriage is recognized (for example in Spain). We also think, as the French colleagues told us, that Rome III should be coherent with Brussels II bis and the reality is that some concepts are defined in very different ways in both

instruments. Plus, Articles 10 and 13 Rome III are not a perfect match and we should manage to overcome these inconsistencies. Moreover, we agree in the idea that the lack of definition of nationality is a problem in the application of this instrument. Also, we have to point out as the French did, that there is a main difference between the Private International Law and the substantive Law. Rome III is a Private International Law instrument, not a substantive law code. But we also think that it can be used to harmonize the substantive law in the subject.

THEMIS 2014

GRAND FINAL

KRAKOW

ITALY 1

OBSERVATION FILE

about the future of the suppression of the "*exequatur*"

The Italian Team

Viola NOBILI

Donatella PALUMBO

Amleto PISAPIA

The trainer

Luca PERILLI

The Romanian claims that the abolition of the *exequatur* provided by Regulation Brussels I would reduce costs and duration of the enforcement proceedings and would therefore enhance the free movement of judgments and persons and, finally, the European space of Justice.
The French team opposes that the abolition of the *exequatur* is not possibile at this stage of development of the intergration of EU, because of the lack of mutual trust among the various judicial systems. The French colleagues defend the principle of sovereignity of the State as to the decision to make foreign judgments enforceable, with the final aim of the protection of fundamental rights and public policies. They propose instead the harmonisation of civil and civil procedural rules and the common training of EU Judges.
The Italian team retains that the issues of mutual trust and sovereignity are widely overstimated by the French team, because mutual trust exists since the beginning of 2000, when the various Regulations about judicial cooperation were negotiated and adopted at EU level. Some Regulations (Brussels II bis, the Regulation about the enforcement of uncontested titles and the Regulation about small claims) alread y provide for the free circulation of executive titles. This would not be possibile if mutual trust did not exist among Member States.
By adopting those regulations, the Member States weived their sovereignity as to enforceability of foreign judgments.
Furthemore, even in the context of Regulation Brussels I, it has to be remarked that the declaration of enforceability is only a part of the recognition of foreign judgments, because it relates to those judgments only that need to be enforced. The remaining judgments produce effect in a different Member State even if not formally recognised.
Finally the Regulation Brussels I in its *wheras* 16 and 17 states that *mutual trust in the administration of Justice in the Community justifies judgments given in a Member State being recognised automatically without the need for any procedure except in case of dispute* and that *the declaration that a judgment is enforceable should be issued virtually automatically after purely formal check of the documents supplied, without there being any possibility for the court to raise of its own motion any of the grounds of non enforcement provided for by the Regulation.*
This demonstrates that mutual trust is the ground even of Regulation Brussels I.
The Italian team supports the abolition of the current formal *exequatur* because it would enhance the speed of the proceedings, in compliance with the fair trial principle, and would reduce the costs for the citizens.
In this perspective the procedure of opposition for the protecion of Human Rights (see case *Gambazzi* of the European Court of Justice) and public policies would be shifted to the phase of the enforcement.

OBSERVATION FILE: SPAIN I On the debate ROMANIA I vs. FRANCE 2 about "The future of the suppression of the "exequatur"".

In this debate ROMANIA I stood for the thesis of the need of the total adoption of the principle of the absolute suppression of the exequatur.

After the Amsterdam Treaty the new idea of the free circulation of judicial decision through the general suppression of he intermediate measure for enforcement was developed. This principle was recognised and was applied in some Council Regulations, and the Romanian team thinks that at the moment, the actual level of trust among the Member States has reached enough common ground that permits us to move forward, to move to a real mutual trust and get an absolute suppression of the exequatur.

Nowadays the integration has enhanced, the Member States have enough common grounds, so therefore the exequatur procedure is a mere formality. The EU needs a simple, less costly, and a more automatic system of circulation of judgments. The judgments shall start to circulate freely within the EU.

They also explained to us the concept of the exequatur connected to the principle of a genuine European area of Justice. And they conclude that it is possible -and also necessary- the suppression of the exequatur by developing a better recognition and enforcement of judgments across the Union.

They showed us the evolution of the legislation related to the exequatur. They think that the suppression should be generalised to all the fields of the civil judicial cooperation.

According to social reality, the judgment debtor appeals only 1-5% of all cases of exequatur granted. And also the 73% of European citizens are in favour of measures to ease the circulation of public documents.

