

# **Cross-Border Litigation in Europe: Private International Law Legislative Framework, National Courts and the Court of Justice of the European Union**

## **Project Summary**

European integration encourages cross-border trade, and promotes consolidation in European industry via cross-border mergers, acquisitions and privatisation deals. This has resulted in a marked increase in migration of people and workers. Migration has also been promoted by EU citizenship and Erasmus programmes. The EU has harmonised various private international law (PIL) mechanisms that are increasingly used in private law disputes in Europe. Despite the immense contribution of EU PIL to successful European integration, the use of the PIL mechanisms may pose problems for national judges and litigants in disputes with an international element. National courts have to apply uniformly a growing number of PIL instruments. Litigants have to take cross-border litigation risks and may incur higher costs.

The increased importance of PIL for disputes in civil and commercial matters, which may affect businesses, consumers and families, raises concerns as to the cost of cross-border litigation as well as to the uniform application of the various PIL instruments across the EU Member States. The rule of law could potentially be undermined by high costs and a high level of uncertainty which could adversely affect cross-border claimants' litigiousness as a number of potential litigants may believe that the risks of litigation outweigh the benefits. Such an outcome would fly in the face of the Stockholm Programme which aims to create "a Europe of law and justice". Given that Civil Justice is dependent on the adequate application of PIL instruments by national courts, any analysis of the effectiveness of the current framework must take account of the practice of Member States' courts and the role of the CJEU.

The project aims to consider whether the current European Union's court system is optimal for the creation of "a Europe of law and justice". In particular, we aim to provide answers to the following research questions: (1) Is the institutional architecture in Europe suited to provide an "effective remedy" for cross-border litigants whose rights have been violated? (Compare: Article 47(1) of the Charter for Fundamental Rights.) (2) Do national courts deal appropriately with harmonised PIL instruments? (3) Does the CJEU deal appropriately with PIL issues? (4) Is there a need for reform? If so, what should be the direction of any potential reform?

The research methodology will allow the research team to complete an empirical study, which takes account of the diverse legal traditions in Europe, in order to ensure that an appropriate comparative study is undertaken. In particular, the consortium plans to conduct research and field work employing a mix of research methods in a representative sample of Member States (Belgium, Germany, Italy, Poland, Spain, and the United Kingdom). Databases for the cases before national courts as well as for the preliminary references before the CJEU will be compiled. Furthermore, it will be necessary to turn to the views of legal practitioners and EU policy makers - qualitative interviews will be conducted to test participants' attitudes and feelings on the functioning of the European court system at present and how it could be improved to better contribute to the uniform application of the various PIL instruments. Further, the research partners will organise a series of workshops in the target countries and a final conference in order to have policy-makers, judges, lawyers and other academics involved with the project. The proposed research into the litigation pattern in sampled countries will be innovative in so far as our analytical activities will allow us to propose ways to improve the effectiveness of European PIL. Moreover, the detailed empirical study from the six Member States will be complemented by national reports from each Member State.

The output from the research will be both academic and policy orientated. The main results of the research are intended to be published in a project book.