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**A European Law Institute: an Important  
Milestone for an Ever Closer Union of  
Law, Rights and Justice**

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

Speech at the European University Institute

**Florence, 10 April 2010**

Distinguished guests,

Ladies and Gentlemen,

Three months ago, I took office as the EU's first Commissioner for Justice, Fundamental Rights and Citizenship. When President Barroso entrusted this important task to me, he asked me to make, during my mandate, a strong contribution to develop and strengthen the EU as an area of law, rights and justice.

The starting point for this challenging endeavour are our fundamental values, which are now enshrined in the EU's Charter of Fundamental Rights. As you all know well, the Lisbon Treaty has made this Charter legally binding, and has given it the same legal value as the Treaties.

To achieve a European area of law, rights and justice, we must enhance the effectiveness of the rights granted to our citizens under the Treaties and under the Charter. Any citizen or company should have confidence in the EU's legal system. Such confidence will be created if there is a sound understanding by citizens of their rights and of the legal process. Most of all, in an evolving single market, citizens need to know their rights and the process for enforcing them when they sign a contract in a cross-border situation, when they shop online, when they want to enforce a court decision cross-border, when a bi-national couple wants to get married or divorced, or when a person living outside his home country wants to write a will.

With the entry into force of the Treaty of Lisbon and the Charter of Fundamental Rights, the European Union now has the capability and the tools to strengthen the Union as an area of law, rights and justice. In particular, we now have the tools to build effective cooperation in civil and criminal matters. These will create mutual trust between the legal systems of the 27 EU Member States.

How to transform this institutional input into concrete policy outcomes and results? How to make use of this input to strengthen the Single Market, and to put Europe's economy back on track?

The question that I want to ask you today in this context: Do we have enough legal consistency in Europe to ensure that the EU's Single Market serves our citizens and our economy?

Alain Lamassoure, a distinguished Member of the European Parliament, has given a very telling answer to this question. In his report on the Citizen and the Application of European Union Law, written in 2008, he explained that citizens and businesses are still missing the benefits of the Single Market. Because there are far too many legal barriers between Member States creating unnecessary bureaucratic problems in daily life.

I know that Alain Lamassoure is right. Because since I became EU Justice Commissioner, I have seen the many letters citizens and businesses have been writing on this to the European Commission and to Members of the European Parliament.

In these letters, citizens and businesses are telling us that, they are afraid of taking advantage of the Single Market because they don't know how to recover debts. Today, companies only recover 37% of cross-border debts. Can you believe this? In our Single Market, more than 60% of cross-border debts cannot be enforced. That's hardly an incentive to do business in the Single Market! And that is a rather worrying situation in the present context of the economic crisis.

Citizens and businesses also are telling us that they don't know how to get a legal decision recognised in another country, or that they have to pay an "exequatur" of up to 2000 Euros to do so. Just for getting a judgement from one country recognised as valid in another country.

Citizens and businesses are furthermore complaining about the problems to file an insurance claim after a car crash in another country.

Last but not least, citizens and businesses are explaining why they hardly ever buy from abroad, despite the possibilities of online commerce. Because citizens are not sure about their rights in other countries or online and they face too many legal and technical obstacles. In 2008 only 7% of transactions on the web in Europe were cross-border.

In my view, if this situation persists, the Single Market will not do what it could and what it should do. Jacques Delors once said that nobody falls in love with a single market. Well, we need to change this and make the EU's Single Market more lovable for citizens and businesses alike. By making it work in their interest.

We therefore urgently need better European legal cooperation to build a common and effective area of law, rights and justice so that citizens and businesses get the best from the Single Market.

However, a new Treaty, a new Charter and new procedures alone will not suffice to solve the problem. A European area of law, rights and justice can only be created if the lawyers are taken on board: judges, legal practitioners, barristers, solicitors, law professors. However, lawyers are, as you all know, rather conservative people. They will prefer to stick instinctively to the traditional concepts of their national legal systems. They will not easily want to recognise the concepts familiar to the lawyers in the neighbouring country, let alone trusting the decisions of a court in another EU Member State. In terms of legal traditions and concepts, Europe is a continent still coined very much by diversity, and not by uniformity.

But how can we make a source of strength out of the diversity of Europe's legal systems when discussions on new EU rules so often stumble over different legal concepts and solutions?