They also had an economical reasoning about their position. Now, the economic welfare of all European citizens has increased, so we need a faster justice, more

reliable and with a wider rage of foreseeability. We need a complete, transparent and uniform set of rules on jurisdiction of the Courts of Europe. And it is a less expensive way to get the judgment recognized is by supressing the exequatur.

This team also thinks that the abolition of the exequatur matches with article 6 of the ECHR and that the abolition of the exequatur is a better way to arise the principle of mutual recognition of judicial and extra-judicial decisions in civil matters. The suppression of the exequatur is a condition of the effective judicial cooperation in the EU.

Contrary to the Romanian position, FRANCE 1 team says that such absolute suppression is not a decisive tool to build a European Area of Justice. They said that we need to save the exequatur!

First of all, they stood against the idea that the exequatur is too expensive. They said that although this proceeding costs 2.200 euros on average, a great part of this quantity is give to the lawyer that deals with the case.
Therefore, the answer to the economic problem is the harmonization of the proceedings.

The second problem that was fighted by this team was the too excessive time of the proceeding of exequatur. The French team thinks that this is not a problem at all, as new provisional enforcement measures can be ruled.

Another obstacle that the French people think that does not exist anymore is the problem about swifting enforcement of foreign decisions (translation, need to adapt the foreign decision in another judicial system...). They say that the previous regulations had already solve this problem successfully (for example in the Council Regulation 2201/2003).

Moreover, they think that the suppression of the exequatur is not a decisive tool for building of an European Area of Justice, since a light and quick recognition system can produce the same results. The suppression of exequatur itself does not

solve anything. We agree that the idea of mutual trust is a goal that we have to achieve but it does not imply itself the necessity of abolishing the exequatur.
And in this issue, we also think that the real problems are those related to the lack of harmonization of substantive law and the lack of harmonization of procedural law. The French team thinks that an area of justice without the abolition of exequatur is possible. Keeping the exequatur permits a coherent case law of exequatur and enforcement. The case law will offer coherences to any difficult that arise. The Exequatur brings foreign judges together, It forcers them to confront their views and opinions, and also calls for cooperation and dialogue. And the real tools to building a European Area of Justice are the E- justice; the European justice Network; the Judges forums on various topics and also the Training network.

Personally, we found really interesting the part of their discussion related to other possibilities of civil cooperation without abolishing the exequatur. They talked about the idea of creating a European Civil Code or a European Code of Enforcement Measures. As our team already explained in our presentation, we think this is a utopia –and not a dream- because it cannot be accomplish by the moment. Contrary, we think that it is a great idea to harmonise the institutions that have the competence to enforce the judgements, as in every country this competence is given to a different institution or judge.

Focusing on our personal opinion, we would like to say that the question would be if the judge of the country were the decision has to be executed could deny it. If we eliminate the exequatur, the judge could never deny the decisions ruled by a judge from a different State. And we think that in several cases, for example when the decision goes against the most important principles of our Constitution, the possibility of denying the enforcement should be still in force. When Regulation Brussels I was revised, the Commision had a complex discussion on this issue; but finally the suppression did not succeed as it was considered too excessive. If we had participated on this debate, we would have created a parallelism with the USA situation. In this country, the solution given to this problem is quite satisfactory: the judgements ruled in one State are always recognised in the rest of the States due to the rule of the "full faith and credit clause" of the Constitution. We only find

one exception to this recognition: the judgement will not be recognised if the principles of the "due process" have not been respected. Maybe we should establish a proceeding similar to this one of the USA, as it seems to be working really good.

OBSERVATION FILE: SPAIN I On the debate ROMANIA II vs. AUSTRIA I about "The functioning of the European Judicial Network in civil and commercial matters".

In this debate ROMANIA 2 stood for the thesis of the full opening of the EJNCCM to the citizens and the legal professionals.

The Romania team made a simile between the EJNCCM and the internet network connections of our devices (laptops, cell phones...). They told to us that everybody in the room is connected to a network, and the reality is that we cannot provide our own connection, Network is a necessity and we need to choose a connection option.

The Network assumed the obligation of providing rigorous and updated information; the judicial network has the potential to be a real contribution to the European Judicial System.

The most important statements of the Romanian Team were: a) Knowledge and Expertise: Judges can be more specialized and other professionals could make an exhaustive use of this structure. The Network is all about information, and it is a natural step to the direct communication between courts and professionals. The Romanian Team thinks that if we permit the legal professionals to access to this Network, the expansion of this structure would be faster. The idea of creating a legal "Wikipedia" was found very interesting for us. b) Statement related to the financial contribution: we all know the current model in international civil cooperation is quite expensive; and if the legal professionals take parte of the Network by paying a fee, this contribution would help to sustain the Network. They also talked about c) an ethical and d) an economical contribution of the Network to the EU system.

