

EUROPEAN COMMISSION



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Commissioner for Justice, Consumers and Gender Equality

Working together to complete the European area of Justice

Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

Annual Conference of the European Law Institute

Vienna, 4 September 2015

Dear Diana [Wallis],

Ladies and gentlemen,

Thank you for the invitation to address you at the annual conference of the European Law Institute (ELI).

Since its founding the ELI has worked hard to enhance European legal integration, improve law-making and above all, to inspire trust among jurists of different vocations and from different legal cultures. Thank you for this work!

As Commissioner for Justice, Consumers and Gender Equality **my mission is to preserve and strengthen our fundamental European values by building bridges between national legal systems.**

To achieve this mission, close co-operation with legal experts and actors on the ground is key. In the only four years of its activity, the ELI has already provided us with invaluable advice on many different initiatives and I rely on your continued support.

The EU is more than a common market, it is also a Union of shared values which sometimes face serious challenges. That's why **completing the area of justice and fundamental rights based on mutual trust** is a **first strand** for my portfolio.

At the same time, and this is the **second strand** of my portfolio, building bridges between national legal systems will foster **economic growth**. A sound and predictable justice system is a prerequisite for a business friendly environment in which cross-border trade can flourish.

The Commission's 2015 EU Justice Scoreboard shows that despite improvements, the efficiency, quality and independence of the justice systems remain a concern in some Member States. There is still work to do, and I know that the ELI is interested in legal developments at national level too, if they are relevant to the EU level.

People are at the centre of these strands of my portfolio. Justice policy is about giving people more choice, protecting their rights and building trust. Beyond legal frameworks and concepts, every proposal we make aims ultimately to achieve improvements in the daily lives of our citizens.

Let me explain to you how I try to achieve this.

1. Civil law

I will start by looking at the civil law area affecting citizens in different roles: family members, consumers or entrepreneurs.

Brussels IIa

When I prepared for this event, I was pleased to see that European families feature on the agenda at your annual conference, with a focus on party autonomy.

Thanks to our cherished freedom of movement, a great many citizens move within the European Union. There are around 16 million international couples in the European Union. When such families separate, legal complexities add to the personal difficulties of the separation.

A milestone in the creation of a common judicial area in European family law is the "Brussels IIa Regulation". This piece of legislation has helped to solve many cross-border family law disputes in Europe over the last ten years.

The evaluation of its functioning shows that overall, the Regulation works well and has increased legal certainty for citizens. At the same time, there are some shortcomings. One such shortcoming is that spouses cannot choose the court to resolve their dispute. Having that choice would reduce litigation on jurisdictional questions after a family break-up.

Another shortcoming concerns the swift return of children that are abducted by their own parents. In situations of parental child abduction, a quick return of the child to his or her habitual residence is crucial to protect the child from harm and distress.

We also need to further streamline the recognition and enforcement of judgments in custody cases. Time is of the essence in these proceedings, to protect the rights of the children involved.

I discussed this both with the Council and the European Parliament, and I sense there is a great willingness to improve the situation.

We are therefore planning a review of the Regulation for 2016.

Insolvency

The ELI has recently put a lot of effort into research on insolvency law. Your conference on this topic in March was well attended.

All Member States have experienced an increasing number of bankruptcies in recent years, resulting in a loss of know-how and jobs.

To put a halt to this trend, we need to modernise the legal framework on insolvency in the EU. We have to focus on the restructuring of companies rather than their liquidation and to allow viable businesses to be saved. Honest entrepreneurs deserve a second chance. We took a first step in this direction in March 2014 with the Recommendation on a new approach to business failure and insolvency.

However, there are currently still 28 different insolvency regimes. Predictability is key for an investment-friendly environment and a modern and more coherent approach to insolvency would help businesses assess the risk of their investment. It would be good to achieve a more common approach on the key

principles. We are discussing this in the framework of the Capital Markets Union and the Internal Market Strategy. Your input would be highly valued.

Digital contracts proposal

Another project that is key for the completion of the Single Market, in this case the digital one, is the proposal on contract law rules for e-commerce, the so called digital contracts proposal.

In the past the ELI contributed to the proposal on the Common European Sales Law, the CESL. Your critical, in-depth examination of the proposal really added value.

Now, with the aim to unleash the potential of cross-border e-commerce, we are modifying the CESL as part of the Digital Single Market Strategy.

We envisage adopting in December this year a legislative proposal covering key contractual rights for online purchases of digital content and for domestic and cross-border online sales of tangible goods. The aim is to do away with current fragmentation which is one of the reasons to prevent cross-border e-commerce. We want to provide legal certainty for traders and ensure high level of protection for consumers.

Your input on how to design legally sound and robust new rules is particularly valuable. I am already grateful for your support, as expressed in your 2015 Statement "*Unlocking the Digital Single Market - An Instrument for 21st Century Europe*". I was pleased to note that you endorse my intention to propose targeted harmonisation rules. I am sure your more detailed comments will allow us to improve the design further.