To me, the answer is clear: **we need to create a European judicial culture embracing all aspects of the law.**

I was EU Commissioner for Culture during five years (1999-2004). I know well how important culture is for national and regional identity. During the past months as EU Justice Commissioner, I got a good understanding that also lawyers have their culture. A culture with a long history. A culture with many different traditions, depending on country, language and region. But also a culture of listening to the other side: *audiatur et altera pars*. A culture of arguing with each other. And a culture of learning from each other. A clear evidence of this willingness to interact is the number of law students involved in the Erasmus exchange programme every year: for instance in 2007/2008, more than 10.000 young people decided to spend a period abroad and thus become familiar with a different legal system.

**This is why I believe that a European Law Institute – as you are discussing it here in Florence in these days – could become an important milestone for an ever closer Union of Law, Rights and Justice.** This is not only a belief that I hold; there are also calls from the European Parliament for such an entity. For example, in its Resolution on the Stockholm Programme adopted on 25 November 2009, the European Parliament called for the creation of a "European Judicial Academy", and several Members of Parliament have raised with me the idea of a European Law Institute during the past months, including in my hearing in the European Parliament.

What are the reasons for having a European Law Institute?

Let me start with a very basic point: European law is the cement binding together our Union. Our Union has, within a remarkably short period of time, emerged into a unique political entity. Its successful and peaceful rapid growth and development has only been made possible because of the force and the rule of European law. **Europe is a "Rechtsgemeinschaft", a Community of law, as Walter Hallstein already said, and until today, our Union is not held together by force or armies, but first of all by the respect of the commonly created European rules.** It is the very role and the effect of European law that distinguishes our Union from any mere intergovernmental organisation. **Our European law therefore needs to be further developed and strengthened, including in academic research and judicial training.**

The impact of European law on the daily lives of European citizens, consumers, farmers, workers, businesses and on national political and legal structures is profound. And European law is not static but results from a dynamic and open process of law-making and legal interpretation. This includes the daily role of countless legal practitioners, from lawyers and bailiffs on the one hand to judges and academia on the other. All these actors are increasingly interacting with European law. This means that every national lawyer and every national judge must also be a European law expert, capable of interpreting and effectively enforcing EU law alongside his own domestic law. And on the Union's decentralised legal system, national judges must become true "Union law judges" to be able to comply with their responsibilities.

Our success in facing up to the new challenges created by the Lisbon Treaty can only be achieved by assuring the coherence and consistency of the way in which the EU legal order interacts with our diverse national legal traditions and systems. And this requires, first of all, well informed and well trained legal practitioners, in particular judges.

*Jura Novit Curia* – Yes, a court has to know the law. But how sure are we that our national courts are aware of all the key features of the diverse national systems of our Union, built upon sometimes centennial layers of history and traditions. In reality, we are all grappling with the same problems, but over time, we nevertheless have built different ways of responding to them.

Sometimes a word in one legal order has a similar, not the same, concept in another national legal system. Just think of the word "bona fide", "bonne foi", "Guter Glaube". You all know that it is not sufficient to translate a legal term. The concept behind must also be well understood before one can really understand, work in and succeed in another legal system.

In our European Union, legal practitioners and authorities will be called upon increasingly to understand and apply decisions made in other EU countries. They will, also be called upon to live up to common minimum standards so that authorities in other countries will be able to trust those decisions.

Legal scholars will be called upon to better understand other legal cultures, and grow the common principles that bind them. Let me cite as an example, the work on civil law harmonisation and on drawing up the so-called "Draft Common Frame of Reference". Here, scholars from all over Europe have come together looking for what is common in our legal heritage, sharing the rich national traditions in search of a language that is European, but recognisable at the same time to national lawyers. This is an exciting area, and one which I intend to support. To me, the development of a European Contract Law, which could be chosen by businesses and consumers, is an important tool for strengthening the Single Market and legal certainty within this Single Market.

There are surely other areas worthy of our attention. The process of comparison and understanding and of reaching for common principles could also, for example, be useful in the area of civil procedure.

That is why it is more important than ever to build a common awareness and an understanding of our different ways of treating similar legal problems. I have always believed that with understanding comes respect. Respect is what we need if we are to build the trust that is essential for a system built on mutual recognition.