Moreover, they also argued about the dissemination of the information. They told us that the main problem on cross-border transactions is time. We did not know that the medium length of a cross-border cause is four years. That is why even the

word "cross-border transaction" scares the citizens! They think their proceeding would last forever! Connected to this idea, the lack of the network make the judicial cooperation goes slowly.

Finally, we enjoyed the explanation about the Judicial Atlas. After explaining us how to use it, they told us that it would be useful to permit the legal professional the access to this source; and, moreover, to permit them to submit their own work, as the judges could use it too.

They concluded that a full opening of the EJNCCM to citizens and legal professionals is not only the correct way to improve the judicial cooperation in civil and commercial matters but also to increase the trust of citizens in cross-border legal actions. IF THERE IS A WILL, THERE IS A WAY.

In the other position, AUSTRIA 1 sustained the maintenance of the present ruling in the domain of the access to the Contact Points and the information provided by the current structure. They explained to us the Functioning of the European Judicial Network in a attractive way, using a Fictional cross border dispute about a ski accident and the different point of view of that a citizen, a lawyer and a judge may have when they deal with a cross-border transaction.

The main aim of their Thesis is that the access to justice is guaranteed although the legal professionals cannot get advantage of this tool. Therefore, citizens' human rights are guaranteed. This guarantee does exist during the trial – as citizens have direct addressees to the Contact Points activities-; and before the trial, as the website provides information to them. Moreover, the atlas provides additional information about judges, legal professionals and case law. The current Judicial Network provides accuracy and liability to the citizens and also to the judicial staff.

The Austrian Team thinks that the Network should not be opened from a teleological point of view, as taking the evidence is a work that is only given to the judge and not to citizens. They also think that if we opened this Network to

citizens, the Contact Points would not be able to answer all the questions that citizens may make.

They explained to us that the Network is personal, informal, flexible, and non bureaucratic; also, they believe it is efficient, convenient, and economical; and also it is in accordance with the principle of proportionality.

Finally, they show us a future vision of the European Judicial Network, they talk about a central Office (p. example in Den), one national expert per MS working full time, and a quick and direct exchange between national experts. We believe, as they do, that the Contact Point should be pointed amongst judge, as they know better the problems and questions that they may solve. We also agree with them in the idea of electing them for a concrete period of time.

The conclusion of the Austrian Team may be that with these elements we can get an excellent cooperation in civil and commercial matters, and also a fluid and closely communication. Therefore, the present ruling in the domain of the access to the Contact Points and to the information provided by the structure shall be maintained.

The Austrian point of view is the one that we think is the most correct. We think that the current rule should be maintained due to several reasons:

- First: because the Network does not have the capacity to open to all the citizens. Actually, Deloitte is making an investigation about the present functioning of the Network. Anyway, we think that it would be necessary to make a previous study about the consequences of the extent of the Network.
- Second: we also think that the main aim of advising the citizens in their cross-border litigation is an objective that has been accomplished by other organisations, such as the European consumer centres (htttp://ec.europa.eu/consumers/ecc/.
- Third: as the Austrian team mentioned, the fact of advising the citizens in concrete issues and not generically may bring two big problems. From the one hand, a problem of professional intrusism, as we interfere with the job

of lawyers. And from the other hand, problems of responsibility may arise: the Network always includes in their factsheets a non-liability clause; if we wanted to go further than this, we should focus our attention in the question of responsibility.

OBSERVATION FILE

Fourth Working Session

Debating Teams: ROMANIA 1 vs. FRANCE 2

In the light of the new Brussels I regulation the debated suppression of the exequatur – and with that the possible loss of an ordre-public control – was of actual relevance.

1) **Position of Romania**: absolute suppression of the exequatur

   a. Presentation

      The team had a well structured presentation, which was underpinned by an equally well structured and witty power point presentation including different visual effects.

   b. Content

      They started with an overview of the advantages and the benefits of the suppression of the exequatur – laying to its basis that there is enough mutual trust in Europe, that borders lost significance and that the exequatur is just mere "formality". They explained the upcoming changes that are subject of the Reg. No 1215/2012 by providing an overview of the relevant case law. Following this, by referring to Art. 6 ECHR, under which the execution phase of the proceeding is part of the "right to a court", they explained to what extent a suppression of the exequatur would be in accordance to leg. cit.

   c. Overall Appreciation

      While the team argued that there is enough mutual trust in Europe for a suppression of the exequatur, it would have been interesting to gain a greater insight on what this trust is based and to have been provided with their view on possible mechanisms that could be established in case the trust is breached by one of the Member States. During the discussion, when being confronted with the existing reasons for rejection of recognition, the impression arose, that they lost the golden threat.

