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Party Perspective on Transnational Civil Procedure in the EU*

1 Introduction

With this paper I would like to present the main topics of my PhD project, which I commenced in the Autumn of 2009. The core question of my research regards whether the national laws of evidence in the EU Member States are *compatible*. With *compatibility* between national laws of evidence I mean that evidence collected in one Member State, and according to the laws there, can be used in the court proceedings of another Member State without any negative effect on the main proceedings. The development of judicial cooperation in the EU is based on diversity among the national legislations, while at the same time aiming for a common sense of justice within the EU. The agglutinating tools at hand are mutual recognition and to some extent mutual trust. Through my PhD research I hope to establish what the differences between French and Swedish civil procedure are and whether the existing diversity does allow for commonality regarding the sense of justice on the one hand and for legal certainty in transnational proceedings on the other hand.

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2 Diversity, International Law and the Taking of Evidence

In a court proceeding where evidence can be found in another Member State than the one where the proceeding is being held, national courts in the EU can turn to one another for assistance to take evidence on the territory of another Member State. This is done with the application of the EU Evidence Regulation.¹ The aim of the Regulation is to create faster and simpler procedures for the cooperation between the courts in matters concerning the taking of evidence abroad. The idea is that judicial cooperation in civil matters² and the existence of choice of law rules are to neutralize the consequences of the choice jurisdiction (i.e. forum shopping) in conflicts between parties with residency in different Member States. The direct effect of union law rights means that the rights can be claimed directly at the national courts. The main rule is that the Member States' national procedural legislations are to be applied to protect these union rights, according to the EU law principle of procedural autonomy³.

Following international law traditions the EU Evidence Regulation leaves it to the Member States' national law to regulate the proceedings for the taking of evidence. The principle can be likened to the idea of a Lowest Common Denominator between the two national laws concerned; the main rule being that the law of the Member State of the requested court is to be applied.⁴ The requesting court can call for the request to be executed in accordance with a special procedure, and this shall be complied with as long as it is not incompatible with the law in the Member State of the requested court.⁵ The main example of special procedures is the use of oaths, which might be necessary for the value of the evidence in the requesting court.

¹ Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, OJ L 174, 27.6.2001, p. 1.

² See Eva Storskrubb, *Civil Procedure and EU Law, A Policy Area Uncovered*, Oxford University Press, Oxford, 2008 concerning the terminology regarding of this policy area.

³ 33/76, *Rewe*

⁴ Article 10.2 Evidence Regulation

⁵ Article 10.3 Evidence Regulation

The possibilities for a requested court to deny taking evidence for a court in another Member State are limited to situations where according to national law a person has a right to refuse being heard as a witness, i.e. doctors, clergymen and other people in such professions. The only other possibility to refuse the execution of a request is if the request falls outside the scope of the Regulation or the requesting court has not met with the requirements of the Regulation.

In the practice guide for the application of the Regulation the Commission clarifies that the regulation applies to “all civil and commercial proceedings whatever the nature of the court or tribunal in which they are taking place”.⁶ This includes “consumer law, employment law and even competition law as far as private proceedings are concerned, as well as matters relating to the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession; bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings.” The scope of the Evidence Regulation, as we can see, goes beyond the Brussels I Regulation.

The interpretation of the Regulation has only been submitted to the Court of Justice twice. In the Tedesco case (C-175/06) an Italian court referred to the Court of Justice for a preliminary ruling. The case in the Italian court regarded infringements in intellectual property rights. The Italian court requested, in accordance with the normal procedure in Italy, a, so-called, *descrizione*, which is a description of the product, which allegedly constituted an infringement of the intellectual property rights. The English Authority however considered this to be “a search for documents and a seizure of samples”, and thus excluded from the scope of the Regulation. The case was withdrawn at the Italian court and was therefore never tried by the Court of Justice but the Advocate General issued her opinion. She argued that the Regulation be interpreted generously and autonomously in order to protect the aims of the Regulation, namely to simplify the cooperation between the courts in cross-border disputes. In the second case (C-283/09) a Polish national court refers to the ECJ a question for a preliminary ruling regarding the right for the requested (national) court to demand from the requesting court an advance for expenses involved in taking evidence for the sake of proceedings in the requesting court. The

⁶ Practice Guide for the Application of the Regulation on the Taking of Evidence, http://ec.europa.eu/civiljustice/evidence/evidence_ec_guide_en.pdf

reference for a preliminary ruling was lodged on 23 July 2009, and the Advocate General presented her opinion on 2 September 2010.