That is why the creation of a European Law Institute is such a good idea. It is certainly a symbol for a broader vision, that of a strong European area of law, rights and justice at the service of our citizens. This is why I would call on all of you not to focus only on institutional details, but also to keep in mind the bigger picture.

Of course, at the end of the day, institutional details will have to be reflected upon. One cannot only dream, but at some point, vision will need to be followed and implemented by action. I am personally open in this respect. I could imagine that the private sector and academia jointly develop a European Law Institute as a place for legal exchange, training and of building a European legal culture. Thereby following the example of the American Law Institute, which is non-governmental, but played a crucial role in developing the US Uniform Commercial Code. I could also imagine the public sector to take part in this, possibly under the umbrella of the European University Institute. And I could also imagine that we think about a structure similar to the recently created European Institute of Technology, possibly established in liaison with the European Court of Justice, which is after all the very centre for the further development of our European legal culture.

There are certainly also many other valuable forms that such a European Law Institute could take, for example a structure built on the European Law Academy in Trier. As said, I am open at this stage. But I also believe that **form should follow function**. And that we should never lose out of sight *why* we want to create a European Law Institute. To ensure that European Law even serves better the citizen, the economy and society than it already does today.

The creation of a European Law Institute alone will not be sufficient for creating the necessary European Legal Culture. We will in addition need at least four further steps to strengthen legal cooperation between our Member States and their legal authorities:

- First, cooperation between national authorities to put laws in place consistently;
- Second, training of the people who practice these laws, like lawyers, judges and notaries;
- Third, cross-border legal scholarships, allowing consecutive times of academic research at research institutions in countries belonging to different legal families;
- Fourthly, we need networks to help remove legal obstacles to the mobility of citizens and businesses in the EU:
  - Networks of national authorities like the one created by EU governments between their justice ministries in 2008, to develop laws consistent with their neighbours.
  - Networks, such as the Civil Law Initiative, that support the practitioners who help citizens and businesses to on a daily basis to understand the EU and its rules, and its common principles.

- Networks such as the Network of the Presidents of the Supreme Judicial Courts or the Association of the Council of State and Supreme Administrative Jurisdictions who exchange experiences and best practices on a regular basis assessing the impact of European and national law decisions in each others legal orders.
- Networks such as the Eurojustice network of European Prosecutors-General that has a wealth of knowledge and expertise to share among practitioners.

We must strengthen such networks so that they create ever closer links of mutual trust between legal practitioners in the European Union.

Ladies and gentlemen,

I hope I could make clear what the vital building blocks for a European area of law, rights and justice need to be: to build the mutual trust and understanding between national authorities; and to ensure consistency between the 27 legal orders that draws its strength from our diversity, but that is also able to bring absolute common solutions. A European Law Institute could be an important milestone in bringing about both mutual trust and consistency.

In my vision, a European Law Institute should take stock of input from both academics and legal practitioners. This would widen the range of possible solutions to common legal problems. It should solve them by pointing out common principles from different legal systems, building mutual trust and understanding.

What politicians still would not (yet) dare say, discuss or explore, a European Law Institute could discuss and analyse. Depending on its quality, this academic input could then help legislators and later judges develop their own ideas and make up their own mind.

Lawyers who provide citizens and businesses with legal advice, bailiffs enforcing court decisions and other legal practitioners should contribute to this reflection and benefit from it. Their input to a European Law Institute's work would be a very valuable asset; and help ensuring that this new entity would not be an academic ivory tower; but closely connected to the economic and social reality of the European area of law, rights and justice.

By its mandate and its reputation, a European Law Institute should after some time have the opportunity to convince the best legal minds of Europe to work together and strengthen the walls of our common European house.

Four years ago, Commission President Barroso said in this very same University here in Florence that "European law is not some alien imposition forced on unwilling nations". European law is actually the key which unlocked 50 years of peace and prosperity in Europe. "The fact that we strive to improve it", he added, "only underscores this because it is the things we cherish that we aim to perfect."

I hope we will be able to say in three to four years time, then with an operating European Law Institute in place, that we have the best tools to perfect our most cherished common achievement – European Union law in a well functioning European area of law, rights and justice at the service of our citizens.

Thank you for your attention.