2) **Position of France**: affirming that such absolute suppression is not a decisive tool for the building of an European Area of Justice

a. Presentation

While they had a very high level of English and a lively presentation, it was at times difficult to follow their Prezi-presentation, as they quickly hopped from one slide to another.

b. Content

They defended their position from the first moment on by pointing out the problems in regard to a suppression of the exequatur. Their main argument was that there is a lack of harmonization. Then they went on by giving reasons why the exequatur procedure is needed. Following from that, they made proposals for possible changes: "changing" the law (harmonization of private law), "changing" the judges (harmonization of education and appointment), "enforcement agency". They concluded their presentation with future goals (e.g. exequatur to bring foreign judges together) and the necessary tools (e.g. liaison magistrates) in order to reach them.

c. Overall Appreciation

They had to sustain a difficult position but they were passionate to make their point clear. While the general issue has been properly dealt with, we would have appreciated a more detailed approach on the mandatory grounds (e.g. the ordre-public control) of saving the exequatur.

TEAM FRANCE 4 : Edward BAUGNIET, Anna MICHAUT, Manuel MUNOZ

DEBATE N°3 : ROMANIA 2 / AUSTRIA
The functioning of the European Judicial Network in civil and commercial matters

We appreciated that the scope of this debate was so clearly narrowed and that both teams talked about very practicals elements using technicals illustrations.

There was a clear division: on the one hand, team Romania sustained the necessity of opening the European Judicial network to all legal professions ; on the other hand, team Austria argued that the access to the European Judicial network should be restricted to judges.

Team Romania 2

Team Romania asserted that there is a need to provide access to the European Judicial Network. Indeed, notaries, liquidators, arbitrators and even lawyers do not have access to the network, which is not a good thing since the ressources of the network would be of upmost interest for these professionals (e.g. application of the European regulation regarding the certificate of succession or application of council regulation regarding bankruptcy). In our opinion, such proposition does not consider the fact that these professions have already organized their own networks and might not wish to enter the European Judicial Network because it might not address their specific needs.

Furthermore, they argued that these new professions would effectively contribute to the European Judicial Network, precisely because these legal professions are the first interlocutors of the citizens. Indeed, prior to the intervention of a Judge, there is often an intervention of a lawyer or a notary.

Finally, they suggested the creation of a European sort of Legal Wikipedia that would include both european and national legislation and case law. In our opinion, this might be tempting on paper. However, it raises many issues and practical difficulties such as : intellectual property rights, privacy issues, selection of the accurate of the information, collaborative issues, incentives to collaborate, the risk of counseling instead of informing and possible liability resulting thereof, feasibility in particular regarding costs, human ressource and linguistic challenges.

Team Austria

Team Austria argued that the European Judicial Network should remain an instrument created « by and for judges », that it was hard to build such a network which nowadays is efficient, convenient, flexible and economical. Opening it would contravene the principle of proportionality and might « break it ».

Furthermore, they underscored four issues: the skills of the person working at the Contact point (we believe such person needs to speak English and develop communication skills); the difficulty for the judge to spare time to contribute since it is not a full-time job; the lack of publicity; the difficulty to reach your Contact point person. We appreciated the practical element of this answer and the fact they found time to interview Austrian Judges on this matter.

The Austrian Team did not only point out the problems of the European Judicial Network, they also suggested practical solutions and improvement relating to the future of the tool : a central office in The Hague (CC Co-Unit) and connexions with non-participated legal professions.

Openings

Both teams ignored the competition and economical element of this debate, except to mention a possible financial contribution by the legal profession. Indeed, lawyers are a private practitioners and have already incurred costs to build equivalent tools. Therefore, we suspect they might be a strong opposition from the lawyers against free access to those tools for all their competitors. Furthermore, they are private players specialized in providing legal ressources and tools to lawyers who might argue that this constitutes unfair competition.

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TEAM FRANCE 4 : Edward BAUGNIET, Anna MICHAUT, Manuel MUNOZ

DEBATE N°4 : ROMANIA 1 / FRANCE 2
The future of exequatur

Team Romania 1

Team Romania argued that suppressing exequatur is possible since there are sufficient common grounds and mutual trust in the European Union. They also developed the disadvantages of exequatur : financial cost and length of the procedure. They presented surveys showing that there was an expectation from EU citizens regarding free movements of rulings.

