



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

# POLICY DEPARTMENT **C** CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



## Workshop on Judicial Training SESSION I - Learning & Accessing EU Law

COMPILATION OF BRIEFING NOTES







DIRECTORATE GENERAL FOR INTERNAL POLICIES  
POLICY DEPARTMENT C: CITIZENS' RIGHTS AND  
CONSTITUTIONAL AFFAIRS

LEGAL AFFAIRS  
**CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

# **THE TRAINING OF LEGAL PRACTITIONERS: TEACHING EU LAW AND JUDGECRAFT**

## **Session I Learning and accessing EU law: Some best practices**

COMPILATION OF BRIEFING NOTES

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## LIST OF ABBREVIATIONS

- CCBE Council of Bars and Law Societies of Europe
- CEPEJ Commission européenne pour l'efficacité de la justice (European Commission for the Efficiency of Justice)
- CJEU Court of Justice of the European Union
- CNEU Council of the Notaries of the European Union
- CoE Council of Europe
- CSM Consiglio Superiore della Magistratura (High Council of the Judiciary)
- DG Justice European Commission Directorate-General for Justice
- DRA Deutsche Richterakademie (German Judicial Academy)
- EAW European Arrest Warrant
- ECHR European Convention on Human Rights
- ECJ Court of Justice of European Union
- ECtHR European Court of Human Rights
- EIPA European Institute for Public Administration
- EJN European Judicial Network
- EJTN European Judicial Training Network
- ENCJ The European Network of Councils for the Judiciary
- ENM French National School for the Judiciary
- EP European Parliament
- ERA European Law Academy
- ETP European Training Platform
- EU European Union
- FMoJ German Federal Ministry of Justice

- GJA German Judicial Academy
- JAT Justice Academy of Turkey
- KSSiP National School of Judiciary and Public Prosecution, Krakow
- MS Member States
- TFEU Treaty on the Functioning of the European Union

## **THE EURINFRA PROJECT**

Reinier **VAN ZUTPHEN**

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### **ABSTRACT**

This paper gives a short overview of the Eurinfra project, as implemented in The Netherlands. It starts with a historical perspective and continues to explain how the project has been implemented through the network of Court Coordinators in European law. Finally, it describes how Eurinfra can evolve into a truly European project.

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## SUMMARY

In this short paper I will give some historic background on the creation of the Dutch Eurinfra project, its functioning, and the challenges for the years to come and the need for new developments in the ever faster changing world in which European law plays an increasing role in the Member States of the European Union and its judiciaries.

The Eurinfra project was launched in 2000 with the objective of improving knowledge of European law within the Dutch Judiciary. The main objectives were to improve accessibility of the sources of information related to European law through web technology, improve knowledge of European law among Dutch judges and support, establish and maintain a network of court coordinators in European law (CCEs).

These objectives have not changed over the years. However, the number of Member States of the European Union has increased significantly since the year 2000 and the various Treaty amendments have broadened the competences of the European Union so that, in addition to the well-known fields in which European law is applicable, EU law has become of great importance also in civil law, family law, criminal law and asylum law. Of even greater importance is probably the entering into force of the Charter of Fundamental rights. In practice, we must acknowledge that today European (Union) law is for all judges as important as their national law and that the two form indeed one integrated set of rules.

Judges must realize that deciding cases can't be properly done without at least a basic knowledge and understanding of European law. Applying European law is no longer the exception but the normal way of handling cases. The number of cases in which there is a cross border element has increased hand in hand with the growing number of Member States.

This all demands a new approach for the Eurinfra project. Members of the CCE-network can no longer be specialists in all fields of substantive European law, as it was the case in the old days. Moreover, they need networking skills, must master at least one or two foreign languages in order to have access to the case law of national courts in other Member States, and must be able (among many other competences) to use modern technologies such as video-conferencing, Skype, e-learning and virtual networking.

The Dutch network is at this very moment reinventing itself in such a way that the network will be composed not only of judges (the coordinators) but also of colleagues from the Dutch Training Center for the Judiciary and from the staff departments that work on knowledge-management.

In various other Member States we see similar developments and it is the serious intention of these national CCE-networks to unite and work closely together improving the application of European law, bringing it to a high level of quality, and thus ensuring that the effectiveness of European Union law is safeguarded throughout the Union.

To be successful, it is of the greatest importance that the networks and its members are supported by the presidents of courts and councils for the judiciary (or similar bodies) in the Member States. Time and money must be available or be made available to ensure the proper functioning of the networks and thus of the European Judiciary. Support from the European Union Institutions is paramount. More specific support is needed for the establishment of a Union-wide network.

## 1. THE OLD DAYS

Years ago, European law was considered to be a separated part of the law, relevant only for specialists. The ordinary judge was only seldom confronted with problems that had to be solved by applying European law. The need to be trained in community law did not really exist. European law was considered to be only interesting for a few judges: thus, judges' limited knowledge was not seen as a serious problem. That most cases could be handled in a proper way without the application of European law was common sense within the judiciary in The Netherlands. This changed in 1999 when judge Meij, at that time the Dutch judge in the Court of First Instance in Luxemburg, voiced his concern by stating that there were serious shortcomings in the Dutch judiciary's knowledge of European law. This led to all sorts of actions laid down in an Action Plan.

The training of judges in European law was taken much more seriously and the Training Institute for the Judiciary developed various courses to bring judges and their staff on the appropriate level of knowledge. The network of CCEs was established and its members started their work, helping out colleagues who were confronted with cases in which European law had to be applied. The Eurinfra project was considered to be completed at the end of the year 2004. In fact, however, the project was not finished at all. Lots of work is still to be done and the project has actually to be taken up all over again in a new form that meets the needs of the judiciary of today. As said before, the Charter and the Lisbon Treaty (now that five years have passed since its coming into force) demand new strategies, training and cooperation.

## 2. DO JUDGES KNOW EUROPEAN LAW?

Everybody nowadays knows the often cited phrase according to which the national judge is a European judge and it is first and foremost the national judge who must apply European law in cases brought before her or him. That the national judge is obliged to do so in strong cooperation with the Court of Justice of the EU is likewise common knowledge. However, when one asks around, it is often heard that national judges still think that European law is for the specialists and that their knowledge is not on the level it should be. Judges still have the feeling that there are shortcomings in their knowledge of European law and they feel insecure when elements of European law are involved in the cases they have to decide upon. It is hard to say whether this is just a feeling or reality. Surveys and inquiries still show that judges believe to lack profound knowledge when it comes to European law. This all notwithstanding, the fact remains that basic training courses are offered on a regular basis and that European law aspects are an integral part of most of the courses offered by the Dutch Training Institute. It has become clear to all judges that they can't function properly as long as they lack the basics of European Union law. This in itself underlines the need for proper training and the continuation of the CCE network.

## 3. WHERE DOES THE DUTCH CCE NETWORK STAND TODAY?

Until recently, the CCEs met once, sometimes twice a year. In these meetings, training was normally given on the substance of the law, and new developments in European law were taught by experts. The presumption was that these trainings added to the value of the CCEs in their respective courts. Next to that, the meetings were used as an informal way of getting to know each other better and exchanging experiences and good practices between members of the CCE network. However successful these meetings were, they showed that more must be done to create a modern network whose members cooperate on a regular basis in order to be of better support to their colleagues in their respective courts.

If the network is going to play a more prominent role in the (uniform) application of European law, the means and frequency of the contacts between CCEs must no longer be solely based on one or two meetings a year; members have to share experiences in a more frequent way. For this reason, for the next year the network will make use of more ICT and web technology than in former years. A team site will be created and the meeting of CCEs will be used for training sessions on how to network and cooperate in a virtual world. CCEs are also going to play their part in identifying topics and types of problems that are common to various courts and field of law. In that way, they will contribute to the needs' analysis that must be made on a regular basis with the aim of creating input for the Dutch Training Institute.

Exchange of knowledge is an important topic for the whole of the judiciary. Through the virtual network, CCEs can share knowledge and have other colleagues also be involved in their activities. Everybody is aware that new problems do not turn up in one single court, but most new problems are common to various courts: exchange and sharing of expertise can be arranged through the network. Training on how to use and share information on European law and its application in The Netherlands can help the network to be more effective. This certainly will mean a change of attitude and perhaps even culture within the judiciary. Until today, sharing of knowledge is still not seen as a best practice: it is for the network to show that it is a very effective way of working on cases. Next to that, such an approach can also be less time-consuming compared to the way judges (still) work today (i.e. every judge tries to solve a problem individually and expresses the findings in the judgment).

The change in the way judges do their work is strongly connected with the broader theme of how to use modern technology to get the right data and information to solve cases and keep up the required level of knowledge. It is therefore very important that knowledge management is taken up very seriously in order to improve the quality of the judges' work not only in the field of European law but also in general. Expertise on knowledge management is therefore needed in the CCEs' network.

The five year action plan of Eurinfra expires in 2014. This year, the network will start working on a new plan of action for the years to come that will meet the modern standards on judgecraft and quality. The network is reinventing itself. Moreover, its new ambitions also include cooperation with networks in other Member States. Using internet, teleconferencing, digital sharing of knowledge and exchanging experiences are today as easy within a Member State as between Member States. In this field, national borders lost their meaning. Best practices of European cooperation already show how fruitful a European network can be for the daily praxis of judges. It is the ambition of the Dutch CCE network to remain the oldest network of its type within Europe and at the same time be as young and lively as the new networks in other Member States.

#### 4. WHAT IS NEEDED TO SUCCESSFULLY REINVENT EURINFRA AND ITS CCE NETWORK?

A number of ingredients are needed in order to successfully reinvent Eurinfra and its CCE network. In the first place, there has to be the enthusiasm of its members and the willingness to cooperate not only with fellow judges but also with colleagues of the Training Institute and knowledge managers, not only at the national level but also in an international context. Next to that, Eurinfra needs the continuous support of the Dutch Council for the Judiciary and of the presidents of the courts.

At the supranational level, support is needed especially from the European Commission and European networks such as the EJTN (European Judicial Training Network) and ENCJ (European Network of Councils for the Judiciary). The Dutch network is ready to play a role in developing a network at the EU level together with the other national networks. The

benefits that would arise from such cooperation are obvious. Cooperation brings the application of European Union law on a higher level: uniformity of that application will certainly grow thanks to such an approach, and this will be for the benefit of all court users within the European Union. After some time, the effect of a strong and intense cooperation between the networks will be that of improving uniformity, ensuring consistency in judgments of the various courts throughout the European Union, so that fewer cases will be brought to the courts. Setting up a European network is therefore absolutely necessary.

## 5. IS THIS JUST A DREAM?

This certainly is my dream. I am convinced that in a modern world, with all the already available technology, a European network of CCEs can be set up. It will improve the quality of the application of European Union law and will contribute to a better functioning of the Union as a whole. This must be done step by step: networks throughout Europe should share their best practices in order to make the necessary steps forward. Judges must not only be trained on the substance of the law but also on how to work together in a virtual world using and sharing the knowledge that is already available and that will become more and more available and accessible in the near future. Modern judgecraft includes intensive cooperation without borders. We need agents of change to realize this dream. Members of the networks are in the best position to take that role. On the European level, the first international meetings have already taken place: the most recent event was organized by EuRoQuod, the Romanian network, with participation from Dutch and Italian partner networks. The creation of a European network is thus not just a dream, but reality in progress, also on the European level.

## 6. AND WHAT NOW?

We need the support of many stakeholders, both at the national and at the European level. Knowledge platforms must become part of the networks and also be provided with adequate financial means. Training of judges and their co-workers on how to use and work within networks is an absolute must. Presidents of courts have to give time to their judges to work within these networks. Councils for the Judiciary must use their position to make things happen. Individual judges like myself must be willing to give their time and energy to make the dream come true. And last but certainly not least, support is needed from the European Commission and the European Parliament for the ideas set out above. That you invited me to share some of my ideas and experiences in your important workshop gives me inspiration to go on with the Eurinfra project in The Netherlands and more importantly gives me hope for the shaping of the European network of CCEs.

## **THE SENSE OF SHARING KNOWLEDGE, JUDGECRAFT AND AUTONOMY: A DUTCH NARRATIVE**

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### **ABSTRACT**

This paper provides a short overview of some of the main Dutch experiences in improving accessibility and handleability of EU law for judges over the past decades. It demonstrates the necessity of a multidimensional approach for the major actors involved and the need to share knowledge, judgecraft and awareness of the autonomy of national courts in the EU's judicial system. With the reinforcement of the ambitious EU Justice programme, the European institutions, most notably the European Commission and European Parliament, are recommended to reap the fruits of these experiences.

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## INTRODUCTION

### A context of Europeanisation

Justice matters in the European Union. Particularly, since the Treaty of Lisbon entered into force, justice belongs to the key areas of intensified European integration. A clear example thereof is provided by the newly gained EU competence on judicial training in the context of judicial cooperation in civil and criminal matters. In September 2011, the European Commission presented its ambitious plan and objectives for judicial training in the European Union towards 2020 by publishing Building trust in EU-wide justice: A new dimension to European Judicial Training.<sup>1</sup> In essence, this plan was adopted by the Council in October 2011. It leaves less for the imagination: further enhancement of a European judicial culture is serious EU-business. Indeed, it covers and entails a lot more than just the reaffirmation of the role of the national courts as a 'keystone of the European Union judicial system', as the European Parliament eloquently observed in 2008.<sup>2</sup>

One may get a similar impression when visiting the European e-Justice Portal on the internet. The mission statement has a prominent place on the front page:

'The European e-Justice Portal is conceived as a future electronic one-stop-shop in the area of justice'<sup>3</sup>

The development and implementation of the European Case Law Identifier (ECLI), on the basis of EU soft law,<sup>4</sup> implicitly illustrates that (published) judgments in the European Union now always have a European dimension: their citation. The ECLI aims to facilitate the correct and unequivocal citation of judgments from European and national courts related to EU law, setting up a uniform identifier to cite such judgments.<sup>5</sup> In the Netherlands, the Council for the Judiciary completed the process of changing to the ECLI-citation on 28 June 2013. More than one and a half million judgments of Dutch courts have been ascribed an ECLI-citation now, and can be traced on the ECLI-register at <http://uitspraken.rechtspraak.nl>. In the near future, this register will be directly linked to the European e-Justice Portal. Other Member States are in the process of implementation of the ECLI-citation. This project evidently has an impact on the day-to-day practice of Courts within the Member States, at least the ones that are introducing the ECLI.

Without doubt, the European e-Justice Portal and the ECLI will enhance the accessibility of national (European) case law within the EU, although the nature of introducing the ECLI as such is largely symbolic. Obviously, it does not change nor influence the substance of judgments; only their appearance and traceability. However, it is an instrument to further strengthen the body of knowledge in particular fields of law in Europe and to connect the case law of Member State Courts with each other. The developments clearly show that the European legal order is a shared legal order with shared authority over European law. This is especially important in a climate in which the role of national courts in the EU's judicial system becomes more important and transnational interaction between them is continually growing.

### Aim of this note

For some of the Member States, improvement of the courts' European tool box is not a new awakening. Several Member States have rich experiences in improving the accessibility and handleability of European law. Involvement of the key stakeholders at national level, i.e. the judiciaries and judicial training institutes of the Member States, in developing the European

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<sup>1</sup> COM(2011) 551 final.

<sup>2</sup> European Parliament resolution of 9 July 2008 on the role of the national judge in the European judicial system (2009/C 294 E/06).

<sup>3</sup> See: <https://e-justice.europa.eu/home.do?action=home&plang=en&init=true>.

<sup>4</sup> Council Conclusions inviting the introduction of the European Case Law Identifier (ECLI) and a minimum set of uniform metadata for case law OJ C 127, 29-04-2011, p. 1–7.

<sup>5</sup> See the description at: [https://e-justice.europa.eu/content\\_european\\_case\\_law\\_identifier\\_ecli-175-en.do](https://e-justice.europa.eu/content_european_case_law_identifier_ecli-175-en.do).

justice policy is crucial. They are the *conditio sine qua non* for enhancement of the European judicial culture. In this regard, the initiative and organisation of the European Parliament workshop on judicial training of 28 November 2013 is to be praised and should be followed up. It provides an excellent opportunity to share knowledge and experiences. In our view, the right involvement of these key stakeholders can contribute to the efficient materialisation of the European judicial area.

This note tells a Dutch narrative of attaining European awareness among the members of the judiciary. The aim of the note is to show the main Dutch experiences in improving accessibility and handleability of EU law for judges over the past decades. It demonstrates the necessity of a multidimensional approach for the major actors involved: sharing knowledge, judgecraft and awareness of the autonomy of national courts in the EU's judicial system.

## Structure

First of all, this note will present some of the early experiences with European law by the judiciary in the Netherlands and initiatives to make European law more accessible in the practice of Courts (§ 2). Secondly, the development of European law as 'law of the land' in the Netherlands will be touched upon. Mid nineties, the assumption of 'European law taking over national law' was not regarded as being very interesting as such. The emphasis of the debate laid on the meaningful contribution that national courts could give to the judicial protection and development of European law: the main issue was, what European ambitions do the national judiciaries have? (§ 3). This eventually led to a large scale project at the beginning of this century. The Eurinfra-project aimed at integrating (awareness for) European law in day-to-day court practice, as will be explained in the subsequent section (§ 4). Thereafter, this note will give a short overview of the current Dutch debate on European judicial training and the role of national courts in the EU's judicial system (§ 5). Several societal trends will impact the future of judicial training and foster reflection on the role of judicial training institutes. Perhaps these trends ask for a new culture of learning (§ 6). The note ends with some concluding remarks and recommendations to optimally reap the fruits of these experiences (§ 7).

## 1. A PROACTIVE JUDICIARY: DEVELOPING AN EUROPEAN ATTITUDE, CASE BY CASE

Since the first ever preliminary reference to the Court of Justice, coming from the Hague Court of Appeal in the Bosch case, the Dutch judiciary has played a proactive role in the development of the European legal order.<sup>6</sup> How can that be explained? One thing is for sure: improving awareness of the role of national courts in the judicial protection of European law and European legal order has been a continuous effort of the Dutch judiciary, legal doctrine and legal practice over the past decades.

### 1.1. A proactive, case-driven climate

In the early decades, the Europeanisation of the Dutch judiciary has been largely case-driven: citizens and companies, and their legal advisors, tried to invoke European law in concrete disputes before the Dutch courts, and the courts were willing to take European law seriously. Against this background it might not be surprising that the famous Van Gend & Loos judgment of the Court of Justice, whose 50th anniversary will be this year, has Dutch

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<sup>6</sup> Case 13/61, Bosch [1962], ECR, p. 45. By consulting the litigation statistics published by the Court of Justice one can see that the Dutch courts are amongst the most 'active' in the EU when it comes to making references to the Court (see the statistics available at: [http://curia.europa.eu/jcms/jcms/Jo2\\_7032/](http://curia.europa.eu/jcms/jcms/Jo2_7032/)).

origins.<sup>7</sup> One has to realise that the Dutch constitution traditionally advocates loyalty towards the European and international legal order.<sup>8</sup> Moreover, the entire legal context contributes to the courts' awareness of the European dimension of their cases. A short sketch:

In 1956 the Dutch Training and Study Centre for the Judiciary (SSR) was established.<sup>9</sup> The Netherlands has a long tradition of training judges and public prosecutors. This includes initial training programmes (prior to becoming a judge or public prosecutor) as well as continuous education for members of the judiciary and the public prosecutors office. SSR has traditionally<sup>10</sup> organised basic and advanced courses on various aspects of European law and on human rights as well as conferences and seminars on particular issues that relate to the European dimension of the judiciary.

Mid fifties, the Dutch and Belgian European legal journal *Sociaal Economische Wetgeving* (now: *SEW Tijdschrift voor Europees en economisch recht*) was first published.<sup>11</sup> In 1960, the Dutch European Law Society was founded, with members from various legal professions.<sup>12</sup> Several universities set up Europa Institutes (such as Amsterdam, Leiden and Utrecht) and instituted chairs and lecturers of European law. The first edition of the authoritative *Common Market Law Review* was published in 1963. In 1965, the interuniversity T.M.C. Asser Institute for international and European law was founded.<sup>13</sup> Commentaries, study books and handbooks on European law were published during the sixties and seventies, most notably the 'Introduction' by Kapteyn and VerLoren van Themaat – later translated into the English language. Series of European monographs started to shed light on the consequences of European law within the national legal order and the development of the European legal order. While the quantitative and qualitative influence of European law on national law and legislation was increasing and became of ever-greater practical importance, the Dutch context, altogether, created a climate in which European awareness of the judiciary seemed only logical.

## 1.2. Ideas on the contribution of national case law to the European legal order

From the outset, the role of national courts in the Netherlands has been understood as very important for the development of the European legal order, also from a pragmatic and practical point of view: due to the interconnectedness of European law and the legal systems of the Member States, the national courts were expected to carry out the bulk of the judicial work related to European law.<sup>14</sup> This view is still present in today's Dutch European legal literature.<sup>15</sup>

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<sup>7</sup> Case 26/62, *NV Algemene Transport- en Expeditie Onderneming Van Gend en Loos v Nederlandse Administratie der Belastingen* [1963] ECR, p. 1.

<sup>8</sup> This attitude is currently embodied in the Dutch Constitution in e.g. article 90 ('The Government shall promote the development of the international legal order'); article 92 ('Legislative, executive and judicial powers may be conferred on international institutions by or pursuant to a treaty, subject, where necessary, to the provisions of Article 91 paragraph 3.') and article 94 ('Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties or of resolutions by international institutions that are binding on all persons.'). The English translation of the Dutch Constitution is available at: <http://www.government.nl/issues/constitution-and-democracy/documents-and-publications/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008.html>.

<sup>9</sup> See: <http://www.ssr.nl>.

<sup>10</sup> As emerges from the SSR archives, SSR organised trainings on European law already at the end of the Sixties.

<sup>11</sup> See: <http://www.uitgeverijparis.nl/tijdschriften/tijdschrift/13/SEW-Tijdschrift-voor-Europees-en-economisch-recht>.

<sup>12</sup> See: <http://www.nver.nl>.

<sup>13</sup> See: <http://www.asser.nl>.

<sup>14</sup> See, e.g., A.M. Donner, 'Les rapports entre la compétence de la Cour de justice des Communautés européennes et les tribunaux internes', in: *Recueil des Cours (Académie de droit international)* 115, 1965, p. 1-61 at p. 22-24.

<sup>15</sup> See S. Prechal, R.H. van Ooik, J.H. Jans, K.J.M. Mortelmans, 'Europeanisation' of the law: consequences for the Dutch judiciary, *The Hague: Raad voor de Rechtspraak [Council for the Administration of Justice]* 2005, p. 8. See also Prechal 2006, p. 432, H.J. van Harten, *Autonomie van de nationale rechter in het Europees recht*, The Hague: Boom Juridische Uitgevers 2011, p. 12.



Two examples from the early decades provide a useful illustration. In 1963, in one of the first case notes on the Van Gend & Loos judgment, the author, Mr Samkalden, noted the importance of national European case law for the interpretation and development of European law:<sup>16</sup> the Italian Council of State had already decided on the direct effect of an EEC-Treaty article in 1961, which was very useful to understand the Van Gend & Loos judgment. Therefore, according to Samkalden, a Community register of European law judgments of national courts would be necessary and would respond to the needs of European lawyers. Samkalden mentions that such an initiative was taken, but that the Council of Ministers decided to drop it from the draft budget of the European Commission. According to Samkalden, in 1963, that decision is

‘sad evidence of lack of insight in the way in which knowledge and interest for European law could be effectively promoted for the sake of interested parties.’

What would the life of European law have looked like if such a public register had been available since the sixties? In addition to the success of the preliminary reference procedure and cooperation between the Court of Justice and national courts, it is reasonable to suggest that such a register would have strengthened the meaning and significance of national European case law for the European legal order. Nearly fifty years later, with the European e-Justice Portal, such a register is within reach and closer than ever. It even seems to become a reality. In other words, Samkalden would certainly have supported the idea of the European e-Justice Portal and the ECLI.

Secondly, since its establishment, the T.M.C. Asser Institute has tried to maintain a collection of national court judgments in which European law plays a role. With Mr Tromm as the editor, the Asser Institute published a collection of such Dutch judgments adopted between 1 January 1958 and 31 December 1972, *De Nederlandse Rechtspraak en het Recht der Europese Gemeenschappen* in 1974.<sup>17</sup> The introduction to this book from the pre-computer era mentions the difficult handleability and quickly growing volume of case law as important problems and pitfalls. To our knowledge, a second edition of the significant ground work was never published.<sup>18</sup> It took quite some years before an effort of similar character was developed again, mainly in the context of the Eurinfra-project of the Dutch judiciary (see hereafter § 4). It is generally believed that the really important Dutch cases in which European law has been applied and interpreted were signaled in Dutch legal journals and case law periodicals, but a special register did not exist.

If Mr Tromm were still working today, he would undoubtedly be enthusiastic about the rich possibilities to use modern technology and collect European case law of national courts and connect them in the European e-Justice Portal. However, his problems and pitfalls remain essentially the same: in the process of digitalisation and connection of the ECLI-registers, the end-users – such as judges – are confronted with a growing amount of available information. How to cope with that and how to select what’s relevant and what not? From the experiences of SSR in the field of e-learning and judicial training courses, we know the importance of the quality and handleability of the digital knowledge infrastructure: it de facto determines the quality of learning.

These are early illustrations that can be taken into account in the context of the current European ambitions of judicial training and the e-Justice project. Good access to knowledge and understanding of European law is essential. The knowledge infrastructure certainly contributes to this, but information overload is a potential weakness even for the European e-Justice Portal.

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<sup>16</sup> Samkalden, *Sociaal Economische Wetgeving* 1963, p. 111-112.

<sup>17</sup> J.M.M. Tromm, *De Nederlandse Rechtspraak en het Recht der Europese Gemeenschappen*, Groningen: H.D. Tjeenk Willink 1974.

<sup>18</sup> However, Tromm published an article on Dutch European case law in the period 1973-1977 in SEW in 1981: J.M.M. Tromm, ‘De Nederlandse Jurisprudentie inzake het recht der Europese Gemeenschappen, overzicht van de periode 1973-1977’, in: SEW 1981, p. 435-483.

### 1.3. From case to case towards self-invented European judicial training

One must bear in mind that the process of Europeanisation of courts mainly took place on a case by case basis at first. This is the picture that describes the first decades of Europeanisation of the Dutch judiciary. The bigger part of the Dutch training system did not fundamentally change, because the real work of the judge was, and currently still is, giving fair solutions and legally sound decisions. In a way, the work of judges is stable and constant, while the European Union and the world around them are ever changing. Certainly, the courts had to adapt to the new context(s). Admittedly, the growing significance of European law was at times difficult to keep pace with for judges in everyday legal practice. For this reason, SSR made efforts to innovate its judicial training programmes and to find solutions aimed at supporting judges in a practical way. Early nineties, SSR started a programme to reinforce and deepen the knowledge of European law among the members of the judiciary. Mid nineties, this cumulated in a large-scale conference emphasising the meaningful contribution of the national courts to the judicial protection and development of European law and analysing the European ambitions of the national judiciaries. Meanwhile, the so-called Eurogroup (Eurogroep) was established in 1995 under the auspices of the Nederlandse Vereniging voor Rechtspraak (Dutch Association for Judges and Public Prosecutors). This Eurogroup is a network of judges whose main purpose is studying and discussing issues of (Dutch) European case law which might occur in everyday court practice.<sup>19</sup>

## 2. EU LAW AS 'LAW OF THE LAND': AMBITIONS OF THE NATIONAL JUDICIARY

To celebrate the 40th anniversary of SSR, the conference 'European Ambitions of the National Judiciary' was organized in October 1996. During the conference, highly esteemed speakers introduced several themes relating to the application and interpretation of European law by members of the judiciary in everyday court practice.<sup>20</sup> The conference focused on the role of national courts in the EU's judicial system and the future conception of judicial responsibilities. The discussions centered on the expectation of 'Europe' towards the Member States' judiciary. Speakers from various countries of the European Union responded to the main subject of the debate from their own national court experiences. An important aim of the conference was to promote an increase in knowledge of European law among members of the judiciary and, in particular, to heighten their consciousness of the parts of European law which are of immediate importance for the administration of justice in a Europeanised context. The conference was used as a springboard towards further development of European judicial training.

### 2.1. From fear for terra incognita...

The various contributions to the abovementioned conference clearly showed an awareness of the European role that the national judiciary plays. For instance, Judge Verburg, then principal of SSR, remarked:

'The national judge being more and more the European judge requires them, besides the above mentioned good and profound knowledge of both institutional and substantive Community law, to be aware of this position. This asks not only for a change of mentality of the national judge in this respect. Furthermore, this new

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<sup>19</sup> See: S. Prechal, R.H. van Ooik, J.H. Jans, K.J.M. Mortelmans, 'Europeanisation' of the law: consequences for the Dutch judiciary, The Hague: Council for the Judiciary 2005, p. 5.

<sup>20</sup> The conference proceedings are published in an edited volume: Rosa H.M. Jansen, Dagmar A.C. Koster and Reinier F.B. van Zutphen, *European Ambitions of the National Judiciary* (Deventer: Kluwer Law International 1997).

position demands for a better acquaintance with and knowledge of the judicial system and law of the other member states.<sup>21</sup>

These words are still valid today. However, Judge Verburg also admitted that – even in the proactive European judiciary of the Netherlands:

'[...] both the Brussels regulations and the Luxembourg jurisdiction are terra incognita for the vast majority of members of the national judiciary; unfamiliar and thus unpopular. Only in those rare cases where Community law is explicitly invoked by the litigating parties, the judge is obliged to at least consider the options. In all other cases Community law is probably left unspoken, sometimes deliberately, but mostly unconsciously.'<sup>22</sup>

Before the conference, a poll was held among Dutch judges and public prosecutors.<sup>23</sup> The poll showed that a large majority of the respondents defined their knowledge of European law as mediocre or insufficient. The substantial majority also indicated a need for further training and education, while almost fifty percent of the respondents stressed the necessity of improving the sources of information and quick access to case law of the European Court of Justice and the European Court of First Instance. This presented an obvious impetus for the stimulation of European judicial training and improvement of the accessibility of European law for the members of the judiciary.

## 2.2. ...to 'law of the land' and European judgecraft

The closing contribution to the 1996 conference, delivered by Judge Kapteyn, at the time Judge at the Court of Justice, is pervaded by the consideration of European law as law of the land. The Court of Justice and the national courts share a common responsibility in upholding the rule of law in the European legal order. Kapteyn presents five basic principles that, even nowadays, summarize the European judgecraft for national courts, and are therefore worth paying attention to:

- '1. Community law is national law common to the member states. National courts should therefore apply Community law as their own law, and not as foreign law to be dealt with as a matter of facts.
2. In the Community judiciary system the enforcement of Community law is first and foremost a matter of national courts. They are part of the Community judiciary and might be considered the Community's *juges de droit commun*. They should be aware of the fact that by applying Community law they are ensuring the proper functioning of the internal market, protecting the rights Community law grants to individuals and corporations, and maintaining in general the rule of law in the Community.
3. In implementing Community law, national courts must, in principle, work within the framework of the procedures and legal remedies provided by their national legal orders. This principle finds its limit, however, in the national courts' duty to ensure the full effectiveness of Community law.
4. When applying Community law, national courts should keep in mind that, being a law common to the member states, it has to be applied in a uniform way in all the member states.

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<sup>21</sup> Joep J.I. Verburg, 'Introduction' in: Rosa H.M. Jansen, Dagmar A.C. Koster and Reinier F.B. van Zutphen (eds.), *European Ambitions of the National Judiciary* (Deventer: Kluwer Law International 1997), p. 23-28 at p. 24.

<sup>22</sup> Verburg (1997), at p. 24-25.

<sup>23</sup> See: Verburg (1997), at p. 26-28.

5. National courts should use the preliminary reference procedure [...] as a means of co-operation with the Court of Justice with the aim of ensuring the full effectiveness as well as the uniform application of Community law.<sup>24</sup>

Further implications of these basic principles can be found in Judge Kapteyn's inspiring contribution to the conference proceedings. The principles illustrate that European judgecraft can be formulated quite concisely: In fact, it entails just a set of basic principles. These have to be combined with awareness of the general well-established case law of the Court of Justice. Furthermore, access to the latest legal developments with regard to solving topical interpretation issues of European law is needed. Indeed, European law is first and foremost a matter of national courts themselves. In other words: judges need smart European judgecraft and a well-functioning knowledge infrastructure to share experiences and solutions for legal disputes.

### 2.3. Using the momentum

The 1996 conference created momentum for a more prominent position of European judicial training within the curriculum of SSR. From the beginning of this century, a general course on the basic principles of European law is an obligatory element of the initial training for all new members of the Dutch judiciary. Furthermore, SSR has renewed its advanced courses on various aspects of European law (e.g. how to make use of the preliminary reference procedure; European administrative law; European competition law; European employment law; European migration law) for judges, public prosecutors, trainee judges and court clerks. Representatives of other judicial training institutes and the European institutions were present at this conference, which led to ideas for further cooperation between national judicial training institutes in Europe. In fact, it was the start of a network which would result in the creation of a European Judicial Training Network (EJTN) a few years later.

In 1999, a small group of judicial training institutes, including SSR, decided to set up a drafting committee to prepare the founding document of a network of European judicial training providers. On 13 October 2000, this group presented the first 'Charter of the European Judicial Training Network' at a conference organised by the French Presidency of the Council in Bordeaux. The charter was then open for ratification by the founding Members. The Network's mission was defined: promoting 'a training programme with a genuine European dimension for Members of the European judiciary.' The European Judicial Training Network is of considerable importance to connect the national judicial training institutes in the EU.<sup>25</sup> Now, in 2013, SSR cooperates within this Network in the field of 'train the trainer' programmes, exchange programmes, the European THEMIS Competition,<sup>26</sup> and joint programmes in various areas of law.

Also in 1999, the Nederlandse Juristenvereniging (the Dutch Jurists Society) centred its annual meeting, in which traditionally preliminary reports are discussed, on international case law in the Dutch legal order. Dr. Lawson wrote a report on the reception of case law of the International Court of Justice and the European Court of Human Rights, and Judge Meij, at the time Judge at the Court of First Instance, wrote on case law of the Court of Justice in the court practice of the Dutch judiciary.<sup>27</sup> Judge Meij gave his honest impressions as a Judge in the Trade and Appeals Tribunal and Supreme Court as well as some of his experiences in Luxembourg. In the aftermath of the annual meeting, he spoke to a journalist and voiced his concerns about the Dutch judiciary's limited knowledge of European law. As a result, parliamentary questions were addressed to the Minister of Justice

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<sup>24</sup> Paul J.G. Kapteyn, 'Europe's expectations of its judges' in: Rosa H.M. Jansen, Dagmar A.C. Koster and Reinier F.B. van Zutphen (eds.), *European Ambitions of the National Judiciary* (Deventer: Kluwer Law International 1997), p. 181-189 at p. 24

<sup>25</sup> See: [www.ejtn.net](http://www.ejtn.net).

<sup>26</sup> See: <http://www.ejtn.net/en/About/THEMIS11/>.

<sup>27</sup> A.W.H. Meij, *Europese rechtspraak in de Nederlandse rechtspleging: impressies uit Den Haag en Luxemburg*. Preadvies Nederlandse Juristenvereniging over het onderwerp Internationale rechtspraak in de Nederlandse rechtsorde, Deventer: W.E.J. Tjeenk Willink 1999

in the Dutch Lower House. In reply, the Minister subsequently formulated a programme and ensured the availability of resources which ultimately led to the launch of the Eurinfra-project in late 2000.

### 3. THE EURINFRA-PROJECT: A MULTIDIMENSIONAL APPROACH TO AWARENESS

The Eurinfra-project, that took place between 2000 and 2004, will be shortly elaborated upon in the next section.<sup>28</sup>

#### 3.1. Three angles of approach

Essentially, the Eurinfra-project consisted of a multidimensional approach to improve awareness of the European law dimension for the Dutch judiciary. The improvement of awareness was specified in three different, but related objectives:

- 1 improving the accessibility of European law information resources by using web technology;
- 2 improving the knowledge of European law amongst the Dutch judiciary;
- 3 setting up and maintaining a network of court co-ordinators for European law.

These objectives are all clearly connected: improved access to European legal resources can be better utilised if the level of knowledge is deepened. A knowledge infrastructure using web technology is in itself an empty cartridge; proper involvement of the people who use the knowledge, share it and add to the body of knowledge is crucial. Awareness of this led to the idea that an organisational basis within the courts was absolutely necessary for the success of the Eurinfra-project. As a result, a network of court co-ordinators for European law was designed to strengthen the knowledge of European law within the courts. This network is still in function to date.<sup>29</sup> As ambassadors for European law, the court co-ordinators have been given the task of improving the information and internal coordination within their own courts, and maintaining contacts with other courts on the subject of European law.

As stated above, the Ministry of Justice launched the project late 2000. In 2002, the Council for the Judiciary became principal and realised the project in close collaboration with the Dutch Trade and Industry Appeal Tribunal, which has extensive experience with the application of European law, the Dutch judiciary's bureau for internet systems and applications (known as Bistro/Spir-IT) and SSR. A Eurinfra Advisory Council was set up to advise on the structure and progress, and provide specific advice.

The Eurinfra-project was part of a larger attempt to broaden digital accessibility for members of the judiciary, as well as the public database of judgments for the general public. The Porta Iuris portal provides a judiciary-wide intranet system with a special European law section which has been created to serve as a platform for professional and organisational information (such as the names of the court co-ordinators and their European law specializations) and knowledge hotspot:

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<sup>28</sup> Additional information on the Eurinfra project is available at [http://www.rechtspraak.nl/English/Publications/Documents/Eurinfra\\_EN\\_FR.pdf](http://www.rechtspraak.nl/English/Publications/Documents/Eurinfra_EN_FR.pdf).

<sup>29</sup> At present, the court boards have appointed a network of approximately 36 court co-ordinators for European law, with the Dutch Supreme Court and the Administrative Jurisdiction Division of the Council of State also participating. The president of the Trade and Industry Appeals Tribunal acts as chair, and that Tribunal also hosts the network's secretariat. The court co-ordinators meet once a year, not only to attend presentations on new European law themes, but also to discuss the functioning of the network itself.

- Eurlex (formerly CELEX) was made accessible via Porta Iuris, but also
- a separate databank for Dutch European case law, and
- a databank for all the cases referred to the Court of Justice for a preliminary ruling since 2002.

As a result, a Dutch court can easily check if the Court of Justice has ruled on any specific matter, if another Dutch court has decided on a case with a similar European law angle and/or if a particular question of European law is already pending at the Court of Justice. In addition, efforts were made to create a search system that integrates case law of the Court of Justice in conjunction with national case law.

A digital newsletter on European law, published four times a year, provides new insights and topical developments. Furthermore, access to legal journals on European law is provided through the Porta Iuris portal. Undoubtedly, the digital knowledge infrastructure on European law has been considerably reinforced; thus, access to the body of knowledge on the application and interpretation of European law by Dutch courts was certainly improved. An introduction to the use of the European law section of the Porta Iuris portal is integrated in the basic course on European law organised by SSR as an individual learning module.

In the context of the Eurinfra-project, SSR has thoroughly reviewed the European law dimension of its courses. This concerned introductory meetings, the basic course on European law, and the development, organisation and revision of advanced European law courses. In addition, SSR reviewed and adapted the European law content of the (approximately 60) existing Dutch law-oriented courses: appropriate attention is now devoted to European law aspects. SSR committed itself to organise meetings and seminars with experts on European law to share their most updated knowledge. The screening and adaptation of courses for European law aspects is an ongoing process.

The Eurinfra-project was formally completed in 2004, but its activities continued. The three pillars of the project have achieved a permanent status and have been reinforced with new activities.

### 3.2. Europeanisation of the law: what consequences for the judiciary?

During 2004-2005, the Council for the Judiciary asked four highly esteemed European law academics (Prechal, Van Ooik, Jans and Mortelmans) to research the (organisational) consequences of the 'Europeanisation' of the law for the Dutch Judiciary. Their final report<sup>30</sup> was published in 2005 and provides several recommendations which are also relevant for the awareness of the European role of national courts. As a result of the recommendations of this report and the subsequent expert meeting, the Eurinfra-project was expanded with two new activities in 2006: 1) opening up the judicial networks and 2) setting up European exchange programmes. The Council for the Judiciary assisted a number of courts in setting up an exchange programme, making contact with foreign courts and encouraging the court staff to participate in such a programme.

### 3.3. Evaluating and integrating

The network of court co-ordinators was evaluated in 2006. In general, the coordinators were increasingly approached by court staff and functioned as a point of contact and reflection. The concept worked and had added value, but the court co-ordinators felt a need to allocate more time to their duties and to 'imbed' these activities more securely within the courts' organisation. The Council for the Judiciary decided that it was essential to continue

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<sup>30</sup> Available at: <http://www.rechtspraak.nl/English/Publications/Documents/europeanisation-of-the-law.pdf>.

to reinforce the network of court coordinators for European law and that they meet once or twice a year.

In Wiki Juridica – the Dutch judicial variant of Wikipedia developed in recent years – an overview of the Knowledge Portal for European law has been introduced.<sup>31</sup> This Portal holds a collection of new developments in law, national and international case law, a selection of news from legal journals and literature, web links and training activities. It also functions as a platform where experiences can be shared.

The ECLI-citation was integrated in the Porta Iuris knowledge infrastructure between 2010 and 2013; the meta codes enhanced the efficient use of the search engines.

The proactive approach and efforts of sharing knowledge on European law of the Council of Europe resulted in the SSR being awarded the Pro Merito Medal in Strasbourg, mainly for their innovative contribution to the visibility of the Council of Europe and the European Court of Human Rights among judges and prosecutors from the Netherlands and in other national judiciaries through the transnational training activities organised by SSR.<sup>32</sup>

The lessons from the Eurinfra-project (an integrated digital knowledge infrastructure, strengthening European judicial training, combined with organisational basis through court coordinators for European law) can be considered as very relevant experiences for the establishment of the current European plans in the context of the European judicial area. The idea of an efficient digital knowledge infrastructure with well-functioning search engines and the concept of the court coordinators have been supported in two recent resolutions of the European Parliament<sup>33</sup> and, luckily, will also be discussed during the European Parliament workshop of 28 November 2013 on judgecraft and judicial training. It would be advisable to take into account the Dutch evaluations of their experience with building the digital knowledge structure, revamping the European judicial training in several courses and setting up the network of court coordinators for European law, while also guaranteeing the appropriate time and resources for the functioning of these European law ambassadors. Perhaps, a programme comparable to the Jean Monnet Chairs for academics should be designed for judges and European law court coordinators for a bottom-up development of the European judicial culture.

## 4. EUROPEANISATION OF THE ORGANISATION OF JUSTICE: WHICH AUTONOMY FOR NATIONAL COURTS IN THE EU'S JUDICIAL SYSTEM?

In the 2005 research report on the consequences of the Europeanisation of the law for the Dutch Judiciary, the authors rightly note:

'For a long time it was assumed - and to an important extent this still holds true - that EU law interferes neither with the national organisation of the judiciary nor with national judicial procedures. Enforcement of EU law has to fit into the existing structures and procedures of the Member States.'<sup>34</sup>

### 4.1. Europeanisation of the organisation of justice

Such an impression seems to be outdated today. In recent years, the approach and influence of the EU on the organisation of justice in the Member States has rapidly changed,

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<sup>31</sup> See: <http://wiki.rechtspraak.minjus.nl/wiki/Wikipagina%27s/Kennisportaal%20Europees%20recht.aspx>. Only accessible through the secured network of the Dutch Judiciary.

<sup>32</sup> See: <http://hub.coe.int/web/deputy-secretary-general/20110321-strasbourg>.

<sup>33</sup> European Parliament resolution on judicial training – court coordinators (2012/2864(RSP)) B70053/2013.

<sup>34</sup> Prechal et al. (2005), p. 9.

partly because of the changes brought on by the Treaty of Lisbon. The Treaty of Lisbon does codify the duty of Member States to ensure an effective system for legal protection. Article 19(1), second paragraph TEU imposes this duty in clear terms:

'Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.'