The Tedesco case shows how easily a person in one Member State can be subjected to the legislation in another Member State, seeing as an infringement of an intellectual property right does not presuppose any prior contact between the parties. As is pointed out by the Advocate General in the Tedesco case the Regulation lacks definitions of the notion “taking of evidence” and the case shows how widely different the interpretation of this central notion can be – a result of the variations of the national legal orders.

A question which was of great importance in the work of the Hague Convention is the one regarding *disclosure*, which in American law goes under the more descriptive name of *pretrial discovery*. In common law countries, in the preparatory stages of the proceedings, the collection of evidence involves an open form of request for the production of evidence from opposing parties. The parties have an obligation to submit to one another information relevant to the proceedings, whether or not supporting the own case. Not only do many EU Member States lack such a system, but also is it considered to clash with the legal orders of many Member States. The Regulation does not include any specific rule excluding the use of pretrial discovery, but the Council has declared that such procedures do fall outside the scope of the Regulation.

The Evidence Regulation gives the national courts the freedom to contact each other directly to submit a request for the taking of evidence. This is to be seen in comparison to the international agreement preceding the Evidence Regulation, namely the Hague Convention of 1970 on the Taking of Evidence Abroad.⁷ According to the Hague Convention the national courts are to go through a central authority in order to put forward a request for the taking of evidence in another signatory State. That procedure is kept for the purposes of the Direct Taking of Evidence procedure, regulated in the Evidence Regulation. The direct contact between Member States’ courts is only possible if the Member States give up a fraction of their sovereignty. Direct contact between the national courts is a significant change in the international regulation of judicial cooperation.

⁷ The Hague Convention is still in force between its non-EU signatory States on the one hand and between the EU Member States and the Hague signatory States.

3 Mutuality, Commonality and EU Governance

With the Treaty of Amsterdam of May 1999 the EC Treaty was restructured and a shift of the competencies of the communities on the one hand and the Member States on the other, was carried through. By placing the rules of judicial cooperation in civil matters in the First Pillar, a basis for legislation at Community level instead of at intergovernmental level was created. During a transitional period of five years, the Council acted unanimously on the proposal from the Commission or on the initiative of a Member State after consulting the European Parliament. After this period the Council only acted on proposal from the Commission. The acts were adopted unanimously, preserving the Member States' right to veto. With the Treaty of Nice in 2003, the legislative procedure according to article 65, in conjunction with article 67, was amended so as to allow for the Parliament and Council to act jointly in a co-decision procedure where legal acts in the field of judicial cooperation in civil matters were adopted on a qualified majority vote. Through the entry into force of the Lisbon Treaty in 2009 the equivalent rule is introduced in article 81 of the Treaty on the Functioning of the European Union (TFEU), where further reference is being made to the ordinary legislative procedure described in articles 289 and 294. The new procedure requires no unanimity in the Council, but that the Parliament and Council on a majority vote basis respectively reach the same decision regarding the adoption of a legal act. Apart from Denmark, which has opted out of the development of a judicial cooperation in civil matters, a Member State opposing a specific legal act, since the Treaty of Nice, no longer has a veto.

At the Council meeting in Tampere in 1999⁸ the Member States agreed to give form to an Area of Freedom, Security and Justice (which was established with the Treaty of Amsterdam of 1997). In the Tampere Conclusions the Council writes that "the challenge of the Amsterdam Treaty is now to ensure that freedom, which includes the right to move freely throughout the Union, can be enjoyed in conditions of security and justice accessible to all. It is a project which responds to the frequently expressed concerns of citizens and has a direct bearing on their daily lives", and continues by stating that "the enjoyment of freedom requires a

⁸ Presidency Conclusions – Tampere European Council, 15 and 16 October 1999. Council of the European Union, (12.10.2004).

genuine area of justice, where people can approach courts and authorities in any Member State as easily as in their own.” Within the Area of Freedom, Security and Justice several legal acts have been adopted. Among these are the Brussels Regulations⁹, the European Enforcement Order Regulation¹⁰, the Service Regulation¹¹ and the Evidence Regulation.