We appreciated that they clearly explained the historical background of the suppression of exequatur in the European Union. However, they did not analyze the consequences of a complete suppressions of exequatur in the European Union.

Furthermore, it felt like they did not really promote a global suppression of exequatur between EU Member States. Some of their points would have been better conveyed by using concrete examples illustrating why suppression of exequatur is needed.

Team France 2

Team France 2 addressed the concrete problems of suppressing exequatur : exact cost of the procedure and eventually suppressing the intervention of the lawyer to reduce costs.

They also argued that exequatur was necessary to adapt the foreign decisions in one's own judicial system. Exequatur is not the main obstacle for the circulation of decisions. Indeed, the real obstacle is the lack of harmonization of substantive laws. Team France 2 gave concrete examples about some legal structures existing in some Members States and pointed out the essential role of the Judge in « translating » legal concepts which do not exist in his own jurisdiction (e.g. trust / usufruct).

Furthermore, they considered alternative paths to create a harmonized area of justice without the suppression of exequatur. They managed to show that exequatur could be « reinvented » and could lead to closer European cooperation.

Imagining that exequatur would be totally suppressed, they argued that it would be difficult for EU citizens to find the appropriate way to enforce their foreign decisions.

However, Team France 2 could have insisted on public policy issues, as we consider that these are the main obstacles for the total suppression of exequatur.

Openings

We are skeptical about the creation of a public enforcement agency, because of the diversity of the existing procedures within Member States in this area.

In our opinion, the total suppression of exequatur is an achievable dream but not a top priority, since we would first need to harmonize procedural civil law and enhance mutual trust between judges.

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Debate nr. 3: Romania 2 vs. Austria 1 (by The Netherlands)

Romania 2

Substance

We found a number of their arguments for the opening up of the EJN network convincing. We found the idea of sharing in the costs useful. Also the idea that the opening up of the network to lawyers would save time and create a more efficient system was convincing. Finally the thought that opening the network up to the general public would reduce the 'fear' of cross-border court cases was an enticing thought, but we question how many 'citizens' would find and use this tool (how many 'average people' would know how to read and use jurisprudence?).

We felt that both teams spent too much time answering the questions from the other team and the judges, and repeating things they had already said. For instance the question on the teleology of the EJN we felt was not properly answered by either team.

Presentation

We liked the introduction and the analogy between a digital network (internet, mobile phone) and the physical EJN network. This made their core-point (that no-one should be excluded from the network) clear. The set –up of their Prezi/Power-point was also nice – showing what a portal could look like. We both felt that Stela Pelian presented very well – we like her tone and use of rhetorical questions, and her voice is pleasant to listen to.

Austria 1

Substance

We thought their argument that opening up the network tot lawyers/public would reduce the quality, and would invite opportunistic use of the forum was very convincing. Also we liked that they came with an additional and alternative set-up, creating a central seat for the EJN, where quick and informal communication would be possible between the contact points (and, of course, we agree that the seat should be in The Hague ☺). We found it impressive and very valuable that they had conducted a survey amongst judges and lawyers, and that they bases their standpoint on this information. After all, the EJN is there to facilitate the legal professionals, and this was underlined by the Austrian approach. Also, we thought that they answered the (rather rhetorical) question from the Romanian team well – a selective network does not per se mean an exclusive one.

As already said, however, we felt that both teams took too much time in answering the questions, thereby losing sight of the core point and making the debate slightly vague.

Presentation

The small theatre play in the beginning was entertaining, and immediately got the attention of the audience. However, we think that they could have used this medium better to illustrate why the judge needs access to the EJN, and why the lawyer does not need direct access. The structure of the slides (NO, from a .... perspective) was clear and convincing.

Observation Files

Romenia 1 – France 2: The future of the suppression of the ' exequatur'

Substantive Romania 1:

Their main argument was that the principle of mutal recognition of judicial and extra-judicial decisions in civil matters claims speaks for the suppression of the exequatur procedure. Also they stated that the exequatur procedure only delays the procedure and that the debtor already went to a whole procedure in one country, why should he also wait on a new procedure in another country? Of course these are good arguments in favour of the suppression of the exequatur, but in our opion they didn't tackle the objections against the suppression and the practical problems that may arise from the suppression enough. When Carlos Manuel Gonçalves de Melo Marinho, one of the jurors, asked a question about the practical implications, this question was not properly answered by either team. The Romanian team repeated the advantages but did not go in the question about whether another country should recognize a decision when for example a clerk passes this decision.