This codification, addressed to the Member States, must be of some significance; in the years ahead, this Treaty law concept will have to get proper form and substance. Apart from the new codification in Article 19 TEU, the Treaty of Lisbon barely refers to the role of national judiciaries.<sup>35</sup> However, for the purpose of intensified European integration (the development of the area of freedom, security and justice), the national judiciaries are essential stakeholders. In this context, the EU has gained specific competence in Articles 81 (2)(h) and 82 (1)(c) TFEU for the support of training of the judiciary and judicial staff in civil and criminal matters. European judicial training will be used as an instrument to build the European area of justice. The Commission's Action Plan of September 2011 is very ambitious, with its main objective to:

'enable half of the legal practitioners in the European Union to participate in European judicial training activities by 2020 through the use of all available resources at local, national and European level, in line with the objectives of the Stockholm Programme.'<sup>36</sup>

Although the Commission stresses that the creation of a European judicial culture should fully respect subsidiarity and judicial independence,<sup>37</sup> the fully fleshed approach of the Action Plan and the new dimension to European judicial training seems to suggest between the lines that the Commission will get a (further) grip on the Europeanisation of national judiciaries and their organisation, step by step.<sup>38</sup> It is important to question the way in which, in the words of the Commission, the creation of a European judicial culture takes place through the published plans.<sup>39</sup>

## 4.2. The best people to provide judicial studies are judges themselves

One question is fundamental in this respect: how do judges best learn EU law? In fact, this same question goes for all the 700.000 legal professionals who will be trained. How will they learn European law? Top-down? Bottom-up? Combined? Through the glass of the Simmenthal or Rewe doctrines?<sup>40</sup> This is relevant for various fields or elements of EU law.

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<sup>35</sup> That is remarkable, considering for instance that since the Treaty of Lisbon, the national parliaments have been allocated their own position in the Treaty (Article 12 TEU). In the preparations for the intergovernmental conference on the European Constitution, the Due Report advocated that the role of the national courts be set out explicitly in the context of the Treaty. See O. Due et al., Report by the Working Party on the Future of the European Communities' Court System, January 2000, available at: [http://ec.europa.eu/dgs/legal\\_service/pdf/due\\_en.pdf](http://ec.europa.eu/dgs/legal_service/pdf/due_en.pdf). Meij was also in favour of codifying the important role of the national courts within the European justice administration system, see A.W.H. Meij, 'Constitutionalizing Effective Remedies: Too Much on EU Courts, Too Little on National Courts', in: D. Curtin, A.E. Kellermann, S. Blockmans (eds), *The EU Constitution: The Best Way Forward?*, The Hague: T.M.C. Asser Instituut 2005. However, he had previously argued that recognising the responsibilities of the national courts in a Treaty 'would change nothing but appearances – even if, by the way, this itself could be of some use.' See A.W.H. Meij, 'Guest editorial: architects or judges? Some comments in relation to the current debate', in: CMLR 37 2000, p. 1039-1045.

<sup>36</sup> COM(2011) 551 final, p. 2.

<sup>37</sup> COM(2011) 551 final, p. 2.

<sup>38</sup> This can also be illustrated by the Commission development of the EU Justice Scoreboard and by the country-specific recommendations in the context of the European Semester which also include recommendations for certain Member States to take measures to improve their justice system.

<sup>39</sup> See particular on this issue: H.J. van Harten, 'Who's Afraid of a True European Judicial Culture?' in: REALaw 2012, p. 131-152.

<sup>40</sup> The reasoning of the CJEU in the Case 106/77 Simmenthal [1978] ECR 629 focused on the autonomous nature of Union law and clarified that, by definition, it takes precedence over any conflicting national rule. The reasoning of the CJEU in the Case 33/76 Rewe [1976] ECR 1989 is centered around the principle of procedural autonomy:



To give two examples, we could firstly think of the question how to interpret the ‘obligation to refer’ for courts of last instance in the preliminary reference procedure: following the wordings and strict lines of the *Cilfit* case<sup>41</sup> or with a more common-sense approach? The different approach to the objectives of EU competition law between the European Court of Justice and the Commission also provides an example.<sup>42</sup> It all boils down to the question of how much influence the Commission will have on the substance of the judicial training programmes and the establishment of a ‘true European judicial culture’.

Against this background, the European Parliament’s resolutions on judicial training of March 2012 and February 2013 are to be welcomed.<sup>43</sup> In both resolutions, the approach of the European Parliament is more oriented on the perspective of the (national) judiciaries and the national judicial training institutes. The observation in the resolution of March 2012 is typical: ‘The best people to provide judicial studies are judges themselves’. In addition, the resolution stresses the need to take advantage of the existing experiences, particularly those of the national judicial training institutes and European law coordinators within national court structures.

Training of national judges is not just another policy field. National judges are not executive ‘parts’ of European governance. They do, or at least they should, operate in a far more independent and autonomous way. This absolutely needs to be taken into account by the EU’s executive in formulating the justice policy in years to come. We need to further develop ideas on how to maintain judicial independence and autonomy as well as on the future role of national courts in the EU’s judicial system, the proper ways to strengthen the European judicial culture and build the European area of justice.

### 4.3. Autonomy of national courts in the EU’s judicial system

In this respect, we should mention that the issue of the autonomy of national courts in the EU’s judicial system in everyday court practice recently received renewed attention in the Netherlands.<sup>44</sup> In November 2012, SSR and the Knowledge Centres of the Judiciary organised a large conference on: ‘What do the Dutch Courts do with European law?’<sup>45</sup> The conference was a great success, with fierce debate and interesting perspectives. It showed that the role of national courts and the authority of their national case law having a European dimension in the European legal order is still open for debate and of growing relevance for everyday court practice in the Member States at the same time.<sup>46</sup>

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national procedural rules apply, unless Community law provides otherwise and the requirements of the principle of equivalence and principle of effectiveness are fulfilled.

<sup>41</sup> Case 283/81 *Cilfit* [1982] ECR 3415.

<sup>42</sup> See for instance Joined Cases C-501/06P, C-513/06P, C-515/06P and C-519/06P *GlaxoSmithKline Services Unlimited v Commission* [2009] ECR I-9291. While the Commission claimed that consumer welfare is the central goal of competition law, the CJEU highlighted three different objectives of competition law: protection of economic freedom, protection of consumers and their welfare and European market integration.

<sup>43</sup> European Parliament resolution of 14 March 2012 on judicial training (2012/2575(RSP)). See also: European Parliament, resolution of 4 February 2013 on judicial training – court coordinators (2012/2864(RSP)).

<sup>44</sup> See in particular: H.J. van Harten, *Autonomie van de nationale rechter in het Europees recht*, The Hague: Boom Juridische Uitgevers 2011 and R. Stijnen, M. Jurgens (eds.), *Toepassing van Europees recht. Wat doet de Nederlandse*

*rechter met het Europees recht?*, Deventer: Kluwer 2012.

<sup>45</sup> See: <http://www.rechtspraak.nl/Actualiteiten/Nieuws/Pages/Nationale-rechter-niet-onderworpen-aan-Europa.aspx>.

<sup>46</sup> See the published contributions of key note speakers: H.J. van Harten, ‘Wat doet de Nederlandse rechter met het Europees recht?’ in: *Trema. Tijdschrift voor de Rechterlijke Macht* 2013, p. 121-127 and R. Barents ‘Enkele kanttekeningen bij de autonomie van de nationale rechter in het Unierecht’ in: *Trema. Tijdschrift voor de Rechterlijke Macht* 2013, p. 128-132.

## 5. A NEW CULTURE OF LEARNING?

As was mentioned earlier, the Netherlands has a long tradition of pre- and in-service training of judges and prosecutors: it started in 1956, long before the information society. Today, the world is more and more demanding and in light of the modern context for courts it is important to find training solutions aimed at supporting judges in a practical way, also in the EU. Since education and training are essential drivers of change within organisations, judicial training institutions must be aware of the current and future developments in society because tomorrow's judges and prosecutors are recruited, selected and educated today. It is our strong belief that several societal trends will impact the future of judicial training and foster reflection on the role of judicial training institutes. Perhaps these trends ask for a new culture of learning.

### 5.1. The challenge of digitalisation and information load

Among the current challenges, digitalisation and the growing amount of available information are the most relevant and challenging. As mentioned above, the quality of the digital infrastructure for knowledge determines the quality of learning. Therefore, judicial training institutions must be involved in the design and implementation of the digital knowledge infrastructure. New generations of judges and prosecutors need to be trained by means of digital training methodologies. As to innovation, it is important to turn knowledge and training into a catalyst for change within the judicial sector. Judicial training institutions should be in a good position to support innovation within the judicial sector.

Developing cost-effective means of improving the training of judges and access to EU law is vital with regard to an EU- population of 1.500.000 legal practitioners and about 350.000 judges and prosecutors.

By their very nature, judicial organizations tend to be conservative. The judicial training institutions might be the focus of change for the judiciary and justice systems in their respective countries. Because change is difficult to achieve, it could and should be a joint effort, a shared effort. Judicial training institutes should collaborate in finding out what the trends are, in order to, very carefully, implement them in their various (national) settings.

Talking about contemporary trends, five are most relevant in our view, as will be discussed below.

### 5.2. Demography

In the Netherlands, we experience greying and greening of society. There will be less (active) legal professionals in the coming years and this may result in a loss of knowledge, including knowledge that must be retained. In such an environment, knowledge management becomes vital. Future generations do not necessarily work (life)long with the same employer. The coming generation must be trained fast – on the job –, because the current generation of judges will soon be leaving the judiciary. Recruitment of talented young people is required in order to maintain the quality of the judicial system. Is this issue generic enough to discuss it amongst the training institutions and at the European level? The challenge is to make the judicial professions attractive for these people, for instance by offering personal development plans and other “gadgets” that attract this young generation. Training institutions can contribute by offering attractive training programmes.

### 5.3. Economy, work and value

The experience determines the value of what is offered. New approaches to work emerge, such as flexible working hours and telework. Flexible labour arrangements and shorter contracts influence the way people need to be trained. For the young generation(s), their choice for the judiciary will (also) depend on the stance that is taken within the profession

on this new approach to work. The same goes for judicial training. Training institutions must have a clear understanding of what constitutes ‘the experience of learning’: it may include more factors than one might think. These factors may be more important than, for instance, the actual course materials or the teacher/trainer.

#### 5.4. Approaches to knowledge and learning

The information society has changed the knowledge landscape. Instead of gathering knowledge, people want to know how they can learn effectively. A shift is discernible from knowledge to learning to research. Research is needed to know what is going to happen, in order to prepare for the future. Innovations are created within networks. This is an interesting and important observation considering that judicial organisations often are of a “closed” nature. How will this be in the future? Judicial training institutions could be a catalyst for the necessary changes in the knowledge infrastructure within judiciaries and judicial organisations. The institutions should be pro-active and build open learning networks with partners, also from outside the judicial organisation.

#### 5.5. Digitalisation

Information has expanded in an exponential way during the last decades. Connecting national case law together with the ECLI-citation and a search engine on the European e-Justice Portal will open up new, unforeseen possibilities for judges and lawyers, but how will the Courts deal with this? Who will store and analyse this information within the judicial sector? What is the effect of the online publication of judicial decisions? It is wise to involve the national judiciaries and their training institutes as architects of the digital knowledge infrastructure. Learning and knowledge are merging processes. E-learning is an example of how this already takes place. In any case, digitalisation is an important and urgent topic, because the new generation of magistrates needs to be trained now, and wants to be trained by means of digital training methodologies.

#### 5.6. Need for innovation

Changes in the society force Courts to innovate. How can we turn knowledge and training into a catalyst for (modest) innovation and change within the judicial sector? Judicial training institutes are at the heart of the judicial sector: people who work in the sector pass through the classrooms of the judicial training institutes. This places them in a unique position to support or even initiate change and innovations within the judicial sector. Moreover, if you look at it from another angle: what would be the effect on the quality of the judiciary if the judicial training institutions failed to reflect on the required innovations and did not pose the right and necessary questions to the judicial sector?

## 6. REAP THE FRUITS: CONCLUDING REMARKS AND RECOMMENDATIONS?

This note has sought to provide a short overview of some of the Dutch experiences in improving accessibility and handleability of EU law for judges over the past decades. While courts in the past were mainly confronted with aspects of European law on a case-by-case basis, the relevance and impact of European law has grown enormously over the years. The Dutch judiciary and SSR as its principal judicial study and training institute have built up a long tradition of judicial training of European law in several ways. Experience shows that a multidimensional approach is necessary, and must include sharing knowledge, judgecraft and awareness of the autonomy of national courts in the EU’s judicial system. The European institutions, most notably the European Commission and European Parliament, are recommended to reap the fruits of these experiences. Concluding this note, some of these fruits will be presented at a glance:

- In a way, the work of judges is stable and constant, while the European Union and the world around them is ever changing and becoming more and more demanding. It is of utmost importance to find solutions aimed at supporting judges in a practical way: keep it simple, functional and local!

The national judicial training institutes have to take care of basic and in-depth training on EU law in the pre- and in-service training.

European law must be made part of the training in substantive national law.

Offering 'action learning' (an educational process in which people work and learn by tackling real issues and reflecting on their actions) or 'just in time learning' in pending cases will improve the effectiveness and efficiency of learning.

Offering online blended learning (formal education programmes in which learning takes place at least partly through online delivery of content and instruction, with some element of one's own control over time, place, path or pace) is the future.

Combination of the working and learning environment by offering courses aimed at the transfer of knowledge only for trainees and newly appointed judges and prosecutors.

The increasing complexity and volume of (European) law may be tackled by a knowledge (digital) infrastructure and a network of specialized judges, such as court coordinators for European law who facilitate their colleagues in accessing sources of EU law.

- European law is nothing special: it is served in courts throughout the European Union, it is 'law of the land' of the European continent.

The development of the European attitude of courts is largely driven by companies and citizens who invoke European law before national courts. The European dimension of cases is continually growing. As a consequence, judges and prosecutors need new knowledge and competences to deal with these contexts.

Because judges and prosecutors are still afraid of applying European law, they can be facilitated by establishing communities of practice in their country and all over Europe, which exchange experiences, knowledge and interpretation of law with each other in a secured digital judges' campus.

Organization of European peer reflection groups ("intervision") of judges and of prosecutors to discuss issues they are confronted with when dealing with EU law in national cases. These meetings can take place online or through videoconferencing.

Because the available materials and knowledge about EU regulations are increasing enormously, judges and prosecutors must be trained in asking the right questions to find the appropriate answers. Standard questions can be developed for frequent pending issues.

An overall information searching system, covering all national judicial infrastructures, can make European law more accessible for all legal professionals in Europe.

Interconnecting national digital knowledge systems is preferable (a judges' hub should be created).

- European judgecraft includes the specific skills judges need to do their jobs, for instance in areas such as opinion writing, sentencing, dealing with court sessions, hearing witnesses, collecting evidence, reasoning, critical thinking. This craftsmanship can be summarised quite concisely.

See the five Kapteyn principles mentioned above

Through exchange programmes, trainees and newly appointed judges can get acquainted with the interpretation and application of European law.

Through exchange programmes, very experienced judges can reflect on their work and in this way foster mutual understanding in order to strengthen mutual trust.

Exchanges for other groups of judges should be foreseen, if time and budget are available.

Peer reflection group meetings could serve as a platform to exchange experiences and practices, possibly through an e-learning virtual infrastructure (judges' lounges).

- The autonomy of national judges, as cornerstones in the EU's judicial system, must be fully respected.

Judges are professionals, leave room for manoeuvre: the best people to provide judicial studies are judges themselves.

Every national court is a court of EU law and should be trusted as such.

The EU's judicial system consists of 28 national judiciaries and the Court of Justice of the EU; together, they uphold the rule of law, develop and share the European legal order and share judicial authority within the EU.

Empower national courts by reaffirming the explicit authority to apply but also interpret European law and by accepting national European case law as a source of law for the EU legal order.

Article 67 TFEU, the basic provision on the area of freedom, security and justice, explicitly states that the different legal systems and traditions of the EU Member States should be respected. It is essential to foster a European judicial culture in which diversity is celebrated.

When formulating the EU Justice policy, be aware of the sensitive relationship between the EU's executive and the autonomy of courts: the views might not be similar.

- Use public finance wisely, try to not reinvent the wheel.

There is a large body of knowledge and good practices of judicial training in the Member States. Do not research it again. Be practical and help the judges in court in their awareness of European law and national legal systems in a cost-effective way.

A programme comparable to the Jean Monnet Chairs for academics should be designed for judges and European law court coordinators for a bottom-up development of the European judicial culture.

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## **THE ITALIAN EXPERIENCE: *SCUOLA SUPERIORE DELLA MAGISTRATURA***

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### **ABSTRACT**

This paper explains the functioning of judicial training in Italy, which is now competence of the 'Scuola Superiore della Magistratura'. It summarizes the methods and the goals of the training offered by the School and focuses especially on the part of the training that regards European law, in order to promote cooperation between different national courts and judges.

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## 1. GENERAL OVERVIEW

Since October 2012, the competence for judicial training in Italy has been transferred from the High Council of the Judiciary (CSM) to the recently established School for the Judiciary (Scuola Superiore della Magistratura). The School is now the only agency charged with training judges and prosecutors, both professional and honorary, belonging to the civil and criminal judiciary.

The School provides both the initial training of newly appointed magistrates,<sup>47</sup> and the continuing education of judges and prosecutors already carrying out their functions.

Training in the School is eminently practical, because the basic and theoretical legal training has already been provided before the selection process in order to enter the judiciary: Italian magistrates are selected via a competition, in the course of which their theoretical knowledge of the law is thoroughly tested.

The training activities aim not only to facilitate a better discussion of cases from the legal point of view, but also to offer useful elements and experiences in order to understand the human and social substance of legal disputes.

The European dimension has a prominent role in this framework, not only because there is a growing set of European rules that must be applied equally in all EU Member States, but also because it is necessary to facilitate dialogue and exchange between courts belonging to different legal traditions and to help creating a common European judicial culture. An integral part of this culture must be openness to non-legal knowledge and to human and social reality, fidelity to the ethical canons of the profession, attention to efficiency and good organization of justice. An increasingly close cooperation between the specialized institutions for the training of judges is one of the objectives to be pursued.

## 2. JUDICIAL TRAINING IN ITALY: AN HISTORICAL OVERVIEW

Just like in many other countries, the first aspect of judicial training in Italy relates to the preparation of those who wish to take part in the selection process in order to enter the judiciary; a second aspect relates to the training of those who have passed the selection and have been appointed as judges or prosecutors. This second activity can be divided into initial training, which currently lasts 18 months, and continuing education for members of the judiciary who have completed their training and are already carrying out their functions.

### 2.1. The first part of the judicial training: pre-selection training

In Italy, access to the competition to become members of the judiciary is restricted to specific categories of law graduates, having undergone additional theoretical or practical specialization. Thus, the training in order to take part in the selection procedure is given by the Universities (in the studies leading to the law degree) and by the post-graduate Schools for the legal professions (which law graduates attend for two years, after a selective admission test). The attendance of the latter can be replaced with further academic training (e.g. leading to the earning of a PhD) or with professional experiences (such as admission to the bar or to leading positions in civil service). However, most judges-to-be also follow private training activities, in particular, courses designed specifically to prepare for the judicial selection procedure: such courses have been attended by the majority of the candidates who were successful in recent selections. The fact that most young judges have attended such private courses is a symptom of the failure or inadequacy of the post-graduate Schools for the preparation to the legal professions.

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<sup>47</sup> Newly appointed magistrates spend one third of their training period following training activities at the Judicial School, and the remaining two thirds getting hands-on experience in courts and prosecution offices.

The selection process is the same for those who will carry out a judicial role and for those who shall serve as public prosecutors, and it is generally considered to be highly selective. It is based on written and oral tests on various legal subjects.

## 2.2. The second part of the judicial training

The training of judges and prosecutors after their appointment was assured, until 2011, by the High Council for the Judiciary (CSM). The initial training took place by way of participation to the activities of courts and prosecutors' offices, except for brief centralized training sessions in Rome, and was governed by regulations of CSM. The continuing education was provided through numerous short courses organized by CSM, which could be attended, every year, by a few thousand judges and prosecutors. Attendance was, within certain limits, mandatory for judges and prosecutors, and was taken into account by the same CSM for the purpose of periodic assessments of professionalism.

This system has been substantially innovated by law, starting in 2005. In particular, legislative decree n. 26 of 2006 - later amended by Law no. 111 of 2007 - established the School for the Judiciary, which came into operation at the end of 2011 and started its training activities October 15, 2012.<sup>48</sup>

## 3. THE SCHOOL FOR THE JUDICIARY

The School for the Judiciary was established as a public institution with legal personality and full organizational and financial capacity. It is governed by a single Board of Directors, composed of 12 members appointed for a term of four years, who elect among themselves a president. Seven members (six judges or prosecutors and one professor) are appointed by CSM; five members (one judge or prosecutor, two defence lawyers and two professors) are appointed by the Minister of Justice. Unlike in the French Ecole Nationale de la Magistrature<sup>49</sup>, the Board deals jointly with the management of the School – in every organizational, administrative and financial respect – and at the same time with the typical educational functions of organizing and supervising its training activities. The School for the Judiciary has no stable faculty, as it resorts to trainers chosen on an ad hoc basis from among judges and prosecutors, university professors, defence lawyers and other experts. The chief executive of the School is a Secretary-General appointed by the Board and assisted – as of today – by fifteen members of the staff. The School currently has its administrative headquarter in Rome, and its operational headquarters in Scandicci (Florence), in the monumental Villa Castel Pulci.

The School now has exclusive competence for all training activities of ordinary judges, both professional and honorary, subsequent to their appointment (initial training, continuing education, decentralized activities in the single judicial districts, international activities, and joint training with defence lawyers and other legal practitioners). Guidelines on the training activities of the School are issued each year by CSM and by the Ministry of Justice.<sup>50</sup>

The training provided to judges and prosecutors is completely paid by the School, which receives its annual budget from the State. In every judicial district, the School appoints special committees in charge of decentralized training activities for the judges and prosecutors of that district.

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<sup>48</sup> D.lgs. 30 gennaio 2006, n. 26, available at

[http://www.giustizia.it/giustizia/it/mg\\_15.wp?previousPage=mg\\_1\\_28&contentId=LEG749463](http://www.giustizia.it/giustizia/it/mg_15.wp?previousPage=mg_1_28&contentId=LEG749463). Also see the website of the Italian Judicial School, at [www.scuolamagistratura.it](http://www.scuolamagistratura.it)

<sup>49</sup> See the internal rules of the Ecole Nationale de la Magistrature, available at: [http://www.enm-justice.fr/uses/lib/5784/reglement\\_interieur.pdf](http://www.enm-justice.fr/uses/lib/5784/reglement_interieur.pdf)

<sup>50</sup> The Guidelines issued by the CSM in 2013 are available at: <http://www.scuolamagistratura.it/images/documentazioneformazionepermanente/Linee%20programmatiche%20del%20CSM%20per%20la%20formazione%202013.pdf>. The Ministry of Justice's 2013 Guidelines are available at: <http://www.scuolamagistratura.it/images/documentazioneformazionepermanente/Linee%20programmatiche%20del%20ministero%20per%20la%20formazione%202013.pdf>

## 4. THE TRAINING AT THE SCHOOL FOR THE JUDICIARY

With regard to the methods and contents of the training it offers, the School has largely continued the training activities formerly organized by CSM, but with some important innovations and some emphases.

The first innovation arises directly from the law establishing the School, which explicitly requires the eighteen-month' training for newly appointed members of the judiciary to be divided into a session of six months, not necessarily consecutive, at the School, and a twelve-months' period in local courts or prosecution offices. The School therefore plans and organizes, for each group of trainees,<sup>51</sup> special programmes of training activities; normally, these are structured so that trainees stay at the headquarters of the School for periods of two consecutive weeks.

The training activities offered concern specific issues of civil, criminal, constitutional, European and international law, which are discussed predominantly with practical and case-study methods, as well as other issues related to non-legal disciplines that are relevant in the judicial activity (e.g. psychology, sociology, philosophy, investigative techniques). Furthermore, as a part of the training it offers, the School also organizes internships in each judicial district (for instance, in penitentiaries, police offices, law firms, local governments, etc.). These internships, which complement the periods of direct practice that trainees spend in courts and prosecutors' offices, are aimed to make trainees – through direct experiences lasting one or two weeks – aware of institutional realities and environments other than courts and prosecution services, but whose activities have direct relevance and connection to the activities of the judiciary.

From a substantial point of view, in its training activities the School strives to provide judges and prosecutors (both during initial training and in-service training) cognitive and cultural stimuli and experiences not strictly connected with the law as such, but with the social environment in which the judicial activity takes place, and which is affected by it. In fact, the law, especially if considered not from an academic point of view, but from the point of view of its application by the courts, is a practical science and experience, which at the same time is influenced by, and influential on, the life of society: a great Italian jurist (Francesco Carnelutti) used to say that "those who know only the law do not even know the law".

The first aim of the training activities offered by the School for the Judiciary is to allow judges to make the best use of extra-legal knowledge and techniques, which often have to be considered for the resolution of legal disputes: for instance, scientific notions which must be used to assess evidence; technical and accounting knowledge which is necessary to evaluate balance sheets; psychological awareness, often needed to evaluate the consequences of choices to be made in respect of children or controversial family situations; and so on. Indeed, the judicial activity must often make use of the inputs of experts in other disciplines, and judges and prosecutors must be able to assess the reliability of such contributions in each case, since the judge is, as they say, *peritus peritorum*, or the expert among the experts.

Another goal of the School is, more broadly, to train judges and prosecutors to develop the ability to look beyond the formal patterns provided by regulatory sources, and capture the essence of human stories and personal and social relationships involved in the matter dealt with, as well as the impact and consequences of the decisions that they are required to adopt.

Furthermore, the training offered aims to help judges and prosecutors to internalize the deep meaning of their function, as well as of the modalities, even the procedural ones, that

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<sup>51</sup> The number of trainees is subject to changes, because it depends on the number of places available in each competition: in the last two years they have been about 350 trainees each year.

characterize or should characterize their activity: impartiality, interparty proceedings, correctly listening to the litigants' cases, a balanced approach to the subjects and the events at issue, clear and persuasive reasoning of the decisions, genuine collegiality of the decisions taken by panels, and the ability to consider each of the judges' or prosecutors' steps within the framework of the overall efficiency of the court or prosecution service, as well as of the general interests of the function that they are called to perform.

All this implies that awareness of the social environment in which judges and prosecutors are to work, observance of professional ethics and care for the organizational aspects of judicial work (in a context where one does not act merely as an individual) are all goals that must be reached by judicial and prosecutorial training. This is necessary also in order to better prevent the risk of misuse or unduly "politicized" use of the judicial function, in conflict with the principle of separation of powers and with the rules of mutual independence and loyal cooperation between institutions.

## 5. THE TRAINING OF THE JUDICIARY REGARDING EU-LAW

Having clarified the general context of judicial training in Italy, it is also important to discuss the issue of training of the judiciary in the European context, also with a view to cross-border judicial cooperation. In university and post-university teaching in Italy, growing attention is paid to European law, although perhaps not yet enough. The same can be said of the inclusion and relevance of European law in the selection procedures for the recruitment to the judiciary. In the training programmes of the School for the Judiciary for initial and permanent training of judges and prosecutors, European law is widely covered, also given the growing interactions and interdependencies between domestic and supranational legislation and case law. Until recently the CSM, and now the School, took and is taking part in the activity of the European institutions dedicated to judicial training, in particular the European Judicial Training Network.<sup>52</sup>

At the School for the Judiciary, we are convinced that European judges must acquire greater familiarity with European standards and the case-law of European courts, as well as with the mechanisms provided for cooperation between these and domestic courts; indeed, we must help create a common judicial culture among judges across Europe. The following aspects are an integral part of this culture: openness to non-legal knowledge, especially of the data and characteristics of the human and social reality affected by the work of judges and prosecutors; fidelity to the ethical canons of the judicial professions; attention to efficiency and good organization of justice.

In addition, training must aim to facilitate procedures for coordination and cooperation between judicial authorities of different countries, both inside and outside the European Union; these procedures are, indeed, increasingly frequent and necessary, as a result of the so-called globalization.

The tools and methods of European judicial training are different: first of all comes language learning, which is essential to facilitate mutual understanding and exchanges. Every European judge should be fluent in the working languages of the international courts, starting with English, which is now the lingua franca of scientific disciplines and is playing more and more the same role in other areas of knowledge and practice. The most appropriate tools for this objective are e-learning programmes, due to their versatility, their accessibility on-line, and their much lower costs.

As for other types of European judicial training, the instruments that can be used are, for instance, exchange programmes between judges and prosecutors of different countries, or training programmes in which judges and prosecutors from different countries participate at the same time. In particular, the latter can involve issues of European law or relate to cross-border judicial cooperation; but they can also address national laws, where a

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<sup>52</sup> <http://www.ejtn.net/About/EJTN-Affiliates/Members/Italy/>.

comparison between different regulatory systems with regard to the same phenomena may be useful. Finally, extra-legal issues involving the social reality affected by the judicial activity may also be topics for training initiatives.

## 6. THE GOALS OF JUDICIAL TRAINING REGARDING EU-LAW

As regards European law, we are well aware of the importance of accompanying the implementation of European legislation (which is applicable, directly or indirectly, in different countries) with common standards of interpretation and application, to be used by national courts acting as European judges, beyond the cases in which authoritative interpretation is provided by the Court of Justice.

Even with regard to the application of national law, common criteria ought to be developed, to be shared by the courts of different countries, and not only of those where strong common traditions exist. Dialogue and exchange between courts belonging to common law countries and civil law countries is today of utmost importance. In a cultural environment increasingly characterized by breeding and hybridization not only of populations but also of legal traditions, the mutual enrichment that can be expected from such comparison and exchange is a valuable benefit.

The same also applies to the comparison and exchange of extra-legal issues, where the sensitivities present in the courts of different countries can enrich each other. Even the knowledge and circulation in Europe of best practices<sup>53</sup> in the field of professional ethics and of organization and operation of judicial services can usefully be the subject of training activities.

## 7. JUDICIAL TRAINING FOR DIFFERENT BRANCHES OF LAW

One last point deserves to be mentioned. In Italy, as in other European countries, there is no unified branch of the judiciary, but there are several judicial branches entirely or almost entirely separate and self-acting: for the civil and criminal cases; for the administrative cases (administrative regional tribunals and Council of State); for public auditing cases (Corte dei conti); and, with some limits, for tax and military cases.

The criteria of allocation of jurisdiction have their roots far back in time and are guaranteed by a regulatory body overseeing conflicts, the Court of Cassation. However, there would undoubtedly be grounds and large scope for a common training, and particularly for in-service training, such as to include necessarily, for instance, the European law dimension. The School for the judiciary, just like the CSM before, is only concerned with judges and prosecutors for civil and criminal matters (so called ordinary magistrates): for judges belonging to the other courts, there are no Schools, and their special self-government bodies, similar to the CSM, are still in charge of training. Therefore, a growing collaboration between all the Italian institutions dedicated to judicial training is to be hoped for.

At the same time, we have to hope for a growing cooperation between the special agencies competent for judicial training in Europe, such as the Italian School and those already operating in other European countries. They are the best placed bodies to realize the common needs and public interests related to the objectives, which I mentioned, of a European – in a broad sense – training of judges and prosecutors, for today and for tomorrow.

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<sup>53</sup> See e.g. the project: Bringing best practices to judicial offices:  
<http://ec.europa.eu/esf/main.jsp?catId=46&langId=en&projectId=416>.

## **THE SPANISH EXPERIENCE: NETWORK OF EXPERTS ON EUROPEAN UNION LAW (REDUE) - INITIAL & CONTINUOUS TRAINING**

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### **ABSTRACT**

The training of Spanish judges in European Union law has been undertaken from its early stages at the Judicial School, establishing continuous training through specific courses at a later stage. In addition to this educational aspect is the support provided by the Network of Experts in European Union Law (REDUE) which aims to provide everyone entering the Spanish legal professional with the necessary information and support in all matters pertaining to European Union Law, with a particular emphasis on the approach to preliminary rulings.

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## EXECUTIVE SUMMARY

### Background

The system for selecting Spanish judges is a complex process requiring action in two distinct areas of decision-making: the CGPJ holds the ultimate power to convene entrance examinations for becoming a member of the judiciary, but it is the legislature that has the power to determine the maximum number of places available for each round of examinations. Selection and training should be inseparable from each other.

The Judicial School of the CGPJ coordinates the selection processes of the judiciary and manages the initial training and continuous training programmes for judges and magistrates. The system chosen by the legislature for entry into the Spanish judiciary is to pass an open entrance examination and a training course with both theoretical and practical content run by the Judicial School, the technical branch of the CGPJ.

The Judicial School has designed a specific and specialized training process with the sole objective of preventing judicial professionals' training from becoming obsolete, offering high quality, integrated and specialized instruction.

Specific training on EU legislation is covered right from the first stage of Judicial School, later being consolidated into continuous training through the provision of special courses and rounding off this educational process with the support provided by the REDUE.

Initial training is undertaken at the Judicial School's headquarters in Barcelona and is aimed at those students who have passed the entrance examination to enter the judiciary. The training is structured around two consecutive phases, based on an in-depth understanding of theory and introducing practical knowledge. The first phase involves attending classes at the Barcelona consisting of conventional classroom sessions combined with spending time at courts, professional practices and other institutions. The second phase consists of a period of supervised work experience with the aim of introducing trainee judges to the judicial profession and takes place in the national courts. The guiding philosophy for the initial training process is for future judges to receive a solid and comprehensive education, covering both the judicial sphere and its institutional position within the European Constitutional States of Law.

The CGPJ guarantees that all judges and magistrates will receive continuous, personalized, high quality training throughout their professional careers. The Continuous Training Service of the CGPJ is responsible for developing all the programmes and activities aimed at achieving the appropriate level of professional expertise for all members of the Spanish judiciary. As well as covering everything that concerns the professional training of judges, the State Training Plan also aims to encourage reflection within the judiciary about the social function it performs, in such a way that the judgements handed down address sociological considerations as well as demonstrating due respect for the written law. Training sessions are structured to provide a forum for sharing opinions and experiences, based on an essentially practical approach.

Spanish judicial training on EU legislation is particularly important and has a dedicated section within the State Training Plan. The State Training Plan designs educational activities which are intended to facilitate contact with judges from other European Member States. Between 2008 and 2013 a total of 108 different educational activities were organized on this subject<sup>54</sup>, making available a total of 1,905 places and resulting in the training of 1,387 judges. The purpose of the "Dámaso Ruiz-Jarabo Colomer Forum of European Judicial Studies"<sup>55</sup> is to foster a common European judicial culture, aligning its objectives with the training priorities of the European Commission.

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<sup>54</sup> See figures 1 – 2 of annex

<sup>55</sup> See figure 3 of annex

The training is supplemented by students spending time at the European Court of Justice in Luxembourg and the European Court of Human Rights in Strasbourg as well as in French and British courts.

REDUE was set up with the objective of providing every member of the Spanish judiciary with the necessary support and information in all matters pertaining to the enforcement of European Union Law, with particular attention to the procedure for questions on preliminary rulings. The main functions of REDUE are to promote the submission of questions on preliminary rulings, offer information about European Law to all other judges, and provide training on European Law to Spanish judges through the activities organized by the Judicial School and the Continuous Training Service.

## Objectives

1. It is necessary to promote the training of Spanish judges in their role as enforcers of European Union Law.
2. REDUE's collaboration with the Judicial School provides added value to other training methods (academic education at the School, university courses, etc.), given that this approach enables judges to pass on to other judges their supra-national judicial experiences during the course of their professional duties.
3. The integral training of judges requires full immersion into European judicial culture and experiences, whose most outstanding exponents in the past 50 years have been the European Union Court of Justice and the European Court of Human Rights. Spanish judges need to move closer to European law, not just from the point of view of the essential enforcement of its associated laws, but also it offers a new model of European judge resulting from the convergence of European judicial cultures.
4. The training that should be provided by the Judicial School must be eminently practical in nature, based on the constant updating of knowledge on European Law.
5. Stable systems should be set up which facilitate the constant exchange of experiences between members of the different European judiciaries.



## GENERAL INFORMATION

### KEY FINDINGS

- The system for selecting Spanish judges is a complex process requiring action in two distinct areas of decision-making.
- The main functions of the Judicial School Commission of the CGPJ are to organise the areas of Training and Selection, monitor activity programmes, coordinate the School's own work and facilitate relations with other institutions.
- The system chosen by the legislature for entry into the Spanish judiciary is to pass an open entrance examination and a training course with both theoretical and practical content run by the Judicial School, the technical branch of the CGPJ.
- The Judicial School has designed a specific and specialized training process with the sole objective of preventing judicial professionals' training from becoming obsolete, offering high quality, integrated and specialized instruction.
- Specific training on EU legislation is covered right from the first stage of Judicial School, later being consolidated into continuous training through the provision of specific courses and rounding off this educational process with the support provided by the Network of Experts in European Union Law (REDUE).

By virtue of the provisions of the Spanish Constitution, the authority to determine the number of judges in Spain rests with the Spanish State. This is determined in Article 149.1.5 of the Constitution which gives the State the exclusive competence in matters of the administration of justice. Therefore the specific decision on the number of judges that should be allowed to enter the judiciary each year corresponds to the Spanish government which, depending on general policy, the availability of resources and the needs of the justice administration, dictates, where applicable, in the relevant draft State Budget Law, the number of judges' places that should be included in the list of public employment vacancies every year.

These places are filled by means of public examinations for the corresponding selection processes for which the CGPJ has complete authority throughout Spain, as Organic Law 6/1985, of 1 July 1985 on Judicial Power grants it wide-ranging competences in matters concerning the selection and training of Spanish judges and magistrates. Ingress into the Spanish judicial system is based on the principles of merit and ability in the exercise of jurisdictional procedures and must guarantee, objectively and transparently, equality of access to the judicial system for every citizen who meets the necessary conditions and aptitudes as well as the suitability and professional expertise of the people recruited to perform these judicial functions. Consequently, the system chosen by the legislator to enter the Spanish judiciary is to pass an open entrance examination and a theory and practical course conducted at the Judicial School, the technical body of the CGPJ.

This therefore entails a complex process that requires the joint and synchronized action of two different decision-making bodies: firstly, the CGPJ has the ultimate authority to convene the entrance examinations to the judiciary, but these examinations must at all times adhere to the maximum number of places available which, in the final instance, will have been established by legislative power in the General State Budget Law for each financial year. This is without forgetting that, as established by the LOPJ itself, the CGPJ may put forward the relevant proposal to the Ministry of Justice in order to correct the relevant demarcation or workforce when it identifies a delay or build-up of judicial matters in a particular court or tribunal which cannot be corrected by strengthening the workforce of that particular judicial office or by the temporary roster exemption envisaged in Article

167.1 LOPJ, or by adopting the exceptional judicial support measures consisting of assigning incumbent judges and magistrates from other judicial entities, hence determining that the cause of the delay is structural and requires a modification of judicial staffing to address it.

The appointment of the CGPJ as the authority for selecting and training judges and magistrates further underlines its status as the governing body of Judicial Power, as the CGPJ fully assumes all the powers pertaining to this specific area, as well as the competences relating to continuous training which it had already been providing, as both these areas should always be understood as components of a single process: selection and training should be inseparable.

The CGPJ exercises these competences through the Judicial School Commission, a regulatory body created by the Plenary Agreement of the CGPJ on 7 February 1996, whose general functions are the planning of the departments of recruitment and training of judges and magistrates, monitoring the planned training programmes, coordinating the work of the Judicial School and channelling relations with other institutions. The structure and functions of the Judicial School were set forth in Regulation 2/1995, of 7 June 1995, and being configured as the technical body of the CGPJ guarantees its proactive and flexible operation.

As mentioned earlier, the essential mission of the Judicial School is to coordinate the recruitment processes for judges and magistrates as well as ensuring the optimum execution of the initial training programmes for future trainee judges and the continuous training programmes and activities aimed at judges and magistrates. This not only applies to Spanish personnel but also envisages the possibility that, in executing any collaboration agreements that may be made by the CGPJ, the School may also undertake the training of judges and magistrates, or candidates for the judiciary, of other countries, especially Spanish-speaking nations, which underlines the international vocation of the education that the School aims to provide.

The management body of the Judicial School is the General Council which is the collegiate governing body of the School and includes members from other institutions which in one way or another are related to the Justice System and who should be given a say in the recruitment and training process. Thus as well as the representatives of the CGPJ itself, the General Council includes representatives of the Ministry of Justice, the Autonomous Communities with authority in the sphere of the judiciary and the professional associations of judges and magistrates, one member from each of the categories of the judiciary and one representative from the prosecution service, which guarantees a balanced presence of all the institutions that are considered to be capable of making a significant contribution to the process of defining the School's objectives and programmes. The main task of the General Council is to approve the teaching programmes devised to impart the theory and practical courses for the recruitment and training of judges and magistrates and establishing their different phases, as well as making any relevant proposals to the CGPJ with the basic outline of the annual activity programme of the School. The general organization of the School is structured around two main areas of action which relate, respectively, to the two main areas it is responsible for: one the one hand, the selection process of new members of the judiciary and their initial training, and on the other the continuous training of all judges and magistrates.

It is worth noting that, as established by Article 302 of the LOPJ, the selection process starts by taking an open entrance examination to "enter the Judicial School", passing the School's course being a necessary part of being eventually appointed as a member of the judiciary. In other words, the selection process comprises two phases: firstly, passing the entrance examination, and secondly passing a theory and practical course which essentially includes a multidisciplinary theory course, a period of supervised practical work in the different bodies of all the jurisdictional departments, and a period during which trainee judges perform relief cover or locum duties. Only when this course has been passed are participants appointed as judges through the proposal system of the Judicial School. This formula underlines the importance attributed by Spain to training members of the judiciary

right from the outset rather than adopting a 'learning by rote' academic selection process. Unless this training period is successfully completed, the duration of which in the case of the theory course may not be less than nine months, and four months for each of the work experience periods, whether supervised or as relief or locum personnel, the candidate cannot be considered for membership of the Spanish judicial system.

This approach continues in all the subsequent activities of the Judicial School, as the Continuous Training Service of the CGPJ has devised a comprehensive, specialized and targeted training process with the sole objective of preventing judicial professionals' training from becoming obsolete, offering integrated, specialized and high quality instruction. This training, as with the training at the Barcelona Judicial School, also has an international vocation as it offers judges from other countries the chance to participate in the course in the same way that Spanish judges are able to participate in those of other countries. Nevertheless, it should be remembered that the Spanish Judicial School is a member of the European Judicial Training Network (EJTN) in which it plays a very active role, currently serving on its Management Committee. By way of example, it is worth mentioning that in 2011, 226 members of the Spanish judiciary attended 57 courses in nine different European countries. In terms of the activities of the EJTN organized directly in Spain by the Judicial School, 187 members of the judiciary and the prosecution system participated from 13 European countries. The Judicial School organized a total of five international training programmes, two of which were in traditional classroom style and three being virtual courses on civil, social and criminal cooperation at a European level, conducted by the Continuous Training Service of the Judicial School with the support of the department of foreign and institutional relations. The European Network also oversees the exchange programme between European judges and magistrates which has various formats: individual exchanges, group exchanges, study visits to European institutions such as the TJUE, the TEDH and EUROJUST, and initial training exchanges of trainee judges. A total of 87 members of the Spanish judiciary and trainers from the CGPJ completed stints in 14 different countries in 2011, while the team at the Judicial School welcomed 91 magistrates of 12 different EU nationalities during 2011.

With regard to specific training on EU legislation, this is carried out from the very first stage of Judicial School, following the pattern described above, subsequently establishing continuous training programmes with specific courses, and rounding off this education with the support provided by the Network of Experts on European Union Law (REDUE) which aims to provide every member of the Spanish judiciary with the necessary information and support on every aspect deriving from European Union Law, with a particular emphasis on the submission of questions on preliminary rulings, Art. 267 TFUE.

When it comes to establishing the training programmes for judges on the specific subject of European Union Law, the Judicial School is very much aware of the Conclusions of the Tampere European Council which set forth the guidelines for a genuine area of justice in the European Union, stating that: "In a genuine European Area of Justice, individuals and businesses should not be prevented or discouraged from exercising their rights by the incompatibility or complexity of legal and administrative systems in Member States... where people can approach courts and authorities in any Member State as easily as in their own calls for improving access to justice, progress on mutual recognition of judicial decisions and greater convergence in civil law and procedural legislation of the Member States."

There is no question that the presence of a cross-border component in litigation leads to greater complexity in the resolution of disputes by the courts, affecting people's access to justice and the actual handling of procedures. It is for this reason that EU institutions are tackling the political objective of creating a European Judicial Area which guarantees that all European citizens shall receive equal access to justice, in such a way that the borders of European countries will no longer represent an obstacle to the resolution of different questions. In this process of building a European Judicial Area, national judges will play an important role, being both participants and active protagonists in this new European judicial culture that will have a major impact on the stewardship of the rights of European citizens.

Today, the primacy of European Law is an undisputed fact, having a higher power than the national laws of Member States. Consequently, the Spanish courts have an obligation to apply Community Law as a priority when a national law dictates otherwise, which makes national judges the main guarantors of respect for European Union law. The role played by national judges is particularly important in the competence of the European Court of Justice in guaranteeing the uniform interpretation and enforcement of community laws by means of questions on preliminary rulings, whereby national judges can, and sometimes must, refer to the European Court of Justice to ask it to clarify the interpretation or validity of Community Law in order, for example, to verify the conformity of national law with the European law in question. This aspect becomes even more important with regard to the resolutions of the Court of Justice when determining that the responsibility of Member States for noncompliance with their community commitments might be rooted in the attitude of national judges against the legal system of the EU (see judgements of 30 September 2003, Köbler, and 9 December 2003, the Commission against Italy).