In line with the Tampere Conclusions of 1999 followed by the Hague Programme of 2005¹², the Union aims at forming a *common sense of justice* within the Union.¹³ To promote the mutual trust needed for increased mutual recognition of legal judgments and decisions, the Stockholm Programme¹⁴ aims at making European citizenship a “tangible reality”, with a possibility for the citizens of Europe and others “to exercise their specific rights to the full within the European Union”. Access to justice must then be facilitated and this is to be achieved through a consolidation of a European area of justice “so as to move beyond the current fragmentation”.¹⁵ The need for mutual trust, reliance and understanding is reiterated in the Stockholm Programme. It is explicitly said to be important between authorities and services as well as decision-makers in the different Member States. One might add that also the European citizens would benefit

⁹ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12, 16.1.2001, p. 1, (*Brussels I*); and Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, OJ L 338, 23.12.2003, p. 1, (*Brussels II*).

¹⁰ Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, OJ L 143, 30.4.2004, p. 15

¹¹ Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), OJ L 324, 10.12.2007, p. 79

¹² The Hague Programme: ten priorities for the next five years. The Partnership for European renewal in the field of Freedom, Security and Justice (COM (2005) 184)

¹³ The notion seems to have been invented for the sake of the developing judicial cooperation of the EU in the Action Plan of 3 December 1998, see note 18 below for further reference.

¹⁴ The Stockholm Programme – An open and secure Europe serving and protecting citizens, OJ C 115, 4.5.2010, p.1.

¹⁵ In other words, the decision seems to already have been made; the harmonisation and unification of the jurisdictions seems to be the goal that the Prime Ministers and Heads of State have agreed upon.

from a real reason to trust the judicial systems and the decision-makers, authorities and services across the EU. Also, such a trust would most likely enhance the *tangibility* of the European citizenship.

Diversity and mutual recognition are traditional in international procedural law. Mutual recognition was explicitly established in the Tampere Conclusions. State sovereignty has historically weighed more than party rights in transnational procedure. Procedural autonomy, established by the ECJ as a limitation for EU law in respect to national law, can be described as an expression of this traditional point of view. The above-mentioned shift of competencies in this area, from the Council with the Member State right to veto, to the Council and Parliament with a majority vote procedure, can therefore be described as historical.

In the Stockholm Programme the European Council explains that in order to take full advantage of the development concerning mutual recognition, measures aimed at strengthening mutual trust are necessary. Some mutual trust must have already existed in order for the decision-makers to accept such a cooperative measure as mutual recognition of one another's judicial decisions. Indeed, the Council states that the Union "is based on common values and respect for fundamental rights". It is, however, nevertheless, most likely true that mutual trust needs some support for its further development and for the development of mutual recognition. The Stockholm Programme reemphasizes the need for assistance in administrative and legal procedures the citizens face when exercising their right to move and reside freely in the EU. It is also stated that the obstacles to the right to free movement should be removed. One might consider the differences between the legal systems as an obstacle in the extent knowledge of the various systems is a prerequisite for the understanding and trust of the same – which in turn might be a prerequisite for the use of the judiciary as such. The impression is that these differences will be eradicated legislative step by legislative step, or at least, that this is the underlying plan behind the Stockholm Programme. One can guess that the lack of knowledge of the various legal systems causes an uncertainty and apprehension against turning to the foreign legal systems on the part of the individual. The existence of the Evidence Regulation and its sister regulations do on the one hand not only constitute legal means but also bear with them legal obligations for the authorities and services to act in accordance with the principle of mutual recognition. The mutual trust can therefore be said to having been put aside, seeing as mutual recognition is an obligation for the authorities. It is for these reasons mutual trust is perhaps more acutely

needed for the individuals and small businesses, when they are to choose whether or not to turn to a foreign judicial system or the “own” judicial system, for that matter.