We also thought it was kind of strange that, both teams, made very little mention of the recast of the Brussels I regulation, since this regulation has so many implications on the exequatur procedure. We didn't understand why they did not use this as an argument in favour of their standpoint. And also we found it curious that there was so little reference to jurisprudence in where this topic is dealt with extensively.

Presentation Romania 1:

Romania began with a kind of funny intro to make a statement that the presentation was about the future. It was a good start to get everyone's attention. The way they presented their arguments, however, could have been more convicing. Also they had too much text on their slides which we think was kind of distracting.

Substantive France II:

The French team focused a lot on the European Civil Code. Also they mentioned harmonisation of substantive law and of the enforcement agencies. The link wasn't completely clear between this and the keeping of the execuator procedure. Also they mentioned the mutual trust within the European Union a lot. We think there was some good jurisprudence to give concrete examples on why an execequator procedur is needed. For example the Krombach vs. Bamberski case. By not making use of this jurisprudence they kept the debate a bit vague. When Carlos Manuel Gonçalves de Melo Marinho, one of the jurors, also gave a great ex ample of the consequences of abolishing the exequatur, but they did pick up on this point.

Presentation France II:

Also the France team had a little too much information on their PowerPoint, which was kind of distracting. Maybe if they stood up during their presentation it could be more dynamic.

FRANCE 2
Bertille DOURTHE
Romain LEMOEL
Thibaut SPRIET

Observations about the debate n°3

Romania – Austria

We found interesting that the Romanian team thought thoroughly of all the advantages that various professionals could find in joining the judicial network, such as the liquidators (because they would be able to check whether or not the forum shopping process was a fraud) ; the notaries and the european certificate of succession which is also very interesting because notaries need reliable information to deal with that certificate and the network is able to give it to them ; but, in the end, we were skeptical about the arbitrators because by giving them the means to get to international case law they would benefit from the judges' experiences which would probably facilitate arbitration instead of judicial settlements when there are many issues to be raised towards their business.
Meanwhile, the Romanian team suggested that the information brought to the network would be on professional and citizens' initiative, which brings us to our doubt about that issue : the more you enlarge it, the riskier it gets for people to be lost in a wide amount of unverified information (if the information uploaded is always brought by individuals through their own initiatives we can imagine it's going to be hard for the Contact Points to check it every day). So it should be remarked that we did not very agree on the comparison with Wikipedia, precisely because that website is subject to many criticisms from professionals and scholars in its mistakes and lack of checking. Thus we were satisfied when hearing the jury members asking the Romanian team how they would perform that checking of accuracy of the information. Especially in fields in which giving information can entail a dangerous liability aspect : when giving juridical advice, we might not avoid the issue of being responsible about it.

The Romanian team had also a very difficult task to perform especially because it could easily be considered unrealistic, and yet they did it very well and were very persuasive.
The improvement proposed to the e-justice website regarding the citizens' access to their procedure was an interesting idea, but it would maybe require Member States to allow that procedure in their own system at first.
Concerning the Austrian team, we appreciated they used the ECHR case law yet it was a bit technical and maybe deserved more explanation for the audience. Anyway it was very important to mention Article 6 as it raises the issue of neutrality and impartiality of the actors taking part in the network. The Austrian team stressed here a prickly issue by saying that even if lawyers have good information and could be useful to the network because they can add up information, we should keep in mind that they are still private parties' servants.
However it was extremely pertinent that they raised the issue of the opening of the contact points' phone book to citizens or lawyers which would lead to a flooding of the website under particular demands, thus bypassing the lawyers' duty and making their job redundant (and their payments from the citizen unfair). This is precisely why, in our opinion, Contact Points are judges, because they are independent and can check the information without personal interests in it.
The centralization of Contact Points will bring judges together and they can thus share about common experiences, information and practices : that would also add visibility to it (getting the citizens – and judges ! – to know about them) and make it easier for judges to use by calling a unique number.
On practical grounds, we evidently liked the dynamism of the Austrian sketch and the story-telling performances of the Romanian team.

THEMIS 2014

GRAND FINAL

KRAKOW

ITALY 1

OBSERVATION FILE

about positions on EU law codification

The Italian Team

Viola NOBILI

Donatella PALUMBO

Amleto PISAPIA

The trainer

Luca PERILLI

Two main arguments were confronted by the Dutch and Spanish teams.