Given this scenario, it is particularly important for all EU Member States to adopt activities that facilitate contact and the exchange of experiences and information between the Judicial Authorities of the different states, thereby, through better reciprocal knowledge, increasing the confidence necessary for the effective implementation of the principle of mutual recognition and ensuring the correct enforcement of the entire European acquis, which demands a high level of training and specialization.

To do so, one of the lines of action put in place by the CGPJ through the Judicial School is provide the adequate training and level of specialization necessary to the magistrates making up the REDUE, the purpose of which is, with the relevant specialization by subject matter, to provide every member of the Spanish judiciary with the appropriate support and information on all matters pertaining to European Union law, with a particular emphasis on the system for submitting questions for preliminary rulings. To help in this respect, the "Dámaso Ruiz Jarabo Colomer Permanent Forum of European Judicial Studies" was set up on 12 May 2003 with the signing of a collaboration agreement between the CGPJ and the Autonomous Community of Murcia.

It is worth highlighting the fact that the work of the members of REDUE is disseminated to the rest of the judiciary through the use of new technologies, which have allowed the CENDOJ (National Centre for Judicial Documentation), in its work as a repository and manager of judicial knowledge, to provide a specific section on its website on judicial authority, containing all the information relating to this area as well as access to a database of preliminary ruling questions drawn up by the members of this network in their different jurisdictional areas (civil, commercial, labour, contentious-administrative and freedom, security and justice).

With these measures, and by exercising the competencies it has been endowed with, the CGPJ provides the whole Spanish judiciary with the tools to understand and assimilate the ever-growing number of European laws and national transpositions that are passed every year.

## 1. INITIAL TRAINING OF STUDENTS AT THE JUDICIAL SCHOOL.

### KEY FINDINGS

- The Judicial School of the CGPJ coordinates the selection processes for entering the legal profession and manages the initial and continuous training programmes for judges and magistrates.
- Initial training is structured around two consecutive phases, based on an in-depth understanding of theory and introducing practical knowledge.
- The first phase involves attending classes at the Barcelona headquarters, consisting of conventional classroom sessions combined with spending time at courts, professional practices and other institutions.
- The second phase consists of a period of supervised work experience with the aim of introducing trainee judges to the judiciary and takes place in the national courts.
- The guiding philosophy for the initial training process is for future judges to receive a solid and comprehensive education, covering both the judicial sphere and its institutional position within European State Constitutional Law.

Firstly, it is worth remembering what the Judicial School and its primary functions consist of. The School is the technical body of the CGPJ whose main mission is to coordinate the selection processes for the judiciary and execute the initial training programmes, continuous training programmes and activities for judges and magistrates. It is also open to training judges or candidates for the judiciary from other countries, especially Spanish-speaking ones. The legal framework of the Judicial School is set out in Organic Law 6/1985, of 1 July 1985, on Judicial Power, laid down in this respect by Regulation 2/1995, of 7 June 1985 of the CGPJ.

Initial training is given by the Judicial School at its Barcelona headquarters and is aimed at students who have passed the entrance examination for the judiciary. This initial training is structured around two annual phases or periods, each lasting one academic year, which go into greater depth on theoretical knowledge and include practical work experience. The first of these periods takes place in Barcelona and students are required to attend conventional classes given by a permanent team of experienced teachers as well as visiting lecturers, combined with work experience stints in courts, lawyers' practices and other institutions. The second period includes a 'supervised work experience' phase aimed at the professional integration of the trainee judges and takes place in the main courts and tribunals. This work experience is done on a rotary basis in courts of the first instance, magistrates' courts and gender and family violence courts under the direction and supervision of teaching magistrates all over Spain.

The current headquarters of the Judicial School was opened on 18 February 1997, with 48 students in the first intake of future judges. Since that time, 2,568 judges have been trained in its classrooms, half the judiciary, in a total of 16 intakes. Six of every 10 students are women (64%). The average age is 29 and it takes an average of 4.4 years to pass the examination. Almost eight of every 10 students come from a family background that has no connection with the judiciary (76%).

Having recently celebrated its 15th anniversary, the Judicial School is now fully consolidated and has become a benchmark in the training of judges and magistrates, the international dimension of its educational programmes being particularly important as ever since its beginnings the School has been committed to collaboration with international bodies and

exchanges with other Judicial Schools. This has facilitated its expansion and its status as an institution of reference.

The philosophy that underlines the initial training process of the Judicial School is that the future judges in present-day society should receive a solid, comprehensive education that encompasses both the judicial sphere and its institutional position within a European Constitutional State of Law, ensuring they are aware of what is involved in their status as an independent, responsible body subject to the rule of law and their rights and responsibilities not only in the exercise of their jurisdictional function but, indeed, in every sphere of their action. Consequently, ever since its beginnings the Judicial School has paid particular attention to ensuring that the training of future judges is aimed at ensuring that judges act in accordance with the principles, values and duties inherent in the Judicial Power of a democratic Member State of the European Union. The initial training is structured into two phases: conventional classroom teaching and supervised work experience. In the first phase, standard teaching is given in three areas: Magistrates, First Instance and Constitutional and EU Law. Following European Union guidelines, the aim is that training in European Law is as broad as possible, so as well as the teaching on community law given by the department of Constitutional and Community Law and references to community law in the sessions on Magistrates and First Instance courts, specific activities are undertaken which include introducing future judges from the outset to the REDUE, providing training on civil and criminal international cooperation, and on European detention orders. This training is rounded off with stints at other European Judicial Schools although in recent years these have been reduced for economic reasons.

The Constitutional and European Law department organizes the initial teaching programme into five modules, plus a special week on 'Judges and Fundamental Rights' and a monographic session on how the REDUE functions. It is worth noting that the teachers in this department also collaborate in the monographic sessions and work hand-in-hand with other departments, which underlines the importance that the Judicial School gives to this subject matter. Students are given a case study of civil or criminal law and are required to draw up an order for reference on a preliminary ruling question and an order for reference on a matter of unconstitutionality. For training on European Community Law, the Judicial School uses the Moodle Platform which allows it to take advantage of new technologies in virtual teaching combined with conventional classroom-based learning.

The Training Plan of the 64 Spanish judges currently doing work experience covers specific training modules on the primacy of EU Law such as: "Judges and control of the law: the issue of unconstitutionality and preliminary rulings"; "The primacy and direct effect of Community Law"; "Questions on unconstitutionality and preliminary rulings"; "the primacy and direct effect of Community Law"; "Preliminary ruling questions"; "The direct efficacy and community responsibility for noncompliance"; "Supra-state law"; "The direct efficacy of directives: Discussion of three case studies: Faccini Dori, Marleasing, María Pupino"; "The community responsibility of the State: Discussion of two case studies: Francovich and Köbler"; "Fundamental European laws; Community and State: Discussion of three case studies: Familiapresse, García Avello and Grogan.

This subject matter aims to reinforce in trainee judges the idea that Community Law is not a specific sector of the legal system but rather a component of the system of sources that imbues everything. It is regular practice in the courses or seminars to plan an intervention on a specific question that opens up discussion of the impact of the European Union's legal system in this area. The Judicial School's intention is for Spanish judges and magistrates to learn at the very beginning of their professional career the peculiarities of the EU legal system and the tools they can use to enforce it correctly, with an emphasis on its practical dimension, thus helping to counteract the belief that is rooted in certain sectors of the judiciary that there is a discretionary factor in Community Law which allows the courts to overlook it for reasons of expediency.

## 2. CONTINUOUS TRAINING OF MEMBERS OF THE JUDICIARY

### KEY FINDINGS

- The CGPJ guarantees that all judges and magistrates will receive continuous, personalized, high quality training throughout their professional careers.
- The Continuous Training Service of the CGPJ is responsible for developing all the programmes and activities aimed at achieving the appropriate level of professional expertise for all members of the Spanish judiciary.
- As well as covering everything that concerns the professional training of judges, the State Training Plan also aims to encourage reflection within the judiciary about the social function it performs, in such a way that the judgements handed down address sociological considerations as well as demonstrating due respect for the written law.
- Training sessions are structured to provide a forum for sharing opinions and experiences, based on an essentially practical approach.
- Spanish judicial training on EU legislation is particularly important and has a dedicated section within the State Training Plan.
- The State Training Plan designs educational activities which are intended to facilitate contact with judges from other European Member States.

The continuous training of judges and magistrates is the exclusive remit of the CGPJ. Thus Article 433 bis of the LOPJ establishes that it will “guarantee that all judges and magistrates will be given personalized, high quality, continuous training throughout their professional careers.”

By virtue of this legal provision and to continue the training process of all members of the judiciary instigated at the Judicial School, the CGPJ has a Continuous Training Service, based in Madrid, which is responsible for conducting all the programmes and activities organized to perfect the professional skills of members of the Spanish judiciary, the main functions of which are the planning, organization and execution of the continuous training activities and programmes and the preparation of collaboration agreements in this area with Autonomous Communities and with both public and private institutions.

To carry out its educational programmes, the current CGPJ set itself the challenge of creating a new continuous training model for the judiciary that broke away from conventional educational concepts, further underlining and extending the purpose of the initial training and also helping to encourage the judiciary to reflect about its social role, not forgetting the ultimate objective that should underpin the whole training process which is to improve the technical expertise of the students and help them to develop the ability to adapt to change. Thus the CGPJ believes that continuous training should not be approached just as the teaching of a series of content but should also facilitate the exchange and sharing of views and experiences. To achieve this end, an eminently practical methodology has been designed to encourage interaction among participants through discussion forums and group work, with the result that even though this training is not mandatory (except in the cases of jurisdictional changes or specialization) it is seen as playing a fundamental role in the proper discharge of the judicial office and as representing a genuine professional duty in the quest to serve the justice administration as efficiently as possible and hence provide a better public service to our citizens who rely on judicial bodies to find a solution to their disputes. Following these directives, and in the clear knowledge that the methods for continuous training should be completely different to those of the initial training, as they address two totally distinct types of students with completely different concerns and

expectations, the CGPJ established two major frameworks for action in this area: the State Continuous Training Plan and the Decentralized Training Plan, rounded off with activities at the Judicial Power Summer School and training by distance learning.

The activities that form part of the State Training Plan are aimed at every member of the judiciary and make up the fundamental core of the educational activities conducted by the CGPJ, in terms of sphere of the students, the breadth of its offering and the high demand for these services. Meanwhile, Decentralized Training is carried out through the respective collaboration agreements on training signed with the governments of certain Autonomous Communities and, where applicable, through the Regional Training Plans. Their scope is restricted to each Autonomous Community and their main purpose is to address the training needs deriving from the peculiarities of the region in question, with a particular emphasis on the laws and languages specific to those regions.

Obviously, to achieve the objectives established in the Training Plan, the CGPJ has provided its Continuous Training Service with a considerable budget in addition to its regular human and other resources. For the 2013 financial year it was given a budget of 3,539,460 € and for next year, 2014, in line with the necessary budgetary stability and cost-cutting required by the Spanish administration, the budget is set at 3,431,357 €, a drop of just 3.06%, as it is understood that the training of our judges cannot be overlooked or disadvantaged in any way despite the difficult economic situation the country is currently experiencing.

In the specific case of judicial training on European Union law, the continuous training of members of the Spanish judiciary is particularly important and has its own special section in the State Training Plan. As mentioned earlier, the judicial enforcement of Community Law, whose complex system of sources judges must be familiar with, should be combined with our own internal judicial system so that judges can deal with resolving the disputes put before them under the auspices of both judicial systems. To instil our judges with this philosophy, and following the agenda of the EJTJ, the State Training Plan has designed educational programmes intended to facilitate contacts with judges of other Member States in order to consider and discuss issues and aspects of mutual interest relating to jurisprudence. In the light of the fact that community laws and jurisprudence are already being shared, it is also regarded as a positive step to create forums where impressions of the huge number of matters regulated by Community law can be shared through reflection and debate.

Consequently, between 2008 and 2013 a total of 108 different training activities were organized on this subject, offering a total of 1,905 places and eventually training 1,387 judges and magistrates.<sup>56</sup> These activities aim to examine every type of jurisdiction as well as other aspects such as cooperation, European languages, knowledge of other judicial systems, formal questions, etc. In terms of the number of attendees, it is worth highlighting the following courses: "Recognition and execution of criminal judgements in the European Judicial Area"; "French in the European Union"; "Judges in the European Judicial Area of civil and commercial law"; "Course on the judicial enforcement of European Community Law"; "Criminal jurisprudence of the European Court of Human Rights"; "Interpretation of contracts based on European contracting principles"; "The European judicial area of social justice"; "Judicial English", etc.

Virtual training activities are becoming increasingly important as they are open to students from other States. These courses are generally based on a practical case study that incorporates elements of the different subject matter of the courses, rounded off with a discussion forum involving all the participants which, apart from discussing the specific case study, is also enriched with other topics of interest. A newsletter has also been created, along the lines of the European Civil Justice journal, which regularly features updates on issues affecting this area and keeps participants constantly informed about the different types of courses taking place. In this respect it is worth mentioning the forthcoming creation

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<sup>56</sup> See figures 1 to 3 of annex



of an Alumni Community which will involve the more than 400 magistrates and jurists from 15 European Union countries who have already participated in one of the virtual courses on the European Civil Judicial Area organized by the Spanish Judicial School, which we hope will become a permanent forum for debate and the sharing of experiences in relation to the different spheres of the European Judicial Area. With this action, the CGPJ is making it very clear how much importance it attaches to the organization of activities that foster contact and joint experiences among the judiciary of the different EU Member States, as it is evident that better reciprocal knowledge will increase the confidence necessary for the effective implementation of the principle of mutual recognition, thus advocating the provisions of the Stockholm Programme which established that...“to foster a genuine European judicial and police culture, it is essential to strengthen training on issues related to the Union and make it systematically accessible to all professions involved in implementing the area of freedom, security and justice.” But there is no question that this “local” effort requires backing from the EU, which needs to facilitate the relevant financial support and make available its own mechanisms to complement these national efforts.

In this particular area, in addition to these activities the State Training Plan is supported by the “Dámaso Ruiz-Jarabo Colomer Forum of European Judicial Studies”<sup>57</sup> whose aim is to foster a common European judicial culture, its objectives matching the training priorities of the European Commission: to improve knowledge of international judicial cooperation instruments, to improve language skills to allow judges to communicate directly with each other, as envisaged by the majority of cooperation instruments, and to develop knowledge of the judicial and legal systems of Member States so any shortcomings can be envisaged within the framework of judicial cooperation.

The Forum encompasses various different training programmes for study and consideration in the field of European Union Law, both substantive and procedural, with a particular emphasis on judicial training in matters relating to Community law and the strengthening of jurisdictional cooperation networks. Of the 108 training activities conducted between 2008 and 2013, 35 were carried out by this Forum. With regard to the planned activities for 2013, it is worth highlighting the XIX Edition of the “Course on the judicial enforcement of European Community law” which is expected to take place this October, comprising both theory and practical sessions over the course of four days. The main objective of this course is to promote knowledge of the basic principles the judicial enforcement of Community Law and its practical application, going into particular depth on the handling of questions on preliminary rulings. The course is structured around three workshops in Spanish, French and English and 27 members of the Spanish judiciary are expected to attend, who will take a specific language test to determine their language proficiency, plus another nine places set aside for foreign judges which are being offered through the European Judicial Training Network.

Another activity worth mentioning is the “XV Seminar on a comparative study of European judicial systems through legal language” (in English and French for Spanish and foreign judges and magistrates). The title of this year’s edition is: “Promoting judicial expertise in the European Justice Area: mutual assistance in civil and criminal law produces results.” This seminar aims to provide specific training for people who are already proficient in English and French and are looking to start using these languages in a professional capacity, and who are also interested in learning more about the structure and operation of legal systems in France and the United Kingdom. A practical session has been organized which entails spending one week in a judicial entity in France or the United Kingdom. With regard to the participation of foreign judges and magistrates, a total of 20 places are being offered through the European Judicial Training Network (12 for English and 8 for French). It should be noted that to organize this Seminar the CGPJ has benefited from a European Subsidy of 234,653.26 euros for the 2012 and 2013 sessions. Finally, it is also worth noting that as part of the State Training Plan every year, the CGPJ plans a visit by 10 Spanish magistrates to learn about the European Court of Justice in Luxembourg and the European Court of

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<sup>57</sup> See figure 3 of annex

Human Rights in Strasbourg, which demonstrates the importance that CGPJ ascribes to activities that help Spanish judges to learn about and understand the workings of European judicial institutions in situ.

Note that the total amount received Spain from the EU in the period 2005-2013 as a grant by the holding of courses open to foreign students, amounts to more than 1,800,000 €,

A total of 1,227 students have attended other countries<sup>58</sup>.

### 3. THE NETWORK OF EXPERTS ON EUROPEAN UNION LAW (REDUE)

#### KEY FINDINGS

- REDUE was set up with the objective of providing every member of the Spanish judiciary with the necessary support and information in all matters pertaining to the enforcement of European Union Law, with particular attention to the procedure for questions on preliminary rulings.
- The main functions of REDUE are to promote the submission of questions on preliminary rulings, offer information about European Law to all other judges, and provide training on European Law to Spanish judges through the activities organized by the Judicial School and the Continuous Training Service.

Spain's entry into the European Community in 1986 introduced profound changes which had a powerful impact on our society from a political, economic, social and legal standpoint. At a legal level, joining the European Union forced Spanish judges to embark on the awareness-raising process required in order to effectively adapt to the new European legal system, comprising a series of regulations whose application, from that point onwards, became compulsory in Spain. This adaptation process called for significant efforts in view of the complexity of the task to be completed despite the considerable interest and commitment demonstrated by Spanish judges right from the beginning, finally overcoming the traditional resistance displayed by some Spanish courts to submitting questions for preliminary rulings to the European Union Court of Justice, even though this was compulsory by virtue of the provisions of Community law.

The correct enforcement of the entire European legal acquis to each particular case demands a high level of training and specialization, and this requirement represents one of the most important challenges for members of the judiciary, a task enthusiastically supported by the CGPJ in exercising the authority it has been endowed with to train these professionals. Thus, with the objective of laying down the foundations that pave the way to achieving the required levels of training and specialization, the Spanish CGPJ decided to create the REDUE whose primary objective was to promote the awareness and receptiveness of Spanish judges and courts with respect to European Union Law. As stated in its own operating rules, approved by the plenary session of the CGPJ held on 17 May 2006, the REDUE was created with the aim of providing all members of the Spanish judiciary with the appropriate support and information needed for all matters arising from European Union Law, with a particular emphasis on the system for submitting questions for preliminary rulings.

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<sup>58</sup> See figures 4 and 5 of annex

### 3.1. Composition and structure

The Network, whose coordination is the responsibility of the technical bodies of the CGPJ, comprises ten magistrates qualified in the various jurisdictional areas, specialists in their field, their main purpose being to offer the necessary assistance to the courts in all matters relating to the enforcement of European Union Law and the jurisprudence of the European Union Court of Justice, with a particular emphasis on the mechanism for preliminary rulings.

At an operational level, the Network is divided into five divisions corresponding to the existing jurisdictional specialities, with two magistrates assigned to each of them in order to verify the functions that fall within their remit in a coordinated way and at a national level. These divisions are as follows:

- Competition Law Division, Intellectual, Industrial and Commercial Property, which is dealt with by two magistrates who work with organizations in the field of commercial jurisdiction.
- Consumer and Civil Law Division, with two qualified civil magistrates.
- Freedom, Security and Justice Division, relying on two criminal law magistrates.
- Administrative and Tax Law Division, looked after by two magistrates representing the contentious administrative courts.
- Labour Law and Social Security Division, served by two magistrates from the social services area.

The members of the network are selected by the Permanent Commission of the CGPJ, based on proposals from the International Relations Commission, from among magistrates who have worked in the category in question for three years and have at least five years' experience within the judiciary. The selection process, based on the principles of openness, equality, merit and ability, puts a particular emphasis on knowledge of European Union Law, taking into account mastery of foreign languages and the level of the candidate's integration in the field of jurisdiction directly related to the division being applied to. The first ten members of REDUE were chosen in October 2006 and were re-elected in 2012 following the compulsory public call for nominations.

Membership of the Network is lost on the expiry of the tenure unless the position has been reconfirmed successive periods of five years; through resignation; through losing the status of a magistrate in active service, or by agreement on justified grounds reached with International Relations Commission of the CGPJ. It is important to stress that being appointed as a member of the Network does not imply that the magistrate is relieved of his or her judicial functions in the place where they work, and magistrates do not forfeit their position as members even if they find themselves subject to the special conditions envisaged in Articles 351 and 352 of the LOPJ (Organic Law of Judicial Power) they continue to exercise their functions directly related to those of the Network within the framework of their new activity, thus guaranteeing that its members remain in direct contact with the judiciary.

### 3.2. Operation

The specific functions to be undertaken by the members of REDUE, in accordance with its operating regulations, are as follows:

- a) To provide all necessary cooperation to the Spanish courts in respect of the positioning, interpretation and enforcement of European Union Law and the jurisprudence of the European Union Court of Justice, with a particular emphasis on the preliminary rulings system.

- b) To promote and participate in training activities in the field of European Union Law and the jurisprudence of the European Union Court of Justice.
- c) To undertake research, prepare documentation and propose other instruments to encourage the knowledge and dissemination of European Union Law and the jurisprudence of the European Union Court of Justice.
- d) To produce an annual report on the activities of each member of the Network, which will be submitted to the General Council of Judicial Power.

To summarize, we can attest that the activities undertaken by the Network focus primarily on encouraging the submission of questions on preliminary rulings, providing information on European Law to other judges in coordination with CENDOJ and facilitating training for Spanish judges on European Law through activities run by the Judicial School.

The CGPJ, through a link on its website<sup>59</sup>, offers the collective of Spanish judges all the necessary information on the structure and composition of the REDUE, including a form for requesting information online, explanatory notes on the procedure for resubmitting questions on preliminary rulings, Art 267 TFEU and a database of these rulings, indicating which of them are still pending resolution and which have been pronounced on by the European Union Court of Justice. Between 1986 and 2013 a total of 173 questions were submitted, of which 152 have been resolved so far<sup>60</sup>. In terms of jurisdictional areas, this recourse has been used most frequently in the field of administrative disputes, with 80 questions submitted, followed by questions relating to social order, with 49, and commercial matters, with 29.

The database also offers specific information on the methodology for submitting questions, the conclusions of the Advocate General, sentences or judicial decrees handed down by the Court of Justice and, finally, sentences adopted by Spanish judges who have submitted questions for preliminary rulings. Additionally, each of the divisions that make up the structure of REDUE, in collaboration with CENDOJ, undertakes to send email updates to all Spanish judges with the most relevant information on the latest legislative developments and the work of the Court of Justice. The use of this corporate tool, put at the REDUE's disposal by the CGPJ, provides every member of the judiciary with knowledge about all the questions submitted by Spanish judges for preliminary rulings. It also demonstrates the correct way to formulate questions for preliminary rulings and informs them about the resulting resolutions, thereby not only helping to overcome any possible reticence in putting forward questions with the lame excuse of ignorance about how to present questions or the complexity of the process, but also helping to foster a culture of viewing Spanish judges as also being European judges. This tool also keeps all members of the judiciary updated with all the latest developments and the outcomes of the resolutions of questions on preliminary rulings submitted not only by Spanish judges but also foreign ones, and the effect they have on our own jurisdictional environment. On this point it is worth highlighting the impact that the resolution to a question on a preliminary ruling has had on our legal system, which was submitted by a Commercial Court judge regarding unfair clauses included in bank mortgage contracts, which has led to a recent change in Spanish legislation in this area in order to come in line with European legislation.<sup>61</sup>

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<sup>59</sup> See figure 6 of annex

<sup>60</sup> See figure 4 – 5 of annex, also by origin of jurisdiction

<sup>61</sup> STJUE 14 march 2013 (C-415/2011) Mohamed Aziz / Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)

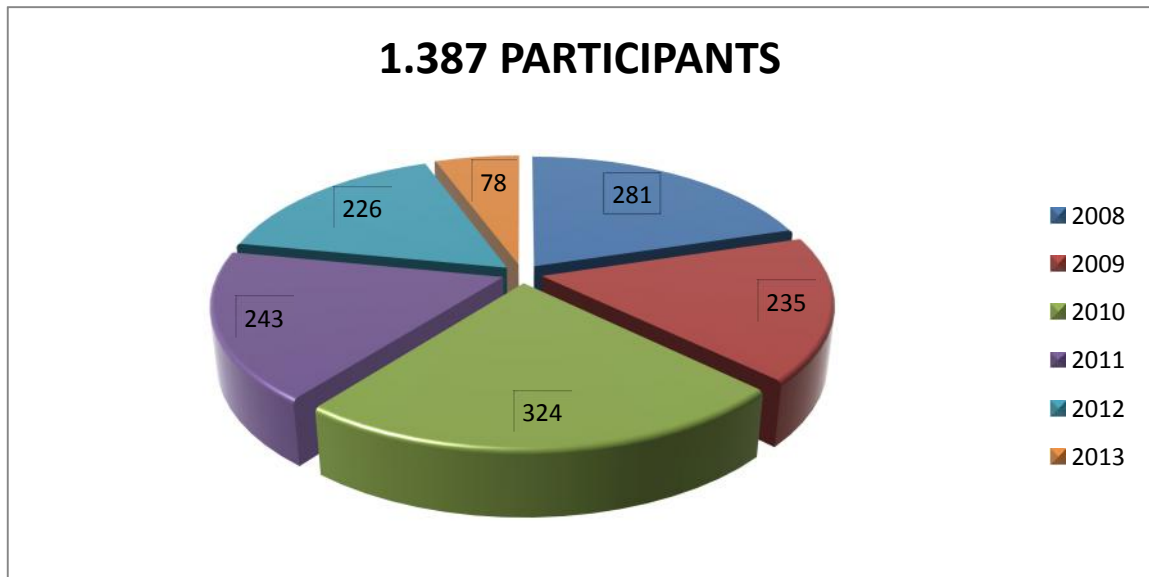
## ANNEX – FIGURES

Figure 1



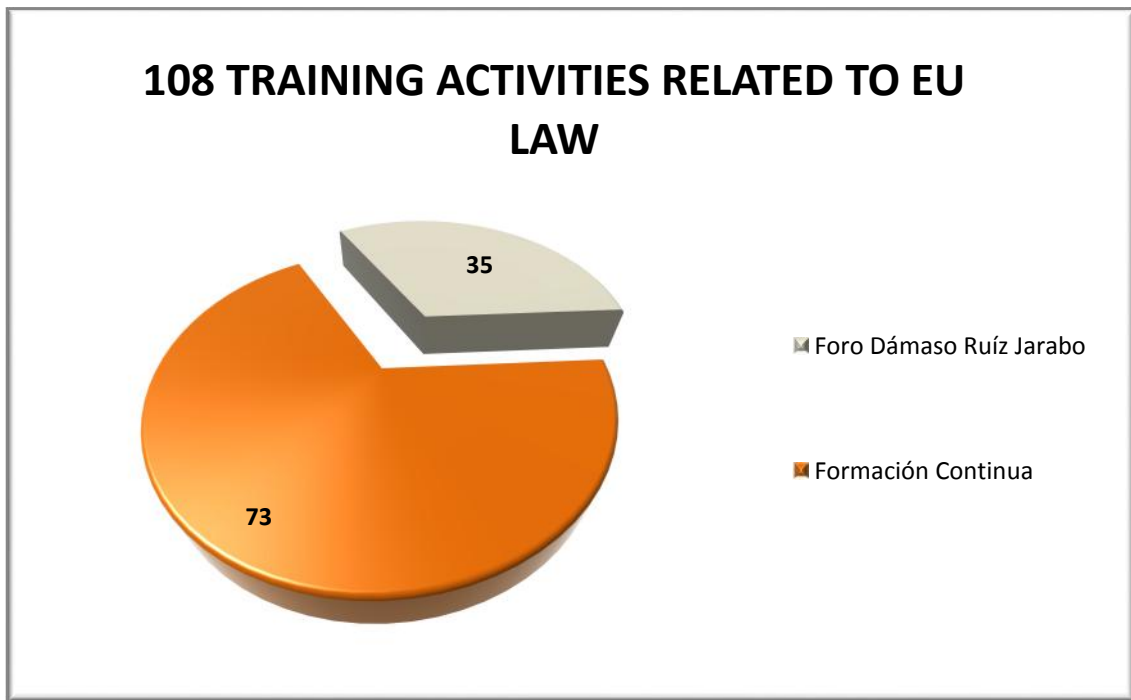
Trainings on EU law held in Spain in the years 2008-2013.

Figure 2



Participants in trainings on EU law held in Spain until July 2013.

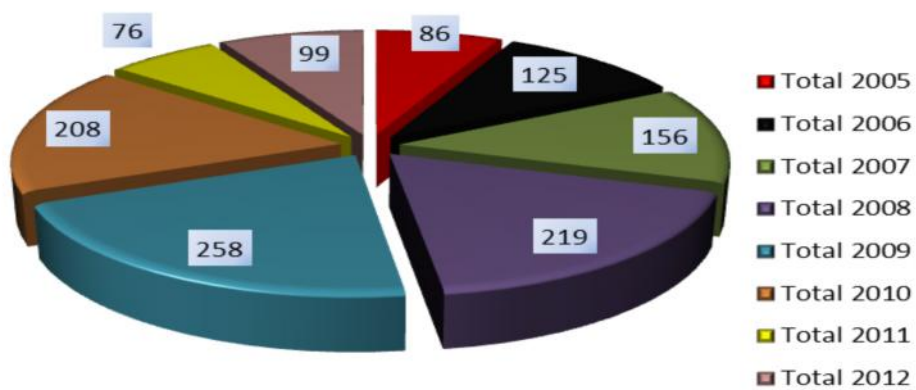
Figure 3



Distribution of the training activities on EU law held in Spain.

Figure 4

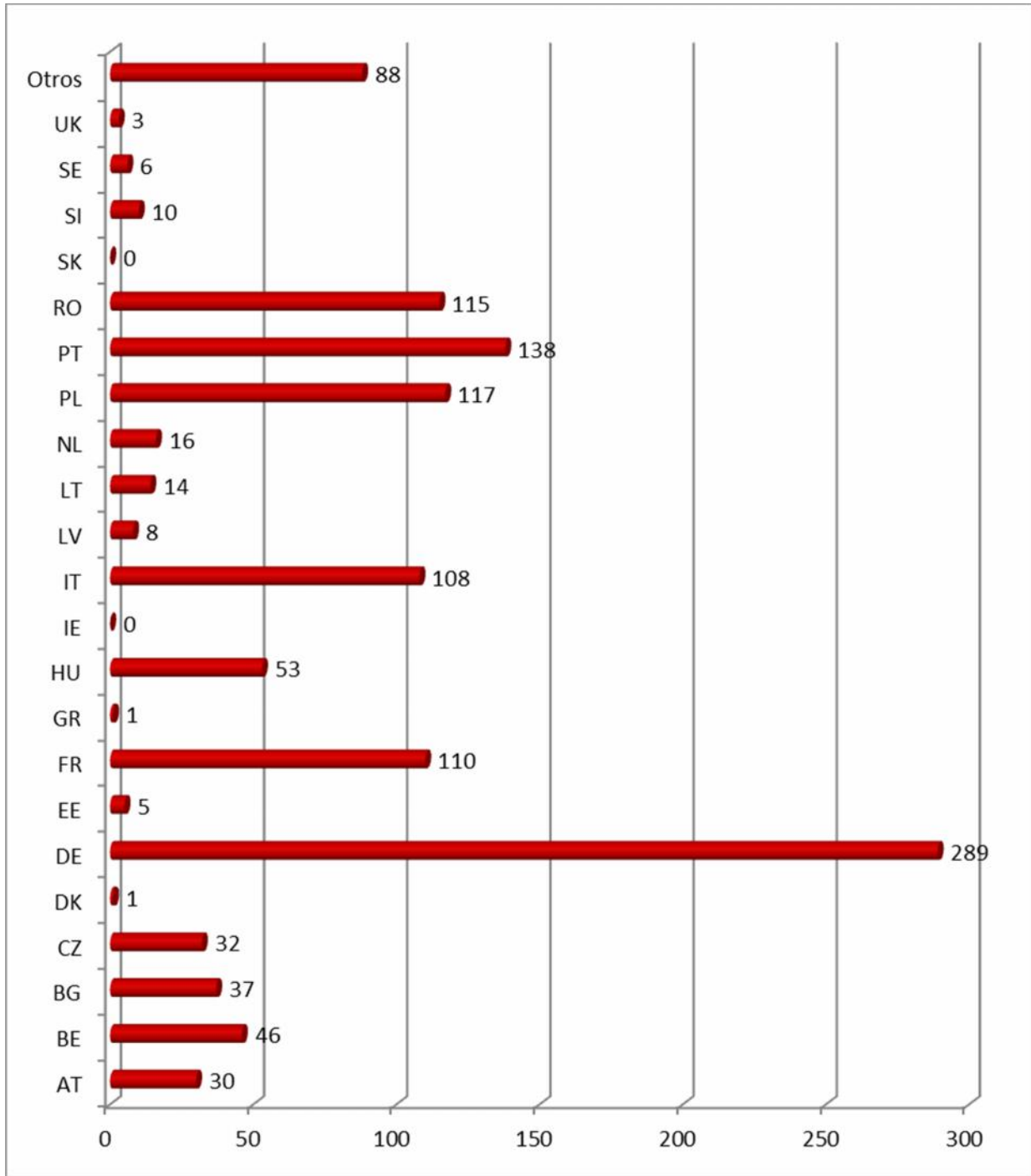
### 1.227 participants from outside Spain 2005 - 2012



Number of persons coming from abroad to attend trainings held in Spain, per year.

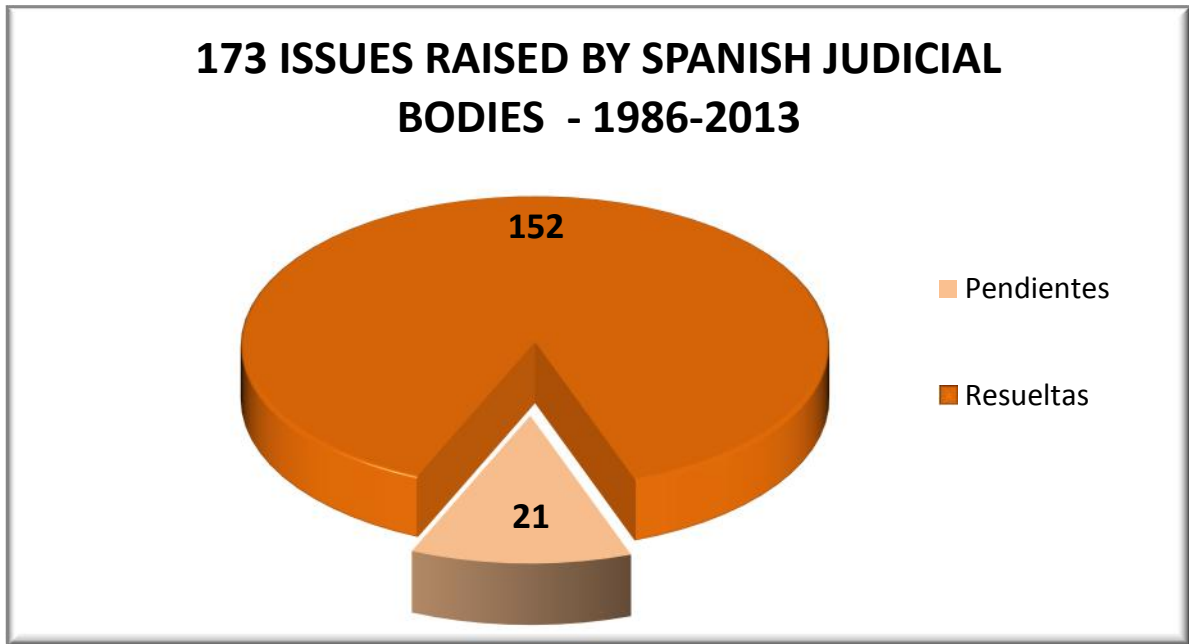
Figure 5

### PARTICIPANTS FROM OUTSIDE SPAIN BY ORIGIN



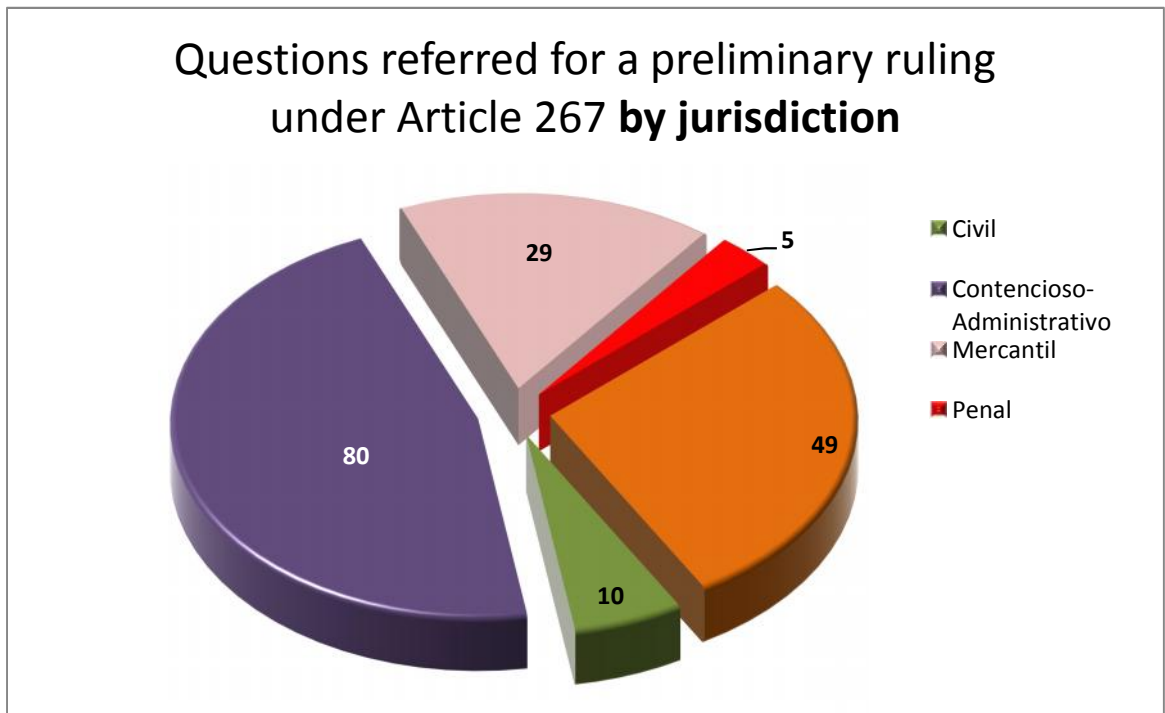
Number of persons coming from abroad to attend trainings held in Spain, divided by nationality.

Figure 6



Detailed analysis of the total number of preliminary references made by Spanish judicial organs in the years 1986-2013.

Figure 7



Detailed analysis of the total number of preliminary references by type of judiciary



Figure 8

The screenshot shows the website for the Poder Judicial España. The header includes the logo 'PODER JUDICIAL ESPAÑA' and the slogan 'La Justicia a tu servicio'. Navigation tabs include 'Poder Judicial', 'Servicios', 'Temas', 'Canal Judicial', and 'Área Personal'. A search bar is present with the text 'Español' and a 'Buscar' button. The main content area is titled 'Red de Expertos en Derecho de la Unión Europea (REDUE)'. It features several informational cards: '¿Qué es la REDUE?' (What is REDUE?), 'Directorio de miembros' (Members Directory), 'Cuestiones prejudiciales' (Preliminary Questions), 'Formulario de consulta' (Consultation Form), and 'La REDUE informa' (REDUE informs). A sidebar on the right titled 'Te puede interesar...' (You may be interested in...) lists various judicial networks like 'Red Judicial Española (REJUE)', 'Red de Expertos en Derecho de la Unión Europea (REDUE)', 'Red Iberoamericana de Asistencia Judicial Internacional', 'Red Judicial Europea Civil y Mercantil', and 'Red Judicial Europea Penal'. There is also a 'Selecciona otro tema' dropdown and an 'Aceptar' button.

Information available for Spanish judges on the Intranet poderjudicial.es, concerning the REDUE.

Figure 9

The screenshot displays the website for the Poder Judicial España, featuring a red header with the text "PODER JUDICIAL ESPAÑA" and "La Justicia a tu servicio". The navigation menu includes "Poder Judicial", "Servicios", "Temas", "Canal Judicial", and "Área Personal". A search bar is located in the top right corner.

The main content area shows a breadcrumb trail: "Estás en: Temas » Todos » Redes Judiciales » Red de Expertos en Derecho de la Unión Europea (REDUE) » Formulario de consulta". Below this is the "Formulario de consulta" section, which is titled "Formulario de consulta - REDUE".

The form is divided into two main sections: "Datos personales" and "Datos de la consulta".

**Datos personales:**

- NIF: \* 000000000
- Nombre: \* SERVICIO
- Apellidos: \* ORGANIZACION Y MODERNIZA
- Teléfono: \*
- Fax: \*
- E-mail: \* modernizacion.ccpj@poderjudicial

**Datos de la consulta:**

- Tema: \*
- Orden Jurisdiccional: \*
- PERIODO ABARCADO: Desde: \* Hasta: \*
- Comentarios:

On the right side, there is a "Te puede interesar..." section with a "Redes Judiciales" image and a list of related networks:

- Rec Judicial Española (REJUE)
- Red de Expertos en Derecho de la Unión Europea (REDUE)
- Rec Iberoamericana de Asistencia Judicial Internacional
- Rec Judicial Europea Civil y Mercantil
- Rec Judicial Europea Penal

Below this list is a dropdown menu labeled "Selecciona otro tema" and an "Aceptar" button.

At the bottom of the form, there are two buttons: "Limpiar formulario" and "Enviar".

Module available for Spanish judges to ask about preliminary references.

Figure 10

The screenshot displays the 'Poder Judicial España' website interface. At the top, there is a navigation bar with the logo 'PODER JUDICIAL ESPAÑA' and the slogan 'La Justicia a tu Servicio'. Below this, there are several menu items including 'Poder Judicial', 'Servicios', 'Temas', 'Canal Judicial', and 'Área Personal'. A search bar is located on the right side of the header.

The main content area is titled 'Base de cuestiones' and contains a search form with fields for 'Buscar:', 'Orden jurisdiccional:', and 'Materia:'. Below the search form, there are navigation links for 'Limpiar Formulario' and 'Enviar'. The page also shows a pagination indicator: '<< Previo página 1 de 17 Siguinte >>'. On the right side, there is a sidebar with the heading 'Te puede interesar...' and a list of related topics, including 'Cuestiones prejudiciales', 'Base de cuestiones', and 'Ejemplos de cuestiones prejudiciales por órdenes jurisdiccionales'. There is also a 'Selecciona otro tema' dropdown menu and an 'Aceptar' button.

The main list of cases includes the following entries:

- 03/05/2013** - Social - **Planteada**  
**Asunto C-365/13, Emiliano Torralbo Marcos - Korota, S. A. y Fondo de Garantía Salarial (FOGASA)**  
Derechos humanos . Disposiciones sociales
- 21/02/2013** - Social - **Planteada**  
**Asunto C-198/13, Víctor Manuel Julián Hernández y otros - Reino de España y otros**  
Derechos humanos . Disposiciones sociales
- 21/01/2013** - Contencioso-Administrativo - **Planteada**  
**Asunto C-25/13, France Telecom España, S.A. - Diputación de Barcelona**  
Aproximación de las legislaciones
- 04/12/2012** - Contencioso-Administrativo - **Planteada**  
**Asunto C-592/12, Compañía Europea de Viajeros España - Tribunal Económico Administrativo Regional de Madrid**  
Fiscalidad . Principios, objetivos y misiones de los Tratados
- 23/10/2012** - Contencioso-Administrativo - **Planteada**  
**Asunto C-497/12, Vueling Airlines - Xunta de Galicia**  
Transportes
- 05/03/2012** - Mercantil - **Resuelta**  
**Auto del Tribunal de Justicia de las Comunidades Europeas (Sala Octava), de 6 de febrero de 2013. Asunto C-147/12, La Retoucherie de Manuela, S. L. - La Retoucherie de Burgos, S. C.**  
Competencia . Normas aplicables a las empresas . Prácticas colusorias
- 01/03/2012** - Mercantil - **Resuelta**  
**Auto de archivo del Tribunal de Justicia de las Comunidades Europeas (Presidente), de 5 de febrero de 2013. Asunto C-364/12, Miguel Fradera Torredemer, María Teresa Torredemer Marcet, Enrique Fradera Ohlsen y Alicia Fradera Torredemer - Corporación Uniland, S.A.**  
Ayudas otorgadas por los Estados . Competencia . Derecho de establecimiento . Fiscalidad . Libertad de establecimiento y libre prestación de servicios . Libre circulación de capitales . Libre circulación de servicios . Principios, objetivos y misiones de los Tratados
- 27/02/2012** - Contencioso-Administrativo - **Planteada**  
**Asunto C-131/12, Google Spain y Google Inc. - Agencia Española de Protección de Datos (AEPD)**  
Aproximación de las legislaciones . Derechos humanos
- 21/02/2012** - Social - **Planteada**  
**Asunto C-178/12, Estela Rivas Montes - Instituto Municipal de Deportes de Córdoba (IMDECO)**  
Disposiciones sociales . Principios, objetivos y misiones de los Tratados
- 24/02/2012** - Mercantil - **Resuelta**  
**Sentencia del Tribunal de Justicia de las Comunidades Europeas (Sala Sexta), de 13 de junio de 2013. Asunto C-125/12, Promociones y Construcciones EJ 200 S.L. - Agencia Estatal de la Administración Tributaria**  
Fiscalidad . Impuesto sobre el valor añadido

Database available for Spanish judges, including information on all preliminary references referred.