Procedural law matters have been considered of central importance on the path of making people’s lives easier in transnational situations since the Tampere meeting in 1999. Approximation of legislation is deemed necessary and it is stated that such approximation would facilitate the cooperation between the authorities and judicial protection of individual rights. The principle of mutual recognition of judicial decisions and judgments is expressed in the TFEU, articles 67, 81 and 82. In accordance with the statement of the Hague Programme, the Stockholm Programme emphasises that mutual trust is a prerequisite for the effectiveness of mutual recognition. In the same programme the respect for the national legal systems and the diversity within the Union is to be realised through “progressively developing a European judicial culture based on the diversity of legal systems and unity through European law”¹⁶. There are challenges ahead for the cooperation within the Union and the development of such cooperation when the European judicial culture is to be based on diversity. In the Tampere Conclusions the possibility to create minimum standards in certain aspects of civil procedure and for the implementation of the principle of mutual recognition was mentioned. Such minimum standards could ascertain that the proceedings in civil and commercial matters reach a common ground, and the cultural differences permitted by the European Court of Human Rights would not have to be allowed within the EU. Otherwise expressed one might say that in order to give the citizens of the Union a common sense of justice the notion of justice needs a definition.

We are at the present in the middle of a process; it is not entirely new, but it is still uncertain what direction the process will take. Its aim is to obtain a functioning inter-state judicial system within the EU, governed by a common sense of justice and for the benefit of the sense of legal certainty and predictability of the citizens of Europe. One of the main tools at hand is the established instrument of mutual recognition. Another tool, although not yet considered fully constructed, is the instrument of mutual trust. Mutual recognition and mutual trust is not only one thing before the other. The way they have been used they are also two starting points from which to reach a common sense of justice. Although

¹⁶ The Stockholm Programme, p. 21.

one cannot expect any mutual recognition without mutual trust, one can reach a certain level of mutual trust and regulate mutual recognition at that level. At that level of mutual recognition one forges a common sense of justice through the means of harmonised law. From the other starting point, one can keep up the work on mutual trust, through way of education and mutual understanding of the different legal systems of the Member States. This seems to be the way of the EU, particularly since the Stockholm Programme.

Another duality for reaching a common sense of justice among the citizens of the EU is the one between the procedural autonomy on the one hand, and harmonisation on the other; both of these methods are applied. The Hague Programme expresses the international private and procedural law tradition, with a high level of respect for State sovereignty, national identity and procedural autonomy. With the harmonisation approach, function and cooperation weigh heavier than national identity, and therefore supranational legislation is used. It is unclear which way benefits the citizens of the EU more from a procedural law point of view.

4 Commonality, Compatibility and Party Perspective

The Evidence Regulation mainly consists of some introductory rules followed by a number of forms for the courts to use in their communication with each other. Each court is to primarily apply the law of its own Member State. From an international law perspective this can be a fair solution to an existing cross-border problem. From a procedural law perspective it might not be so clear. To a party in a court proceeding predictability is of central importance. From a party perspective court proceedings are a gamble and parties need to know whether to play or not. Without any kind of predictability one cannot appreciate the risks, financial or other, of the proceedings. Bearing in mind that the parties in civil and commercial matters often have a choice never to turn to the courts for help, the costs and risks of the proceedings are deciding factors.

The Regulation concerns the forms for cooperation between the courts whereas only national law regulates the conditions under which a national court can or shall request that evidence be taken by the court of another Member State. Likewise it is the national law of the requested

Member State which regulates the procedure for taking evidence. The influence of the parties in these matters is also mainly the concern of national law. So, what are the legal consequences if there is evidence to be collected in a Member State but the legislation there does not allow for the evidence to be taken in the manner required according to the law of the proceeding? In such a case, the balance between the parties that the law of the procedure is to guarantee would be twisted.