I would like to mention a few words of special appreciation to the legal experts - members of the working group - under the leadership of Lord Thomas. Your hard work enhances the quality and the legitimacy of EU law, far beyond your respective areas of expertise.

2. Criminal law

Let me now turn to the area of criminal law, where together we have to find ways to tackle threatening situations under the current EU and international **context**.

The tragic terrorist attacks in Paris and Copenhagen at the beginning of this year showed that we need to permanently adapt the EU Criminal Justice acquis to new needs and challenges. We must also take care to set sound legal foundations.

Here again, the work of the ELI is vital.

With the study project on conflicts of jurisdiction, you started work on a crucial issue which is still largely unsolved at the European level, both for political and for legal reasons. We are really grateful for this ambitious and timely project and look forward to its results.

The ongoing negotiations on the European Public Prosecutor Office proposal show that the lack of common rules on jurisdiction and transfer of proceedings is a serious obstacle to a common European area of Criminal Justice. By way of comparison, in the civil law area we have such common rules since nineteen sixty eight [1968].

With new technologies easily available to everyone, we need to look into matters like cyber-enabled crime and electronic evidence. In both areas the principle of territoriality which traditionally guides law enforcement and judicial competence is strongly challenged. Your conflicts of jurisdiction project will also guide our reflections here.

Against this context, I will sum-up some of the priorities in the criminal law area for the years to come.

Firstly, I want to **finalise the negotiations on the European Public Prosecutor Office** as soon as possible.

Secondly, high up on my to-do list is strengthening **procedural safeguards in criminal proceedings**: presumption of innocence, legal aid and the rights of children involved in criminal proceedings.

Thirdly, in line with the Renewed European Union **Internal Security Strategy 2015-2020**, I will focus on preventing radicalisation to terrorism, in particular in prisons. On 19 October 2015, the European Commission will be holding a High-Level Ministerial Conference on the "Criminal justice response to radicalisation" in Brussels, organised together with the Luxemburgish EU Presidency.

I will also propose to further improve ECRIS, the European Criminal Record Information system. Currently ECRIS does not work effectively for third country nationals convicted in the EU.

And, finally we are looking into the legally very complex question of extending the mutual recognition regime for freezing and confiscation orders. The idea is to extend the existing rules to the most modern forms of confiscation, including the so called "non-conviction based confiscation".

3. Fundamental Rights - Data Protection

When we talk about security and criminal law, we must talk about Fundamental Rights as well. That is why we insist so much, for example, on robust data protection rules or on meaningful rights of the defendant in criminal proceedings. These rights are enshrined in the Charter of Fundamental Rights for a reason. They are core values of any democracy and we must live up to our own European standards.

Innovation in the digital world can bring great economic and social benefits. But both technical innovation and security concerns must not come at a cost to data protection and fundamental rights.

With the new rules on data protection, the Commission proposed in January 2012 a modern, strong and consistent data protection framework. Citizens will be better protected because the new rules will ensure that they can effectively exercise their data protection rights in the digital world. As we know data

protection and data security are people's main concerns when they go online. Two thirds of citizens tell us that they don't have enough control over their personal data.

We have now entered a last and crucial stage of negotiations between the Parliament, the Council and the Commission on the new General Data Protection Regulation. All three institutions have confirmed their determination to agree on the data protection reform by the end of 2015.

As regards professional secrecy, the Regulation will allow Member States to lay down specific safeguards. Lawyer-client confidentiality and the protection of client information and of personal data are key to a lawyer's part of the job of upholding the rule of law.

4. The rule of law

Respect for the rule of law goes further than upholding some fundamental rights. Respect for the rule of law is a prerequisite for the protection of all fundamental values listed in the Treaties. Also, respect for the rule of law is crucial for establishing mutual trust between Member States and their legal systems. This is why respect for the rule of law is a precondition for EU membership.

In March 2014 we presented a new Framework to strengthen the rule of law in the EU Member States. It allows the Commission to start a dialogue with an EU Member State to prevent an emerging systemic threat from escalating further.

Not only the European Commission, but all EU institutions have important, complementary roles to play in promoting and protecting the rule of law. The Council and the EU Member States agreed to establish an annual rule of law dialogue to that effect, and the first of these dialogues will take place in November.

And it is the European Court of Justice as the judicial authority of the EU that ensures the uniform application and interpretation of EU law – together with the courts and tribunals of the Member States.

5. Conclusion

Last but not least, the academic community in Europe, including the ELI, can contribute to a rule of law culture in Europe, through your work, through research, publications, conferences. And from what I've seen in your conference programme, that is exactly what you do. Stimulating the debate, encouraging exchange between experts, academics and practitioners, on all matters EU law. Closer and effective judicial cooperation will be even more important against the challenges of migration where justice aspects also play a role. I wish you a successful conference and insightful discussions, and I look forward to your input and expertise on many different projects and proposals.