Figure 11

Spanish Judicial Power | Services | **Temas** | Canal Judicial | Área Personal

Jueces y Magistrados/as | Escuela Judicial | Bibliotecas | **Todos** | Los + consultados

Estás en: [Temas](#) > [Todos](#) > [Cuestiones prejudiciales](#)

### Cuestiones prejudiciales

Archivos asociados [Pulse aquí.](#)

#### Procedimiento

Entrado en vigor el Tratado de Lisboa el 1 de diciembre de 2009, el mecanismo de la cuestión prejudicial está regulado en el nuevo artículo 267 del Tratado de Funcionamiento de la Unión Europea (TFUE). Con anterioridad estaba regulado en el artículo 234 TCE. El artículo 267 TFUE establece la competencia del Tribunal de Justicia de la Unión Europea para pronunciarse, con carácter prejudicial, sobre la interpretación del Derecho de la Unión –antes Derecho Comunitario– y sobre la validez de los actos adoptados por las instituciones, órganos u organismos de la Unión.

Es muy útil acceder a las **RECOMENDACIONES** a los órganos jurisdiccionales nacionales, relativas al planteamiento de cuestiones prejudiciales (2012/C 338/01) que el propio Tribunal de Justicia ha realizado. Está disponible en la página web del Tribunal y ha servido de base para confeccionar estos tres “modelos” que se os sugieren.

- PROVIDENCIA:** Suspensión del término para dictar sentencia y dar audiencia a las partes y al Ministerio Fiscal.
- AUTO:** Planteamiento de cuestiones prejudiciales (como se verá frente a la división normal de los autos en 3 partes –antecedentes de hecho/fundamentos/parte dispositiva–, se propone que el auto contenga 7 apartados).
- PROVIDENCIA:** Recibida la respuesta por el Tribunal de Justicia de Luxemburgo, traslado a las partes.

**IMPORTANTE:**

Se incluye en los ejemplos la decisión de remitir al Servicio de Relaciones Internacionales del Consejo General del Poder Judicial –Fax: 91 7006 350- (REDUE Red del CGPJ de Expertos en Derecho de la Unión Europea) copia simple tanto del auto planteando cuestiones prejudiciales como de la sentencia que luego se dicte una vez recibida la respuesta por el Tribunal de Justicia de la Unión Europea. **ES FUNDAMENTAL ESTA COLABORACIÓN VUESTRA EN BENEFICIO DE TODA LA CARRERA Y PARA LA MEJOR APLICACIÓN POR**

Template available for Spanish judges to make a request for a preliminary ruling.

## **THE FRENCH EXPERIENCE: *ECOLE NATIONALE DE LA MAGISTRATURE***

Xavier **RON SIN**

Director of ENM

### **ABSTRACT**

The judges of Member States are the natural judges of European Union law. Given the importance of the topic and the challenges involved, the training of French judges in European Union law is given special attention at the French National School for the Judiciary.

The subject is dealt with extensively by the French National School for the Judiciary during both the initial training of student judges and the in-service training of the French judiciary.

### **CONTENT**

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<b>1. INITIAL TRAINING</b>	<b>60</b>
<b>2. IN-SERVICE TRAINING</b>	<b>64</b>

## INTRODUCTION

The judges of Member States are the natural judges of European Union law. Given the importance of the topic and the challenges involved, the training of French judges in European Union law is given special attention at the French National School for the Judiciary.

The French National School for the Judiciary is a national public administrative body under the responsibility of the Ministry of Justice. It was established by the Order of 22 December 1958 and is governed by the Decree of 4 May 1972. The School is managed by a board of directors of which the President and Vice-President are respectively the First President and the Prosecutor General of the Court of Cassation, and which is led by a director appointed by decree on the recommendation of the Keeper of the Seals, Minister for Justice. This status grants the School autonomy in its administrative and financial means of operation.

The Organic Law on the status of the judiciary assigns it the following tasks:

- Organisation of competitive entry examinations for judges and public prosecutors

- Initial vocational training of future judges and public prosecutors – student judges are sworn in and referred to as *auditeurs de justice*

- Ongoing training of French in-service judges and public prosecutors

- Training of professionals who are not judges or prosecutors but whose work is closely linked to that of the judiciary

- Training of judges and prosecutors from foreign countries under cooperation agreements with France

As the sole institution responsible for the initial and in-service training of the French judiciary, the School deals extensively with European Union law both during the initial training of student judges (see 1.) and in its ongoing training programme (see 2.).

## 1. INITIAL TRAINING

The French National School for the Judiciary, unlike other European schools, has admitted an increasing number of student judges over the last few years:

- 127 in 2010

- 138 in 2011

- 212 in 2012

- 251 in 2013

This figure is likely to be 270 in 2014.

The majority of entrants hold at least a Master's Degree in Law and are recruited either through a national competitive examination or through a 'lateral' entrance process after working in a legal role in enterprises or as a lawyer. After 31 months of training, they will fill one of the core posts in the French judiciary, either on the bench or within the public prosecution service: sub-district court judge, non-specialist judge, investigating judge, juvenile court judge, sentence enforcement judge, replacement judge (to temporarily fill a vacant post in a judicial district), deputy public prosecutor, replacement deputy public prosecutor.

## 1.1. The French National School for the Judiciary's philosophy with regard to the training of student judges

In 2008, following a well-known court case – the Outreau affair – which led the French political world to question the judicial training model, a reform of the French National School for the Judiciary was carried out, radically changing the way in which student judges are trained. In addition to incorporating psychological tests in competitive examinations and introducing a compulsory six-month placement in a law firm and a two-week European exchange or international placement, the School changed its training method from one focused primarily on descriptive learning by students of the various functions of the bench and the public prosecution service to one focused, firstly, on the 13 fundamental competences expected of all judges and prosecutors and, secondly, on cross-cutting learning in areas such as the methodology of civil judgments and the methodology of criminal proceedings from the crime scene to the decision to prosecute and from the hearing to the enforcement of sentences, with a strong emphasis on multi-disciplinary approaches across the board.

Successive training seminars are thus held within each of the following eight training departments, on the initiative of the department leader (a permanent employee of the School with the title of Training Coordinator) and a figure from outside the ENM, who is referred to as the Department Supervisor.

The eight departments are named as follows:

Judicial communication

Process and formalisation of judgments in civil matters

Judicial environment

Administration of justice

Economic life

Judicial humanities

Process and formalisation of judgments in criminal matters

International dimension of justice.

As regards the 'International dimension of justice' department, every year since 2008 the following people have taken part in this training development seminar: Antonio Vitorino, former EU Justice Commissioner and Department Supervisor, Bernard Chevalier, Legal Secretary at the Court of Justice of the European Union, and Bernard Leroy, UN Legal Adviser. Training coordinators are also involved in these initial and in-service training modules.

In this department, as in all others, the selected teaching approach is linked to the acquisition of the 13 fundamental competences:

Ability to identify, understand and apply rules of professional ethics

Ability to analyse and summarise a situation or case

Ability to identify, adhere to and guarantee a procedural framework

Ability to adapt

Ability to adopt a position of authority or humility in accordance with the circumstances

Ability to develop relationships, listen and discuss

Ability to prepare and conduct a judicial hearing or interview in observance of the adversarial principle

Ability to elicit agreement and conciliate

Ability to take de jure or de facto decisions which have been considered in context, are grounded in common sense and are enforceable

Ability to justify, formalise and explain decisions

Ability to take into account the institutional, national and international environment

Ability to work in a team

Ability to organise, manage and innovate

Each training department is expected to ensure that the training provided within its scope enables student judges to acquire the competences covered by that department.

When the new programmes were developed, the teaching time for the 'International dimension' department was set at three weeks during the initial training period and three days during the period of preparation for first posting.

Every year, at the end of the course, teaching evaluation seminars are also organised (one seminar per department), to review teaching and develop the programme for the following year group. External professionals are involved in the process of developing training modules.

## 1.2. The content of EU law training for student judges

The 'International dimension of justice' department organises its courses thematically over approximately three weeks. Thus, a 'European exchange week - Out' (first week), usually in November or December, provides some of the student judges with the opportunity to immerse themselves in a European country, which is in most cases an EU Member State (student judges may also go to Switzerland and Macedonia). The number of exchange students varies according to the rules of the European Judicial Training Network: 96 student judges thus took part in these exchanges in 2012 and 69 in 2013.

Student judges take part in visits to local judicial and training institutions. In 2012 the EJTN, within the framework of the AIAKOS Exchange Programme Working Group, formalised the educational aims of these exchange programmes as being to encourage mutual trust and to develop the European judicial culture and European Union law.

The content of the exchange programmes varies from one country to another. In 2012, student judges in Belgium were thus able to visit the European Commission's Directorate-General for Justice and the European Anti-Fraud Office (OLAF). In Luxembourg, a group of student judges met Advocate General Yves Bot and visited the CJEU. In Greece, training courses on EU law were organised for ENM exchange students. In Bulgaria, a visit to the 'International Operational Cooperation' department of the Ministry of the Interior gave students a very real insight into the work of these departments and the real-time handling of cooperation requests etc.

The 'European Exchange week - In' (second week), usually in December, is when foreign delegations are received at the ENM in Bordeaux. The number of exchange students varies from year to year: 300 in 2012 and 352 in 2013. Together, the European exchange students and French student judges receive an 'ad hoc' programme of study with a strong emphasis on European law.

The programme varies from one year to another, but the content is always the same: comparative law, practical presentations on training institutions and European institutions, presentations of tools for EU-wide cooperation, etc. The aim of this content is to develop a common European judicial culture based on mutual trust and recognition of judgments in civil and criminal matters.

The programmes give priority to cross-cutting topics. Thus in 2009, the main topic of the week was 'Vulnerable persons in the European judicial area'. In 2011, a presentation was given on 'European rules on family law, wrongful removal of children'. The second week is also an opportunity for presentations on European institutions, such as the Directorate-General for Justice (presentation given by Françoise Le Bail in 2012) or



Eurojust, on training institutions such as the EJTN and even on associations like the European Judges and Prosecutors Association (EJPA).

Given that many students have a high-level theoretical knowledge of European law (one of the subjects covered by the entrance competition), and in order to ensure a practical understanding of the topic, interactive methods are used.

Mock criminal and civil hearings help trainees to gain a better understanding of the comparative approach; practical case studies enable theoretical presentations, such as that on the 'Brussels II bis' family law regulation, to be put into practice; and drafting international letters rogatory in workshops allows trainees to share ideas with teaching staff and gain an optimal understanding of tools for mutual assistance in criminal matters.

Practical study is combined with discussion-based activities: round tables are held in connection with the week's topic ('round table on the trafficking in human beings', on 'the European Public Prosecutor' and so on).

Finally, the last week is devoted to the study of specific areas of European law in partnership with the European Court of Human Rights (ECHR) and the Court of Justice of the European Union (CJEU).

In the case of the CJEU, Advocate General Yves Bot has consistently introduced the first day of the seminar since 2011. With the help of Bernard Chevalier, First Vice-President of the Nîmes Tribunal de Grande Instance (Regional Court), and former legal secretaries of the CJEU, Mr Bot addresses the topic of preliminary rulings under Article 267 TFEU. In the afternoon and the following day, CJEU legal secretaries lead practical workshops on this topic.

Student judges work on very concrete cases such as the implications of an accident sustained while travelling and examine, for example, Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, the case-law of the CJEU and the French Labour Code. They then practise drafting requests to the CJEU for a preliminary ruling in their role as national judge.

The implications of a German criminal court's sentencing of a German-born Greek national for committing drug offences and illegally entering and residing in Germany is another example of the subject-matter covered. Student judges are required to compare national legislation with EU regulations, including Article 21 TFEU.

### 1.3. Training specific to the European Court of Human Rights

A partnership has been established with the ECHR to improve the effectiveness of teaching and to involve permanent ENM trainers more closely in the design and delivery of training sessions. In November 2012, an ENM delegation in Strasbourg developed a new training module under the technical authority of the ECHR's French judge and its registrar. An innovative training activity was thus developed for the 2012 year group, with a more dynamic format combining theoretical modules (in particular an inaugural lecture by the French judge) and practical modules based on concrete examples of ECHR judgments against France, in a determined effort to convince all student judges that in their future careers they will be first judges with responsibility for ensuring that French legislative provisions comply with the Convention.

At the same time, the permanent ENM trainers concerned by this activity received several days' specific training at the ECHR in Strasbourg, which enabled them to enhance their skills in this field.

In 2012 and 2013, the following people in particular contributed to the 'International Dimension of Justice' department's various weeks' activities devoted to European law:

Mr André Potocki, French judge at the ECHR

Ms Anne Marie Dougin, Head of division at the ECHR

Mr Philippe Roublot, judge and Head of the Judicial and European Litigation Office at the Ministry of Justice

Mr Yves Bot, Advocate General of the Court of Justice of the European Union

Mr Bernard Chevalier, former Legal Secretary of the Court of Justice of the European Union

Ms Françoise Le Bail, Director-General DG Justice, European Commission

Mr Denis d'Ersu, Legal Secretary of the Court of Justice of the European Union – along with, in total, a dozen other legal secretaries in charge of directed studies

Mr Joël Sollier, Director of Legal Affairs at Interpol

Lord Justice of Appeal Matthew Thorpe

Mr José Noguales Cejudo, judge.

#### 1.4. Evaluation of training

Training modules are evaluated by the student judges at the end of the course (via online questionnaires). Results are summarised and used during annual assessment seminars, when trainers and external contributors also review the previous year's training. Student judges have the opportunity to take part in a second evaluation of their training when they return to the ENM during the period of preparation for their first posting (their initial training is reviewed after their placement). A final training evaluation stage, to be completed six months into service, should be implemented soon.

## 2. IN-SERVICE TRAINING

The number of sessions on EU law remained stable up to 2011 and tripled in 2012 to meet judges' demands for training in this area and in view of the increasing importance and visibility of EU law in the French legal landscape.

In 2012, twelve training sessions (see 2.1.) and seven in situ group placements (see 2.2.) were thus included in the in-service training catalogue. At the same time, 18 courses on EU law-related topics were offered under the decentralised training scheme in 2012 (see 2.3.). Together these courses helped to train a very large audience; including heads of courts (see 2.4.).

### 2.1. National in-service training in 2012

In 2012, no fewer than seven in-service training sessions focused on the substantive law of the European Union, the Member States and the ECHR, and five of them covered procedural law.

### 2.1.1. Substantive law

The role of the judge in EU law:

Three-day session designed to provide participants with a key outline of the European institutions and their decision-making processes, to enable them to gain a comprehensive understanding of the principles and concepts of EU law and to familiarise them with the conditions under which the latter should be applied.

The fight against corruption and the protection of the EU's financial interests:

Two-day session devoted to examining changes in legislation and case-law in this area and to presenting specialist agencies (GRECO, OLAF, TRACFIN, UNODC).

The fight against VAT carousel fraud:

Five-day session run by the Centre for the Study of Financial and Engineering Techniques of the Université Paul Cézanne, Aix en Provence, presenting VAT fraud and swindles, in particular within the EU.

The international dimension of civil disputes:

Five-day session enabling participants to determine the law applicable to cross-border civil disputes and to learn more about the legal instruments available.

The international dimension of commercial disputes:

Five-day session enabling participants to determine the law applicable to cross-border commercial disputes and to learn more about the legal instruments available.

Fundamental rights and hierarchy of rules:

Three-day session providing an overview of the fundamental rights recognised by national law and the practical arrangements for the protection of those rights.

Common Law:

Five-day session introducing the fundamental principles that govern common law systems, and their application according to various customs.

### 2.1.2. Procedural law

Recognition and execution of civil judgments in Europe:

Five-day session on the free movement of judgments and on cooperation mechanisms within the EU in civil matters.

International cooperation in criminal matters:

Six-day session split into two modules including a presentation of criminal cooperation instruments and their implementation, in particular within the European Union.

Preliminary rulings by the CJEU:

Two-day session which focuses on learning how to draft requests to the CJEU for a preliminary ruling.

Understanding the ECHR:

Five-day session

Europe's judicial systems:

Five-day session discussing the similarities and differences between judicial systems within the EU, particularly in terms of resources, organisation, procedural arrangements, policy of modernisation, human resource management, operational standards and evaluation arrangements, based on studies by the European Commission for the Efficiency of Justice (CEPEJ). Session led by Jean-Paul Jean, Chair of the CEPEJ's Working Group on the Evaluation of Judicial Systems. Speeches by Georg Stawa, CEPEJ Vice-President, François Paychère, Chair of the Working Group on the Quality of Justice and Hélène Jorry, CEPEJ member responsible for presenting the Commission's work on quality of justice policies, satisfaction surveys of court users, access to justice and the management of standard disputes.

## 2.2. In situ training

In 2012, French judges were offered placements within the following organisations:

Group placement at the Council of Europe

Group placement at the CJEU

Group placement at Eurojust, Europol

Group placement at the European Anti-Fraud Office (OLAF)

Group placement at the United Nations Commission on International Trade Law (UNCITRAL), a body which seeks to harmonise trade law rules

Group placement at the Secretariat General for European Affairs (SGAE), which reports to the French Prime Minister and is responsible for coordinating the views expressed by France within Community bodies

Group placement within the French Department of European and International Affairs

## 2.3. Decentralised training in 2012

In addition to national courses in Paris, 18 'decentralised' courses were organised and funded in 2012 by the French National School for the Judiciary in the various judicial districts known as cours d'appel (courts of appeal) as well as in the cour de cassation (Court of Cassation):

Course title	Number of courses offered by the Cours d'appels
EU law programme - The internal market I: Competition, consolidation of achievements and new perspectives	1
EU law programme - The internal market II: Freedom of movement	1
EU law programme: The impact of EU law on social law	1
EU law programme: Private international law – Conflict of laws: contracts and obligations (Volume I & II)	1
EU law programme – Private international law II: Jurisdiction and judgments in civil and commercial matters (Brussels I)	1
EU Law programme - Private international law III: Couples and children	1
Mediation and European law	1
EU law as an automatic point of reference	2
International family disputes	1
Private international law programme – Family law: Divorce and matrimonial property regimes. Jurisdiction and applicable law.	1
Private international law programme – Family law: Parentage, adoption and nullity of marriage	1
Private international law programme – Family law: Children. Parental authority, protection, guardianship of minors, child abduction	1
Private international law programme – Family law: Lis pendens, exequatur	1
ECHR	1
Mutual international assistance in criminal matters	2
International divorce	1

## 2.4. The training audience

The sessions on EU law and procedures are open to judges and prosecutors, local magistrates and, in most cases, to registry staff and judges and prosecutors of the European Judicial Training Network (EJTN). Some may also be attended by judges of the commercial courts and administrative magistrates.

In 2012, 500 judges, prosecutors and local magistrates, including from abroad, received theoretical training, out of a total 1 430 applicants. This figure represents the total number of applications received for these sessions by the ENM. Each judge or prosecutor makes four choices in order of preference. Only one of these courses is offered. Places on group placements were granted to 138 judges, prosecutors and local magistrates, including from abroad, from a total of 334 applicants.

For the record, in 2012, approximately 22 000 applications were received through the registration website, 1 764 of which were for sessions or group placements connected with EU law and procedures. This figure equates to just over 8 % of all applications.

Some 200 judges and prosecutors also received training in their regions, through the decentralised in-service training programme.

Heads of courts (presidents and public prosecutors) also take specific courses regardless of whether they are the head of a court of first instance (the course entitled 'New heads of court' includes half a day's study of another judicial system within the EU) or the head of a court of second instance (the course entitled 'Heads of court, new challenges' includes a visit to the Court of Justice of the European Union).

In 2013, the French National School for the Judiciary also provided a training session for French judges called 'The settlement of cross-border disputes in judicial practice' as part of its seminar on cross-border pecuniary claims and e-justice in Europe, co-organised by the Academy of European Law (ERA) and the Spanish Judicial School. Furthermore, the ENM is working on the introduction in 2014 of an e-learning module on preliminary rulings by the CJEU.

## 2.5. European-level training initiatives

In addition to national training courses, various training initiatives exist at European level:

### 2.5.1. Training provided by the European Judicial Training Network (EJTN)

The EJTN, which was founded on 13 October 2000 in Bordeaux and which has had legal personality since 8 June 2003, is the outcome of the initiative begun in 1999 by the French National School for the Judiciary to bring together its European Union counterparts with a view to supporting, through judicial training and greater mutual understanding of judicial systems, the process of creating an area of freedom, security and justice among Member States initiated by the Treaty of Amsterdam of 2 October 1997.

Its main activities are reflected in:

A catalogue of courses open to European judges and prosecutors, in various fields (criminal, civil, cooperation, etc.). These courses may be organised directly by the network, or may feature in the catalogue of one of its members that offers places to European judges and prosecutors. Some 60 judges and prosecutors attend such courses every year;

The organisation of exchange programmes between current and future members of the judiciary;

The development of judicial training guidelines on various topics of criminal and civil law. These guidelines are regularly updated.

The European Judicial Training Network is funded through:

The financial participation of its members, whose contributions are determined by the articles of association according to the respective weight of their home Member State. The ENM's contribution will amount to EUR 37 250 in 2014. The contributions of EJTN members account for approximately 5 % of its total funding.

Financial support from the European Union and more specifically from the Criminal Justice Programme of the European Commission Directorate-General for Justice, which provides approximately 95 % of the budget.

Although involvement in this network requires significant investment, the ENM values the extremely important role it has to play at European level.

### 2.5.2. European Commission-backed training within a partnership framework

Since 2010, the ENM has been actively involved in implementing judicial training initiatives at EU level, launching projects supported by the European Commission and organised in cooperation with its 'sister institutions'.

Indeed, the ENM considers that modern judicial training should supplement national sessions with initiatives which bring judges and prosecutors from different countries together to participate in common training activities on topics of mutual interest.

Through their focus on Community instruments and topics of comparative law, such activities undoubtedly help to reinforce the reality of the European judicial area, by strengthening the knowledge of EU judges and prosecutors and by encouraging communication between them as well as the dissemination of best judicial practice.

The French National School for the Judiciary responds very often to calls for proposals issued by the European Commission Directorate-General for Justice in this area. It has recently won and, in its capacity as leading partner, implemented the following projects:

A project concerning the property consequences of divorce for bi-national couples in the European Union: this two-day course, which was attended by judges and prosecutors from 11 Member States, helped participants to improve their knowledge and discuss their working practices with regard to Community regulations applicable in this area;

A project concerning police custody in Europe and the requirements relating thereto, in the light of the requirements laid down by the European Convention on Human Rights: this course, which comprised study visits to four EU countries, was an opportunity for EU judges and prosecutors to discuss this measure of constraint and its use in practice;

A project on dealing with delinquency in isolated European minors;

A project concerning the role of victims in criminal proceedings in the European Union.

The French National School for the Judiciary is also a partner in the delivery of seven training programmes led by other judicial training institutions or bodies involved in judicial training in Europe, with which it provides training on the above topics.

Accordingly, it fully supports the policy implemented by the European Commission following its Communication of 13 September 2011 'Building trust in EU-wide justice, [and] a new dimension to European judicial training', in application of the Stockholm Programme (which aims to train half of the EU's judges and prosecutors by 2020).

### 2.5.3. Training provided by the Council of Europe's HELP Network

Finally, the French National School for the Judiciary has joined the HELP programme and network. This programme, initiated by the Council of Europe, offers online courses on the rules of the European Convention on Human Rights and aims to improve judges' and prosecutors' knowledge of the instrument. The close legal relationship between that text, which is cited in the case-law of the CJEU and in the Charter of Fundamental Rights, and Community law, explains why the DG Justice ran a workshop on it during its last General Assembly in June.

# **THE TRAINING OF LEGAL PRACTITIONERS: THE BELGIAN EXPERIENCE**

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## **ABSTRACT**

This paper gives an overview of the training provided by the Belgian Judicial Training Institute. The Institute was founded in 2007 and has begun working to train magistrates, judicial trainees and court staff members since 2009. Its aim is to ensure that magistrates and court staff are prepared to deliver justice in the modern world and are ready for the challenges arising from the on-going reform of the justice system.

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## 1. WHO WE ARE

### 1.1. Foundation of the Belgian Judicial Training Institute (JTI)

The Judicial Training Institute (hereinafter JTI) is a young institution which was founded in 2007. In numerous other countries of the European Union, there are - since many years - specific organs that are entrusted with the organisation of the professional training of magistrates and members of the judiciary.

The creation of the Judicial Training School had been advocated since at least 1993, but the process that led to its actual foundation was characterized by disagreements as to the type of institute that should be created – in particular, whether it should offer training only to magistrates, or even to judicial trainees. The Institute was finally set up only in 2007.

The law that created the Institute only mentions professional training and the exchange of professional experiences, while it ignores the training before the competition to become a judge or prosecutor and thus before the appointment as a judicial trainee or magistrate<sup>62</sup>. In other words, the legislator chose not to create a 'magistrate school'<sup>63</sup> and thus rejected the idea of a 'unified training' before the appointment as a magistrate.

Although created by a law of 2007, the JTI has effectively started working from 1st January 2009. The first trainings for magistrates and court staff took place already in January 2009. The first training for judicial trainees followed at the end of March 2009. Both initial and continuous (in service) training sessions have been organized for magistrates, judicial trainees (107 training days) and court staff (382 training days) during the JTI's first year. Since then, the JTI has continuously expanded his offering. In 2012 the JTI organized already more than 22,000 internal training days.

### 1.2. Statute

#### 1.2.1. A federal institution

The JTI is a federal institution.

During the discussion of the bill relating to judicial training and the foundation of JTI, both in the commission for justice and in the plenary meeting of the Senate, the question whether to create a federal training institute or two separate magistrate schools – i.e. one per Community – , has been extensively discussed.

The training of magistrates involves three aspects: University education in law (the degree of Master of Laws), the exams giving access to the profession of magistrate (through a judicial traineeship or not) and judicial training (which is in turn subdivided in initial training, in-service training and career guidance).

Only the first aspect, namely the training for Master of Laws, is considered an exclusive competence of the Communities; the other two are set at the federal level.

Professional training forms integrally part of the statute of the magistrate or of the court staff, and is consequently a federal matter. Thus, the JTI was created as a federal institution.

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<sup>62</sup> The examinations are held by two appointment and designation committees of the High Council of Justice, in application of art. 259bis-9 of the Judicial Code.

<sup>63</sup> This is, however, the case in a number of countries such as Spain, France, Portugal and Romania.

### 1.2.2. An independent institution

Furthermore, the JTI is also an independent institution. The autonomy of the Judicial Training Institute is absolutely required in order to respect the fundamental principle of the independence of the judiciary.

One of the guarantees of the independence of magistrates consists in them having a profound knowledge of the law and of the social reality; moreover, they need to have the necessary skills (psychosocial, technical, etcetera) and the required basic attitudes.

The Consultative Council of European Judges (CCJE) asserted, in its opinion no. 4,<sup>64</sup> that an elaborated, thorough and diversified training of judges, who are selected after having finished their university studies, is vital, so that they can fulfil their duty satisfactorily.

This opinion explicitly states that the training of judges must be entrusted to "a special body responsible for drawing up the curriculum, providing the training and supervising its provision" and that "any authority responsible for supervising the quality of the training programme should be independent of the Executive and the Legislature and that at least half its members should be judges".

By choosing to create an institute for professional training, the Belgian legislator wanted to follow an internationally set trend according to which the magistrates have the right to determine and organise 'for themselves' to a large extent their education and the exchange of professional experience.

## 1.3. Legal framework, objectives and organisation

### 1.3.1. Legal framework

The JTI was founded by the law of 31 January 2007 under the legal form of a parastatal institution 'sui generis' whose structure guarantees the independence of the magistracy. This law has been profoundly changed by the law of 24 July 2008. Two additional legislative changes date from 22 December 2009 and 22 March 2010.

### 1.3.2. Objectives

The JTI wants to contribute as an independent federal body to increasing the quality of justice by developing in an optimal way the professional competences of the magistrates and the members of the judiciary<sup>65</sup>.

The JTI aims to become the reference body promoting a learning culture that valorizes the skills and competences of its target audience by sustaining permanently its need to adapt.

### 1.3.3. Organisation

#### Governing board

The governing board is an intermediary management body, entrusted with:

- 1) the approval, in compliance with the directives of the High Council of Justice, of the annual action plan proposed by the direction;
- 2) the control of the execution by the direction of the tasks of the Institute;

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<sup>64</sup> Opinion no. 4, 27 November 2003, on appropriate initial and in-service training of judges at national and European levels, available at [http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/CCJE\(2003\)OP4\\_en.pdf](http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/CCJE(2003)OP4_en.pdf)

<sup>65</sup> Professional competences include: the knowledge, skills and attitudes that are necessary to be able to exercise their duties efficiently towards the interested persons.

- 3) the approval of the budget and personnel plan proposed by the direction;
- 4) the exercise of its competence with regard to the assessment and discipline of the members of the direction.

The governing board is composed of 16 members,<sup>66</sup> equally divided between the Dutch and French language regimes.

#### Direction and personnel

The direction is charged with the daily administration of the JTI<sup>67</sup>.

The direction is especially entrusted with<sup>68</sup>:

- 1) the conception of the programs for the training of magistrates and court staff, the organisation of the courses and their assessment;
- 2) the preparation of the budget and the annual action plan;
- 3) the administration of the budget and the financial means of the JTI;
- 4) the conclusion of public contracts;
- 5) all aspects of personnel policy (i.e. the selection, recruitment, dismissal, assessment and discipline);
- 6) the conclusion of mutual agreements and cooperation protocols with institutions, organisations and associations, especially with:
  - a) the Training Institute of the Federal Authority;
  - b) the Flemish Community, the French Community and the German-speaking Community;
  - c) the educational institutions that depend on or are financed by the aforesaid Communities and approved institutions that are competent in the field of professional training;
  - d) the national or international organisations that are involved in professional education.
- 7) the conclusion of cooperation protocols with the Federal Public Service for Justice with regard to the services that it can provide to the JTI;
- 8) the representation of the JTI in legal proceedings as defendant and in extrajudicial proceedings. For its participation in legal proceedings as plaintiff the consent of the governing board is required.

The JTI also has an own administration, which assists the direction in the execution of the tasks of the JTI. On December 31<sup>st</sup> 2012, the administration consisted of 21 personnel members (FTE).<sup>69</sup>

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<sup>66</sup> Nominated by the Royal Decree of 23 December 2008 (Belgian Official Journal of 31 December 2008).

<sup>67</sup> See art. 12 of the law of 31 January 2007.

<sup>68</sup> See art. 13 of the law 31 January 2007.

<sup>69</sup> Of which, 7 staff members of level A (university degree); 9 members of level B (short course higher education); 3 members of level C (secondary education); 2 members of level D (driver + co-worker training rooms).

### Scientific committee

The scientific committee is one of the three bodies of the JTI. It is an advisory organ both to the board and to the direction.

As indicated by its name and given its composition, the committee gives a scientific and didactic contribution. This does not mean that its members teach themselves at the school, their presence is only advisory. Its advisory competence is exercised, pursuant to art. 26 of the law of 31 January 2007, by giving advices and formulating recommendations regarding:

- the training policy of the Institute;
- the training programs;
- the organisation of the training;
- the pedagogical methods.

Within the framework of this assignment, the scientific committee assesses the reports of the trainings and reports and gives advice about this to the direction and the governing board.

Members of the committee<sup>70</sup> include:

- Judges and prosecutors
- Court staff
- Lawyers
- Professors of the university
- Members of the training institute for the federal administration
- The director of the JTI (who presides the committee).

#### 1.3.4. Government Commissioners

The two government commissioners perform their duties respectively on behalf of the Minister of Justice and the Minister of Budgets and have a financial power of control "ex post" with regard to the JTI. They attend the meetings of the governing board in an advisory capacity.

## 2. WHAT WE DO

### 2.1. Target group, development of a learning culture and training activities

#### 2.1.1. Target group

In figures the target audience, i.e. all the categories of people who are eligible to be trained by the JTI, can be illustrated as follows<sup>71</sup>:

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<sup>70</sup> Who were nominated by the royal decree of 30 December 2008 (Belgian Official Journal of 12 January 2009) and invested on April 1st 2009.

<sup>71</sup> Figures relevant on the date of 31 July 2013; source: Federal Public Service for Justice, Directorate-General of the Judicial Organisation.

TARGET AUDIENCE OF THE JUDICIAL TRAINING INSTITUTE		
Target group department “magistrates”		
professional magistrates of the judiciary		2,764
judges	1,779	
public prosecutors	985	
deputy magistrates		1,903
first instance	160	
court of appeal	1,743	
councillors and judges in social matters		1,968
councillors	526	
judges	1,442	
judges in commercial courts		1,035
assessors in the sentencing court		20
deputy assessors in penalty enforcement cases		80
judicial trainees		95
TOTAL:		7,865
Target group department “court staff”		
legal assistants of the courts		104
legal assistants of the public prosecutor’s offices		191
members of the service for documentation and concordance of texts at the Court of Cassation		10
members of the court registry		2,023
members of the secretarial office of the Public Prosecutor’s Office		749
Staff of the court registries and the secretarial offices of the Public Prosecutor’s Office		4,822
Staff who hold a special degree (attachés)		73
TOTAL:		7,972
GRAND TOTAL:		15,837

### 2.1.2. Development of a learning culture

Due to the continuous evolution of justice, the knowledge and the competences of the magistrates and court staff must be adapted by promoting the development of a learning culture.

To this end, we first have to analyse the training needs of our target audience, taking into account the budgetary and human limitations.

Finally, to fulfil the mission statement of the JTI, the direction has mapped out the different partnerships that are possible with educational institutions that depend on or are financed by the Communities and with approved organisations which are competent in the field of professional training.

### 2.1.3. Training activities

The JTI is the institution competent for judicial training of magistrates and court staff. Judicial training is understood to be<sup>72</sup>:

- 1) initial training, namely training given during a traineeship or at entry into service;
- 2) in-service training, namely the one given during the career with the aim of developing the professional competence;
- 3) career guidance, namely training given in preparation of the exercise of a future office or mandate.

A magistrate is entitled<sup>73</sup> to participate in the in-service trainings proposed by the JTI for five working days per judicial year. The choice of the courses that a magistrate will follow is taken by the chief justice of the court, in consultation with each magistrate.

The JTI is obliged to assess<sup>74</sup> each of the trainings that it organises. The assessment is done by means of anonymous questionnaires filled in by the participants to the training. The questionnaires are used for the evaluation by the scientific committee, which makes an annual report to the director and the governing board.

For court staff, the rights and duties to initial training, in-service training and career guidance and the implementation modalities of the trainings are further defined by the King<sup>75</sup>.

As EU law is a compulsory course in Belgian universities, JTI does not offer any initial training in EU law. However, as JTI only organizes very practical training sessions, we use case-studies in all trainings having international or European dimensions, e.g. judicial cooperation in criminal matters, the European arrest warrant, judicial cooperation in civil and/or commercial matters, cybercrime, the Brussels II-bis Regulation (training sessions for youth and family judges and magistrates), and so on. Since 2009, JTI has also organized two so called "European seminars", which were organized for magistrates coming from all Member States of the European Union (2011: Fighting against environmental offences; 2012: Mediation). Four other European seminars are scheduled in 2014 (Fight against financial crimes; Cooperation in cross-border insolvency proceedings; Fight against terrorism; Secondary Victimization).

## 3. DEFINING TRAINING NEEDS

As said before, the JTI wants to ensure that its training programmes address the real needs of magistrates and court staff. The objective is not to provide a set of training courses or

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<sup>72</sup> See art. 3 of the law of 31 January 2007.

<sup>73</sup> See art. 4 of the law of 31 January 2007.

<sup>74</sup> See art. 5 of the law of 31 January 2007.

<sup>75</sup> Royal Decree of 18 May 2009 establishing the rights and duties to judicial training, as well as the implementation modalities of the trainings with regard to the persons as defined in article 2, 4° until 10°, of the law of 31 January 2007 relating to the judicial training and the creation of the Financial Training Institute, Belgian Official Journal, 4 June 2009.

programs but rather to provide the lever for the judiciary to ensure a quality and performing justice.

### 3.1. Challenges

The planned reform of Justice in Belgium (see below) represents a major change, by far the biggest since nearly 30 years. This reform will affect the entire organisation and both magistrates and court staff will be confronted with a new way of working.

This requires from all a certain flexibility and willingness to change but it also strongly increases the need for support and training to develop or improve specific competences.

#### 3.1.1. More autonomy and management responsibility

The key elements in the reform of Justice are the adjustment of the judicial districts, the empowerment of the chief justice of the court and the corporatisation of (resource) management, which will lead to ensuring more autonomy and management responsibility for the courts themselves. These changes constitute a significant challenge that is faced not only by the organisation but also by every individual magistrate and member of the judiciary.

Because of the reduction of the number of judicial districts, there is a bigger need for collaboration between entities, as well as for increased flexibility and/or mobility (i.a. because of specialization) from magistrates and staff.

While the number of chief justices of the court is being reduced, their responsibility increases: the number of personnel under their management grows, and they need to ensure the most efficient utilization of the allocated resources.

The new management agreements offer the judiciary more managerial autonomy but they also establish specific results and objectives to be reached. This, however, might increase the risk that the organisation of Justice will evolve into one oriented to “production-numbers”, where quantity will outweigh quality and dedication.

The essence of this debate is not whether this evolution is consistent with the ‘independence’ of the individual magistrate, but how to prepare everyone involved (magistrates and court staff) to assume their responsibilities in a proper way within this new approach.

Magistrates (even those not in a managerial position) and staff will need competences that were not necessarily acquired during basic training: they will need to develop more general and generic competences in the judicial context. In this context, the principle of ‘trial and error’ is not an option and savings on education will most definitely result in severe reductions on the desired results.

#### 3.1.2. The generation mix

Like many other organizations, the judiciary is faced with an extensive mix of generations and the differing expectations this entails. The differences in vision, working environment and methods should be considered as a major challenge.

On the one hand we have the baby boomers, people in their 50s and 60s who are not adaptable to change and firmly hang on to established procedures and processes. On the other hand, we have the so-called generation Y, representing the future of the organization as it is crucial in order to control the natural outflow. These younger magistrates are critical, have the will to improve practices and are a driving force for technological innovation and creativity. In between, there are people from other generations, each with specific characteristics.

The JTI plays a huge role in uniting the different generations when it comes to certain themes and the development of competences. With a curriculum that is adequately varied and balanced, the JTI should be able to provide the most suitable and 'natural' support for everyone.

In the meantime, our network-platforms and peer groups offer a solid base for engaging the cross-generational debate about judicial and organizational challenges among other themes.

### 3.1.3. The need for good basic knowledge

The judicial process is subject to strict procedures, especially when it comes to roles and responsibilities, timing, etc. These procedures increase in complexity and are adjusted each time in a shorter period, so there can be no doubt that every magistrate and every member of the court staff should have an adequate understanding of these strict regulations.

While basic training (at universities) has provided them with sufficient theoretical knowledge of laws or regulations, the JTI has a different approach: "We don't teach them law, we teach them to judge or to prosecute."

Initial training will become increasingly important in the next few years. The need for a strong inflow of new magistrates and staff members, combined with the social and judicial evolutions and their impact on the judicial process, will require broadening the elaboration of the training program.

Traineeship and mentorship, organized at the working place with the assistance of the JTI, are some important methods to ensure the knowledge acquisition of young magistrates and the transfer of knowledge between co-workers.

However, it is not only young magistrates who need training: every magistrate and member of the court staff should possess a solid and immediately applicable knowledge. The JTI contributes to assuring that every magistrate and member of the court staff possesses the right and necessary skills to hold his office, role or function within the Public Prosecution or Courts.

### 3.1.4. Knowledge outflow

The high rate of the natural outflow within the judiciary (> 40% in Belgium) in the next years raises the genuine risk of a tremendous knowledge loss. The judiciary needs to take the appropriate measures to prevent the loss of knowledge and by extension the loss of competencies.

The first major measure is to map the existing knowledge and skills and to point out the impact of the natural outflow. After that, a short, medium and long-term needs assessment needs to be carried out.

The JTI developed a structured approach to ensure the appropriateness of our offering to resolve the lack and/or loss of competencies. A specific judicial competence model (see infra) is at the basis of this approach.

### 3.1.5. Social and technological evolution

The globalisation of our society and the fast technological evolution give rise not only to additional legislation, but to new judicial problems as well. Clearly, the judiciary should be able to integrate these changes and adjust their work accordingly to guarantee an adequate justice system.

At the same time, there's a growing risk of significantly increased legal costs as the number of investigation techniques used is increasing systematically. This is due to the fact that one



wants to be sure not to have overlooked anything but also that there's insufficient experience with these new problems and therefore there is an incorrect assessment of the risks and needs. Another problem is the insufficient knowledge of the possibilities, probative value and restrictions of newly introduced forensic or investigation techniques.

Besides granting an adequate training, it's essential to pursue the exchange of practical experience in order for magistrates, assisted by forensic experts, to be able to define the most appropriate investigation scenario.

The JTI has already started several initiatives within the judiciary as well as with other actors in the field of Justice to share concrete knowledge based on specific cases. This exchange will become increasingly important over time and it will ideally incorporate international experience as well.

#### 3.1.6. Upcoming computerization

The computerization of the judiciary requires another way of thinking and working for magistrates and court staff.

The application-related or functional training of ICT software is one aspect of the equation and for this, the distributor or developer of the ICT software is best suited to provide training. However, other aspects are equally important: dealing with digital instead of paper files, the focussed search for information, the sharing of and contributing to digital documents, the different aspects of information security, electronic information exchange between parties, legal implications, etc.

In these latest aspects, at the crossroad between technology and the domain of the judiciary, the JTI can bring an added value. Sharing insights, knowledge and experience will provide an important contribution to the acceptance by all generations of this new working environment.

#### 3.1.7. Focus on organisation-readiness

When it comes to competence development within the judiciary, proactivity is a priority within the strategic vision of the JTI. This implies that the JTI itself has to be adequately prepared and ready to capture and process the different trends. In a way, one could say that the corresponding training should be ready even before a new law is published.

It's important for the JTI to have enough autonomy for the development of the programs and curricula, without being bound by rigid guidelines that might hinder creativity and new initiatives.

#### 3.1.8. The international context

When it comes to national and international collaboration on judicial training and exchange of professional experience, the JTI is a front-runner with a unique responsibility and jurisdiction. The JTI participates in international networks and also actively contributes to numerous European projects and programs.

Since more and more lawsuits are of a crossborder nature, this domain will require more effort in the coming years. Another aspect that will require more attention is the level of training on European legislation and/or knowledge of the specificities of the laws and legal systems of other Member States.

### 3.2. Needs assessment (ABA)

The unique position of the JTI within the judicial landscape guarantees our in-depth understanding of the culture, habits and specificities of the judiciary. Magistrates and court

staff experience the JTI as a stimulus for their personal creativity and as a source of opportunities and chances.

The JTI is perceived as a real network- and interaction opportunity for all magistrates and court staff in the Belgian judiciary. It is considered as a platform where the necessary professional exchanges take place. This is crucial for the effectiveness of our offering and the adhesion of all magistrates and court staff.

The JTI wants to assure an optimal learning performance. Therefore, it has developed integrated and blended learning paths on the basis of judicial expertise, experience and pedagogical insights.

It's however not realistic to expect the JTI to offer to every individual all types of training that could help him – it simply does not have the required human or financial resources to do that for over 15,000 people at the same time.

We need to focus on the domains where the JTI offers the highest added value through its expertise and knowledge, and need to address first the most critical needs of the judicial organisation.

The JTI certainly does not want to limit its offering to a set of repeated standard courses. On the contrary, we want to adapt our offering timely and proactively to make sure that the judiciary disposes of the required competences.

To this end, we developed a structured approach to identify, in an objective way, the most critical needs of the organisation, using the specific judicial competence model developed by the JTI.