In the *Dombo Beheer BV* Case the European Court of Human Rights held “that each party must be afforded a reasonable opportunity to present his case – including his evidence – under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent.”¹⁷ In the same case a substantial disadvantage was found in the inability to hear a witness. As we have seen, the EU Evidence Regulation accepts limitations to hear witnesses belonging to certain groups of professionals. One might guess that such restrictions are not entirely uncommon in the EU national legislations. If the procedural law of one Member State is a coherent system, standing steady on its feet, the limitations to hear a witness might very well be compensated for within the system. But what happens when the limitation to hear a witness travels across the borders to another court proceeding? What happens when it is incorporated in a proceeding based on the free evaluation of evidence and the freedom to present evidence? Compensation to ensure the equality of arms between the parties does not exist in such a situation within the Swedish Procedural Law, since it affects the sturdiness of the totality of the evidence to be evaluated. It is reasonable to presume that such compensation deficit will occur also in other situations of transnational proceedings, maybe even more so where the evidence is not evaluated as freely as in Sweden.

As a consequence to the principle of mutual recognition of judgments, a fifth freedom has been introduced, namely the freedom of legal judgments. In 1998 the Justice and Home Affairs Council adopted an Action Plan on how to best implement the Provisions of the Treaty of Amsterdam¹⁸, where it is stated that “the ambition is to give citizens a common sense of justice throughout the Union”. The Evidence Regulation is based on the *supposition* of an already existing “common sense of justice” among the Member States of the European Union. Partially it is stated in various documents that a *minium* common sense of justice

¹⁷ *Dombo Beheer B.V. v. The Netherlands*, Judgment of 27 October 1993.

¹⁸ Action Plan mentioned in note 13.

(values as well as fundamental rights and freedoms) is the basic foundation for the European project now called the EU. The development of the principle of mutual recognition presupposes, in reality, a minimum of mutual trust, and mutual trust presupposes, in reality, a sensation of a common sense of justice. Mutual recognition would thus not have been, had there not, in the first place, already existed a sensation that there is a common sense of justice shared by the peoples of the European Project.

One can claim, which was also done in former article 6.1 EU, that the human rights and fundamental freedoms as well as the principle of the rule of law are common to the Member States. But a short and superficial analysis of the Member States' laws of evidence shows that the view on justice is not common on the area of evidentiary law. According to article 6 of the new EU Treaty, the Union is to respect the rights such as they are expressed in the EU Charter and the European Convention of Human Rights. According to the *margin of appreciation* doctrine of the Strasbourg court there may be cultural differences within its jurisdiction which might lead to one procedure being acceptable in one of the signatory States but be considered a breach of the convention in another State. The legal security a citizen and party in transnational proceedings can feel in such a situation must be assumed to be limited.

The Regulation means that the citizens of the EU can be required to both apply and be subjected to no less than 26 different legal orders within the territory of its own Member State. The possibilities to get an overview for the common citizen or small and medium enterprises I dare say are non-existent. The risks for a general legal insecurity are evident. One condition for the citizens to have a feeling that there is a common sense of justice must be that the citizens have a notion of what law is applicable in the other Member States.

5 Short Comparison

A most superficial study, which will be carried out in detail further on in the work of my PhD thesis, shows that the taking of evidence is a part of national legislation where widely different ethical points of view prevail in the various legal orders of the Member States.¹⁹ Regarding the taking of evidence, the Greek judge enjoys rather large freedom to take evidence

¹⁹ José Lebre de Freitas, *The Law of Evidence in the European Union*, Kluwer Law International, Hague, 2004, p. 1–31.

ex officio. He is also free to deny the taking of evidence requested by a party, without there being a possibility for the party to appeal. The English judge, just like his Spanish colleague, is restricted to the evidence presented by the parties, and seems to have no rights to take evidence on his own initiative. Spanish law and French law both have regulated the admissibility and evaluation of the evidence to a comparatively large extent, whereas the free evaluation of evidence is a basic principle of Swedish, German and Austrian law.²⁰

In the same way, the rules regarding admissibility of evidence and burden of proof vary within the EU. In some Member States the burden of proof in a specific case might fall on party A, in others on party B. In some cases there is an obligation to cooperate in the discovery and presentation of evidence, which might go against the basic principles of the law of another Member State.

In the gamble of the proceedings evidence plays a central role. The EU Evidence Regulation is a helpful tool to the parties and to the courts. But the procedure is regulated with a set of rules, built on basic principles and values. Swedish civil litigation rests on the principle of orality. Although the proceedings are not always entirely oral, the principle of orality is the foundation. That and the principle of public access to court proceedings made the legislator in Sweden comfortable to leave the evaluation of the evidence entirely to the court.²¹ As another side to the principle of the free evaluation of evidence is the principle of free production of evidence. The parties are, apart from some very limited exception, entirely free to present to the courts whatever evidence they find relevant.