On one side codification of EU legislation about private international law would bring certainty, predictability, consistency and would help European citizens and legal professionals in the use of EU law. That would, as a consequence, enhance access to Justice, elimination of legal barriers and circulation of judgments.

On the other side the Spanish team claimed that, according to art 81 of the TFEU, the EU has not the power to codify legislation but it can only enact legislative acts with the aim of harmonising national private international law; as a consequence codification would turn in a mere compilation of legislation, that would not clarify the controversial provisions and, in any case, would not solve the systemic gaps of the existing legislation.

The Italian team wants to remark the fundamental importance of the role performed by the European Court of Justice and by the national judges in the framework of the preliminary ruling proceeding for the evolution of the EU law since its outset.

The Court of Justice, by its decisions, has not only contributed to harmonise the national legal provisions with EU legislation, but it, by interpreting the EU law, has even developed "autonomous" concepts, stemming from the law, that are valid and applicable in all Member States, irrespective of their national legal cultures and traditions.

This has contributed in a decisive way to developing a common European legal culture.
Considering what above, the Italian team supports the idea of codification of legislation that has been implemented for a sufficient period of time, to be consolidated through the case law of the European Court of Justice and the practices of Member States' judges. For this case codification would bring legal certainty with all the benefits highlighted by the Dutch team.
As regards the new legislation, w hose implementation is not consolidated in the judicial practice yet, codification would not only encounter political obstacles, but would also produce the negative effect of preventing a positive development of international private law through the case law of the European judges, at national and central level.

TEAM FRANCE 4 : Edward BAUGNIET, Anna MICHAUT, Manuel MUNOZ

DEBATE N°2 : NETHERLANDS / SPAIN
EU LAW CODIFICATION

Both teams agreed on the positive aspects of codification and that it was an achievable goal; that it could enhance predictability and clarity of the European regulations. They also agreed that codification should be limited to the area of conflict of laws, excluding substantive law. Moreover, codification was interpreted by both teams as a compilation of existing law but new laws would not be created in this process.

We appreciated that the scope of this debate was so clearly narrowed down to these issues and that both teams made clear choices on the definition of their respective topics.

However, both teams disagreed on the timing when this codification would occur.

Finally, the main question of the debate was : when can we concretely reach a codification of the European legislation in civil matters ?

However, there was no real debate around the fact that codification may be seen as useless or inadequate for *common law countries.*

Team Netherlands

Team Netherlands asserted that EU private international law has many gaps, specifically territorial gaps (i.e. all EU countries are not bound by the same rules [Danemark, UK, enhanced cooperations]) or material gaps (i.e. exclusion of the some contract of Rome i) - these arguments appear as relevant to foster more cooperation in civil matters.

Also, they argued that codification could help to fulfill these gaps. However, there seems to be a contradiction, because they admitted that codification would only imply a compilation and not an implementation of new rules (unromantic codification). Therefore, such codification would not bridge these gaps.

Furthermore, they insisted on the fact that codification would bring clarity, predictability, avoid redundancy and could be used as a basis for the development of EU regulation in civil matters. We agree on the fact that codification would make the regulations clearer for EU citizens. All the applicable law to his personal case could be found in a single document. However, we believe that it could also have a negative effect : paralyzing further evolution of European regulations, since from the moment they have been codified they are - at least they should be - meant to be set in stone.

Team Spain

Team Spain defended that codification is a good thing. However, the EU is not ready and does not have legal grounds to codify civil matters regarding article 81 (2). We were convinced by the argument that we are only at the beginning of legislating in civil matters at the EU level. Since the Amsterdam treaty many *small revolutions* have occurred and a lot more are to come. There is not enough legal substance to codify at this moment. We are still in the building process, it is too early to stabilise.

Openings

Both teams ignored the linguistic challenges involved in the context of codification. Should we use a unique European langage or mirror what is in place for Regulations (translation in all official EU langages) ?

Moreover, codification has already happened for some states, since EU law is integrated in national law. Therefore, parts of the EU legislation have already been included in national law (e.g. Directive on defective goods in the French civil code).

Should codification be implemented at an EU level, national level or both ?

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OBSERVATION FILE

Romania 1 vs. France 2

I. General assessment of the debate

The debate centers on the evolution of EU law regarding the need of certain measures for enforcement (*exequatur*). While national law tradition dictates that foreign judgments cannot be enforced in the same fashion as national ones, the judicial tools of the EU continue to promote a system with less and less formalities and easier access to the enforcement of judgments.