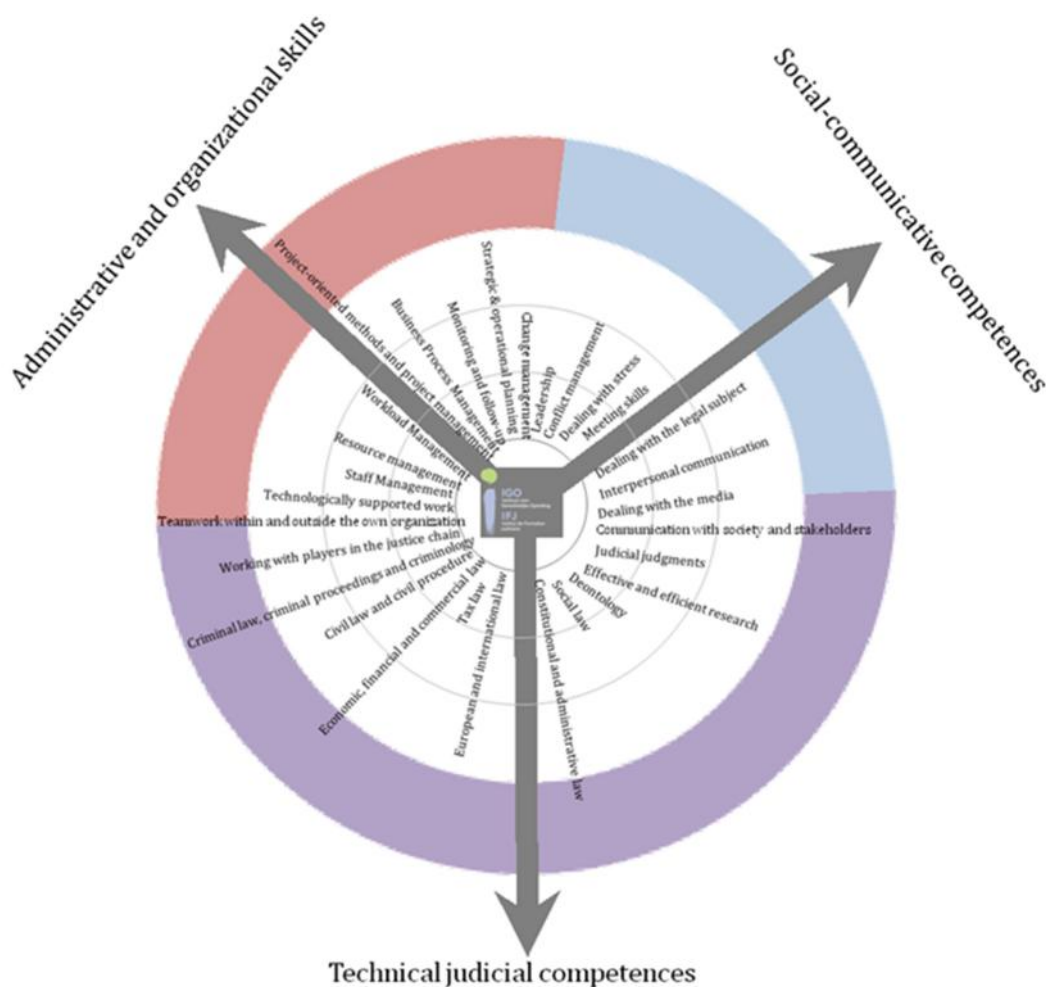
The choice to develop a specific competence model confirms our focus on the integration of the (generic and specific) competencies within the judicial context and the alignment on the particular needs and situation of the judiciary. The model has been developed with the assistance of field experts (focus group) and has been tested and validated by several reference contacts<sup>76</sup> since then.

The model defines the competencies in three separate domains: the technical competencies, the administrative-organizational competencies and the socio-communicative competencies.

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<sup>76</sup> For example all the chiefs of the courts and prosecutor offices, court staff and the minister of Justice for defining the competences of the judges, prosecutors and court staff.

Figure 1: the judicial competence model developed by the JTI.



The model covers all potentially required judicial competencies and is the reference framework to identify the competence requirements of each role or function.

Obviously, not every competence will be required for each role or function, nor will it be required with the same depth for everyone. It's therefore crucial to clearly define the specific competencies requirement for each function. This however is the responsibility of the High Council of Justice (related to the magistrates) and the Minister of Justice (related to the court staff).

In a first phase, the JTI maps the existing or available competencies in the field for each entity and each function. A specific survey has been developed and sent to every chief justice of court. The JTI opted for this pragmatic approach as the cost and effort for an individual assessment was excessive. For the development of an adequate training offering, we need reliable indications but not necessarily mathematically precise figures.

The results are compared with the reference per function, a set of competencies for each function defined by both the High Council for Justice and the Minister. This gap-analysis, reviewed by an expert team including representatives of the JTI and its Scientific Committee, indicates the real competencies deficit and therefore the domains with the most important deficit that need to be addressed with priority.

In a second phase, the respective training teams of the JTI, each responsible for a specific domain of competencies, propose the different training initiatives. These are based on different learning methods, in order to allow the development of competencies for both magistrates and court staff.

This process will be repeated on an annual basis in line with the budget-cycle. Therefore, once validated, this set of initiatives defines (part of) the budget and represents the training program for the reference year +2.

The JTI aims to present a balanced and dynamic training portfolio in which different learning methods interact with each other depending on the already acquired level of the related competence.

We empower each individual to define his or her personal training path in order to develop the competencies required for his or her current or desired position.

## 4. TRAINING METHODOLOGY

The Belgian Judicial Training Institute uses various methods (conferences, workshops, case-studies, traineeships by means of exchange programmes, blended learning and so on) to achieve its training objectives. The most common method is the traditional instructor-led training (ILT). Within this instructor-led training, the Institute frequently makes use of interactive components such as SMART Boards, workshops and exercises. Apart from the ILT, the Institute also uses an increasing number of alternative training methods. Some examples of alternative methods used in 2013 are provided below.

### 4.1. Exchange of professional experience

Certain training courses are specifically targeted at creating a platform for the exchange of professional experience. During these courses, different groups of experts present various topics with the goal of creating a group discussion. A reporter is present to transmit a summary of the discussion to all the trainees, after the end of the course.

### 4.2. Simulations

During the seminars for judicial trainees, simulations are used as a preparation for their future jobs. One of these simulations consists of a mock-trial with real judges, lawyers and robes. Another example is the use of simulated police calls. The latter involves night-time phone calls by police officers to which the judicial trainees need to respond as a public prosecutor. In order to provide the trainee with valuable feedback, the phone calls are recorded and analyzed by a group of experts the day after.

### 4.3. Demonstrations

In the course of the annual cybercrime seminar, the participants are able to witness a live hacking demonstration by the Federal Computer Crime Unit (FCCU, police unit). This real world example gives the trainees a tangible view of an otherwise abstract form of crime. After the hacking, the police will also attempt to lure a paedophile using a young girl's fake profile in a chat room. This trap will also be monitored live by the participants of the seminar.

### 4.4. Trainers

The Belgian Judicial Training Institute does not employ any full-time trainers. We do have a database of experts who are used on regular basis to give training to our target audience.

Most of these trainers are practitioners: specialized magistrates (both judges and prosecutors), lawyers, court staff, civil servants, police officers, journalists, psychologists, and so on. This is especially true for technical courses. As our training sessions are very practical, only around 5 % of JTI's trainings are held by academics.

Training programs containing a broader and not so technical content are often taught by non-judicial experts as for instance communication- or management experts.

## 5. CONCLUSION

The Belgian judiciary is confronted with many new challenges caused by the reform of Justice but also by societal and technological evolution.

Focused training will be a key lever to ensure that all magistrates and court staff dispose of the required competencies to face these challenges. A specific approach is required and therefore a particular competence model has been developed to take the specificity, the culture and the mission of the judiciary into account.

The annual training portfolio needs to address the most critical competence deficits. These are identified on the basis of a field survey compared to the requirements benchmark defined by the High Council of Justice and the Minister.

The JTI needs to offer practical and blended training to ensure the adhesion of all generations within the judiciary and to make sure that the competencies acquired can be put in practice by the participants.

The JTI represents, by its unique position in the judiciary and by the vision on creating value through training, a key lever for the success of the reform of Justice in Belgium. The remaining challenge is to guarantee the availability of the required human and financial resources in a period of governmental budget constraints.

# **THE POLISH EXPERIENCE AND BEST PRACTICES WORKED OUT ON THE TRAINING OF JUDGES IN EU LAW AND IMPROVING ITS ACCESSIBILITY**

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## **ABSTRACT**

The National School of Judiciary and Public Prosecution of Poland decided to undertake a systematic approach to implement training on Union-related issues and make it systematically accessible therefore created the strategy on EU law training for the judiciary. It has been based on exhaustive analysis of training needs. It consists of diversified trainings, networking of experts on EU law and commitment to European cooperation on judicial training.

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## EXECUTIVE SUMMARY

The aim of this note is to present the approach of KSSiP towards the judicial training in EU law. The paper presents how needs of Polish judiciary resulting from the accession of Poland to EU are being addressed in the training activities of KSSiP. EU law training schemes approved, tools employed, level of their implementation and challenges for the future are presented.

KSSiP decided to undertake the systematic approach to implement training on Union-related issues and make it systematically accessible for judges.

The issue that had to be addressed was to train sitting judges on the proper application of EU law. The Majority of them had not attended EU law courses neither during their law studies nor initial judicial training. EU law is being taught at the law faculties since the Nineties and the initial judicial training includes the issues of EU law since approx. 10 years.

KSSiP created the strategy on EU law training for the Polish judiciary. It is a set of small and medium scales activities. Effectiveness is a key word.

The approach of KSSiP has been based on exhaustive analysis of training needs, diversified training, networking of experts on EU law and commitment to European cooperation on judicial training.

The process of analysing training needs in EU law was launched. The answers to questions what to train, how to train and who should train were based on:

- Empirical research conducted among members of the Polish judiciary in 2009 - 2010,
- Study on Judicial Training in the European Union Member States commissioned by the EP in 2011<sup>77</sup>,
- Assessment of training activities performed,
- Resolutions of EP and Council and communications of EC on judicial training.

The first study shows what role EU law plays in the daily judicial practice of national judges in Poland. EU law remains meaningless and abstract notion to many judges due to the lack of any practical experience with them. They do not see relevance of EU law for the daily professional practice. This lack of experience is caused to the large extent by the lack of knowledge what role EU law might play in everyday practice. This makes judges be passive and resistant to the EU perspective to the case handled.

The conclusions and recommendations of this research were the following:

- Judges do need training in EU law.
- Judges do want to be trained in EU law.
- Judges need practice oriented training.
- Training must be adequate to the role that is being played by the judge in the service of justice.
- Training must be relevant to the professional practice.
- Judges need the access to the information on EU law.
- Training must be performed by practitioners rather than academics.
- Not all judges need to acquire the same scope of knowledge on EU law.

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<sup>77</sup> [http://www.ipolnet.ep.parl.union.eu/ipolnet/webdav/site/myjahiasite/shared/poldepc/legal/pe453198\\_en.pdf](http://www.ipolnet.ep.parl.union.eu/ipolnet/webdav/site/myjahiasite/shared/poldepc/legal/pe453198_en.pdf)

Another important study influencing the shape of the KSSiP strategy of training of judges in EU law was the ERA and EJTN study on Judicial Training in EU Member States prepared for the EP in 2011<sup>78</sup>. Its key findings are following:

- Make training integral to work as a judge or prosecutor
- Make training more efficient.
- Make training more practical (focus on needs, on practice).
- Widen access to training.
- Improve EU support for judicial training.

To sum up, both studies, together with own assessment of KSSiP and EU Institutions documents led to the creation of a system of training in EU law presented in the study.

Training should enable judges to exist in the multi-centralised legal environment, to know how national and EU legislation interact and influence their everyday practice and how to apply EU law. Not quantity but the quality of training is what matters. Training must prove the relevance of EU law for daily judicial practice. EU law cannot remain the abstract and meaningless notion to judges.

Our aim is not only to achieve the given number of judges trained but, what is far more important, to achieve the high number of judges being able to apply the EU law correctly and efficiently.

Both papers proved that judges report that the number of cases involving EU law is increasing. The obligations of national judges as EU judges keep broadening. Since the accession of Poland in 2004 we appear to be in a period where we are undergoing a paradigm shift, where many of the rules, the norms which we have taken for granted for so long, are coming under sustained pressure, and new rules and norms are taking hold. Firstly reforms seek to modernize the justice system and to open up judiciary to the challenges of EU membership, there is the effect of the Internet and modern IT technologies, and thirdly, there are the severe constraints on government expenditure.

This is why training must be created in the way to address the challenges of the future.

It is excessive to expect national judges to comprehensively know EU law; yet, a reasonable familiarity with constitutional, material and procedural fundamentals thereof is a condition sine qua non of the proper functioning of national judges as EU judges

The approach must differ for the following 3 groups of subject matters:

Firstly - basic concepts and principles. This includes the constitutional law, the principles of EU law, its direct application and primacy and the consequences of these principles for judicial practice. Judges need to be aware of the interaction between EU legislative instruments and national legislation.

The second area of training is the substantial EU law. Here the level of knowledge required depends on the scope of professional tasks of a judge.

Thirdly this is the judicial cooperation. All judges may be concerned by EU law and European judicial cooperation at some stage during their practice.

The basic goal is to make judges realize how EU law can be used in everyday cases and what its consequences are and teaching what the procedures in cases "of union character" should be. The trainings are to ensure the ability to interpret the law in a way that is

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<sup>78</sup> [http://www.ipolnet.ep.parl.union.eu/ipolnet/webdav/site/myjahiasite/shared/poldepc/legal/pe453198\\_en.pdf](http://www.ipolnet.ep.parl.union.eu/ipolnet/webdav/site/myjahiasite/shared/poldepc/legal/pe453198_en.pdf)



demanded by the EU law and to adjudicate with regards to the consequences of the primacy rules as well as direct and indirect effect of the EU law.

This kind of training should be addressed to each and every judge. It should be rooted in national law, based on cases from daily practise. Here the national approach is the best one. The training tools developed at the European level might be of the assistance.

When providing training we have to focus on the domain that judges are adjudicating in: judges should be familiar with the substantive EU law according to their field of specialization. This familiarity should be acquired through the training on national law.

Additional there is a need to create the “leaders” – judges who are experts in EU substation law (given branch of law) in every court around the country. They should participate in the EU substantial law training at European level. Subsequently trainers should be provided with the possibility of being trained at the European level together with their colleagues from different countries. Finally there are very narrow areas of law where the limited number of judges should specialize in. In this case often there is no point in organizing the national trainings but the judges in question should be offered the possibility of participation in the international training events.

EU substantial law should primary be trained at national level as inseparable part of the training in national law. When organizing training on national law, usually focused on one issue of jurisprudence or legal instrument, KSSiP includes a session devoted to European law perspective of this issue, where appropriate.

However there are numerous reasons why the EU substantial law should be trained at European level as well.

Judicial cooperation must be trained both nationally and in international dimension. The former is training on the role and place on EU judicial cooperation rules in national proceedings and relation to national procedures. The latter is the possibility to discuss the functioning of EU judicial cooperation instruments with the colleagues from different MS. For the smooth functioning of judicial cooperation instruments mutual trust between judges from different MS is a must. This is why possibilities of common participation in training sessions have to play an important role.

Research on the training needs confirmed that Polish judges tend to consult the EU law issues that they face with their peers.

There is a network of judges “consultants” being created. There will be a civil and criminal judge in each small and average court in Poland and each department of big courts appointed with the duty to serve colleagues with assistance on EU law issues. Members of this network are being selected from the judges already well trained in EU law, being trainers of KSSiP, combining judicial and academic career.

This goal might be achieved by national institutions responsible for judicial training playing an active role in EU law training, as it has already been mentioned that European training activities and financing can only complement national activities in this field. That cannot be used to release MS from their responsibility for ensuring an appropriate level of training of the judicial professionals.

Nevertheless it must be highlighted that even enormous efforts on national level will not give the expected effect without European level cooperation: networking, exchange of best practices, international seminars, exchange programmes and EU co-financing.

This European level input should be threefold:

- Coordination of European law training at national level, exchange of best practices and methodologies, working out and dissemination of best tools and methodologies, networking of training institutions and trainers;

- Training events at European level;
- Projects of European nature per definition.

EJTN is a key player on the European judicial training scene. Its role and supremacy should be strengthened and cannot be overestimated.

EJTN is perfectly tooled to:

- coordinate of European law training at national level, exchange of best practices and methodologies, working out and dissemination of best tools and methodologies, networking of training institutions and trainers;
- perform and facilitate training events at European level;
- organize projects of European nature per definition.

It is equally suitable to coordinate the European level training activities of European associations of legal professions such as the CCBE, the CNUE, the ENCJ, the Network of Presidents of Supreme Judicial Courts, the European Union Forum of Judges for the Environment, etc.

## GENERAL INFORMATION

### KEY FINDINGS

- There are 10.322 judges in Poland which constitute 13% of EU judiciary.
- Majority of judges did not undergo training on EU law during their neither university education nor initial professional training.
- There is a centralised judicial training organised in Poland, performed by the National School of Judiciary and Public Prosecution (KSSiP). It organises approx. 400 training activities yearly opening 20.000 training places.
- KSSiP created the strategy on EU law training for judiciary. It is a set of small and medium scales activities.
- The approach of KSSiP is based on exhaustive analysis of training needs, consists of diversified training, networking of experts on EU law and commitment to European cooperation on judicial training.
- This system of judicial training on EU law is still being built and developed.

MS bear the main responsibility for the quality and scale of judicial training. Training on EU law should be inherent element of national training activities.

European level training activities and EU financing should be an addition to national performance. EU financing cannot release the MS from their responsibility for ensuring an appropriate level of training of the judicial professions. However it must be underlined that there are many activities that cannot be performed nationally. They require European coordination, or aim at common training and exchanges of experiences of judges from different countries, aim at organising exchanges between judges, trainers, judicial school staff. European support should step in not only where MS cannot act but also where they should but do not. This paper aims to present how these statements are being implemented in Polish reality.

There are 7.003 judges of District Courts, 2.813 judges of Regional Courts and 506 judges of the Courts of Appeals in Poland. (10,322 in total).

KSSiP is the sole public entity responsible for providing the initial and continuous training for the officials of the common courts of law and the public prosecutor's office in Poland. Yearly it organises approx. 400 training events from one day courses, through 3 day courses (that are most frequent form of training) up to the post graduate studies. It addresses approx. 20.000 trainees (judges, prosecutors, court staff) a year. It is worth mentioning that the total amount of our addresses is approx. 35.000, the priority is given to judges and prosecutors. As there are no legal obligations to participate in training some participate several times a year, some once in many years.

EU law is being taught at the law faculties since 90s of last century and the initial judicial training includes the issues of EU law since approx. 10 years.

The "first wave" of judicial training on EU law took place before and just after the accession of Poland to EU law. That was a huge undertaking, prepared with much devotion but with unsatisfying effects (as the researches presented further in this paper show).

KSSiP developed strategy of the judicial training in EU law. It focuses on the sitting judges.

Today the access to the profession of a judge in Poland is twofold. One way is to undergo the initial training performed by KSSiP. The alternative is the access from different legal professions after some years of experience. Majority of judges has been appointed after graduating the judicial initial training.

The assumption is that all initial trainees of KSSiP are sufficiently trained in EU law. The new model on initial judicial training aims at providing well trained young judges that will create the judiciary of the future. In the future, the process of generational exchanges will take decades.

The question that must be addressed is to train sitting judges on the proper application of EU law. Majority of them had not attended the EU law courses neither during their law studies nor initial judicial training. The questions of training initial trainees on EU law will scarcely be covered in this paper.

## 1. IDENTIFICATION OF TRAINING NEEDS OF JUDGES

### KEY FINDINGS

- The alarming situation proved in the research on training needs was not caused by the lack of trainings in EU law but because of its inadequacy.
- 91% of the judges confirmed the need to broaden their knowledge of EU law, and 95% declared their willingness to participate in further training in EU law.
- Judges need practice oriented training.
- Training must be adequate to the role that is being played by the judge in the service of justice.
- Training must be relevant to the professional practice.
- Not quantity but the quality of training matters.

The starting point was the identification of training needs of judiciary in the EU law. This process was aimed to provide answers to 3 fundamental questions:

What to train: what is the goal of the training; what is a „perfect European judge“ that we wish to create by training; what is the desired set of knowledge of EU law and skills to apply it; does every judge must be trained extensively in EU law; who needs what – profiling judges' competences;

How to train: what methodology; by learning or by doing; how to prepare training materials;

Who should perform the training. This question has two dimensions entity/trainers. Should it be national training school, European academies (like ERA) or EJTN facilitating and providing EU law training in its networking capacities? Who is best placed to perform EU law training for judges? The former is who is a perfect trainer for judges – academic, peer judge?

When KSSiP and its legal predecessor took over tasks of judicial training in 2006 the picture was that judges were trained for tomorrow with the use of the methods of yesterday. There were much training on EU law performed, many judges participated. The training sessions were mostly lectures performed by leading academics. Judges did gain the knowledge on EU, its institutional system, legal acts and legislative process, principles of EU law, internal market, and judicial cooperation. However they did not practice the application of EU law.

The process of analysing training needs in EU law was launched. The answers to the questions asked were based on:

- empirical research conducted among members of Polish judiciary in 2009 - 2010,
- EP-study on Judicial Training in the E U Member States of 2011,
- assessment of training activities performed,
- resolutions of EP and Council and communications of EC on judicial training.

The cornerstone of identification was the report prepared for KSSiP based on empirical research conducted among members of the Polish judiciary. The study was conducted as part of the doctoral thesis by Urszula Jaremba at the Erasmus University in Rotterdam, Faculty of Law.

The Statistical findings were the following:

Only 23% judges considered to be sufficiently informed about changes in EU law. In the case of national law it is 88%. Only 12% considered their knowledge of EU law as very good or good.

In the 12 months before the survey 67% of the judges undertook training in EU law. About 22% said the level of the training was high or very high. However, only 19% agreed with the opinion that training in EU law provide information on when and how EU law should be applied in a particular case and as many as 70% felt that the training is too theoretical.

42% judges had not dealt with EU law in cases in which they adjudicated in the last 12 months. In the group of judges who have used EU law almost 60% consulted the matter with someone else, with a clear majority of the help of a colleague of the court.

32% agreed with the opinion that training in EU law should be carried out by the judges. 64% believe that training in EU law should be mandatory and 57% of the judges each year should be trained in EU law.

91% confirmed the need to broaden their knowledge of EU law, and 95% declared their willingness to participate in further training in EU law.

Those figures shown what role EU law played in the daily judicial practice of national judges in Poland. EU law remained an abstract notion to many judges due to the lack of any practical experience with it. They did not see relevance of EU law for the daily professional practice. This made judges passive and resistant to the EU perspective of the case handled.

This survey proved that these problems are not limited to Poland but have a much broader scope. They do not even might be associated with the new MS.

Surprisingly the above alarming situation was not caused by the lack of trainings of EU law but because of its inadequacy. It was too theoretical, not giving the skills of proper application of EU law.

The conclusions and recommendations of this research were the following:

- Judges do need training in EU law.
- Judges do want to be trained in EU law.
- Judges need practice oriented training.
- Training must be adequate to the role that is being played by the judge in the service of justice.
- Training must be relevant to the professional practice.
- Judges need the access to the information on EU law.
- Training must be performed by practitioners rather than academics.
- Not all judges need to acquire the same scope of knowledge on EU law.

Another important study influencing the shape of the KSSiP strategy of training of judges in EU law was the ERA and EJTN study on Judicial Training in the European Union Member States of 2011 (see above).

It proved that (in 2011) 51% of judges and prosecutors in Europe declared that they had never participated in judicial training on Union or another Member State's law while 74% declared that the number of cases involving EU law had increased over the years.

Its key findings were following:

- Make training integral to work as a judge or prosecutor;

- Make training more efficient;
- Make training more practical (focus on needs, on practice);
- Widen access to training;
- Improve EU support for judicial training.

The EC Communication on "Building Trust in EU-wide Justice a New Dimension to European Judicial Training" repeats that European judicial training should be practice oriented to attract the practitioners necessary to the running of justice systems. It should be relevant for their everyday work, take place during short periods of time and use efficient learning methods.

To sum up, both studies, together with own assessment of KSSiP and EU Institutions documents led to creation of the system of training in EU law presented in the following chapters.

We are aware that objective of the EC is to enable half of the legal practitioners in the EU to participate in European judicial training activities by 2020 through the use of all available resources at local, national and European level. The undertaken steps are to facilitate this goal in Polish perspective. However the crucial issue for KSSiP is not to achieve the given number of judges trained but to organise training adequate to judge's needs, practise orientated. Most important is that they participate in the training of practical nature. Training should enable them to exist in the multi-centralised legal environment, to know how national and EU legislation interact and influence their everyday practice. Training must prove the relevance of EU law for daily judicial practice. EU law cannot remain an abstract and meaningless notion to judges.

Our aim is not only to achieve the given number of judges trained but, what is far more important, to achieve the high number of judges being able to apply the EU law correctly and efficiently.

Training must be differentiated depending on the professional profile of a judge (and prosecutor). There are elements common to all judges; however vast majority of EU legislation will never be applicable by each and every judge.

What is important, and both researches proved this, is that judges report that the number of cases involving EU law is increasing. The obligations of national judges as EU judges keep broadening. Since the accession of Poland to EU many of the rules which have been taken for granted for so long, are coming under sustained pressure, and new rules and norms are taking hold. Firstly reforms seek to modernize the justice system and to open up judiciary to the challenges of EU membership, there is the effect of the Internet and modern IT technologies, and thirdly, there are the severe budgetary constraints.

This is why training must be created in the way to address the challenges of the future.

Professor Richard Susskind in "Tomorrow's Lawyers", says this: "Wayne Gretzky, perhaps the finest ice hockey player of all time, famously advised to 'skate where the puck's going, not where it's been.' Similarly, when lawyers are thinking about the future, whether about their law firms or law schools, they should be planning for the legal market as it will be and not as it once was. In ice hockey terms, however, most lawyers are currently skating to where the puck used to be." To adapt his term to judicial training we have to predict what set of knowledge, skills and competences will be useful for judges in the future not to limit the training to what is needed at present.

The lesson learned from the outcome of the survey led KSSiP to create the systematic approach to judicial training on EU law. It is described in the following chapters. It is still being developed, there is still a long way to go, but at least we know where we are going and we are determined to get there.

## 2. WHAT TO TRAIN

### KEY FINDINGS

- It is excessive to expect national judges to comprehensively know EU law; .
- The basic goal of the training is making judges realize how the EU law can be used in everyday cases and what its consequences are.
- The aspects of EU substantial law should primary be treated as inseparable part of the training in national law.
- The judicial cooperation must be trained both nationally and in international dimension. The former is the training on the role and place of EU judicial cooperation rules in national proceedings and relation to national procedures. The latter is the possibility to discuss the functioning of EU judicial cooperation instruments with the colleagues form different MS, building mutual trust.

### 2.1. Introduction

Training must be differentiated depending on the professional profile of a judge. There are elements common to all judges; however vast majority of EU legislation will never be applicable by each and every judge.

It is excessive to expect national judges to comprehensively know EU law; yet, a reasonable familiarity with constitutional, material and procedural fundamentals thereof is a condition sine qua none of the proper functioning of national judges as EU judges

The approach must differ for the following 3 groups of subject matters.

Firstly - basic concepts and principles. This includes the constitutional law, the principles of EU law, its direct application and primacy and the consequences of these principles for judicial practice. Judges need to be aware of the interaction between EU legislative instruments and national legislation.

The second area of training is substantial EU law. Here the level of knowledge required depends on the scope of professional tasks of a judge.

Thirdly this is the judicial cooperation. All judges may be concerned by EU law and European judicial cooperation at some stage during their practice.

In each of these three pillars of judicial training of EU law there must be different scope of addressees, different level of training (national/international), different methodologies employed.

Underneath each of these pillars is analysed.

### 2.2. Basic concepts and principles – awareness rising

The basic goal is to make judges realize how EU law can be used in everyday cases and what its consequences are and teaching what the procedures in cases “of EU character” should be. Training is to ensure the ability to interpret the law in a way that is demanded by the EU law and to adjudicate with regards to the consequences of the primacy rules as well as direct and indirect effect of the EU law.

This kind of training should be addressed to each and every judge. It should be rooted in national law, based on cases from daily practise. Here the national approach is the best one. The training tools developed at the European level might be of the assistance.

KSSiP launched this training in 2011 as an multiannual project. We have trained the judges trainers, developed training materials including cases, publishes two handbooks (see chapter 3). Training in uniform manner organised by KSSiP takes place at the local level in 11 seats of court of appeals. 997 judges participated in them in 2012, the aim for 2013 is 880. We aim to increase the budget and train all the judges in 5 years.

### 2.3. EU substantial law

It is unrealistic to expect that judges will know all the body of EU substantial law as it is unrealistic that they do all body of national law and when providing training we have to focus on the domain that judges are adjudicating in.

EU directives affect a broad range of national legislation in the field of private law as well as civil and criminal procedure. The aspects of EU substantial law should primary be treated as inseparable part of the training in national law.

All in all, judges should be familiar with the substantive EU law according to their field of specialization. This familiarity should be acquired through training on national law.

Additional there is a need to create the "leaders" – judges who are experts in EU substation law (given branch of law) in every court around the country (see p. 4). They should participate in the EU substantial law training at European level. Subsequently trainers should be provided with the possibility of being trained at the European level together with theirs colleagues from different countries. Finally there are very narrow areas of law, where the limited number of judges should specialize in. In this case often there is no point in organizing the national trainings but the judges in question should be offered the possibility of participation in the international training events.

When organizing training on national law, usually focused on one issue of jurisprudence or legal instrument, KSSiP includes a session devoted to the European law perspective of this issue, where appropriate.

To sum up, the EU substantial law should primary be trained at the national level as inseparable an part of the training in national law. The training tools developed at the European level as well as methodologies used in different countries should be employed. European cooperation in this field is necessary.

### 2.4. Judicial cooperation

The judicial cooperation must be trained both nationally and in international dimension. The former is the training on the role and place on EU judicial cooperation rules in national proceedings and relation to national procedures.

The latter is the possibility to discuss the functioning of EU judicial cooperation instruments with the colleagues form different MS. For the smooth functioning of judicial cooperation instruments the mutual trust between judges from different MS is a must. This is why important role is to be played by possibilities of common participation in training sessions. That allows to mutual understand different approaches to the same legal instruments that must be applied in uniform manner in the EU. That might be pan-European or regional events. An example of the latter is cooperation of Visegrad Group countries within the judicial training and organized trainings on judicial cooperation in our region.

Crucial for building mutual trust and mutual understanding is possibility of participation in exchange programmes for judges.



### 3. HOW TO TRAIN

#### KEY FINDINGS

- Trainings are based on standard training modules developed and run with the use of workshop, case study method.
- Judges and prosecutors who are trainers have undergone methodological trainings and participated in courses on EU at the advanced level.
- The set of training material developed includes the methodology of trainings, training modules, training sessions' scenarios, cases with the scenarios of its resolving, lists of cases to be discussed and legal instruments to be analysed, etc.

The remarks in this chapter will focus on training methodology applied in the awareness rising trainings on basic concepts and principles. What is special about that is the new approach in the terms of methodology and scale of trainings. We aim at addressing all members of the Polish judiciary.

#### 3.1. Methodology

Trainings are based on standard training modules developed and run with the use of workshop, case study method. Each training session consists of one general module for the judges from different departments, and three modules profiled to the specialization of the participants. Each module is based on solving one case study as a starting point. The case is based on an actual issue that in fact could be dealt with in a given court (criminal, civil etc.). Next, basing on the case, the subject of the module is analysed with a specific instrument of the EU law or a regulation allowing to solve the case (e.g. in the situation where national law must be disregarded, pro-union interpretation must be given, a preliminary question (article 267 TFEU) must be asked, etc.). This approach is practise oriented and shows participants that EU law might be applied, EU law derived rights assured, in vast number of cases handled.

#### 3.2. Trainers

The trainings are conducted by judges and prosecutors (about 20 trainers). Judges and prosecutors who are trainers have undergone methodological trainings and participated in courses on EU at the advanced level organized by ERA. They have undergone methodological training on creating and conducting workshops based on case method. Trainers are divided in teams of two. All teams are running trainings parallel in the seats of all 11 Courts of Appeal in Poland. All trainings although run by different trainers are based on the same methodology, cases and materials. This is to assure the uniformity of trainings. At the end of each year trainers meet to evaluate the year's activity, exchange experiences and update methodology.

#### 3.3. Training materials

The set of training material for trainers and trainees has been developed within the cooperation of KSSiP with Polish Academy of Science. This includes the methodology of trainings, training modules, training sessions' scenarios, cases with the scenarios of its resolving, lists of cases to be discussed and legal instruments to be analysed, etc.

Trainings are accompanied by two publications. The first one is Polish edition by KSSiP of „Essential EU Law in Charts” by Prof. Christa Tobler, Jacques Beglinger. These materials present the union law in a clear and succinct way. The second is manual identifying crucial issues for the application of EU law „Application of EU law by judges of common courts and public prosecutors”. The concept of this book is exceptional among numerous publications on national courts obligations. It is practise oriented guide for judges.

## 4. NETWORK OF JUDGES EXPERTS IN EU LAW

### KEY FINDINGS

- Judges should be able to identify issue of EU law in the case. To solve it they might need the assistance.
- There is a must to create a network of judges "consultants".
- The important feature of this network is its sustainability.
- National networks of "judges consultants" should be coordinated at European level.

The research on the training needs confirmed that judges tend to consult the EU law issues that they face with their peers.

It was already concluded that it is excessive to expect all judges to comprehensively know EU law. The goal is that all are familiar with constitutional, material and procedural fundamentals. They should be able to identify issue of EU law in the case. To decide on the case respecting the EU law derived rights and obligations they might need the assistance.

There is a network of judges "consultants" being created. There will be a civil and criminal judge in each small and average court and each department of big courts appointed with the duty to serve colleagues with assistance on EU law issues. Members of this network are being selected from the judges already well trained in EU law, being trainers of KSSiP, combining judicial and academic career. There will be specialist trainings addressed to judges "consultants".

The important feature of this network is its sustainability. The similar network was created just before accession of Poland to EU. However its members once trained were not coordinated, not networked. After couple of years they left courts, changed jurisdictions, were promoted and the network disappeared. The newly created network must be managed, its members must be continuously trained and have a possibility to meet and exchange experiences.

It is crucial to coordinate this kind of networks at the European level aiming at exchange of best practices and methodologies of networking.

## 5. EUROPEAN COOPERATION

### KEY FINDINGS

- The European training activities and European financing can complement national trainings and financing and cannot be used to release the Member States from their responsibility.
- European level training activities should create a snowball effect for further judicial training activities on regional, national and local level.
- European support should step in not only where MS cannot act but also where they can but do not.
- EU co-financed projects should give a fishing rod not a fish to national training institutions and judges.

### 5.1. Where European input is required (subsidiarity)

The objective of the EC as legal practitioners training is concerned might be primarily achieved by national institutions responsible for judicial training playing an active role in EU law training. As it has already been mentioned that European training activities and financing can only complement national activities in this field.

Nevertheless it must be highlighted that even enormous efforts on national level will not give the expected effect without European level cooperation: networking, exchange of best practices, international seminars, exchange programmes and EU co-financing.

This European level input should be threefold:

- a. Coordination of European law training at national level, exchange of best practices and methodologies, working out and dissemination of best tools and methodologies, networking of training institutions and trainers;
- b. Training events at European level;
- c. Projects of European nature per definition.

Ad. A

The first group are the projects enhancing national performance, aiming at curricula building, training modules development, and distance learning tools development, events on identification of training needs and best practices and their dissemination. These are of a great assistance for national entities organising national EU law training process. They should create a snowball effect. Once equipped with the tools and methodologies of effective training national judicial schools will more efficiently fulfil their duties. The European projects should develop and test training tools that should be further implemented nationally.

Important element here is the networking. Only being in a close cooperation the national training entities can develop and exchange the above mentioned elements. Additionally the activity in the networks allows exchange of trainers and offer places for foreign participants in the national training events. Furthermore being a network enhances the work out of a common training project and its submission for an EU co-financing.

Ad. B

The second group is training activities at the European level, seminars addressed to the professionals of many or all MS. They are to complement, enhance or facilitate the national training events:

The examples of these are:

- Seminars for trainers;
- Seminars for members of national networks of experts/judges consultants;
- Seminars testing the training modules or other training tools developed at the European level;
- Judicial cooperation seminars aiming at building mutual trust and confidence;
- Seminars on training methodologies for judicial educators;
- Seminars on the substantial law, addressed to the limited number of experts or specialist in the given field of law; these are especially seminars on the topics that could not be addressed to the national judges at the national level due to the limited interests or narrowness of subject.

The added values of training events in question are following:

- give opportunities to interact with leading experts, academics and practitioners from abroad, such as judges and experts from the courts (ECJ, ECHR),
- allow to improve language skills,
- enable the exchange of ideas and establish contacts with judges and prosecutors from other states,
- play networking function.

However European support should step in not only where MS cannot act (given examples) but also where they can but do not. National judges should not be deprived of training of EU law due to the national financial constrained or lack of efficiency of national training. Here the steps should be taken to increase the national activity or to replace it to the necessary extend.

EU co-financed European projects should give a fishing rod not a fish to national training institutions and judges. Fishing rods are cheaper than fish. It is not efficient to train all national judges on issue that might be trained at national capacities. European level training should equip the national entities with the tools not accessible nationally, improve national trainings.

Ad. C

The third kind of European level training events are those that per definition require cooperation of partners from different countries and participation of judges of different jurisdictions.

The key examples are all kind of the exchanges: for judges, for trainee judges, for trainers, managers of training (educators), study visits to EU Institutions.

## 5.2. Common projects

Training events at European level can be efficiently performed within the projects co-financed by EC (especially the Civil Justice and Criminal Justice programmes). However there is a need to ensure that training projects presented by consortia of national structures for co-funding are of high quality. The European level facilitation is necessity to achieve it. Here there is a major role to be played by EJTN (see point 5.3.).

## 5.3. EJTN

EJTN is a key player on the European judicial training scene. Its role and supremacy should be strengthened and cannot be overestimated.

EJTN is perfectly tooled to:

- coordinate of European law training at national level, exchange of best practices and methodologies, working out and dissemination of best tools and methodologies, networking of training institutions and trainers;
- perform and facilitate training events at European level;
- organize projects of European nature per definition.

EJTN is a perfect platform of networking national judiciary training entities and coordinating its activities.

It is equally suitable to coordinate the European level training activities of European associations of legal professions such as the CCBE, the CNUE, the ENCJ, the Network of Presidents of Supreme Judicial Courts, the European Union Forum of Judges for the Environment, etc. EJTN should play here an important coordinative role.

The EJTN can also be, as required by EC, an agent for change by ensuring that training projects presented by consortia of national structures for co-funding at European level meet criteria and are of high quality.

KSSiP is an active member of EJTN, maximally uses the training opportunities created by EJTN for national judiciary. KSSiP believes that EJTN is a key player in addressing the national training needs in European law.

#### 5.4. ERA

ERA provides continuous training for legal practitioners at the advanced level. It has extensive experience in successfully organizing European law seminars. ERA's role is important to develop judicial training at European level as described before.

Important role that is being played by ERA, which KSSiP benefits from, is the assistance in organizing the national or regional level training events.

KSSiP is cooperating closely with ERA on many platforms. We are creating partnerships to apply for EU co-financing; ERA is performing tailor-made training events on our requests. Finally KSSiP is benefiting from the training events organized by ERA, where KSSiP trainers and judges experts on EU law participate.

It must be highlighted that membership of ERA in EJTN gives the added value to the networks' activities.

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# **THE TEACHING OF EUROPEAN LAW AT THE GERMAN JUDICIAL ACADEMY: PRACTICE-ORIENTED CROSS-LINKING OF EU LAW AND NATIONAL LAW**

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## **ABSTRACT**

The Briefing Note firstly analyses the reasons for the relative reluctance of many domestic judges (and prosecutors) to fully apply European law in their day-to-day work. In a second step it is shown how the German Judicial Academy tailors the content and the methods of its residential training courses on specific issues of European law to the real practical needs of acting judges (and prosecutors).

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## EXECUTIVE SUMMARY

### Background

With currently approximately 25,300 acting persons, Germany has the highest combined number of judges (20,200) and prosecutors (5,100) of all EU Member States. They serve in five different branches of jurisdictions (civil and criminal courts; administrative courts; labour courts; social security courts; fiscal courts). An important number of them are more or less specialized in particular fields of the law, including of course all the issues where the domestic law is to a bigger or smaller extent influenced, overlapped or even dominated by European law. As the German judicial system is regionalized – each of the 16 States has its own Ministry of Justice, most of them have their own constitutional courts –, the vast majority of the 25,300 acting judges and prosecutors are State agents, with only a relatively small number of federal judges and federal prosecutors.

The “Deutsche Richterakademie” (The German Judicial Academy<sup>79</sup> = GJA) is Germany's only supra-regional (national) institution to carry out in-service further training for acting judges and prosecutors. In addition to the hundreds of judicial training events organized autonomously by the 16 States, GJA annually provides, in its two full-accommodation conference sites in Trier and in Wustrau, more than 140 three-to-nine-day residential training courses for a total nearly 5,000 participants.

A little more than half of the courses – i.e. around 75 – are geared to legal specialist topics (whereas the other small half of the curriculum is dedicated to interdisciplinary conferences and to behavioural seminars). About one fifth of the legal specialist courses (so approximately 15) focus on international and European law topics, seven to ten of which dealing specifically with European law (EU law and – to a lesser extent – CoE law). One course has places for up to 40 participants, so that approximately 550 to 600 judges (and prosecutors) can annually benefit from GJA residential training courses specifically geared to cross-border issues.

Annually, between 20 and 30 thematically fitting training courses are opened for up to ten participants (judges and prosecutors) from other EU Member States. One of these courses becomes a so-called EJTN “Upgrade Activity” and provides simultaneous German-English interpretation.

E-learning or blended learning tools are currently not offered by GJA. This is due to the specific federal character of the institution. Indeed, the Federal Government as well as all the 16 States hold a stake in GJA, and the programme planning is mainly shared by these 17 stakeholders, whereas the GJA Administration itself only plans a handful of legal language seminars per year. Anyway, to the author's mind, distance learning can at best play a minor role in the teaching of European law for the reasons laid out sub 1.2. and sub 2.7.

GJA is not directly implied in the EJTN exchange programme for judges and prosecutors. Due to GJA's specific organizational form, the key stakeholders in the exchange programme are the Federal Ministry of Justice in Berlin (FMoJ) and the 16 State judicial administrations. Neither does GJA hold a stake in the carrying-out of post-university initial training for future judges, prosecutors and private lawyers. The two years of practical internships and the final examinations are indeed organized autonomously by the 16 States and their State jurisdictions. Currently, European law topics do not play a prominent role in the initial training, which is to be regretted.

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<sup>79</sup> [www.deutsche-richterakademie.de](http://www.deutsche-richterakademie.de).



## Aim and methodology

The aim of the present Briefing Note – inspired by the European Council’s 2010 ambitious Stockholm Programme on judicial training<sup>80</sup> and more specifically by the European Commission’s 2011 Communication on European judicial training within the Stockholm Action Plan,<sup>81</sup> and preparing European Parliament’s November 28<sup>th</sup>, 2013 Workshop on “The training of legal practitioners: teaching EU law and judgecraft” – is to provide in a first step an empiric and conceptual analysis of the – be it knowledge-based or practical – difficulties which the average German judge (and prosecutor) may face when he/she has to apply European law (Chapter 1), and to then demonstrate the various measures which GJA has undertaken and still undertakes to further enhance the German judiciary’s<sup>82</sup> readiness to properly apply European law, and to thus promote the necessary understanding that European law is no less than an integral part of the domestic law (Chapter 2).

Concerning methodology, the analysis of the current state of EU law awareness among the German judiciary in Chapter 1 takes EP’s 2011 comprehensive Study on “Judicial Training in the European Union Member States” as point of origin.<sup>83</sup> Experiences from the author’s personal professional life as a prosecutor and as a judicial training organizer will help to complete the picture, especially regarding particular fields of law where the awareness for the importance of European law seems to be even less perceived than in other areas (1.1.).

In a second phase, a glimpse on the key findings of contemporary adult learning experts will show why overcome traditional frontal lectures are even less suitable to promote the awareness of the practical relevance of European law among judges and prosecutors than they are fit to properly communicate the impact of domestic law issues.

The analysis will demonstrate how a modern – entirely practice-orientated – mix of teaching and learning methods might help to improve not only the mere quality of EU law application by judges (and prosecutors), but also the awareness for this specific field of law and the willingness to apply it correctly (1.2.). Indeed, the latter aspects are closely entwined.