French law of evidence is comparatively formalised. Only where there is no regulation of the evaluation of a certain kind of evidence, the judge is free to evaluate the evidence himself; that however seems to be the exception. The parties can agree on the value of certain evidence and the judge is then bound to this within certain limits of legal security. If in France one is weary of letting such powers as the evaluation of evidence to the courts, the predictability of regulated evaluation of evidence is considered of greater importance. Just as Swedish procedural law, French procedural law includes a principle of orality, but it does not enjoy such

²⁰ European Judicial Network in civil and commercial matters, http://ec.europa.eu/civiljustice/index_en.htm

²¹ Chapter 35 § 1 of the Swedish Code of Judicial Procedure (SFS 1942:740)

royal position as it does in Sweden.²² In Sweden, evidence must be presented orally and directly to the court, if at all possible; written evidence should in principle be read out loud. That is not the French way. Quoting Professor C-J Hamson at the Faculty of Law at Cambridge University, who in 1949 summarised the differences in the hearings of English and French civil procedure as the English hypothesis being that the judge, although well-read, cannot read, and the French hypothesis being that the judge, although not hard of hearing, has problems understanding the human voice.²³ The description of the English hypothesis seems to be a correct analysis also of the Swedish attitude in civil litigation – but strangely Swedish administrative court judges suffer from the same disabilities as the French judges!

From this superficial comparative study the impression is that the sense of justice might not be common in the Union. Does diversity allow for commonality in the sense of justice? How much diversity is possible in order to reach the aim of a common sense of justice?

6 Conclusion

Judicial cooperation in transnational procedural law in the EU is based on two conflicting approaches; the diversity approach and the commonality approach. The diversity approach gives more weight to the national legal culture whereas the commonality approach gives more weight to the supranational legal culture. When evidence relevant to a court case cannot be found within the jurisdiction of the court, but instead within the territory and jurisdiction of another State, traditionally, the problem has been solved by ways of international law. Focus is on State sovereignty and diversity is the effect. Mutuality is the bridge between the national legislations. Predictability and legal certainty in procedure are not focal points.

National procedural law is to a large extent untouched by EU law, or otherwise expressed: national procedural law is to this day untouched enough for it to be accurate to still be talking about procedural auto-

²² Albeit its position has fallen gradually since its crowning through the adoption of the 1942 Code of Judicial Procedure, se Eric Bylander, *Muntlighetsprincipen : en rättsvetenskaplig studie av processuella handlägningsformer i svensk rätt*, Iustus, Uppsala, 2006, and its summary in English.

²³ C-J Hamson, *La procedure civile en Angleterre et en France*, *Revue internationale de droit comparé*, 1950, Vol. 2, No 1, p. 77.

nomy.²⁴ The Single Market is regulated by a plurality of legislations. Foreseeability through procedural law is blurred by this plurality. The process in which we are at the time being, presents us with a choice between a pluralistic approach or a harmonisation approach. Both can be combined and both are represented by values expressed as late as in the Lisbon Treaty and the Stockholm Programme. The Council has indeed decided that the future of the EU will be a balancing act between diversity of legal culture and a common sense of justice.

The differences between the Member States' evidentiary rules create *per se* an insecurity and risk for the feeling of injustice, because even if the legal order of one Member State is coherent it can be incomprehensible to a foreigner. The feeling of a risk for injustice creates insecurity at the prospect of cross-border court proceedings. That can in its turn constitute a hindrance to cross-border agreements on the internal market, which the union civil law is supposed to promote. We no longer have 26 different jurisdictions, each and every one connected to the territory of one Member State, but rather 26 different jurisdictions applicable on the territory of all 26 Member States. How common is our sense of justice, judging by the national procedural legislations today? How much trust, between the individual actors on the Single Market or in the unified Europe is reasonable, judging by the national procedural legislations?

²⁴ Anna Wallerman, however, studies how accurate it really is to be talking about national procedural autonomy at this point in time, and presents her thoughts so far in her article in this volume.