While it is clear that Regulation nr. 2201/2003 and other EU instruments made important steps toward eliminating the *exequatur* formalities, more recent Regulations, such as the Brussels I and 650/2012, have not abandoned all forms of judgment recognition. Thus, the current vision toward the elimination of the *exequatur* procedure is rather uncertain.

Assessment of the debate itself

We appreciated the elaborate and comprehensive arguments of both teams. Moreover, the manner in which the debate was conducted underlined the great knowledge on the subject chosen. The speeches were well-structured and supported by very original visual aids. We enjoyed the practical examples given and believe that they illustrate the importance of this issue in national and international law.

The teams touched upon the relevant EU legislation and CJEU jurisprudence, ECHR jurisprudence, providing us with a full insight on the legal framework of the debate.

1. For the Romanian team, we appreciated the multilateral perspective adopted. They approached the given subject from three points of view: historical, social and economic. The team explained the evolution of the judgments recognition in the EU, going back to the Brussels Convention from 1968. They offered the factual basis of the suppression of the *exequatur*, the **mutual trust** that the States involved must share, as well as the legal basis, which is the Amsterdam Treaty and the Tampere Conclusions.

The Team showed how a judgment was initially viewed only as a piece of evidence which could be used in a new trial in the State of enforcement. Then, a system of recognition for foreign judgments was created, which was accompanied by an *exequatur* procedure. The final goal, as the team pointed out, is that each foreign judgment be viewed as national judgments. This means that no further steps should be taken for their enforcement, other than the measures needed for national judgments. Some examples in this sense would be the Small Claims Regulation, European Payment Order, etc.

The Romanian Team explained that the grounds for refusal to recognize and enforce a judgments were rarely used, mainly because efficient procedural guarantees have become a general rule in the EU Member States' legislation. They have showed that only 1%-5% of the judgments are appealed, and 73% of the citizens would welcome a more speedy procedure of communicating judicial documents in the EU. The conclusion they drew was that the *exequatur* procedure is only a formal one, stressing upon the fact that the grounds for refusal are also to be found in the national law of the Member States.

Furthermore, they have showed that maintaining the exequatur procedure is not a viable concept since it would allow for the existence of 28 different procedures at EU level, which is not compatible with the aims of the Union. In addition, they underlined that the suppression of the exequatur formalities encourages the single market concept, which is one of the fundamental ideas of the EU. They also highlighted the fact that the debtor's rights cannot overcome the need to easily enforce a final judgment.

Last but not least, they made reference to art. 6 of the ECHR and the relevant case law of the Court, since the execution of a judgment is part of the civil trial.

2. For the French team, we appreciated the innovative arguments provided, as well as the revolutionary approach, meant to give an alternative to the suppression of the *exequatur*. They argued that suppression equals the surrender of sovereignty and it weakens the debtor's rights.

Furthermore, they showed that the concept of mutual trust is needed within the EU, but it does not exist at this time. They further explained that this is more of a goal rather than reality. As a legal basis, they underlined that art. 67 of the EU Treaty should not be interpreted as permitting automatic recognition of judgments, but, on the contrary, the procedure should be conducted by a judge.

Another argument they presented was the lack of harmonization in substantive law, and the lack of certain legal concepts in some EU Member States, which would make the enforcement of judgments very difficult. They provided viable arguments to keep the exequatur, but instead create a EU Enforcement Code and a EU Civil Code. Furthermore, they highlighted the need for harmonization in the training of judges at a EU-level. They also mentioned the necessity to organize in the same way the enforcement agents, since there are major differences between the legal systems of the Member States.

The French team underlined that the best protection of human rights can be achieved at a national level, since national judges are the ones to ensure a filter and greater guarantees. They also stated that doubts may arise when a judge is meant to apply foreign law to a particular case, since is not well-acquainted with other national legal systems. Thus, the exequatur needs to be maintained.

II. Answering the jury's questions

This part of the debate was a very active one, both teams involved in a dynamic discussion with the jury. They had the opportunity to share their views on whether or not a decision (not a judgement) coming from another Member State should be enforced directly, especially

considering the lack of the impartiality of an administrative authority. This difficulty is even greater when the decision stems from a non-EU state, such as Brazil.

They further explained the level of mutual trust which is shown by the existing EU regulations and made different assumptions about its evolution.

III. Ideas to ponder at

In our view, the concept of sovereignty needs to be further readjusted to the EU aims and this is clearly shown by the fact that even the public-order ground of refusal is established by the CJEU and not by the member states themselves. We also believe that suppressing the grounds of refusal of the exequatur would not make a big difference at a practical level in many Member States since these grounds are also present in most of the national enforcement regulations.

Romania 2 team