Chapter 2 is then entirely dedicated to GJA’s awareness of the particular importance of training on European law within the in-service training curriculum, and to the institution’s manifold recent initiatives to provide an as comprehensive and as diverse as possible training programme on European law topics for acting judges and prosecutors.

With a particular focus on the training years 2011 to 2014, it will be shown that, as one keystone of the overall concept, practice-orientated basic introductory courses on EU law are offered as a first awareness-raising incentive (2.1.), but that at the same time an important number of regularly offered training courses are dedicated to the highly practice-relevant interface of European law and domestic law in various specific fields of specialization (2.2.).

These series of regular conferences specifically geared to European law issues are completed by ad hoc training courses on particularly urgent and practice-relevant EU law topics, the FMOJ playing here an important role in the planning of the events on behalf of GJA (2.3.).

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<sup>80</sup> European Council (2010), The Stockholm Programme: An Open and Secure Europe Serving and Protecting Citizens, EC (2010/C 115/1), Brussels.

<sup>81</sup> European Commission (2011), Communication for the Commission to the Council and the European Parliament on “Building trust in EU-wide justice: A new dimension to European judicial training”, COM (2011) 511 final, Brussels.

<sup>82</sup> In this Briefing Note the term “judiciary” is used in its continental (Civil Law) understanding, i.e. comprising the courts and the prosecution service.

<sup>83</sup> A link to the study can be found on the website of ERA ([www.era.int](http://www.era.int)) under the menu point “About ERA”; see also below REFERENCES.

Outside the named set of training courses which are entirely and exclusively conceived from a European law perspective, other elements of GJA's training curriculum also serve the purpose to put the participating judges and prosecutors more at ease when dealing with cross-border files. It will be shown that:

- In the vast majority of cases, GJA's legal specialist conferences, even when they are in principle focused on domestic (substantive or procedural) law topics, dedicate at least half a day or a day of the agenda to European law-related matters (2.4.);
- Legal language training courses in English, French, Spanish and Italian (in some cases with basic, advanced and specialized modules) allow attendees not only to improve their language-based knowledge and skills, but also to get a much better grip on handling letters rogatory from abroad asking for legal / judicial assistance (2.5.);
- The joint organising of practice-orientated bilateral or multilateral seminars with other national judicial training institutions as well as with European training stakeholders such as ERA and the EJTN largely enhances the mutual understanding and thus the willingness to apply, if required, the law of another country (2.6.).

Finally, it will be demonstrated that modern training for acting judges and prosecutors on European law matters at GJA combines an important variety of teaching and learning methods, putting specifically forward modern principles of "androgogy" and "facilitated and contextualized learning".<sup>84</sup> It will be shown that these methods are a natural prerequisite, if the goal is to make training contents as practice-orientated as possible (2.7.).

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<sup>84</sup> For more details on this terminology see below sub 1.2.

## GENERAL INFORMATION

### KEY FINDINGS

- The awareness of German acting judges and prosecutors for the practical importance of European law and for its entwinement with domestic law has as a whole considerably risen during the last decades.
- There are, however, still important challenges to be faced in the promotion of a natural, efficient, homogeneous and consistent application of European law by all members of the German judiciary (lack of awareness; better knowledge of the domestic law; little dogmatic knowledge of substantive European law; little knowledge of particular proceedings; difficult access to European law sources; snugness; resignation ...).
- National and European judicial training institutions have a particularly high responsibility for the promotion and the in-depth implementation of European law as natural part of the respective domestic law in the judiciaries of the 28 EU Member States. They should smoothly co-operate to achieve this task.
- In-service training for acting judges and prosecutors on European law has to be as practice-orientated and as learner-focused as possible, offering a broad mix of methods (lectures, discussions, workshops, case studies, mock trials, thematic field trips ...).
- GJA's experience shows that a basic introductory training course on EU law focusing on its particular relevance for the working practice of judges (and prosecutors) can serve as ice-breaker for reluctant colleagues.
- GJA's experience shows that particular emphasis should be given in the curriculum to regular training courses relating to specific fields of the law, elucidating, in the respective field, the practical interface of European law and domestic law. This includes – in all of these courses – the highlighting of the particular importance of the preliminary ruling procedure under Art. 267 TFEU. Specific methods for the interpretation of legal texts having a European origin are also an important element of the courses.
- GJA's experience shows that ad hoc training courses on urgent EU law topics with high practical relevance must be offered in due course.
- GJA's experience shows that a neat distinction between domestic law issues on the one hand, and European law topics on the other, is not possible anymore, and that European law has thus to be a part of virtually each and every legal specialist conference for acting judges and prosecutors.
- GJA's experience shows that legal language courses for judges and prosecutors in the most widespread languages within the EU are an adequate means to retrench fears concerning the application of foreign law and at the same time to promote constructive and efficient cross-border co-operation.
- GJA's experience shows that bilateral or multilateral seminars organized in co-operation with other national or European judicial training institutions particularly advance the mutual understanding of domestic judges.

Germany has in principle highly qualified – and often highly specialized – judges (and prosecutors) in its five branches of jurisdictions (civil and criminal courts; administrative courts; labour courts; social security courts; fiscal courts). With approximately 25,300 acting persons, the country – having common borders with nine other European countries –

has the highest combined number of judges (20,200) and prosecutors (5,100) of all Member States of the EU.

One institutional guarantee for the rather high quality of the judiciary is that only those among the 15 to 20% of the best in the final examination after two years of practical juridical internships stand a real chance to apply for a post in the judiciary (prosecution service included). Furthermore, structured interviews or assessment centres are carried out in order to ensure that the newly-appointed judges and prosecutors do not only have the necessary legal and judicial knowledge, but also the relevant psychological and social capacities.

In spite of these time-tested institutional safeguards for a high quality of the German judiciary, and even though nowadays it is a well-known fact that virtually any field of the law is intrinsically tied to European law, a German judge (and prosecutor) does not significantly differ from a colleague from any other European country in that he/she is habitually more at ease when applying domestic law than when applying EU law or the CJEU preliminary ruling procedure under Art. 267 TFEU (this is all the more true for the ECHR and for Strasbourg's ECtHR rulings on Convention violations).

Indeed, a thorough analysis of the afore-mentioned EP 2011 Study on "Judicial Training in the European Union Member States" shows that – independently of the size of the respective domestic judiciary – judges (and prosecutors) all over the EU face virtually the same difficulties in properly applying European law on their domestic files. Even their degree of open-mindedness towards the substantive and procedural rules stemming from European institutions does not seem to depend significantly on the regions where they work.

It should thus be treated as a given fact that the difficulties encountered in any domestic judiciary of the EU in the sound application of European law are not a national or a geographic problem. In reality, it is a – typical – systemic challenge, by the way to be found not only in the law and in the judiciary, to convince an in principle learned and knowledgeable person to adopt and implement totally new rules, and all the more stemming from a radically different institutional and dogmatic setting. It is perhaps a quite human reaction that a domestic judge accustomed to his/her national codes and to the specific ruling style of his/her supreme court(s) for years and years shows some scepticism towards unfamiliar – and from a subjective standpoint sometimes even "odd" – rules.

That is why – although this Briefing Note is necessarily written from a German perspective, and German experiences are widely covered – the following analysis is based on more or less universally acknowledged (empiric and conceptual) findings and tries to develop universally true and applicable answers and solutions. The universality of the task is by the way in itself a pledge for widespread institutional co-operation among the domestic and the European judicial training stakeholders. The wheel does indeed not have to be permanently re-invented by several dozens of players in the field of EU law training.

# 1. DIFFICULTIES OF THE JUDICIARY IN THE PROPER APPLICATION OF EUROPEAN LAW – ANALYSIS AND POTENTIAL REMEDIES

## KEY FINDINGS

- The awareness of German acting judges and prosecutors for the practical importance of European law and for its entwinement with domestic law has as a whole considerably risen during the last decades.
- There are, however, still important challenges to be faced in the promotion of a natural, efficient, homogeneous and consistent application of European law by all members of the German judiciary (lack of awareness; better knowledge of the domestic law; little dogmatic knowledge of substantive European law; little knowledge of particular proceedings; difficult access to European law sources; snugness; resignation ...).
- National and European judicial training institutions have a particularly high responsibility for the promotion and the in-depth implementation of European law as natural part of the respective domestic law in the judiciaries of the 28 EU Member States. They should smoothly co-operate to achieve this task.
- In-service training for acting judges and prosecutors on European law has to be as practice-orientated and as learner-focused as possible, offering a broad mix of methods (lectures, discussions, workshops, case studies, mock trials, thematic field trips ...).

European law has become an increasingly important factor for the domestic law systems since the foundation of the European Communities in the 1950s. Nowadays, virtually all fields of the law are influenced by EU law (regulations, directives, framework decisions, etc.), as well as by CJEU decisions. During the last six decades, awareness of German judges and prosecutors for the importance of European law has risen considerably. The judge who has not even heard about EU law simply does not seem to exist anymore.

However, as will be shown in-depth sub 1.1., there are still a considerable lack of knowledge and a non-negligible amount of ignorance and reluctance when it comes down to properly and comprehensively apply European law rules. This is a valid finding for the highly EU law-influenced domestic substantive law (via regulations and directives), as well as for procedural questions, raised for example by the CJEU preliminary ruling procedure under Art. 267 TFEU, or by the framework decision on the European Arrest Warrant (EAW). The empiric and statistical analysis also demonstrates that specific categories of judges (and prosecutors) are even less aware of the impact of European law than others.

In view of the particular difficulties the national and European judicial training institutions are faced with in the field of European law, it is all the more important that the training offered is as practice-orientated as possible and properly applies the consolidated findings of adult learning experts on modern learning methodology. Thus, the conceptual analysis (1.2.) prepares the ground for the illustration in Chapter 2 of recent practical examples of training carried out by GJA on European law.

### 1.1. Empiric and statistical approach: Key findings of the survey conducted by ERA and the EJTN for the EP in 2010/11

The 2011 EP Study summarizing the results of an impressive survey conducted by ERA and the EJTN (assisted by national training experts) on judicial training in the EU, especially in

the field of European law,<sup>85</sup> was based on answers to a thorough questionnaire given by a total of more than 7,000 judges, prosecutors and court staff from all (at the time 27) EU Member States.<sup>86</sup> It came to ambivalent results:

While, on the one hand, it underlined that:

"The battle to persuade judges and prosecutors of the relevance of EU law for their work seems largely to have been won: there is a high degree of awareness of the relevance of EU law across all Member States and there is an overall impression that the number of cases involving EU law is rising",

It revealed at the same time that:

"The knowledge of how and when to apply EU law, in particular the use of the preliminary reference procedure, is still lacking,"

And that:

"Just over half of judges and prosecutors who responded to the survey (53%) had received continuous training in EU or another Member State's law. [...] 21% had received it from their national judicial training institutes."

A closer look on the thorough comparative assessment carried out in the Study reveals that – independently of their national origins – almost three quarters of the responding judges estimated that EU law was relevant to their judicial functions, whereas only slightly more than half of the responding prosecutors shared this opinion.

The results of the survey also demonstrate that – not surprisingly – the awareness and the knowledge of European law as well as the willingness to apply it are higher among those members of the judiciary who deal with EU law issues more frequently. Here the biggest gap was discovered between administrative judges on the one hand, more than two thirds of which quite regularly have to apply European law according to the Study, and criminal judges and prosecutors on the other. Less than one third of the latter seemingly have to apply European law on a regular basis, which is quite a striking finding in view of important recent EU instruments in the field of criminal law (2000 EU Convention on Mutual Legal Assistance in Criminal Matters; EAW), and in view of the immense importance of the jurisprudence of Strasbourg ECtHR on Articles 6 and 7 of the ECHR.

Independently of the area of specialization, the knowledge among members of the domestic judiciaries on supporting instruments / institutions such as the European Judicial Networks in Civil and Commercial Matters and in Criminal Matters or Eurojust is deplorably low. The problem is aggravated by the fact that only 21% of the responding judges and prosecutors said that they were proficient in at least one foreign language (mostly English).

By quoting from answers to the survey, the Study stresses the "vicious circle" to which the lack of awareness of the practical impact of EU law leads: The less a judge or a prosecutor has to deal with European law-related matters, the more he/she will be prone to apply his/her domestic law even where EU law should be applied. And this situation can indeed be a disincentive for members of the judiciary to undertake EU law training.

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<sup>85</sup> See European Parliament – Directorate-General for Internal Affairs (2011), *Judicial Training in the European Union Member States*, PE 453.198, Brussels (see also footnote n° 5). The following analysis of the key findings is based on the Executive Summary (pp. 5 to 12) and on the chapter on "Comparative Assessment" (pp. 25 to 61).

<sup>86</sup> Nearly 6,100 of the respondents were acting judges and prosecutors. This represented about 5% of the nearly 120,000 judges and prosecutors in the 27 EU Member States at the time (Croatia excluded). From Germany came quite impressive 1,346 answers out of a contingency of (at the time) 25,222 judges and prosecutors. It might nevertheless be realistic to point out that these answering 5.3% of the German judiciary were without a doubt not entirely representative, as the mere fact to be willing to answer a rather long online questionnaire on EU law and related training topics shows a genuine interest in the matter, which cannot be taken for granted for all German judges and prosecutors.

Another key finding of the Study is that – all in all – only a minority of one fourth or at best one third of the members of EU’s domestic judiciaries are familiar with the technical details of the CJEU preliminary ruling procedure under Art. 267 TFEU, even though this procedure is the very pillar stone for a uniform application of European law throughout the EU. Even one fifth of the responding Supreme Court judges were not really aware of their obligations under the preliminary ruling procedure.

The professional experience of the author of this Briefing Note as criminal and civil judge as well as prosecutor in economic crime matters in the State of Baden-Wurttemberg and as training organizer on State and on national level perfectly matches the key findings of the Study: Scores of otherwise open-minded and excellent colleagues showed a non-negligible reluctance in the application of EU law rules, especially concerning letters rogatory on mutual legal assistance (the reluctance somewhat diminished when linguistic and conceptual help was offered). And the lack of awareness / knowledge was indeed highest in the field of criminal law.

Concerning more specifically the shortcomings and obstacles to judicial training in EU law, the Study lays out that – in addition to the already mentioned points of lack of awareness and lack of language skills – the following aspects seem to be relevant:

- Workload;
- Lack of information on the training curricula;
- Short notice of upcoming training events;
- Lack of places and lack of funding;
- Institutional opposition within the sending jurisdictions;
- Incompatibility of a several days’ absence from the family with work-life balance.

However, all these obstacles (some of which might though be more a pretext to appease a bad conscience) are not exclusive to European law training. They are encountered by all national and regional judicial training stakeholders. It is the latter’s task to overcome these difficulties by offering and promoting an attractive training curriculum on European law topics. “Attractive” in this context means up-to-date, diverse in topics and modern in methodology, practice-orientated and accessible.

## 1.2. Conceptual approach: modern adult learning theory

Based on the analysis sub 1.1., it seems quite obvious that any national or European judicial training institution has the difficult task to tailor its offer on European law-related issues in such a way that it gives a true incentive to the average domestic judge (or prosecutor) to take an interest in the a priori extrinsic topic. A priori, this interest cannot be raised by theoretical and dogmatic lectures in front of a huge audience on little practice-relevant topics such as the Primary European Law (i.e. the Treaties since the beginning of the 1950s) or the “ordinary legislative procedure” under Art. 294 TFEU.

Adult learning experts turn the afore-mentioned very recurrent shortcomings and obstacles to positive training requirements. According to the findings of an Australian adult learning expert, C. Egle, in 2009,<sup>87</sup> adult learners:

- Need to validate the information from their own values and attitudes;
- Are responsible – so let them set goals and help plan;
- Need to decide for themselves what is important to learn;
- Expect that what they are learning can be applied immediately;

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<sup>87</sup> Egle, Caron (2009), A Guide to Facilitating Adult Learning, Australian Government, Department of Health and Ageing, Canberra, p. 3 and 4.

- Want to be actively involved in their learning;
- Need to see the relevance;
- Need to feel confident in their learning environment.

With the formulation of these requirements, C. Egle has deepened and concretized what has become known among training experts, since the 1980s/90s,<sup>88</sup> as so-called "androgogy", i.e. an adult-learners-centred and problem-posing approach as opposed to the traditional teacher-directed pedagogy. Contemporary adult learning experts hold, however, that the distinction between adult-centred "androgogy" and child-centred pedagogy is somewhat misleading because the learning styles might in principle differ independently of the age of the trainee. That is why the Californian adult learning expert L. Herod prefers the distinction between teacher-centred "Directed Learning" on the one hand, and learner-centred "Facilitated Learning" on the other.<sup>89</sup> And one particularly successful element of "Facilitated Learning" would be "Contextualized Learning" in that sense that learning should "be framed around realistic situations in which the skill would be used".<sup>90</sup> The following chapter will set out how the GJA tries to implement these methods in its curriculum on European Law.

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<sup>88</sup> The term has been conceived and explained in-depth by the American adult learning expert Malcolm S. Knowles (1980, updated 1990), *The Modern Practice of Adult Education; From Pedagogy to Androgogy*, Cambridge (USA), pp. 40 et seq.

<sup>89</sup> Herod, L., EdD (2002, updated 2012), *Adult Learning: From Theory to Practice*, California, pp. 7 et seq.

<sup>90</sup> Herod, L., *Ibid.*, pp. 14/15.



## 2. THE GERMAN JUDICIAL ACADEMY'S MULTI-LAYERED RESPONSES TO THE TRAINING NEEDS ON EUROPEAN LAW

### KEY FINDINGS

- GJA's experience shows that a basic introductory training course on EU law focusing on its particular relevance for the working practice of judges (and prosecutors) can serve as ice-breaker for reluctant colleagues.
- GJA's experience shows that particular emphasis should be given in the curriculum to regular training courses relating to specific fields of the law, elucidating, in the respective field, the practical interface of European law and domestic law. This includes – in all of these courses – the highlighting of the particular importance of the preliminary ruling procedure under Art. 267 TFEU. Specific methods for the interpretation of legal texts having a European origin are also an important element of the courses.
- GJA's experience shows that ad hoc training courses on urgent EU law topics with high practical relevance must be offered in due course.
- GJA's experience shows that a neat distinction between domestic law issues on the one hand, and European law topics on the other, is not possible anymore, and that European law has thus to be a part of virtually each and every legal specialist conference for acting judges and prosecutors.
- GJA's experience shows that legal language courses for judges and prosecutors in the most widespread languages within the EU are an adequate means to retrench fears concerning the application of foreign law and at the same time to promote constructive and efficient cross-border co-operation.
- GJA's experience shows that bilateral or multilateral seminars organized in co-operation with other national or European judicial training institutions particularly advance the mutual understanding of domestic judges.

The analysis in Chapter 1 has underlined the particular importance of sound judicial training on European law matters – “sound” meaning sufficient in numbers and diversity, and modern in methodology – being provided by the national training institutions. GJA has understood the message. Indeed, in a recently published 75-page methodological Issue Paper<sup>91</sup> the “Programming Conference” of GJA (i.e. its Managing Board) has explicitly stated that an

“Important building block [of the curriculum] is the array of conferences dealing with European law. Due to the increasing significance of European law, it is necessary to offer a wide range of conferences in this field. First of all, these include introductory conferences on the topic. However, more specific conferences that deal with the interface between national law and European law are of particular importance. Language courses round out this range of conferences.”

An analysis of the curricula from 2011 to 2013, and of the upcoming curriculum for 2014, in respect of the content-entwining of domestic law and European law, and in respect of modern participatory methods, shows that GJA seems to have achieved the self-set goal in a rather satisfactory way, even though there is of course always potential for further improvement.

<sup>91</sup> Deutsche Richterakademie (2012), What Constitutes Good Further Training?, Trier, p. 8 and – in the summary of the key findings – p. 43.

## 2.1. Annual basic introductory courses on European law

In its curricula, GJA annually offers one four-day basic introductory training course on European law for up to 40 participants. It is called "An Introduction to European Law; the Law of the European Union". The course covers elementary questions of European law (insofar as they are relevant for the judiciary), such as the constitutional and legislative framework of the EU, the different kinds of interfaces between EU law and domestic law, the influence of EU law and of the jurisprudence from the CJEU on the domestic jurisprudence and on chosen other Member States, the preliminary reference procedure, but also the functioning and the competencies of the ECtHR. Methods are lectures, discussions and a field trip to the CJEU.

Experience shows that this one basic introductory training course seems to be roughly sufficient to cover the existing training needs. On the one hand, the 40 places are normally fully booked. On the other hand, the seminar is seldom – and never significantly – overbooked. One reason for this – at first glimpse surprising – finding in a judiciary of the afore-mentioned seize might be the rather high degree of specialization among judges and prosecutors. The more specialized (and also the more experienced) judges and prosecutors will prefer to attend the more specific training courses described sub 2.2., and sub 2.3.

## 2.2. Regular residential training courses cross-linking the most important European law topics with the domestic law

As already stated above, European law nowadays influences virtually each and every field of the law. The inevitable complexity caused by the entwinement of domestic law in a specific area – often in itself rather complicated – with the superposed EU law, and the multifaceted and differentiated jurisprudence of the CJEU make specialized European law training courses for specialized judges (and prosecutors) an absolute necessity. One could even say that regularly offered seminars which – in a very practice-orientated way – highlight the interface of EU law and domestic law in various fields indeed form the very core of GJA's curricula on European law. Attendees learn, amongst others, how and when to apply the CJEU preliminary ruling procedure under Art. 267 TFEU in their respective fields of specialization, how to interpret statutes based on European law, and how to interpret rulings by the CJEU and by the ECtHR.

Between 2011 and 2014 alone, GJA has carried out and will carry out the following four-to-five-day residential training courses in the indicated rhythms:

- "European Law in the Practice of Administrative Courts" (annually);
- "Current Influences of European Law on Domestic Administrative Law" (every two years);
- "European Law Influences on Domestic Criminal Law" (every two years);
- "International Co-operation in Criminal Matters" (annually);
- "European Law in the Practice of Civil Law Jurisdictions" (annually);
- "First Instance Civil Procedure – Developments in the European Domestic Judiciaries" (every two years);
- "International Family Law" (every two years);
- "A Revolution in International Family Law: EU Regulations and International Treaties instead of Conflict of Laws – What Changes?" (every two years);
- "EU and Fiscal Law – Topics and Trends" (annually);
- "European Law Influences on Domestic Labour Law" (every two years);

- “German Labour Law in the European Context” (every two years);
- “European Social Security Law” (every two years)
- “On the Independence of the Judiciary – A European Comparison” (annually)
- “International Courts” (every two years).

The methods which are used to make the courses as practice-orientated as possible will be indicated in-depth sub 2.7.

### 2.3. Immediate reactions to particularly accentuated training needs on a European law matter

The courses mentioned sub 2.2. rather satisfactorily cover the permanent European law training needs of Germany’s judges and prosecutors. However, European law is more dynamic in some fields than in others. That is why any national (or European) judicial training institution has the obligation to organize ad hoc courses on particularly current and urgent fields of European law.

In the federalized structure of Germany, it is in particular the FMOJ with its various legislative and international departments which identifies the named accentuated training needs and which then organizes ad hoc training courses to be carried out in the premises of GJA in Trier and in Wustrau. Singular courses on current EU law topics planned by the Federation for GJA between 2011 and 2014 were and are:

- “European (and International) Human Rights’ Protection”;
- “Current Developments in Trademark Law on the National and on the European Level”;
- “Airline Passengers’ Rights under Regulation (EC) N° 261/2004”;
- “An Introduction to German and to European Data Protection Law”;
- “Practical Aspects of International Litigation in Family Matters”.

To sum up the findings sub 2.2. and 2.3., quite an impressive number of 15 different fields of European law have been dealt with by GJA in a four-year period in its courses dedicated exclusively to cross-border issues. But of course, in view of the intrinsic entwinement of domestic law and European law, the teaching of European law must not be reserved exclusively to specific training courses in that area.

### 2.4. European law as integral part of the vast majority of legal specialist conferences at GJA

About 60 of GJA’s approximately 75 annual training courses on “hard” juridical topics focus on domestic law issues. But that does of course not mean that they ignore European law. The interaction between domestic law and EU law in particular is that intense that it might even be asked whether genuine domestic law is not on the verge of disappearance. So it is no wonder that at least four fifths of GJA’s courses on domestic law issues give a more or less prominent place to European law.

Concerning civil law, the regularly offered course on bankruptcy law, for example, dedicates a whole day on EU law concerning cross-border bankruptcies. A field trip to the CJEU is included in the agenda. And it is just not imaginable to organize a conference on insurance law or on competition law without taking into account the various impacts of EU law in these matters. As regards criminal law, any seminar on fighting economic and financial or organized crime or terrorism must logically contain practical information on European and international law influences on the gathering of cross-border evidence, on defendants’ and victims’ rights, etc. And finally concerning public law, it must be stated that a domestic law

training course dedicated to public finances (subsidies, public procurement, etc.) or to the status of foreigners and asylum-seekers is in reality a "hidden" training event on European law.

Recently, the influence of EU law has even begun to extend to typical soft skills' issues: Directive (EC) n° 52/2008 on certain aspects of mediation in civil and commercial matters directly influences the agendas of GJA's three to four annually offered behavioural training courses on mediation.

## 2.5. Legal language courses

One particular difficulty of European law is caused by the fact that all 24 official languages of the EU have theoretically to be taken into account in the interpretation of a regulation, a directive or a framework decision. Though this is of course just unfeasible for a practitioner, it is nevertheless true that a decent knowledge in the most important languages of the EU<sup>92</sup> might be enormously helpful in the sound application of European law on a domestic case. And mutual legal assistance in civil or criminal matters becomes much more natural – and much more efficient and quicker – for anyone with legal language skills in at least one foreign tongue.

For the named reasons, GJA regularly offers entirely practice-orientated legal language courses (of four to five days each) in:

- "English Law" (basic, advanced and specialized modules co-organized with the Law School of Norwich University of East Anglia);
- "Droit Français" (basic, advanced and specialized modules co-organized with the French Unit within the Law Faculty of Trier University);
- "Derecho Español" (basic and advanced modules co-organized with the Spanish Judicial School);
- "Diritto Italiano" (for the moment one basic course co-organized with the new Italian School for the Judiciary).

## 2.6. Bilateral and multilateral seminars in co-operation with other European judicial training stakeholders

Mutual personal and legal understanding and trust between judicial practitioners from different countries can be most effectively promoted by bilateral or multilateral residential training courses bringing together judges (and prosecutors) from at least two different countries, allowing them to exchange on practice-relevant cross-border issues.

GJA has internalized that principle and concluded, during the last five years, privileged partnerships with the national training institutions of three other European countries:

- The Training Council within the Austrian Federal Ministry of Justice;
- The Justice Academy of Turkey (JAT);
- The French National School for the Judiciary (ENM).

GJA and the named three institutions annually co-organize bilateral seminars on important contents- and methodology-based cross-border issues, each second event being carried out in the premises of the GJA.

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<sup>92</sup> From a statistical standpoint, that would be – apart from German – English, French, Italian and Spanish.

In addition to this, GJA has hosted, during the last five years, bilateral seminars with the judiciaries of the People’s Republic of China, of Japan, of Russia, and of the United States of America.

Judicial and legal training institutions on the European level, such as ERA and the EJTN, play a pivotal role for the multilateral co-ordination of European law training and for the dissemination of modern concepts of judicial training in that field. GJA successfully co-operates with both ERA and the EJTN.

In July 2013, two multilateral training events were held in GJA’s Trier Conference Site: A 1.5-day methodological EJTN Seminar on “Specialized Modules on Continuous Training” brought together 29 trainers and training organizers from 19 EU Member States, and a 1.5-day so-called “Regional Conference” co-organized by ERA and GJA on “European Cross-border Litigation in Civil Matters” united 27 civil judges from Germany, Austria and Bulgaria.

In spring 2014, an interactive EJTN Criminal Justice Seminar on the EAW with 40 to 45 participants from three EU Member States will be held in GJA’s Trier Conference Site. And ERA and GJA have entered into a joint bid for the EU financing of another “Regional Conference” in Trier in 2014, this time on EU competition law.

## 2.7. Mixed methods in training courses dedicated to European law topics: Facilitated and contextualized learning

As outlined sub 1.2., a modern and practice-orientated mix of methods is of utmost importance for offering an attractive and sustainable European law training curriculum for acting judges (and prosecutors). Indeed, it is more than a platitude that practice-relevant contents can only be taught successfully in a contextualized setting. Nevertheless, this cannot go without a share of “traditional” lectures, as European law in all its complexity necessarily needs some first knowledge input. But it has to be pointed out that the GJA requests all its speakers to save at the very least one third of the allotted time for discussions, facilitated round-table debates and Q&A-sessions.

However, important parts of the various European law training activities explained sub 2.2. to 2.6. have used and will use alternative teaching and learning methods which can be summarized under the afore-explained concept of “facilitated and contextualized learning”. To explain the interface of domestic law and European law in a hands-on way, GJA training courses employ – in addition to lectures, discussions, facilitated round-table debates and Q&A-sessions – the following practice-orientated methods:

- Case studies; they are used in all specialized European law courses described sub 2.2. and in all the legal language trainings (2.5.);
- Group work / workshops; this method is often combined with case studies;
- Mock trials / simulations; making the attendees actively play roles in simulated cross-border settings has indeed proven to be one of the most positively-commented learning methods;<sup>93</sup>
- Panel discussions; having a range of experts in a panel with rather short statements and the possibility of very concrete attendees’ questions is by and large preferred by the attendees compared to lengthy frontal lectures;

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<sup>93</sup> The last day of the Second Joint Seminar of GJA and JAT in Ankara from November 12<sup>th</sup> to 15<sup>th</sup>, 2013, was entirely dedicated to four mock trials (with Turkish and German family judges, and Turkish and German criminal courts) on two fictitious cross-border domestic violence cases invented and prepared in advance by the 43 attendees (25 German and 18 Turkish criminal judges, family judges and prosecutors). All the attendees agreed that they had learned more about the respective procedural frames than would have been possible in two weeks of theoretical lectures.

- Thematic field trips; virtually all GJA training courses dedicated primarily to European and/or international law topics comprise at least one thematic field trip, often to the CJEU (Luxemburg), the ECtHR (Strasbourg), foreign jurisdictions or the FMOJ (Berlin).

It is not purely coincidental that e-learning is not part of GJA's methodology in teaching European law. Apart from organizational reasons which render – in Germany with its 16 State judicial administrations – the carrying-out of e-learning on a supra-regional level rather difficult, the main reason for the reluctance in the use of e-learning concerning EU law is however a content-based one. For all the reasons set forth in this Briefing Note, the very complexity and diversity of European law cannot nearly be taught as efficiently by distance learning means as it can be done by residential training courses in a contextualized learning setting. In other words: A judge (or prosecutor) will only understand the relevance of the whole thing when he/she is confronted with EU law in a “learning-by-doing” situation.

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## **TRAINING OF JUDGES AND PROSECUTORS IN HUNGARY**

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### **ABSTRACT**

The aim of this note is to summarize the main features of training of judges and public prosecutors in Hungary concerning, amongst others, the institutional framework of the training, its target groups, the structure of the courses, the special methodologies and the training on EU law. Furthermore, the note aims at presenting the latest developments of the Hungarian system of training of judges and public prosecutors.

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## 1. INSTITUTIONAL FRAMEWORK OF JUDICIAL TRAINING IN HUNGARY

In Hungary, the Hungarian Academy of Justice (in Hungarian: Magyar Igazságügyi Akadémia) is responsible for the central training of judges and court staff. The establishment of the Academy was decided in 2004 and it was opened on the 1<sup>st</sup> of September 2006. The original official name of the Academy was the Hungarian Judicial Academy (in Hungarian: Magyar Bíróképző Akadémia) - it was renamed as Hungarian Academy of Justice from 1 January 2012. However, it must be emphasized that the centralized organisation of training of judges has a long tradition in Hungary, since before the creation of the Academy the facilities of the training centre of the Hungarian Prison Service (located in Pilisszentkereszt) were rented to provide for trainings organised at national level.

The provisions on the organisation and tasks of the Hungarian Judicial Academy are set out in the Act CLXI of 2011 on the Organization and Administration of Courts. Pursuant to that act, the Academy operates as a department of the National Office for the Judiciary.

The Hungarian Centre for the Training of Prosecutors (in Hungarian: Magyar Ügyészképző Központ), as the institutional framework established for the centrally organised training of trainee and junior prosecutors was established in 2005<sup>94</sup> and started to operate on 1 January 2006. Prior to that date, there was no institutional framework of centrally organised training of prosecutors. The training of trainee prosecutors was organised within the territorial prosecutorial organs and was based on the training provided by the personal instructors appointed to the given trainee prosecutors.

From the organisational point of view, the Hungarian Centre for the Training of Prosecutors is directed by the Department of Human Resources, Continuous Training and Administration of the Office of the Prosecutor General. The director of the Hungarian Centre for the Training of Prosecutors is the head of the Division for Training of the said department.

It is true both for the Hungarian Academy of Justice and for the Hungarian Centre for the Training of Prosecutors that they operate during the whole year, except during judicial vacations.

## 2. TARGET GROUPS

The Hungarian Academy of Justice offers trainings for the following target groups: trainee judges, court secretaries (assistant judges), junior judges (appointed for a period of 3 years), senior judges (appointed for lifetime tenure) and also for other court staff (IT staff, librarians, statisticians, financial clerks, internal controllers etc.); thus, practically speaking, for all persons directly involved in the work of courts. Moreover, some trainings of the Academy are also open for other legal practitioners, namely for prosecutors, lawyers and public notaries. In that regard it can be mentioned that in 2013 the Academy held 6 trainings with the participation of prosecutors, lawyers and public notaries.

As concerns the training of public prosecutors, it has to be emphasized that the Hungarian Centre for the Training of Prosecutors is responsible for the centrally organised training of trainee and junior prosecutors. Moreover, it is considered as a great progress that the compulsory, continuous training system for appointed public prosecutors, which was developed on the basis of professional discussions, is now regulated by an Order of the Prosecutor General<sup>95</sup> which has entered into force on the 1<sup>st</sup> of January 2013. Furthermore,

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<sup>94</sup> Order No. 14/2005. (ÜK. 9.) of the Prosecutor General on the Hungarian Centre for the Training of Prosecutors

<sup>95</sup> Order No. 25/2012. (XI. 16) of the Prosecutor General on the continuous training of public prosecutors



the Hungarian Centre for the Training of Prosecutors organizes courses also for non-staff members of the prosecution service. However, the trainings offered by the Hungarian Centre for the Training of Prosecutors are not open to any other legal practitioners.

It should be pointed out that almost 70% of the staff of the prosecution service (including 75% of the trainee prosecutors) participated in some form of training in 2012.

### 3. MANDATORY NATURE OF TRAINING

As regards the trainings offered by the Hungarian Academy of Justice it should be pointed out that training for court trainees and for court secretaries are mandatory. Appointed judges mostly have optional trainings, but in certain cases there are mandatory trainings for all judges. This is the case of newly appointed judges who must take part in a course, usually lasting 5 days, held separately for civil and criminal judges, the topics of which include e.g. the presentation of basic legal acts, the jurisprudence of the Curia of Hungary (the highest judicial authority of Hungary), ethical standards for judges, behaviour in the courtroom etc. On the other hand, judges dealing with a specific field of law must periodically take part in 2 or 3-day courses where the focus of training is on that specific field of law.

As concerns the Hungarian Centre for the Training of Prosecutors, it can be stated that the fulfilment of training for trainee prosecutors is compulsory and they also have to take exams at the end of the training. Similarly, training has become mandatory for the appointed public prosecutors as from 1 January 2013.

All trainings are provided free of charge for the participants.

### 4. TRAINING PROGRAMME AND STRUCTURE OF THE COURSES

As concerns the training of judges and court staff, it must be emphasized that the draft agendas and training programmes are prepared by training organisation experts and tutor judges of the Hungarian Academy of Justice.

In the course of preparing the annual training plan, the courts submit their proposals and requests regarding the trainings they would like to be provided with in the next year. Topics can cover broad areas from specific legal fields to psychology trainings.

The training agenda is submitted by the head of the Hungarian Academy of Justice to the president of the National Office for the Judiciary. The National Judicial Council forms an opinion on the annual training plan which is then approved by the president of the National Office for the Judiciary.

Pursuant to the Act on the Organization and Administration of Courts, the president of the National Office for the Judiciary and the Prosecutor General may conclude an agreement with the Minister for Justice on the judicial training and international law related training to be implemented by the Hungarian Academy of Justice.

I would also like to emphasize that the modernisation of the Hungarian system of training of judges and court staff is under way. In 2012, the president of the National Office for the Judiciary has set as strategic purposes the development of the training system and the cooperation with the other legal professions. As a first step, a 3-day discussion was held on the training of judges and court staff in March 2013 with the participation of the

members of the National Judicial Council, the presidents and vice-presidents of the regional courts of appeal and of the regional courts, the members of the working group previously dealing with the reform of training system and the representatives of other legal professions.

The Institutional Strategy on the reform of training of judges and court staff was adopted on 12 September 2013. Prior to its implementation the strategy would be subject to testing. The main elements and features of the planned and detailed new system are the followings:

- According to the strategy, a system of accreditation of local and regional trainings would be introduced, thereby on the one hand ensuring the coordinating and monitoring role of the Hungarian Academy of Justice and, on the other hand, offering wider training provision. Also, the workload of the Academy would be reduced. The concept makes a distinction between the levels of organisation and implementation of the trainings. In that regard it provides for three possibilities:
  - o central – central: the training is organised and implemented centrally by the Academy, and courses are held in its buildings,
  - o central – local: the training is organised centrally by the Academy and held outside of the Academy,
  - o local – local: the training is offered by the regional court/regional court of appeal and is held there.
- The following types of training programmes are set out in the strategy:
  - o Generally mandatory trainings, which are mandatory for given target groups, i.e. judges, trainee judges, court secretaries, other court staff. The Academy would organise these kinds of trainings and they would be held at the premises of the Academy.
  - o Trainings mandatory depending on the appointment or specialisation.
  - o Periodically mandatory trainings could be organized with regard to the changes in the legal environment or for the purpose of enhancing legal uniformity. These kinds of trainings could be ordered by the president of the National Office for the Judiciary at national level or by the presidents of regional courts and regional courts of appeals with regard to the given court.
  - o Optional trainings could be chosen by judges and partly by court secretaries.
  - o Training of trainers programmes would be set up.
  - o Other trainings.
- Samples of training programmes would be prepared in advance.
- The proposals for training programmes could be prepared by the Academy or submitted by anyone from the courts and even from other legal professions.
- The Professional Accreditation Body would be responsible for evaluating the central, regional and local training programmes. The National Office for the Judiciary would express its opinion on the list of trainings prepared by the Professional Accreditation Body. Then, the list of trainings would be adopted by a decision of the president of the National Office for the Judiciary. Furthermore, the adopted list would be updated at least once during each year (thus, trainings which are not considered to be timely could be modified or eliminated).

- In order to increase predictability, a so-called Individual Training Plan would be created for judges, trainee judges and court secretaries, who could select the mandatory and optional trainings, including the accredited local and regional trainings, from the training list offered for the year ahead. This choice would be subject to the approval of their administrative superior. According to this concept, the minimum period of mandatory training would be 2 training days and the maximum period of training would be of 15 days per year for a court secretary and 10 days per year for a judge. Graduate studies, participation in a specialised postgraduate programme and PhD studies are also considered as trainings.
- On the basis of the new concept, three-year training periods of mandatory collection of credits would be established. The judges would be required to collect 150 credits, while the court secretaries would be required to collect 120 credits per training period. This would ensure the judges' and court secretaries' continuous participation in the centrally organised training and would also leave space for participating in local and regional trainings.
- The strategy lays down special rules on the training of trainee judges. The period of training would be of 30 months during which a trainee judge could gain, in the framework of uniformly planned employment, the knowledge necessary to use the powers of judgement. Trainee judges would be required to spend a given period among judges sitting in different divisions of cases (e.g. criminal cases of first instance: 6 months, criminal cases of first instance at regional courts: 2 months, criminal cases of second instance: 2 months, civil cases: 2 months, civil property law: 4 months, enforcement: 1 month, civil cases of first instance at regional court: 2 months, civil cases of second instance: 2 months, economic and company law cases: 2 months, administrative and labour court: 3 months). In the last year of training, the trainee judges would participate in centrally organised training aiming at preparing them for the trainee judges' exam. Both trainee judges and trainee prosecutors would be obliged to participate together in 3 modules of 5 days of centrally organised training. The subjects of the 3 modules would be: civil law; criminal law; administrative, labour and EU law.
- Special rules are foreseen also with regard to the other court staff. In principle, the level of training would be local, but training could also be organised at regional level or centrally. The training period would be 1 year beginning from their hiring.
- A uniform IT training software would be created to support the new concept.

Training and continuous training programmes of the Hungarian Centre for the Training of Prosecutors are implemented in accordance with the annual training plan which is subject to the approval of the Prosecutor General and is adopted by him at the National Meeting of Heads of the Prosecution Service every spring.

The training of trainee prosecutors is based on a four-semester uniform syllabus and educational program. Due to that, even an exceptionally large number of trainee prosecutors (in 2011 and 2012, nearly 300 new trainee prosecutors started working for the prosecution service) can be successfully trained for the prosecutor's exam and can be provided with the theoretical knowledge needed for that exam. Thus, it can be stated that the training for trainee and junior prosecutors is running successfully since it reinforces dedication to the profession and it contributes to trainees' passing the exam with good results. In that regard it can be mentioned that the proportion of "excellent" and "A+" exam results has significantly increased in the last years.

The stages of the uniform training for trainee prosecutors are the following:

- Fundamentals of prosecutor's profession (3 days), subjects: the history of the prosecution service; the organization and symbols of the prosecution service; ethical

standards for prosecutors; prosecutors' fundamental rights and obligations specified under the Act on the Status of the Prosecutor General, Prosecutors and Other Prosecution Employees and the Prosecution Career, the prosecution service relationship; prosecutors' basic responsibilities relating to the field of criminal law; prosecutors' responsibilities in the field of public protection; daily work management; the General principles of documents and case management; managing cases involving national security or classified information; data protection and security.

- Part "B" of the exam (3 weeks), subjects: substantive criminal law, criminal procedure, sentence execution and prison law
- Part "A" of the exam (2 weeks), subjects: civil law, business law, civil procedure law
- Part "C" of the exam (1 week), subjects: labour law, social security law, constitutional law and public administration law, EU law.

In 2012, the Hungarian Centre for the Training of Prosecutors organised courses for 9 groups, teaching to 4 classes of trainee prosecutors for 22 weeks in the Training Centre (located in Balatonlelle).

Furthermore, as already mentioned above, the Hungarian Centre for the Training of Prosecutors is also responsible for the training of junior prosecutors. Every year, a one-week course is organised for them, focusing on the essential knowledge that must be acquired during the preparation for the prosecutor's professional career: ethics, rhetoric and criminalistics. Elements of training that can be effectively used in daily practice have also been included in the training (e.g. conflict management).

As concerns the continuous training of appointed public prosecutors, the following elements of the new training system applicable as from the 1<sup>st</sup> of January 2013 are worth highlighting.

Training is held during training periods. A training period lasts for 5 years. In order to fulfil training requirements, one needs to participate in internal and external trainings and has to perform other tasks specified in the Annex of the Order of the Prosecutor General. Training requirements are considered to be fulfilled if during the training period a prosecutor has been awarded the academic title D.Sc. (Doctor of Science) from the Hungarian Academy of Sciences, has received a PhD title or has become a habilitated associate professor.

The following trainings are considered to be internal trainings: the trainings and courses organized by the Division for Training of the Department for Human Resources, Continuous Training and Administration of the Office of the Prosecutor General, which last for minimum one day and maximum five days on a one-time basis annually; the one-day trainings organized by the chief prosecution offices and the one-day professional programs organized by the National Institute of Criminology.

External trainings include:

- a) theoretical trainings qualified by the Division for Training as such,
- b) training programs organized by international organizations or foreign judicial training institutions (especially by the EJTJ, ERA and the European Institute of Public Administration - EIPA) that are announced with the assistance of the Department for International and European Affairs with the objective of calling for applications or are proposed with the aim of designating participants.

External trainings announced by courts, chambers of attorneys, academic associations and external trainings based on invitations along with the conditions of participation are published by the Division for Training on the Intranet of the prosecution service.

Prosecutors who are under a duty to take part in trainings are required to collect 50 credits during a training period. However, prosecutors who are to reach the age of retirement within five years are not required to participate in trainings.

Based on the annual training plan, the Hungarian Centre for the Training of Prosecutors may organize not only central but also regional trainings for prosecutors working in various fields of their profession in accordance with their training needs.

In 2012, participants in centrally organized trainings included prosecutors working in the public interest protection branch and deputy chief prosecutors heading this branch, prosecutors dealing with petty offence cases, investigating prosecutors, prosecutors supervising penal institutions and securing human rights in such institutions, deputy chief prosecutors heading the criminal branch, prosecutors handling minor and juvenile cases as well as spokespersons of the prosecution service. The Hungarian Centre for the Training of Prosecutors also organized a labour law conference, a statistics course and training in management. In addition to this, a two-day conference was held for chief prosecutors. Moreover, a criminalistics course is organized every year consisting of three one-week parts, which is very popular among prosecutors.

It is also worth mentioning that at the end of 2012 the Hungarian Centre for the Training of Prosecutors launched a training program on the new Criminal Code of Hungary (Act C of 2012), which entered into force on the 1<sup>st</sup> of July 2013. All prosecutors and junior prosecutors (approximately 2000 persons) are given the opportunity to participate in this training. Prosecutors having been involved in the codification of the new Criminal Code have been invited as trainers in this program in collaboration with the heads of the criminal branch.

As regards the number of trainings and participants, 24 centrally organized trainings were held in 2012 with the participation of 960 public prosecutors.

Lastly, it should be mentioned that the Hungarian Centre for the Training of Prosecutors regularly organizes trainings for non-staff members of the prosecution service (offering courses for financial managers, statistics courses and courses on the rules of case management involving national security or classified information). In 2012 more than 300 participants (in 10 groups from the prosecution service) took part in the specific trainings aimed at presenting how the new electronic document and file management system developed for the digitalization of prosecutorial proceedings operate.

## 5. TRAINERS

Trainers of the Hungarian Academy of Justice are selected on the basis of requests submitted to the court executives (heads of judicial divisions) and to the universities, as well as on the basis of experiences gained from previous trainings.

Trainers involved in the trainings organised by the Hungarian Centre for the Training of Prosecutors are mainly heads of the Prosecution Service with broad professional experience and theoretical knowledge. Most of them also teach at law faculties of universities. Their lectures and presentations have to be submitted also in writing and they are uploaded on the Intranet system of the prosecution service to make them accessible for all.

The programme and professional content of trainings and courses are evaluated by participants on evaluation sheets filled in anonymously. Critical remarks are taken into account when organizing future courses and trainings.

## 6. SPECIAL METHODOLOGIES USED AT TRAINING COURSES

As regards the training methods used in the Hungarian Academy of Justice, it can be observed that they include not only lectures and seminars but also special methodologies, namely workshops, mock-trials (with video recording for the purpose of subsequent analysis by a psychologist expert and a tutor judge together with the participants) and e-learning courses.

The training system of the Hungarian Centre for the Training of Prosecutors is based on educating participants via lectures and professional consultations. The practical training of trainee prosecutors is provided at the territorial prosecutorial organs where, in the course of legal practice, instructors can assist trainee prosecutors effectively in their acquiring professional knowledge and skills on a daily basis. It should be also noticed that the theoretical preparation of trainee prosecutors for the bar exam, which is included as part of their training and is implemented according to a uniform syllabus and training programme, is adjusted to the exam themes issued by the minister responsible for justice. Lectures include topics which relate to prosecutorial powers and responsibilities, tend to be problematic issues or are difficult to analyse at exams based on experience. Until the end of their prosecutorial traineeship, trainee prosecutors demonstrate and prove their knowledge about the learning material at exams that are graded and held at the chief prosecution offices.

Furthermore, as regards the training opportunities of both trainee and junior prosecutors it should be mentioned that different competitions and professional events (e.g. Professional Scientific Conference, Kozma Sándor Scientific Competition, courses, conferences abroad, etc.) also offer excellent opportunities which contribute to their training.

As regards the special features of the training of appointed public prosecutors, the following elements are pointed out.

On the one hand, special emphasis is given to the linguistic training of prosecutors, which is encouraged by the prosecution service in proportion to its financial resources. In order to support linguistic training, language courses having started earlier also continued in 2012, and opportunities to participate in language courses at own costs with working hour allowance have been given to additional prosecutors.

On the other hand, supporting post-graduate studies also forms a significant part of professional training. Many of the prosecutors have participated in post-graduate programmes of law faculties where they have obtained post-graduate degrees, typically in economy-related criminal law, criminalistics, environment protection and European law. The number of prosecutors having a second degree has been continuously increasing.

## 7. TRAINING ON EU LAW AND ON THE LAW OF OTHER MEMBER STATES

The annual training plans of the Hungarian Academy of Justice offer specific training on EU law and the law of other Member States. These courses mainly focus on the areas of judicial cooperation in civil matters and judicial cooperation in criminal matters, the competences of the Court of Justice of the European Union and that of the European Court of Human Rights. Moreover, it must be pointed out that there are several trainings organised in cooperation with European judicial training organisations (e.g. European Judicial Training Network (EJTN), Academy of European Law (ERA) and cooperation among the countries of the so-called Visegrad Group).

Examples on EU law related trainings held in 2012:

Two-day consultation for judges specialized in European law (18-19 April 2012)

- One-day course for judges specialized in European law dealing with civil matters (20 April 2012)
- One-day course for judges specialized in European law dealing with criminal matters (20 April 2012)
- Three-day course on the competences of and procedures before the European Court of Human Rights (language of the course: English) (2-4 May 2012)
- Three-day course on the competences of and procedures before the Court of Justice of the European Union (18-20 June 2012)
- Two-day course on the competences and responsibility of the European Court of Human Rights (II) (language of the course: English, interactive case studies with the participation of maximum 20 participants, 27-28 September 2012)
- Two-day course on the competences and responsibility of the Court of Justice of the European Union (II) (interactive case studies with the participation of maximum 20 participants, 22-23 November 2012)

The Hungarian Centre for the Training of Prosecutors usually does not offer courses dedicated exclusively to a specific topic related to EU law or law of the other Member States. Nevertheless, a great majority of the courses also includes the presentation of specific EU legal acts and case-law of the Court of Justice of the European Union relevant for the topic of the given courses. Moreover, as already outlined above, since Part “C” of the bar exam includes the topic of EU law, training is held thereon for trainee prosecutors on a mandatory basis.

## **THE ACADEMY OF EUROPEAN LAW (ERA) EXPERIENCE WITH JUDICIAL TRAINING**

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### **ABSTRACT**

The Academy of European Law (ERA) began its work in 1992, after the European Parliament had suggested its founding in 1990 in order to invest in a European centre for the continuing education of legal professionals in order to improve the application of European law.

With the rapid pace of European integration during the late 1980s and 1990s and the Single European Act 1986 and the Maastricht Treaty 1992, when the scope of European legislation became wider than ever before, it became clear that lawyers, judges and other legal practitioners at all levels and in almost all fields of law would need regular training and a forum for debate in order to keep up-to-date. A total of 11,147 judges and prosecutors, as well as 4.800 legal practitioners have so been able to participate in specific ERA events specifically devised for these target groups between 2012 and 2013.

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## EXECUTIVE SUMMARY

### Background

Despite the key responsibility for giving effect to European law, which national practitioners and in particular national judges have carried since the origins of the Single Market in 1958, European judicial training has only become a major concern of EU policy in the context of the creation of the European Judicial Area following the entry into force of the Amsterdam Treaty in 1999. The Hague and Stockholm Programmes adopted in 2004 and 2009 paved the way for major programmes of the European Commission to support European judicial training. The Commission's 2006 Communication on judicial training highlighted three priorities – “improving familiarity” with EU legal instruments; “improving language skills” and “developing familiarity with the legal and judicial systems” of other Member States<sup>96</sup> – that are still reflected in its subsequent 2011 Communication on the same matter. The latter, based on the ambitious targets of the Stockholm Programme, calls for the training of half of the (1.4 million) legal practitioners in the European Union by 2020.<sup>97</sup> The European Parliament, in 2003 initiator of the on-going successful exchange programme between judicial authorities and in 2011 sponsor of a major study on judicial training in the Member States, has for many years advocated a stronger commitment of EU institutions to cater for a more efficient and better targeted judicial training concept and to foster a common judicial culture.

### Aim and concept

The aim of the present briefing note is to provide a comprehensive overview of the role and activities of the Academy of European Law (ERA) in European judicial training. ERA, itself the child of a European Parliament initiative in 1991 to prepare law practitioners in the Member States for their role in applying and enforcing European law throughout the emerging Single Market, has provided European law training to more than 100,000 judges, prosecutors, counsel and other practising lawyers in the past 21 years.

Following a brief presentation of the EU institutions' past approach to judicial training and its impact on ERA, the Academy and its mission are introduced in some more detail in chapter 2. As ERA's activities in judicial training can hardly be separated from its involvement in the European Judicial Training Network, an association comprising judicial training authorities from all 28 Member States, a third chapter is devoted to the intense cooperation and interplay of these two European judicial training actors.

Chapter 4 explains ERA's principal approach to the training of judges and prosecutors which for many years has been a top priority in ERA's activities. Before 2004, a particular focus lay on preparing these target groups in the candidate countries for their role as European judges following their Member States' accession to the EU. In total, more than 11,000 judges and prosecutors participated in ERA seminars especially or primarily designed for the judiciary since 2000.

Increasing attention is given to the production of e-learning tools which when developed with financial assistance of the European Commission are made available for free to judges, prosecutors and other judicial target groups.

In lieu of presenting ERA's approach to judicial training in an exhaustive enumeration, examples of best practice are presented covering five different aspects of judicial training. Of these, the development of specific training modules in family law and in environmental law, two-week academies for judges and prosecutors at the beginning of their careers and the decentralised concept of targeted seminar for the four Visegrad countries are of

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<sup>96</sup> Communication from the Commission to the European Parliament and the Council on judicial training in the European Union of 29.6.2006, COM(2006) 356 final, par. 24.

<sup>97</sup> Commission Communication to the European Parliament, the Council and others: “Building trust in EU-wide Justice – A new dimension to European judicial training” of 13.9.2011, COM(2011) 551 final.

particular interest.

With regard to judicial training in the narrower sense, ERA was able to gain specific insight in the practice of Member States' judicial training and the training experience of members of the national judiciaries through the production of a study at the request of the European Parliament in 2011.

Judicial training in the wider sense of the European institutions and in particular the Commission Communications of 2006 and 2011 encompasses the training of other legal professionals, in particular of lawyers in private practice. Chapter 5 presents an overview of ERA's experience in this particular field, which has also for a long time been a top priority for ERA. In this context, needs have been assessed and new concepts developed in close cooperation with European and national professional associations, notably the CCBE.

However, training projects especially conceived for the Bar have only recently started to be conceived in larger numbers. Such specific projects are partly co-funded by the European Commission in the framework of their judicial training programmes, partly self-financing. Consequently, the number of practitioners attending such events has strongly increased in the past two years: While since 2000, some 4,800 lawyers in private practice participated in ERA seminars especially or primarily designed for the Bar, more than 2,000 of these attended such events in 2012 and 2013.

A major innovative approach in ERA's training offer for legal practitioners are one-day courses related to specific EU law topics in different European cities implemented in cooperation with local bar associations and targeted at the practical needs of lawyers in private practice.

## 1. JUDICIAL TRAINING AS A EUROPEAN REMIT

### KEY FINDINGS

- EC institutions showed limited ambitions for European judicial training prior to the Maastricht Treaty, but EP called for the creation of ERA in 1991.
- Attempts to set up a Judicial Training Network with an EU legal basis in the context of Amsterdam failed after 1999.
- The Commission communications of 2006 and 2011 widened the concept of European judicial training to include the legal professions.
- Four EP resolutions in 2008, 2009 and 2010 called for the creation of a "European Judicial Academy" composed of the EJTN and ERA.

For a long time it has been uncontested that the implementation and application of European law is in the first instance a responsibility of the national judge and the national legal practitioner. It is therefore somewhat surprising that, prior to the Amsterdam Treaty, the European institutions did not demonstrate stronger interest in ensuring a European element in the training of national practitioners. An exception confirming the rule was the European Parliament's 1991 initiative in the context of the completion of the Single Market to set up the Academy of European Law (ERA) in Trier.<sup>98</sup> The first EU programme to promote mutual understanding and facilitate cooperation between the judicial authorities of the Member States was launched in 1996, the Grotius Programme.

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<sup>98</sup> See above footnote (fn.) 96.

Judicial training has first been mentioned as a European Union competence by the Lisbon Treaty which came into force in 2009.<sup>99</sup> However, Commission or individual Member State initiatives calling for an institutionalisation of judicial training at European level were already launched following the conclusions of the Tampere summit in 1999.<sup>100</sup> As early as 14 November 2000 the then French presidency of the Council put forward an official proposal for a Council Decision on the establishment of a “European Judicial Training Network”<sup>101</sup> which was intended to be administered and supervised by the Commission. This proposal, which was formulated under the terms of Articles 31 and 36 TEU, required a unanimous decision by the Council which was not achieved, five of the fifteen Member States opting against it. Apart from the fact that the proposal was confined to criminal matters only, judicial circles were particularly critical because, in their view, judicial independence was not compatible with the role foreseen for the Commission.

In December 2001, the European Council in Laeken also called for the creation of a European Judicial Training Network, but without specifying the legal form this should take. The Hague Programme of 2004 contained similar proposals. In its “Communication on the future training of the judiciary in the European Union” of 29 June 2006<sup>102</sup> the Commission pointed out that “at the present time” the creation of a European Agency would not appear “opportune” (side note 37) and that as an alternative there should be intensified support for existing structures and an expansion of the support programmes. The Stockholm Programme adopted by the European Council in December 2009 (as well as the subsequent Stockholm Action Plan) again emphasises the importance of regular continued training for all legal professions (the judiciary and lawyers in private practice) and particularly encourages the use of “existing training institutions” to ensure the participation of “a substantive number of professionals” in a European training scheme “by 2015”<sup>103</sup>. This is further endorsed by the Commission Communication on Judicial Training of 13 September 2011 which calls for the training of 700,000 legal practitioners by the year 2020.<sup>104</sup> The Communication also expressly excludes the creation of a “monopoly structure” at European level and instead suggests an extension of financing options under the terms of the new financial perspective with a view to supporting training for more than 20,000 legal practitioners a year up to 2020.

The two Commission communications as well as the Stockholm Programme and Action Plan make clear that “judicial training” not only encompasses judges and prosecutors (in some Member States even the latter are not considered part of the judiciary), but also lawyers and notaries, all core target groups of ERA. In addition, both texts refer expressly to ERA and its expertise and relevance for European judicial training.

Similarly, the European Parliament highlighted ERA’s role and potential with regard to judicial training in a series of resolutions. Of these, the four most ambitious even proposed a new European architecture of judicial training of which ERA and the European Judicial Training Network (EJTN) would provide the cornerstones. For the first time on 9 July 2008, the European Parliament, by an overwhelming majority, approved the report by Vice-president Diana Wallis on the role of the national judge in the application of Community law, which expressly calls for the creation of a “European Judicial Academy” including EJTN and ERA, and firmly rejects the creation of new parallel infrastructures<sup>105</sup>. On 25 November

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<sup>99</sup> See Articles 81, 82 TFEU.

<sup>100</sup> Police training has for years been institutionalised at European level within the framework of CEPOL.

<sup>101</sup> OJ C18/9, 19.1.2001:

<sup>102</sup> Communication from the Commission to the European Parliament and the Council on judicial training in the European Union of 29.6.2006, COM(2006) 356 final.

<sup>103</sup> See chapter 1.2.6 „Training“.

<sup>104</sup> Commission Communication to the European Parliament, the Council and others: “Building trust in EU-wide Justice – A new dimension to European judicial training” of 13.9.2011, COM(2011) 551 final.

<sup>105</sup> INI/2007/2027, par. 21: “The European Parliament ... Considers, however, that the time is ripe for a pragmatic institutional solution to the question of judicial training at EU level which makes full use of existing structures whilst avoiding unnecessary duplication of programmes and structures; calls, therefore, for the creation of a European Judicial Academy composed of the EJTN and the Academy of European Law; calls for this institutional solution to take account of relevant experience gained in running the European Police College; ...”

2009, this call was renewed by the newly elected Parliament in a resolution in view of the expected Stockholm Programme which was submitted by rapporteurs from three different committees<sup>106</sup> Third, on 17 June 2010 the Parliament adopted a further resolution in response to the Commission's Stockholm Action Plan and the reply of Vice President Reding to an oral question from Klaus-Heiner Lehne MEP, on behalf of the Legal Affairs Committee of 10 May 2010. For the first time, Parliament formulated its demand to be consulted on any plans for the creation of a body to be set up on the basis of existing structures and networks, in particular EJTN and ERA.<sup>107</sup> Finally, in its resolution of 23 November 2010 "on civil, commercial and family law aspects as well as aspects of international private law of the Action Plan to implement the Stockholm Programme" the European Parliament reiterated its calls for the establishment of a European Judicial Academy including EJTN and ERA.<sup>108</sup>

## 2. ERA AS A EUROPEAN INSTITUTION FOR JUDICIAL TRAINING

### KEY FEATURES

- ERA is the result of a European Parliament initiative in the context of the completion of the Single Market 1992
- ERA's legal and judicial training programmes are conceived and implemented by four specialised sections.
- Main target groups include the judiciary, lawyers in private practice, notaries, in-house counsel and lawyers in public administration.
- In 2013, ERA is organising more than 180 events. In 2012, the 138 events implemented were attended by some 8,000 participants from 53 countries.

ERA's mission is defined in the Statute of the Foundation (§ 3 Objectives) as follows:

"1. The task of the Academy of European Law Trier shall be to enable individuals and authorities involved in the application and implementation of European law in Member States and in other European States interested in close co-operation with the European Union to gain a wider knowledge of European law, in particular European Union law and its application and to make possible a mutual and comprehensive exchange of experiences.

"2. The Academy shall pursue this objective by organising courses, conferences, seminars and specialist symposia, particularly for the purposes of continuing vocational training, by issuing publications and by providing a forum for discussions."

The creation of the Academy of European Law Trier (ERA) in 1992 was primarily the result of a European Parliament initiative in the context of the comprehensive legislative programme launched to complete the EU Single Market by the end of 1992. Ultimately a European Parliament Resolution of 10 September 1991 called for the immediate creation of

<sup>106</sup> Par. 105, Resolution by the European Parliament of 25 November 2009 on the Commission Communication to Parliament and Council – An area of freedom, security and justice serving the citizen – the Stockholm Programme. The rapporteurs were Luigi Berlinguer (JURI), Juan Fernando López Aguilar (LIBE) and Carlo Casini (AFCO).

<sup>107</sup> European Parliament resolution of 17 June 2010 on Judicial Training (Stockholm Programme).

<sup>108</sup> INI/2010/2080, par. 13 : "13. Bearing in mind the Stockholm programme's ambitious goal of offering European training schemes to half of the judges, prosecutors, judicial staff and other professionals involved in European cooperation before 2014, and its call for the existing training institutions in particular to be used for this purpose, points out that the Network of the Presidents of the Supreme Judicial Courts, the European Network of the Councils for the Judiciary, the Association of the Councils of State and Supreme Administrative Jurisdictions and the Eurojustice network of European Prosecutors-General, court officers and legal practitioners have a huge amount to offer by coordinating and promoting professional training for the judiciary and mutual understanding of other Member States' legal systems and making it easier to resolve cross-border disputes and problems, and therefore considers that their activities must be facilitated and receive sufficient funding; further considers that this must lead to a fully funded plan for European judicial training drawn up in liaison with the abovementioned judicial networks, while avoiding unnecessary duplication of programmes and structures, and that it should culminate in the creation of a European Judicial Academy composed of the European Judicial Training Network and the Academy of European Law;..." (emphasis added).

the Academy and requested EC institutions to support ERA.<sup>109</sup> Driving forces in the implementation of the initiative were the Grand Duchy of Luxembourg and the German state of Rhineland-Palatinate. ERA's status is that of a not-for-profit public foundation. In 1992 the founding patrons were Luxembourg, Rhineland-Palatinate and the City of Trier. Today, 24 of the 28 EU Member States are formal patrons of the Foundation. These Member States, as well as a number of EU institutions, are represented on ERA's Governing Board.<sup>110</sup>

Initially, it had been intended to set up the Academy as a Community institution. However, to ensure that the Academy could be established before the completion of the Internal Market in 1992 – and to avoid the issue of the seat of the Academy which at this stage the creation of a Community institution would have involved – the founders decided to follow the path of a foundation under national law. The option of transforming ERA into a Community institution was in no way abandoned even though to date, ERA's boards have not yet adopted any final position on this question.

The original ERA concept, the creation of a “European Judicial Academy” was, at a very early stage, expanded to include all legal professions – judges and prosecutors, lawyers in private practice, in-house counsel, notaries, tax advisors, lawyers in public administration etc. These target groups still represent the core client groups of ERA in all EU Member States and candidate countries. These target groups are of course constantly changing; older generations of legal professionals with no exposure to EU law training during their studies, limited language skills and little computer literacy are gradually disappearing. However, as the 2011 ERA/EJTN study for the European Parliament on judicial training has shown, too many judges and prosecutors are still unfamiliar with specific EU law procedures and only have a vague idea of EU law concepts.<sup>111</sup>

Since 1998 ERA has had its own conference centre in Trier, funded completely by the state of Rhineland-Palatinate. In 2008, following the adoption by its Governing Board of the Development Strategy “ERA 2012” aiming at increasing the capacity and training activities of the Academy, ERA acquired a neighbouring building previously owned by the German Federal Bank and converted it for its own purposes. By 2011, ERA's conference facilities in Trier were expanded by some two thirds and office space doubled. The centre with five large conference rooms and six workshop rooms can be used by up to 700 participants simultaneously. In parallel, ERA's staff resources could be considerably enlarged thanks to a generous increase of ERA's EU grant following a suggestion by the European Parliament.

ERA currently has a staff of 73 employees from a wide variety of EU Member States. The programmes of up to 190 training events in 2013 (138 in 2012) as well as an increasing selection of e-learning tools are conceived and implemented by four specialised sections (private law, business law, criminal law and public law) with lawyers from different Member States representing the different main legal and judicial traditions in the EU. A total of 30 staff members run these sections.

In addition to its programme of open and contract activities, ERA regularly provides further education events to the European institutions and to EU Member States. In 2012, a total of 7,986 participants attended ERA events (2011: 8,233). Of these, 1,221 were judges and prosecutors and 1,449 lawyers in private practice (in 2011: 1,574 judges and prosecutors; 939 lawyers).

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<sup>109</sup> OJ C267/33, 14.10.1991.

<sup>110</sup> Patrons of ERA represented on its Governing Board: Austria, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Spain, Slovakia, Slovenia, Sweden, the United Kingdom; the German states jointly; Scotland.

<sup>111</sup> “Judicial training in the European Union Member States”, study PE 453.198, 2011.

### 3. ERA AND THE EUROPEAN JUDICIAL TRAINING NETWORK

#### KEY FINDINGS

- The European Judicial Training Network (EJTN) was created in 2000 by national judicial training institutions in cooperation with ERA.
- ERA took care of the EJTN secretariat from 2000 to 2005.
- The EJTN has run the EU programme of judicial exchanges since 2005. It has organised own training seminars since 2010.
- Since 2011, ERA has been the convener of EJTN's Programmes Working Group.

The 2011 Communication of the European Commission states that judicial training is a main responsibility of the Member States at least with regard to "quality and scale".<sup>112</sup> At the level of Member States however, the prevailing characteristic was and still is the enormous diversity of judicial systems and a corresponding heterogeneity of judicial training structures. At national level, judicial training is provided by at least four different types of authorities: Judicial schools, depending on either a body of judicial self-governance (Council of the Judiciary, Supreme Courts) or a state authority; Ministries of Justice; Higher Courts and/or Prosecutors General; autonomous Court administrations. Staff and other resources as well as financial capacities and budget autonomies vary greatly from country to country. Since 2009, the economic and financial crisis has had a growing negative impact on national training budgets and the current austerity policy has vitally hit many national training institutions.

The ambitious legislative programme of the Single Market Initiative 1992 made for the first time representatives of the Member States' judiciaries aware of their pivotal role in the implementation and enforcement of European law. The enormous gap between the requirements to fulfil this role and the widespread ignorance of most European judges and prosecutors of the EU law *acquis*, its interpretation and application led to repeated calls to provide targeted training in EU law to members of the national judiciaries.

Following these calls, ERA implemented regular seminars specifically designed for the needs of the judiciary as early as the mid-nineties. However, random conferences at European level essentially attended by the already converted and uncoordinated parallel attempts to provide some EC law training at national level were largely felt as an insufficient response to meet the challenge. Consequently, in 1998/99 a small group of national judicial authorities (among which the Ecole Nationale de la Magistrature of France, the German Federal Ministry of Justice, the Consiglio Superiore della Magistratura of Italy, the Consejo General del Poder Judicial of Spain, SSR of the Netherlands, Domstolsverket of Sweden, the Judicial Studies Board of England & Wales, the Centro dos Estudos Judiciários of Portugal) and ERA decided to set up a drafting committee to prepare the founding document of a network of European judicial training providers. On 13 October 2000, this group presented the first "Charter" of the European Judicial Training Network (EJTN) to a conference organised by the French Presidency of the Council in Bordeaux, which was then open for being signed and deposited at ERA by the founding members by 31 December.

Until March 2005 ERA, as the sole EJTN member with a European structure and mission, acted as the Network's secretariat. Since March 2005 EJTN has had its own permanent secretariat in Brussels headed by a Secretary General appointed for a term of three years (currently this post is held by Luís da Silva Pereira, a senior prosecutor from Portugal).

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<sup>112</sup> See fn. 104

Today the EJTN includes national institutions responsible for judicial training from all EU Member States.

Following a pilot project launching an ambitious exchange programme between national judicial authorities in 2004 (“Erasmus for judges”), EJTN became responsible for the organisation of this exchange programme from 2005 on. The Exchange Programme has become the most successful activity of the Network; until 2013, some 4,300 judges and prosecutors took part in it<sup>113</sup>. Another key feature is the opening of members’ training activities for participants from other jurisdictions which are listed in a publicised catalogue. In 2010, EJTN launched its first own training programme; the Network has since developed training guidelines and/or events covering criminal and civil justice cooperation, administrative law, fundamental rights, train the trainers activities and language training. It also engages in e-learning and organises a very popular annual moot court competition for young judges and prosecutors (“Themis”).

ERA has been a member of the EJTN Steering Committee for several terms. In 2010 it was elected convener of its Programmes Working Group (re-elected in 2013). Especially as Convener of this Working Group, ERA has since March 2011 assumed a strategic responsibility for the development and coordination of judicial training activities within the Network.

## 4. ERA’S CONTRIBUTION TO DATE TO TRAINING JUDGES AND PROSECUTORS

### KEY FINDINGS

- The training of judges and prosecutors has been a top priority for ERA since the mid-nineties. In ERA’s early years, a particular focus lay on preparing these target groups in the candidate countries for their States’ accession to the EU.
- Since 2000, more than 11,000 national judges and prosecutors participated in ERA seminars especially or primarily designed for the judiciary.
- With the support of the European Union, ERA has created an increasing number of e-learning tools which are made available for free to judges, prosecutors and other target groups.
- Among ERA’s approach to judicial training, best practice examples include the development of specific training modules in family law and in environmental law as well as two-week academies for judges and prosecutors from all Member States at the beginning of their careers.
- A very special opportunity for ERA to gain further expertise in European judicial training was the production of a major study on the state of judicial training in the Member States at the request of the European Parliament in 2011.

### 4.1. Training judges and prosecutors: ERA’s approach in a nutshell

The recognition that the effectiveness of EU law depends on the way it is implemented by legal practitioners in the Member States was the starting premise when ERA was founded. Further training of the national judiciary was therefore from the beginning fundamental to its mission. ERA has, from its early days, attached major importance to targeting judges and state prosecutors, in particular by offering specific seminars specially tailored to their needs. Between 2000 and 2004, in order to make the best possible assessment of judicial

<sup>113</sup> EJTN Annual Report 2012, p. 11.

training interests, both from a national and European perspective, ERA set up a separate working group on judicial training within the framework of its Board of Trustees, made up of members of European and national courts, for example Paul Broekhoven (Dutch Judicial Training Foundation), Guy Canivet (First president of the French Cour de cassation), David Edward (member of the European Court of Justice), Michael Elmer (Danish High Court judge, former ECJ Advocate General), Nial Fennelly (ECJ Advocate General), Ernst Markel (Austrian Supreme Court judge and president of the European judges association) and Walter van Gerven (Belgian professor and former ECJ Advocate General). Representatives from the ECJ, national courts and judicial schools as well as judicial associations have long been members of ERA's (advisory) Board of Trustees, giving valued advice for ERA's programme development.

The number of ERA seminars especially devised for members of the judiciary was significantly increased following the expansion of the European judicial area and the immense growth in the judicially relevant *acquis* following the Tampere summit in 1999. It should be emphasised that judicial training at ERA was never restricted to instruments of judicial cooperation but from the outset included classic fields of EU law such as competition law and anti-discrimination law, areas in which the Commission has regularly commissioned ERA to organise special training projects.

Finally, ERA's activities for the judiciary in new Member States prior to accession are worthy of particular mention. As early as the nineties, ERA was a key partner in PHARE projects to implement a large number of seminars in Hungary and Bulgaria exclusively designed for the judiciary. Similar events were held in the framework of bilateral agreements with a number of countries, in particular Poland, and on behalf of TAIEX in all new Member States with the exception of Cyprus and Malta.

These activities were then continued and expanded. Annex 1 shows an overview of ERA events since 2000 specially targeting members of the judiciary (judges and prosecutors). Many but not all of these events were co-financed within the framework of EU programmes (Civil and Criminal Justice Programmes, Hercules, AGIS, the Framework Programme on Civil Law, Competition Law, and others). The overview does not include events on instruments of judicial cooperation addressed solely at lawyers in private practice and public notaries (for this see Annex 2 and chapter 5 below). Between 2000 and 2013, ERA will have trained more than 11,000 judges and state prosecutors in European law in seminars exclusively or primarily designed for the judiciary, as much as possible in close cooperation and coordination with EJTN partners.

## 4.2. ERA e-learning for the judiciary

Over the past two years, e-learning has become an increasingly important product line in ERA's portfolio of European law training. With regard to the training of judges and prosecutors, e-learning tools or modules to be developed in the framework of projects co-funded or contracted by the European Commission have by now become standard elements of any proposal or application. In principle, such courses or tools will be freely accessible on ERA's e-learning platform and offered to our EJTN partners to be integrated into their domestic e-learning systems. The Commission also envisages making them accessible through the EU e-justice portal.

Such e-learning tools are first produced in English as the European Union's most widely used language. However, they lend themselves much more easily (and at lower cost) to a transfer into other languages than any face-to-face event.

By the end of 2013, the following courses, modules or podcasts specifically designed for judges or prosecutors are already or will be available on the ERA e-learning platform and have been or will be shared with national judicial training institutions:

- [EU competition law for national judges](#)
- [Introduction to EU Anti-discrimination Law](#)



- [Training modules on the European legislative instruments for cross-border cooperation in civil matters](#)
- [EU Law on Industrial Emissions](#) (not yet generally accessible)
- [The Cyber Menaces and different Types of Offences within Cybercrime](#) (mini podcast; not yet generally accessible)

### 4.3. ERA best practice in judicial training

The following examples illustrate what ERA considers its best practice in approaching various key aspects of judicial training: (1) curricula, (2) training methodology, (3) training to favour the correct application of EU law, (4) training to promote international judicial cooperation, (5) training evaluation. This list is based on ERA's response to a survey with regard to the "Study on best practices in training of judges and prosecutors" which EJTN is conducting in the context of Lot 1 of the current pilot project on European judicial training.

#### 4.3.1. Development of training modules for the EU judiciary

Under framework contracts concluded with two different European Commission DGs, ERA has been developing a number of stand-alone training modules, respectively on the EU legislative instruments for cross-border cooperation in civil matters and on EU environmental law. These training modules are structured as a 'training package' to be published and made available for future use by any party or institution interested in the provision of judicial training in these areas of European law.

In the field of EU civil law, ERA developed two training modules covering the area of European family law and more specifically 'Cross-border divorce and maintenance: jurisdiction and applicable law' and 'Parental responsibility in a cross-border context, including child abduction'. The modules consist of a trainer's pack with information and guidelines on how to organise a workshop implementing the module, a proposed workshop programme and recommendations on methodology, an introductory e-learning course, a list of background materials for the training recipients, examples of former trainers' PowerPoint presentations, case studies with suggested solutions and a national section, providing information on legislation, jurisprudence and representative publications on the application of European family law in 26 EU Member States.

Each training module can be implemented through workshops of a suggested 2.5-day duration, providing attendees with an in-depth analysis of the applicable EU legislative instruments and their interaction with international and national provisions. Topics with high practical relevance and closely interlinked with EU family law, such as the preliminary ruling procedure and cross-border family mediation, are also incorporated. Face-to-face presentations are combined with practical exercises and interactive sessions and IT-supported training is promoted.

The development of training modules aims at a multiplier effect. By investing in the creation of high quality training material that is both comprehensive and structured in a flexible way in order to be reusable by any interested institution and organisation, this practice is more cost-effective and has a much greater potential output than the organisation of a number of workshops.

The crucial elements for the success of this practice are the comprehensiveness and flexibility of the produced training material. Although not tailor-made for the specific needs of a certain group of judges, the training modules contain a series of elements supporting training providers that vary from ready-to-use case studies to recommendations on methodology and proposals on the workshops' programme.

The effectiveness of the practice has been evidenced by the successful implementation of test workshops in different language combinations and addressed to diverse target groups: for judges, lawyers, judicial trainers – pan-European, regional or almost purely national –

for beginners or more specialised legal professionals. With the necessary adjustments, the implementing test workshops met different participants' training needs, a fact that was reflected in the evaluations carried out both directly after the implementation of the workshops and after a certain period of time, thus assessing the long-term impact in the everyday work life of attendees.

The subsequent independent organisation of additional workshops and the employment of part of the training material in events on the initiative of the workshops' trainers and participants also illustrate the success of the practice and its wider potential. By way of example, family law seminars were organised by the Judicial Academy of the Land of North Rhine-Westphalia and the Bulgarian National Institute of Justice by using the training modules. Parts of the civil justice modules were used in seminars organised by the Judicial Academy of the Slovak Republic together with ERA, by the Judicial Training Centre and the Supreme Court of Slovenia and also by the Romanian National Institute for Magistracy (NIM) in the context of its first two conferences of EuRoQuod, a newly developed national network for judges acting as court coordinators for EU law.

#### 4.3.2. Academies for judges and prosecutors at the beginning of their careers: laying the base for a common judicial culture

The organisation of intensive two-week training programmes for judges and prosecutors at the beginning of their career (e.g. 'auditeurs de justice', 'Richter auf Probe', etc.) from various EU jurisdictions was an extremely successful good practice which could not be repeated because a renewal of the funding model was not accepted by the European Commission.

ERA (with the support of EJTN) implemented this concept twice in January 2011 in the field of EU criminal justice. The programme offered a mixture of training methods, varying from lectures and e-learning to interactive workshops and study visits presented by EU and national criminal justice experts. Study visits were organised with the ECJ, Eurojust, EJM, Europol, and with national courts in the region. The training content was threefold:

- First, intensive training on European criminal justice was provided to familiarise young European judges and prosecutors with EU legal instruments in the area of criminal justice (e.g. the EAW, confiscation and freezing orders, etc.) and with the support that can be offered by the relevant EU agencies (Eurojust, Europol, EJM).
- Second, participants gained an insight into different national penal systems in the EU and a better understanding of the work of their counterparts in other EU Member States, thus building mutual trust between the professionals of the different European judicial systems and an awareness of belonging to a common judicial area.
- Third, through participating in an intensive two-week training with colleagues from all over the European Union, best practice in judicial cooperation in criminal matters was exchanged and a genuine European judicial spirit evolved.

Per two-week academy, between 50 and 60 participants attended (both events were in fact oversubscribed). ERA aimed at guaranteeing a sound balance of participants per EU Member State, having in each seminar at least one participant per Member State attending.

The project was awarded co-financing under the Framework partnership agreement signed by ERA with the European Commission's (then) DG Justice, Freedom and Security. From a financial perspective, given the intensity of the programme and the aim to offer participation to judges and prosecutors from all EU Member States, the project was only possible thanks to a specific type of financial support under the Framework partnership programme which the European Commission unfortunately refused to repeat: The part of the costs not covered by the project grant corresponded to the salary costs for delegates

which were borne by their judicial authorities. Consequently, no additional financial burden (no cash contribution) had to be taken over by these authorities.

The project was very popular and seems to have been a major source of inspiration for the new AIAKOS Programme of EJTN.

#### 4.3.3. Decentralised training of national judiciaries following the adoption of major legislation at EU level

The conception and organisation of a systematic, long-standing and large-scale series of decentralised seminars following the adoption of a major EU legislative change which assigns a new role to the national judge has proven to be an efficient approach to encourage a rapid and better implementation of the new legislation and to contribute to a harmonised interpretation of these rules throughout the EU.

This approach was implemented by ERA immediately after the adoption of EC Regulation 1/2003 introducing the new Competition Law regime across the EU. Even before the entry into force of the new regulation in May 2004 ERA started offering basic training for the judiciary in various Member States. A standardised programme was drafted and adapted to the specific needs of each judiciary. ERA has continued implementing this concept since, even though today the focus has shifted from basic training to more advanced or sectorial training. Basic training on this topic has now been replaced by a stand-alone e-learning course available on the ERA website to everyone, in particular to national judges.

This large-scale series of seminars was made possible through the co-funding of the European Commission's DG COMP and the commitment of fourteen EU Member States which cooperated in their implementation. Some 30 national training seminars were organised for the judiciaries of Bulgaria, Croatia, the Czech Republic, Finland, Germany, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom between 2005 and 2013.

#### 4.3.4. Regional training series on the use of EU justice instruments for criminal and civil justice cooperation

The organisation of seminar series in a regional context can be identified as an evidence-based good practice. Together with the judicial schools of the four Visegrad countries (Czech Republic, Hungary, Poland and Slovakia), ERA organised two series of four events on criminal and civil justice cooperation, each event addressing one core topic of judicial cooperation in either of these areas. Every partner school hosted one event in each series. The aim was to achieve an increased and adequate use of the EU judicial cooperation instruments and improve the understanding of judicial practice in the other Member States by training judges and prosecutors. A specific format and methodology was conceived to achieve these results: A team of five speakers was put together for each seminar, one EU expert (academic, official or expert from another Member State) selected by ERA and four national experts, nominated by the judicial schools upon consultation with ERA.

Each seminar had a theoretical module explaining key aspects of the legislation, both from the EU and national perspectives. The second day of each seminar was devoted to practical work in national groups, followed by an exchange in plenary on the solutions found by each group. All case studies and exercises were designed by the EU expert in consultation with ERA. In the national groups, participants worked under the coordination of the national expert. In order to make sure that the topics and subtopics were practically relevant (from the transposition point of view) ERA maintained a close dialogue with the national schools and justice ministries from the four beneficiary countries.

For each seminar the feedback of participants was gathered through evaluation questionnaires, including questions on new insights gained as well as relevant advice on the use of the instruments. It was encouraging to notice the positive responses to these

questions and the satisfaction of participants with the intensive nature of the seminar, quality of lectures and topics. The very good working atmosphere further enhanced the impact of the project and contributed to the emergence of a European judicial spirit.

#### 4.3.5. Needs assessment, evaluation and impact assessment

The assessment and evaluation system that was developed for the workshops implementing the training modules in the area of EU family law (see above 4.3.1) can also be identified as a good practice. Before the implementation of each workshop an initial needs assessment questionnaire was sent to interested participants. Through this short questionnaire applicants provided an overview of their professional background and their experience in the area of EU law and more concretely in the area of EU family law. Questions asking for the reasons for which judges registered for the workshop as well as their expectations from their participation were also included. By evaluating this information, the workshop organisers were able to assess which applicants were in the target group and whose training priorities best matched the objective of the programme.

In order to assess the implementing workshops efficiently, a twofold process was introduced: all participants were asked to complete a detailed evaluation questionnaire immediately after the end of the workshop, focusing more on the quality of the workshop itself. Questions on the seminar content and methodology, the training material provided and the quality of the trainers' contributions were inter alia included in these evaluation forms. Besides this immediate feedback, a mid-term evaluation form asking for an assessment of the results and impact of the workshop in the longer term was sent to participants.

This evaluation system was introduced in order to achieve the main goal of the series of the ten implementing workshops, which was to test and update the materials of the developed training modules. It was important to ensure evaluation at different stages from all actors involved, namely the participants of the different workshops, the trainers and experts engaged and the workshop leader who would then introduce all necessary amendments to the materials of the training modules.

For the implementation of this practice, three standardised forms (an initial needs assessment questionnaire, an initial and a mid-term evaluation form) were conceived by the ERA project team for the development of the training modules. These forms could then be re-used for other implementing workshops.

Every stage of the assessment procedure of the ten implementing workshops of the training modules in the area of EU family law had different positive results: the answers to the initial needs assessment questionnaires were relevant for defining and bringing together a group of participants who would benefit the most from each planned workshop in the given context:

- The filled-in initial evaluation forms, with extensive multiple-choice and open questions to different aspects of the workshop (organisation, trainers, social programme, etc.), but also of the training modules as such (methodology, training materials, e-learning course, etc.), were of significant relevance and importance for the improvement and updating of the training modules.
- The mid-term evaluation forms were more focused on the participants and the impact of the received training on their daily work. The usefulness of the training materials provided, the importance of frequent alternation of the teaching methodology and the high relevance of the networking opportunities provided during the workshop were among the findings highlighted by this practice.
- The development and implementation of such an assessment system can be seen in general as a cost-effective procedure, which has the potential to enhance the quality of

the training. Once developed, the evaluation forms can be re-used in the context of future training activities.

#### 4.4. Judicial Training in the EU: A Study for the European Parliament

In 2011, the Academy of European Law, with the support of the European Judicial Training Network, produced a major study for the European Parliament on the state of judicial training in the European Union.<sup>114</sup> The study focused on training in EU law but also analysed other aspects, such as the conditions under which training is provided, the methodologies used and the target groups addressed.

A research team was established at ERA and its work was supported by a research advisory committee, composed of high-ranking representatives of the judiciary (including a number of ERA's Trustees), and an expert evaluation group, bringing together experienced judicial training professionals from the Member States. The resulting study, which runs to more than 800 pages and covers all 27 (then) EU Member States, describes the training provision for professional judges (including administrative judges), public prosecutors (including in jurisdictions where they are regarded as separate from the judiciary) as well as court staff who have legal training and who help prepare judgments, make preliminary judicial decisions or play a role in judicial cooperation.

The study contains three main sections:

- Profiles of the judicial training actors at EU level, including organisations specifically established to provide judicial training, organisations that train judges and prosecutors in addition to their core activities and associations of judges that provide training to their members;
- Profiles of the judicial training actors at national level in all 27 Member States of the European Union, including details of how judicial training is organised in each Member State, the staffing and budgetary resources devoted to it, the numbers of judges, prosecutors and court staff trained each year and other key information;
- The results of a survey in which almost 6,000 individual judges and prosecutors and more than 1,000 other court officials from all EU Member States reported on their knowledge and experience of dealing with EU law, their contacts with foreign judicial authorities, their evaluation of judicial training provision, and other key factors in the creation of a common European judicial culture.

The results of the study were used by the European Parliament in its Resolution of 14 March 2012 and the interim results were cited by the European Commission in its Communication of 13 September 2011. Unfortunately there is no room to reproduce the key findings in this briefing note. The full study is available online at [www.judicialtraining.eu](http://www.judicialtraining.eu).

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<sup>114</sup> "Judicial training in the European Union Member States", study PE 453.198, 2011.

## 5. TRAINING LAWYERS IN PRIVATE PRACTICE

### KEY FINDINGS

- The training of lawyers in private practice has also for a long time been a top priority for ERA and been further developed in close cooperation with European and national professional organisations, in the first instance the CCBE.
- Since 2000, more than 4,800 lawyers in private practice participated in ERA seminars especially or primarily designed for them (more than 2,000 in 2012 and 2013 alone).
- Training projects especially conceived for the Bar have only recently started to be conceived in larger numbers. Such specific projects are partly co-funded by the European Commission in the framework of their judicial training programmes, partly self-financing.
- A major innovative approach in ERA's training offer for legal practitioners are one-day courses related to specific EU law topics in different European cities in cooperation with local bar associations and targeted at the practical needs of lawyers in private practice.

### 5.1. Private practitioners as a key target group

Lawyers in private practice (and also in-house counsel) have always belonged to ERA's principal target groups for training and professional exchange. EU institutions have also included them in their concept of judicial training at least since the Commission Communication of 2006<sup>115</sup>. Through close and long-standing cooperation with the Council of Bars and Law Societies of Europe (CCBE), the European Criminal Bar Association (ECBA) and other professional bodies at European and national level, ERA has aimed to ensure that its programmes meet the specific requirements of legal practitioners in the private sector. In 2011, participants from the Bar constituted one-third of participants at ERA's open events. In 2012 ERA welcomed the highest number of lawyers in private practice in its history (1,449), an increase by 54%. The profession constituted 25% of the participants at ERA's open events and 24% at its contract and co-financed events in 2012.

As lawyers in private practice are in principle used to attend fee-paying events and hence attend general open ERA events to a much larger extent than judges and prosecutors, specific events conceived to accommodate the training needs of counsel figure much less frequently in ERA's past training programmes. Annex 2 gives an overview of ERA events specifically targeting legal practitioners between 2000 and 2013 which will have been attended by more than 4,800 lawyers by the end of this year (of which more than 50% will have attended events in the three years of 2011, 2012 and 2013).

### 5.2. Contributing to the CCBE European Training Platform

A particularly interesting project of the CCBE in which ERA is also involved, concerns the creation of the so-called "European Training Platform" (ETP). This initiative which is co-funded by the European Commission aims at the creation of a special IT platform to provide comprehensive information (a full catalogue) on training offers in European and national law available from the full range of providers at European level and in the member states. Once completed, the platform shall be hosted and regularly updated as part of the European Commission's e-justice portal. With its unique experience as a European training provider in adapting to the diverse legal training cultures in different EU Member States, ERA is closely involved in the consultative group established to support the development of the ETP and will of course contribute actively to the platform when it is up-and-running.

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<sup>115</sup> See above fn.102.

### 5.3. Needs assessment

It is essential that ERA not only makes lawyers in private practice aware of its programmes, but also that it hears from private practitioners about their training needs and priorities. For this reason ERA has for many years held an exhibition stand at major law conventions. In the past years it was present, among others, at the Deutscher Anwaltstag (the annual German Lawyers Convention), the Convention nationale des avocats (the triennial French Lawyers Convention), the Congreso de la Abogacía Española (the quadrennial Spanish Lawyers Congress) as well as the first ever Trade Fair of the Legal Profession in Europe and the Mediterranean in Barcelona, at the IBA Annual Conference 2012 in Dublin, at the first IBA Central European Conference in Warsaw and at the Union internationale des avocats annual congress in Dresden.

### 5.4. CPD

It is often crucial for lawyers in private practice that their participation in one of ERA's training events meets the compulsory professional development (CPD) requirements that have been introduced by an ever-growing number of national bars and law societies in recent years. ERA makes every effort to ensure that participation by lawyers from all over Europe in its events – whether in Trier or elsewhere – is recognised under the various national schemes. The diversity of the different national schemes makes registration cumbersome for ERA and this situation will continue as long as unified standards at European level are lacking. However, attending a two-day ERA event usually meets the annual CPD requirements in most jurisdictions.

### 5.5. Specific ERA projects for the Bar

Over the last years ERA has increasingly explored ways in which it could work more closely with national – and indeed local – bar associations in order to ensure that practitioners have access to high-quality training in European law. A major innovation in this regard was the start in 2011 of a training project on EU criminal justice instruments tailor-made for the defence. This project, which is supported by the European Criminal Bar Association (ECBA), the Czech Bar Association, the Délégation des barreaux de France (DBF), the Finnish Bar Association, the Österreichischer Rechtsanwaltskammertag (Austrian Bar), the Scottish Faculty of Advocates and the Barcelona Bar Association, is co-financed by the European Commission in the framework of the Criminal Justice Programme. The seminars – two in 2011 and four in 2012 – were conducted throughout the EU, each of them targeted at a different group of four to five selected Member States which are geographically close to each other such that the need for cross-border cooperation is particularly accentuated. In total, defence lawyers from 20 EU Member States benefited from this project.

Another innovation in 2011 was the launch of one-day courses related to specific EU law topics – such as corporate tax, VAT, cross-border insolvency proceedings, family law, intellectual property or company law – in different European cities in cooperation with local bar associations and targeted at the practical needs of lawyers in private practice and in-house counsel. In so doing, ERA aims to complement what is offered by national providers by bringing – in contrast to these – a genuine European dimension and perspective to its events, in terms of both the contents and the expert speakers. Courses of this kind have been or are currently organised in Barcelona, Bilbao, Bucharest, Dublin and Hamburg.

On the basis of a cooperation agreement signed in 2010 with Fondazione G. Carmignani ERA started implementing a series of seminars for Italian lawyers in private practice in early 2011. The seminars, held in Florence and Livorno with the support of the Florence Bar Association and the region of Tuscany, dealt with various topics such as civil litigation, consumer protection and the consequences of the Lisbon treaty for legal practitioners. This project unfortunately came to an end in 2012 because necessary regional subsidies by Tuscany were cancelled as a consequence of the financial crisis in Italy.

Another training project co-funded by the EU, this time by its Prevention of and Fight against Crime (ISEC) Programme, focused issues related to economic crime not only for judges and prosecutors but also for lawyers in private practice and in-house counsel. One seminar in 2012 dealt with "White-collar Criminality in the EU in a Global Perspective – Challenges for Defence and Prosecution"; two further events will take place in 2013.

Other events of particular importance for private practitioners in 2011 and 2012 included the annual conferences on European Family Law, "Cross-border Insolvency Proceedings", "Revision of the Brussels I Regulation" and the annual training seminars on "How to Litigate before the ECJ: Procedure before the General Court and the Court of Justice for Lawyers in Private Practice" and "Advocacy Training for Criminal Defence Lawyers".

In the field of civil justice, ERA's biggest single event of the year 2012 gathered some 300 participants, mostly lawyers in private practice, to the kick-off conference in Athens of a project fully funded by the European Commission's DG Justice to train Greek-speaking legal practitioners on mediation in civil and commercial matters. The project also involved workshops organised in cooperation with the local bar associations in Heraklion, Patras and Thessaloniki.

## ANNEX 1: ERA EVENTS ORGANISED FOR JUDGES AND PROSECUTORS 2012-2013

2012

Date	Place	Title	Att.
6.-10.2.	The Hague	Intensive legal English course for EJM contact points: Focus on judicial cooperation in criminal matters	14
26.-27.3.	Trier	EU Gender Equality Law for members of the judiciary	52
23.-24.4.	Trier	EU Disability Law and the UN Convention on the Rights of Persons with Disabilities: Seminar for members of the judiciary	50
7.-8.5.	Trier	EU Gender Equality Law for members of the judiciary	48
4.-5.6.	Trier	EU Anti-discrimination Law for members of the judiciary	47
7.6.	Edinburgh	Senator's European Law Day	41
28.-29.6.	London	Private Enforcement of Articles 101 and 102 TFEU	25
13.-14.9.	Barcelona	The conduct of inspections for the enforcement of EU competition law	30
26.-28.9.	Brussels	Cross-border divorce and maintenance – Workshop for judges (training module on European Family Law)	21
1.10.	Trier	Training course in EU law for the Supreme Court & the Supreme Administrative Court of Finland	24
8.-9.10.	Trier	EU Anti-discrimination Law for members of the judiciary	49
18.-19.10.	Kitzbühel	Europäische Strafgerichtsbarkeit	23
24.-26.10.	Brussels	Cross-border divorce and maintenance - Train the trainers workshop on the implementation of the training module on European Family Law	10
12.-13.11.	Trier	EU Gender Equality Law for members of the judiciary	54
14.-16.11.	Trier	Study visit of Bulgarian magistrates	8
15.-16.11.	Trier	Basic training course on legal and technical aspects of cybercrime*	44
19.-20.11.	Trier	EU Anti-discrimination Law - Seminar for members of the judiciary	45
19.-23.11.	The Hague	Intensive legal English course for EJM contact points:	8



		Focus on judicial cooperation in criminal matters	
20.-22.11.	Brussels	Cross-border parental responsibility & child abduction - Workshop for judges and lawyers implementing the training module on European Family Law *	20
26.11.	Brussels	Seminar for National Judges: Predictable market regulation and effective right of appeal. The role of the judiciary to contribute to regulatory certainty	24
29.-30.11.	Madrid	Fighting child pornography on the internet: between legislation and concrete action *	19
3.-5.12.	Brussels	Train the trainers workshop on "Cross-border parental responsibility, including child abduction"	10
6.-7.12.	Chi in u	Training of Moldovan magistrates and & launch of textbook on int. cooperation in criminal matters	22

2012 Total 688

2013

Date	Place	Title	Att.
24.-25.1.	Trier	EU Disability Law and the UN Convention on Rights of Persons with Disabilities Seminar for members of the judiciary	45
14.-15.2.	Trier	Basic Training Course on Legal and Technical Aspects of Cybercrime (Focus on Profiling Hackers and other Internet Sex Offenders) *	40
25.-27.2.	Dublin	Cross-border Divorce and Maintenance: Jurisdiction and Applicable Law	26
13.-15.3.	Innsbruck	Workshop on cross-border divorce and maintenance	35
14.-16.3.	Thessa-loniki	Parental Responsibility in a Cross-border Context - including child abduction*	16
18.-19.3.	Trier	Applying EU Anti-Discrimination Law - Seminar for members of the judiciary	54
21.-22.3.	Trier	Understanding the Role of the European Court of Justice in Criminal Matters*	22
11.-12.4.	Lisbon	Tackling Cyberlaundering More Effectively - Legal Challenges and Practical Difficulties *	23
16.-17.4.	Trier	BES practice: Euregio's legal training	55
22.-23.4.	Bucharest	The Charter of Fundamental Rights of the European Union in Practice	38
22.-24.4.	Scandicci	Parental Responsibility in a Cross-border Context - including child abduction	28
22.-26.4.	The Hague	Intensive Legal English Training Course for EJM Contact Points: Focus on Judicial Cooperation in Criminal Matters	14
25.-26.4.	Trier	Basic Training Course on Legal and Technical Aspects of Cybercrime: Focus on jurisdictional issues in cyberspace*	36
29.-30.4.	Omšenie	European Family Law - The Brussels II bis Regulation: Case Law, Challenges and Perspectives	49
13.-16.5.	Sofia	Train the trainers workshop for judges	32
20.-22.5.	Riga	Parental Responsibility in a Cross-border Context - including child abduction	21
27.-28.5.	Trier	EU Gender Equality Law - Seminar for members of the judiciary	52
3.-4.6.	Trier	BES practice: Euregio's legal training	60
3.-5.6.	Budapest	Workshop on EU Law on Industrial Emissions for judges	24
6.-7.6.	Seville	Introduction to the Use of Electronic Evidence in Criminal Proceedings: Collection, analysis and presentation of electronic evidence in courts*	29

10.-11.6.	Trier	Applying EU Anti-Discrimination Law - Seminar for members of the judiciary	47
26.-28.6.	Krakow	The Rome I Regulation in judicial practice	50
11.-12.7	Trier	Cross-border litigation in practice	22
3.-4.9.	Cracow	EU Disability Law and the UN Convention on Rights of Persons with Disabilities	60**
9.-10.9.	Helsinki	Cross-border litigation with a focus on monetary claims and European e-justice	40**
11.-13.9.	Trier	Workshop on EU Law on Industrial Emissions for judges	25**
16.-17.9.	Trier	Understanding the Role of the European Court of Justice in Criminal Matters *	50**
19.-20.9.	Barcelona	Cross-border litigation with a focus on monetary claims and European e-justice	40**
19.-20.9.	Trier	Basic Training Course on Legal and Technical Aspects of Cybercrime - Seminar for Judges and Prosecutors	60**
23.-24.9.	Trier	Applying EU Anti-Discrimination Law - Seminar for members of the Judiciary	50**
26.-27.9.	Cracow	The Charter of Fundamental Rights of the European Union in Practice - Training seminar for civil court judges	40**
10.-11.10.	Krom íž	Using EU Civil Justice Instruments	50**
21.-22.10.	Thessa-loniki	EU Gender Equality Law - Seminar for members of the judiciary	50**
22.-23.10.	Trier	Criminal Justice Workshop: Mutual Recognition and Criminal Justice Instruments in the EU	20**
23.-25.10.	Barcelona	Workshop on the interaction between the EIA, Habitats and Water	25**
28.-29.10.	Trier	Training of the German judiciary on the enforcement of EU State aid rules	45**
7.-8.11.	Vilnius	Towards A More Effective Fight Against Cybercrime - Cooperation between law enforcement authorities and the internet industry *	50**
12.-13.11.	Trier	Lutte contre la fraude, lutte contre la corruption et analyse scientifique des phénomènes de la criminalité organisée	40**
13.-15.11.	Trier	Workshop on the interaction between the EIA, Habitats and Water Framework Directives (for Judges)	25**
14.-15.11.	Bucharest	Cross-border litigation with a focus on monetary claims and European e-justice	40**
21.-22.11.	Krakow	Using EU Civil Justice Instruments	49**
21.-22.11.	Paris	The Charter of Fundamental Rights of the European Union in Practice	50**
28.-29.11.	Krakow	EU Gender Equality Law - Seminar for members of the judiciary	50**
9.-10.12.	Trier	EU Disability Law and the UN Convention on Rights of Persons with Disabilities	50**
16.-17.12.	Trier	BES practice: Euregio's legal training	60**

2013 Total 1,787

\* seminar not targeted exclusively at judges and prosecutors

\*\* estimated figures

## ANNEX 2: ERA EVENTS ORGANISED FOR THE LEGAL PROFESSIONS 2012-2013

2012

Date	Place	Title	Att.
13.-14.2.	Trier	EU Gender Equality Law - Seminar for legal practitioners (funded)	50
1.-2.3.	Trier	How to litigate before the ECJ - For lawyers in private practice	25
30.-31.3.	Rome	Advocacy training for criminal defence lawyers	14
20.-21.4.	Edinburgh	EU criminal law for defence counsel (co-funded)	25
4.5.	Florence	European Family Law	40
14.-15.5.	Trier	EU Anti-Discrimination Law - Seminar for legal practitioners (funded)	55
31.5.-1.6.	Trier	How to litigate before the ECJ in intellectual property cases - Procedure before the General Court for lawyers in private practice	14
12.-13.6.	Strasbourg	How to litigate before the ECHR - Procedure before the European Court of Human Rights*	11
22.-23.6.	Prague	EU criminal law for defence counsel (co-funded)	22
30.6.	Athens	Mediation in Greece: EU and National Legal Framework and Practice	238
24.-25.9.	Trier	Annual conference on European family law 2012*	70
24.-25.9.	Trier	EU Gender Equality Law - Seminar for legal practitioners (funded)	55
27.-28.9.	Trier	Annual Conference on EU Company Law 2012*	26
15.-16.10.	Brussels	EEA/EU-Labour Law - Seminar for Norwegian Lawyers	40
18.-19.10.	Málaga	International Taxation - Current topics and interaction at EU level	40
26.-27.10.	Barcelona	EU criminal law for defence counsel (co-funded)	22
5.-6.11.	Trier	Applying EU Anti-Discrimination Law - Seminar for legal practitioners (funded)	53
20.-22.11.	Brussels	Cross-border parental responsibility, including child abduction - Workshop for judges and lawyers implementing the training module on European Family Law *(funded)	8
10.-11.12.	Trier	EU Gender Equality Law - Consolidating seminar for legal practitioners (funded)	48
13.-14.12.	Trier	EU Disability Law and the UN Convention on the Rights of Persons with Disabilities: Seminar for legal and policy practitioners* (funded)	15

2012 Total 871

2013

Date	Place	Title	Att.
25.-26.1.	Patras	Mediation in Greece: EU and National Legal Framework and Practice - Interactive Workshop* (funded)	30
28.2.-1.3.	Barcelona	The Charter of Fundamental Rights of the European Union in Practice* (co-funded)	51
1.3.	Brussels	Competition challenges related to vertical agreements: Focus on the e-commerce, food and luxury sectors*	21
5.-6.3.	Strasbourg	How to Litigate Before the European Court of Human Rights - Practical Guide to Procedure*	17
14.-16.3.	Thessaloniki	Parental Responsibility in a Cross-border Context - including child abduction* (funded)	13

21.-22.3	Trier	Understanding the Role of the European Court of Justice in Criminal Matters* (co-funded)	16
5.-6.4.	Heraklion	Mediation in Greece: EU and National Legal Framework and Practice* (funded)	23
15.-16.4.	Trier	EU Gender Equality Law - Seminar for legal practitioners (funded)	45
22.-23.4.	Trier	Applying EU Anti-Discrimination Law - Seminar for legal practitioners (funded)	44
22.-24.4.	Trier	Workshop on cross-border divorce and maintenance (funded)	19
6.-7.5.	Trier	Applying EU Anti-Discrimination Law - Seminar for legal practitioners (funded)	51
10.-11.5.	Vilnius	EU Criminal Law for Defence Counsel (co-funded)	24
13.-15.5.	Trier	How to Litigate before the CJEU - Procedure for lawyers in private practice	13
3.-4.6.	Edinburgh	The Charter of Fundamental Rights of the European Union in Practice (co-funded)	20
4.6.	Hamburg	Cross-border Insolvency Proceedings	15
6.-7.6.	Seville	Introduction to the Use of Electronic Evidence in Criminal Proceedings: Collection, analysis and presentation of electronic evidence in courts* (co-funded)	17
21.-22.6.	Rome	EU Criminal Law for Defence Counsel (co-funded)	37
16.-17.9.	Trier	EU Gender Equality Law - Seminar for legal practitioners (funded)	50**
16.-17.9.	Trier	Understanding the Role of the European Court of Justice in Criminal Matters * (co-funded)	50**
26.-27.9.	Trier	Annual Conference on European Family Law 2013	100**
26.-27.9.	Trier	Annual Conference on EU Company Law and Corporate Governance 2013	60**
4.10.	Barcelona	EU Labour Law and the case law of the European Court of Justice	25**
11.10.	Bilbao	Cross-border insolvency proceedings for Spanish lawyers	25**
14.10.	Hamburg	Gewerbliche Schutzrechte in der Europäischen Union - Aktuelle Entwicklungen in der Rechtsprechung zum Europäischen Marken-und Geschmacksmusterrecht	25**
18.-19.10.	Dublin	EU Criminal Law for Defence Counsel (co-funded)	25**
22.10.	Prague	EU Labour Law and the case law of the European Court of Justice	25**
4.11.	Trier	Europäisches Familienrecht (in Kooperation mit der RAK Koblenz)	25**
4.11.	Hamburg	European Company Law	25**
7.-8.11.	Vilnius	Towards A More Effective Fight Against Cybercrime - Cooperation between law enforcement authorities and the internet industry *(co-funded)	50**
21.-22.11	Milan	Challenges Related to Electronic Evidence: Obtaining, Relying Upon and Admitting It In Court - Advanced seminar for EU legal practitioners (co-funded)	50**
22.11.	Brussels	EELA-ERA Annual Seminar on European Labour Law	100**
29.-30.11.	Prague	EU Criminal Law for Defence Counsel (co-funded)	25**
5.12.	Dublin	Cross-border insolvency proceedings for Irish lawyers	25**

2013 Total 1,141

\* seminar not targeted exclusively at legal professions

\*\* estimated figures

# **BEST PRACTICES IN JUDGES AND PROSECUTORS TRAINING**

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## **ABSTRACT**

This note provides a brief account of the work in progress on the EU funded project exploring best practices in the training of judges and prosecutors across the EU. The full report and findings of the project team are due to be published early in 2014.

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## 1. BEST PRACTICES IN JUDICIAL TRAINING

### 1.1. Background

In 2011 the European Parliament published a major study on Judicial Training in the European Union, with special reference to training in the law of the European Union.<sup>116</sup> The report was written by the Academy of European Law (ERA), a key provider of such training in Europe for the past 25 years. The report was preceded by a number of further studies that dealt with widely ranging aspects of European training for judicial office holders.<sup>117</sup>

The main objective of the ERA study was to provide an in-depth, objective analysis of judicial training in the Member States on EU law, the law of other Member States and comparative law. Based upon this study, ERA went on a) to identify the institutions in the EU currently leading such training; b) to compile an inventory of best practices in judicial training, which may be shared between jurisdictions, especially with regard to EU law; and c) to make recommendations about possible solutions to shortcomings identified in the current provision of judicial training at EU level.

The study was extensive and of high quality. Reflecting upon the wider issues of judicial training not limited to training in EU law, the Commission, guided by the European Parliament, subsequently determined that there was a need for further and more detailed empirical work that could identify more examples of transferable best practices in the training of judges and prosecutors (where the latter are also judicial office holders).

Building on ERA's study, in 2012 the Commission opened an invitation to tender for a project designed to investigate best practices in the training of judges and prosecutors across the EU.<sup>118</sup> Following a competitive tendering process, the European Judicial Training Network (EJTN) was in January 2013 awarded the contract.

The objective of this project is to complete a study comprising the following elements:

- a) To produce a comprehensive definition of what constitutes best practices in training of judges and prosecutors both in national legal systems and traditions, and also in European Union law and judicial cooperation procedures.<sup>119</sup>
- b) To provide a guidance framework within which best practices in these fields can be developed.<sup>120</sup>
- c) By empirical investigation, to seek out and identify examples of best, good and promising practices in these fields from amongst the EU members states.<sup>121</sup>
- d) Based upon the findings at a-c above, to recommend ways of improving such training, by promoting a dialogue and further co-operation between judges and prosecutors across the EU.
- e) Further to recommend methods for promoting exchanges of best practices across the EU.

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<sup>116</sup> ERA – Academy of European Law, *Judicial Training in EU Member States*, European Parliament – Policy Department C, Brussels 2011, available at <http://www.europarl.europa.eu/delegations/en/studiesdownload.html?languageDocument=EN&file=60091>.

<sup>117</sup> See the studies cited in the reference list.

<sup>118</sup> Tender JUST/2012/JUTR/PR/0064/A4 – Implementation of the Pilot Project – European Judicial Training Lot 1 “Study on best practices in training of judges and prosecutors”.

<sup>119</sup> See Annex 1, which includes the adopted definition of best practice.

<sup>120</sup> See Annex 2.

<sup>121</sup> See Annex 3.

- f) To establish processes for the dissemination of best practice methodology amongst all judicial training providers in the EU.

## 1.2. Execution of the project

Immediately after the contract had been signed, EJTN commenced work on the project, and a number of building blocks were put into place. A project steering group was established within EJTN consisting of the chairs of all EJTN's internal working groups, alongside a small EU Commission steering committee composed of the Project CEO, its core administrator, and key members of the Commission. The main role of the project steering group is to monitor the full execution of the project, through the medium of the project's seven senior experts (see below), and generally to assist the project's CEO in the full execution of the project's aims and objectives.

The project team of senior experts was appointed in February 2013 by the project steering group from amongst a list of nominations provided by the national training institutions participating in the project.<sup>122</sup> To be eligible for consideration experts had: to have at least 8 years of judicial training experience at a senior level, to be available to attend regular meetings as required by the project's steering group, and to be fluent in the English language. The following seven senior experts were selected on the basis of CVs from a shortlist of around 35 applicants: Mr. Cedric Visart de Bocarme (Belgium), Professor Jeremy Cooper (United Kingdom), Judge Jorge Obach Martinez (Spain), Ms Ineke van de Meene (The Netherlands), Judge Roxanna Rizoiu (Romania), Judge Raffaele Sabato (Italy), Dr Dragomir Yordanov (Bulgaria).

With the assistance of EJTN, the senior experts quickly identified the full quota of national training institutions and other European stakeholders in the field of judicial training, in a position to contribute to the study. An initial invitation was sent on behalf of EJTN to all these organisations, firstly, inviting them to participate in the project, and thereafter, inviting them: a) to nominate national contact points who would be responsible on behalf of the institution for the execution of the project questionnaire; b) to offer names of other experts to assist in the project; c) in due course, to answer the questionnaire that would be circulated to all participants inviting them to put forward examples of best, good and promising training practices; and d) if required, to accept and to host study visits.

Following this process, EJTN established a network of national contact points, and a further pool of junior experts has been set up to assist in the preparation of study visits by the senior experts where required to investigate further some of the examples identified as potential best practice.<sup>123</sup>

The senior experts devoted a significant amount of time and discussion in the early weeks of the project a) to defining the concept of best practice in the context of the training of judges and prosecutors (see Annex 1) drawing upon their collective experience of judicial training; and b) to developing the best practice framework; c) to defining and refining the questions to be asked in the questionnaire (see Annex 2). The introduction to the questionnaire can be found at Annex 3 to this note.

In answering the questions, respondents were encouraged, in addition to providing a general description of the identified practice, to address a series of specific issues in relation to the practice. These included questions such as: what issues or problems needed to be solved in developing the practice? What need was addressed by the practice? How was this practice adopted, implemented and executed? What conditions had to be in place and what resources (people, time, money etc.) had to be acquired before the practice could be introduced? How much time was needed to implement the practice? Was there any resistance to the introduction of the practice, and if so, how was this tackled? What results

<sup>122</sup> See General Information para 2.

<sup>123</sup> The full list of junior experts is provided below.

have been achieved so far by using the practice? How do you assess the effectiveness of this practice? Additional remarks on the economic, religious, geographical and/or cultural context that affect the adoption and implementation of the practice were also invited.

In June and July the senior experts, working in small teams following an exhaustive analysis of the questionnaire responses, identified a core set of possible best, good or promising practices worthy of further investigation. To date the senior experts have met on 4 occasions in Brussels and they will be meeting again in Sofia in December for further deliberations, and in particular to scope out the recommendations. Much of the work of the group however is achieved via electronic communication; in particular through sub-group work and analysis, although the key strategic discussions, decisions and recommendations all take place in the plenary sessions.

To date, the experts have identified 28 training practices that provide prima facie evidence for consideration as examples of best practice; 28 practices that provide prima facie evidence of consideration as examples of good practice; and 15 practices that provide prima facie evidence for consideration as examples of promising practice. The experts' preliminary view is that the great majority of these practices are transferable within the EU. In addition there are some examples of practices whose egregious characteristic is the fact that they are very widely used and are thus common to a wide range of EU countries. The experts have reached the preliminary view that unless these practices fall into a best, good or promising category they should be excluded from the study as being outside the terms of reference. Finally, whilst it is to be hoped that the study will include examples of best, good and promising practices drawn from a wide range of EU countries with a broad geographical spread, distorting the real picture simply in order to achieve a balanced geographical spread is clearly to be avoided, as it is not the purpose of the study.

The six core areas of the investigation are as follows:

#### 1.2.1. Training needs' assessment

Crucial to any good training programme is the need to have in place a systematic, robust and comprehensive process that: a) assesses the training needs of judges and prosecutors; b) ensures those needs are reflected in the training programme; c) regularly reviews and, where necessary, updates the training programme to meet new or developing needs. The senior experts have identified a few such programmes and are exploring the detail and effectiveness of the programmes with the national institutions, with a view also to assessing their transferability (for example, taking into account that what is possible in a small jurisdiction may not be possible in a large jurisdiction etc.) In countries where the performance of judges is also actively assessed and appraised, the experts are interested to learn what are the consequences of a negative appraisal, both for the further training of negatively appraised judges and also for the training programme in general (e.g. where appraisal throws up a common area of weakness, how is remedial training in that area provided to correct the identified weakness?). Experts are currently working on 3 examples of potential best practice, 1 of good practice, and 4 of promising practice under this head.

#### 1.2.2. Innovative curricula or training plans in any given particular area

Experts have found a number of interesting examples of innovation in the design of judicial training programmes in the course of the study. Of particular note is the extent to which judicial training is drawing increasingly upon other disciplines to strengthen and enrich core programmes, working alongside other professionals (e.g. economists, psychologists, actors). Training in practical skills, including management of cases and of people, is increasingly to the fore in several programmes. The senior experts are currently working on 11 examples of potential best practice, 4 of good practice, and 7 of promising practice under this head.



### 1.2.3. Innovative training methodology

The use of innovative training methodology across European judicial training is patchy but on the increase, and there are a number of impressive examples of innovation that will figure prominently in the final report. Of particular note is the increasing use of the electronic media, the development of new training styles focussed on individual needs, and the use of live case reconstruction and role play. The experts are currently working on 7 examples of potential best practice, 11 of good practice, and 5 of promising practice under this head.

### 1.2.4. Implementation of training tools to favour the correct application of EU law and implementation of training tools to favour international judicial cooperation

The senior experts are currently working on 2 examples of potential best practice, and 10 of promising practice under these heads, which for these purposes have been grouped together, as the methodologies appear quite similar in relation to both training areas. If these figures are maintained, it does appear that in the field of training in transnational law (EU and international law) training practices remain comparatively conservative and are lagging behind other areas in their approach to innovation. On the other hand, the key best practice that has been identified to date in this field (the use of a multi-faceted range of training approaches in collaboration with other national/transnational training institutions) is applied in a number of different countries, most notably in central and Eastern Europe.

### 1.2.5. Assessment of participants' performance in training/effect of the training activities

This appears to be the area of least activity according to questionnaire responses to date, although experts have identified 5 potential areas of best practice under this head, all of which are worthy of further exploration. The transnational training organisations ERA and EIPA (the European Institute of Public Administration) are especially strong in their approach to this issue.

## 1.3. Further steps

In conclusion, at the time of writing this note (September 2013) the senior experts working on the project have received completed questionnaire responses from 18 of the 27 member states, together with 3 detailed responses from EIPA, EJTN and ERA, the core cross-national judicial training institutions in the European Union. A further 7 countries responded stating that they did not intend to put forward any response to the questionnaire, for a variety of reasons. Responses are still awaited from 3 countries. The full Table setting out the response to date is set out below (in the general information section). In the months of October and November, experts intend to intensify their analysis of the examples that have so far been identified as worthy of consideration for promulgation as exemplars of best practice in the training of judges and prosecutors. To this end, they intend to carry out a small number of direct study visits, and other investigations by telephone and email. Findings and recommendations thereon are expected to be published early in 2014.

## 2. GENERAL INFORMATION

Table 1: responses received (September 2013)

RESPONSES RECEIVED	
COUNTRY/ORG.	NATIONAL TRAINING INSTITUTE
Austria	Bundesministerium für Justiz
Belgium	Institut de Formation Judiciaire
Bulgaria	National Institute of Justice
Croatia	Judicial Academy
Czech Republic	Judicial Academy
Estonia	The Supreme Court of Estonia
Finland	Oikeusministeriö
France	Ecole Nationale de la Magistrature
Germany	Federal Ministry of Justice
Hungary	Hungarian Judicial Academy Office of the Prosecutor General
Italy	Consiglio Superiore della Magistratura
Poland	National School of Judiciary and Public Prosecution
Portugal	Centro de Estudos Judiciarios
Romania	National Institute of Magistracy
Slovenia	Center for Judicial Training
Spain	Centro de Estudios Jurídicos Escuela Judicial de España
The Netherlands	Studiecentrum Rechtspleging
UK (England and Wales only)	Judicial College
ERA	Academy of European Law
EIPA	European Institute of Public Administration
EJTN	European Judicial Training Network

NO RESPONSE	
COUNTRY	INSTITUTE
Cyprus	Supreme Court of Cyprus
Greece	National School of Judges
Ireland	Judicial Studies Institute
Lithuania	National Courts Administration
Luxembourg	
Malta	The Judicial Studies Committee
Slovakia	Judicial Academy

AWAITING RESPONSE	
COUNTRY	INSTITUTE
Denmark	Domstolsstyrelsen
Latvia	Latvian Judicial Training Center
Sweden	Domstolsverket

Table 2: project schedule

Tender JUST/2012/JUTR/PR/0064/A4 – Pilot Project – European Judicial Training LOT 1 - Study on best practices in training of judges and prosecutors PROJECT SCHEDULE		
DATE	(2013)	ACTIVITY
FEBRUARY	Feb-01	Signature of the contract
	Feb-20	Kick off meeting with EU COM/desk officer
		List of junior/senior experts /contact points are submitted
	Feb-27	First meeting of the Experts' Laboratory at EJTN
MARCH		Concept of training best practices is settled
	Mar-12	Inception note is submitted
		Laboratory of experts start the draft of the questionnaire
APRIL	Apr-29	First meeting of the EU COM Steering Committee
MAY		Questionnaire is concluded and sent to contact points
JUNE		Contact points start answering the questionnaire
		Translations begin to take place
	June-11	Second meeting of the Experts' Laboratory at EJTN
		Assessment phase begins
JULY		Contact points conclude answering the questionnaire
		Translations are concluded
	July- 10	Project Steering meeting at EJTN
	Jul 24-25	Third meeting of the Experts' Laboratory at EJTN
		Assessment phase continues
	July 26	Progress meeting with EU COM / desk officer
	July-31	Interim report is submitted
AUGUST	Aug-29	Fourth meeting of the Experts' Laboratory at EJTN
		Assessment phase continues
SEPTEMBER		Study visits take place
		Assessment phase continues
OCTOBER		Last study visits take place
		Assessment phase concludes
		First selection of best practices take place
		Recommendations starts to be drafted
	Oct-31	Second meeting of the EU COM Steering Committee
NOVEMBER		Recommendations continue to be drafted
		Final report starts to be drafted
		Recommendations are drafted
		Second selection of best practices take place
DECEMBER		Fifth (last) meeting of the Experts' Laboratory in Sofia
		Final list of best practices is concluded
		Final recommendations are concluded
	Dec-31	Final report is concluded

Table 3: table of junior experts

COUNTRY	ORGANISATION	NAMES
Estonia	The Supreme Court of Estonia	Mr. Tanel Kask
Italy	Consiglio Superiore della Magistratura – High Council for the Judiciary	Mr. Nicola Russo, Mrs. Roberta Collida, Mr. Carlo Renoldi, Mr. Fabio Licata, Mrs. Rossanna Giannacari, Mr. Luca Perili, Mrs. Gabriella Capello, Mr. Gianluigi Pratola, Mrs. Valentina Manuali, Mr. Massimo Ferro
Lithuania	Training Centre of the National Courts Administration of the Republic of Lithuania	Mrs. Diana Labokaite, Mrs. Lijana Visokaviciene
Romania	National Institute of Magistracy Romania	Mrs. Beatrice Ramascanu, Mrs. Diana Ungurean, Mr. Liviu Zidaru, Mrs. Otilia Pacurari
Slovenia	Center for Judicial Training Ministry of Justice	Mrs. Jerneja Prostor
Spain	Escuela Judicial de España – Spanish Judicial School	Mrs. Isabel Tomas
Spain	Centro de Estudios Jurídicos - CEJ – Ministry of Justice	Mr. Jose Miguel Company
The Netherlands	Dutch Training Institute for Judiciary – SSR	Mrs. Elise Bloem
United Kingdom	Judicial College	Mrs. Gillian Mawdsley

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- Questionnaire "B" on the role of training institutions in recruitment and initial training of judges and prosecutors

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- Questionnaire "C" on the role of training institutions as regards in-service training of judges and prosecutors

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## ANNEX 1 - DEFINITION OF BEST PRACTICE IN JUDICIAL TRAINING IN EUROPE

1. The object of this project is to identify "best practices" in judicial training in Europe. It is therefore necessary to define such "best practices" for those who will endeavour to identify them in the course of this research.

2. In the wider world, "best practices" are normally cast only in broad outline. Thus in the production process, recommendations may be given to employees, highlighting the most efficient way to complete their tasks; in the medical profession or in the management of investments a physician or a manager may follow best practices when deciding about the client's health or money by prudently resorting to pharmaceutical products or investing in a well-diversified portfolio. In these areas, it is self-evident that one may find methods or techniques that have documented outcomes and the ability to replicate themselves as key factors.

3. In recent years, public agencies, too, have been adopting best practices when delivering services related to their field of activity, such as education or welfare services.

4. In the particular public sector represented by the setting of justice, and of judicial training in particular, there is no general consensus on what constitutes “best practices”. Contrasting values that justice seeks to reconcile by resorting to the rule of law (for example the rights of the victims versus those of the accused party; public interest versus private interest), as well as preserving the independence of the judiciary as a general framework ensuring that the rule of law is effectively applied, make it difficult to define best practices in areas in which differing legal standards apply.

5. Judicial training tends to reflect the characteristics of the systems of justice in which judges or prosecutors operate. In addition many countries have no mandatory judicial training, have no assessment of participants’ performance in training, and have no monitoring of the cost-efficiency of training; the very indices of what makes a “practice” best among others are thus unavailable.

6. Rather than talking exclusively about “best practices” (i.e. programmes or strategies having the highest degree of proven effectiveness supported by objective and comprehensive research and evaluation), we favour as a more fruitful route of enquiry investigating also examples of “good or promising practice”. A “good or promising” practice is a programme or strategy that has worked within one organization and shows promise for becoming a “best practice”, as it has some objective basis for claiming effectiveness and potential for replication among other organizations. In reality one may often in everyday usage employ the concepts of “best” and “good or promising” practices interchangeably, as they may overlap. In measuring effectiveness, a number of factors must be taken into consideration including the content and quality of the programme per se, the link between the programme and the preliminary needs analysis, the quality of the trainers, the accessibility of the programme to trainees, and its subsequent impact upon performance of judges and prosecutors, appropriately evaluated.

7. The definition of a “good or promising practice” in the field of judicial training can be further widened to include a) its capacity to be effectively transferred to other jurisdictions; b) the extent to which it innovates or refreshes (even inspires) existing, established training practices to enhance the learning experience of judges and prosecutors; c) the capacity of the practice to adapt to the differing cultural, social, economic and religious circumstances in which different judicial systems operate across the EU; d) the existence of clear evidence that it meets an articulated training need.

8. For the purposes of this project, therefore, we will include in the search for “best practice” in judicial training what may currently be described as a “good or promising practice”, that is a practice in judicial training with at least preliminary evidence of effectiveness or for which there is potential for generating data that will be useful in determining its promise to become a “best practice” for transfer to wider, more diverse judicial training environments.

9. The above definition includes two sub-concepts: evidence-based “best, good or promising practices” and experimental “good or promising practices”. Both concepts will be relevant for this research; in particular, experimental and promising practices could be put forward for further analysis as a step toward becoming examples of “best practice”.

10. Having adopted the above definition, we offer the following suggestions to researchers who will have to apply it.

a) Most choices about practices in the area of judicial training are linked to policy issues, usually centred on judicial independence; e.g. no mandatory training and no assessment of participants’ performance in training is provided in many countries, on the basis that this ‘preserves judicial independence’. Such trade-offs should be evaluated, so that e.g. cost-effectiveness should not be the only parameter to evaluate effectiveness, since other values (such as the protection of judicial independence) are also at stake; in short, a best

practice is not such if it jeopardizes judicial independence, but also is not such if, in order to preserve it, it is not cost-effective.

b) Since in the area of judicial training there is such a strong connection between practice and public policy, generalization of behaviours does not necessarily mean that such behaviours are best practices; in fact, the impossibility of assessing cost-effectiveness may prevent the identification of some generalized practices as non-effective. More sophisticated analyses are therefore necessary to identify acceptable "good or promising" practices. In short, in identifying "best practices", breaking loose from generalized behaviours challenges those behaviours in order to add value, and offers the opportunity to introduce a new "best practice" in public policy that nobody had thought of before.

c) Attention should be paid to "local" connotations of the practice, allowing flexibility for how it is implemented; in short, the practice should be described in as broad a manner as possible, so that it may adjust to different local conditions.

d) Analysis should also describe potential vulnerabilities that could lead a practice to fail, e.g. in settings in which financial or management capacities are not available, or in which different values may jeopardize the results; in short, the analysis should pay attention to economic, religious, geographical and cultural diversities.

e) Nonetheless, "best practices" should be simple, consistent in their components, and capable of standardization.

## ANNEX 2 - THE BEST PRACTICE TRAINING FRAMEWORK

1. In seeking to identify a range of examples of Best Practice in Judicial Training (as defined in Document 1) across the European Union, the Laboratory of Experts has designed the following General Framework. This General Framework provides the broad parameters of the optimum content of a full judicial training programme. We use the word 'training' in its broadest sense to include not only teaching but also time for personal learning, self-reflection, and self-tuition.
2. We do not expect participating training bodies to put forward as examples of Best Practice programmes that cover ALL the content contained in the Framework. We do however anticipate that for a programme to be put forward as a Best Practice example, it will cover one or more of the areas contained in the General Framework.
3. As a preliminary matter, we expect every training programme to be based upon an assessment of a) the training needs of individual judges and prosecutors, and b) the training needs of judges and prosecutors as required by the wider society.
4. It is anticipated that as a result of the above 'needs assessments', Judicial training programmes will address the following issues ('the General Framework'). Central to each programme will be an awareness of the necessity of devising training that can be delivered within available resources.

### A. Law and Procedure

The emphasis in judicial training should increasingly be upon the use of case studies, small discussion groups, and maximising the potential where appropriate, for e-Learning. The set piece big lecture, with a passive audience could no longer in our view be an example of Best Practice in the modern world.



## B. Judgecraft

This big topic covers a wide range of subjects including case management, judicial conduct and ethics, assessment of credibility, evidence gathering and decision writing, including an analysis of processes leading to decisions such as sentencing theories.

## C. The Social Context of Judging

This refers to ensuring through appropriate training, that judges and prosecutors have a high level of awareness as to how the differing backgrounds, capacities, needs and expectations of those appearing in courts and tribunals should be reflected in the conduct of judicial proceedings.

## D. Technological Skills

All modern judges should be skilled in the use and application of information technology. This includes good personal computing skills, ability to access and use research databases, and an understanding of the range and significance of social media.

## E. Training of Judges in EU Law relevant to their Jurisdiction

This is a core purpose of this project, which also reflects the aspirations of both the Stockholm Programme Resolution on Judicial Training (17 June 2012) and Articles 81.2 h and 82.1 c of the Treaty on the Functioning of the European Union, created by the Lisbon Treaty.

## F. Training of Judges to Deliver the Programmes

As a general principle, judges and prosecutors are best placed to train judges and prosecutors or at least to plan and to supervise their training. Judicial training programmes should ensure they are adequately trained for this purpose.

## G. Training of Judges in Perceptions of 'Justice Users'

Judges should be sensitive to how they are perceived by justice users, without compromising their independence. Training programmes that expose judges to the perceptions of justice users in controlled and sensitive ways, are to be encouraged.

## H. Development of Effective Feedback and Evaluation of Programmes.

Training programmes without feedback from users and other forms of evaluation exist in a vacuum. Conversely, training programmes that listen, and respond to the views of their users increase both in value and in quality.

## I. Development of Innovative Training Methodologies.

All training programme designers should be ever vigilant to innovation in training methodologies as a means of improving, energising and invigorating their programmes. The pressures of increasing budgetary constraints require great vigilance as to the need to keep searching for efficient and cost effective methodologies, in particular the use of electronic forms of learning. This process should inevitably lead to the development of innovative curricula, sensitive to new requirements.

## ANNEX 3 - QUESTIONNAIRE (INTRODUCTION)

### 3) The Questionnaire

In this questionnaire, we ask you to provide us with a description of best, good or promising practices in six categories: 1) training needs' assessment; 2) innovative training methodology; 3) innovative curricula or training plan in any given particular area; 4) implementation of training tools to favour the correct application of EU law; 5) implementation of training tools to favour international judicial cooperation; 6) Assessment of participants' performance in training/effect of the training activities.

We are interested in practices both on the national AND on the regional and local level; e.g. practices used for training and learning at local/regional courts and prosecutors offices.

We kindly request you to provide, if appropriate, at least one best, good or promising practice for each category, where you believe the practice falls within the above definitions. Should you wish to include any other best practices under the same category, please feel free to do so. However, you should not send in more than 10 selected practices in total, and we are interested in quality, not quantity.

It is possible that a practice fits more than just one category. For instance, you may have an innovative methodology for training on international judicial cooperation. This practice can be presented under both Categories 1 and 4. If this is the case, we ask you to present the practice in just one category, while indicating that it also applies to the other category.

For each best, good or promising practice, we would like to know:

- What the practice consists of;
- Why the practice was adopted;
- How the practice was adopted, implemented and executed;
- What results have been achieved so far?

Your answers to this questionnaire will be analysed by the team of experts presented above. When filling in the questionnaire, we urge you to bear in mind that the members of this team may not be aware of certain specific characteristics of your legal system and the system of judicial training in your country and institution. Therefore, we ask you to be as clear as possible when describing the identified practices. Moreover, for each practice there is room to provide any additional background information that is needed to understand the local connotations of the practice.

In addition to the best, good or promising practices, this study also covers the issue of how you identify and assess the training needs of the judiciary. You will find a further question on this topic at the end of the questionnaire.

We would appreciate it if you could provide the information on your identified practices in English. However, answers provided in your local language will be translated into English and studied by the team of experts. Please feel free also to add, as annexes to your answers, any pertinent documents even if written in your own language.

## **TRAINING OF LAWYERS IN THE EUROPEAN UNION**

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### **ABSTRACT**

This paper analyses the issues arising in the context of the training of lawyers in the European Union, in particular as regards their training in EU law and the cross-border accessibility and recognition of existing national training. Special attention is paid to the role of the CCBE, the recommendations of its Training committee and its implementation of training projects co-financed by the EU.

### **CONTENT**

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## EXECUTIVE SUMMARY

### Background

The Council of Bars and Law Societies of Europe (CCBE) represents the Bars and Law Societies of 32 member countries<sup>124</sup> and 11 further associate and observer countries,<sup>125</sup> and through them, more than 1 million European lawyers. It is recognised as the voice of the European legal profession by the national Bars and Law Societies, and acts in this capacity as the liaison between the EU and its institutions and Europe's national Bars and Law Societies.

The CCBE was founded in 1960, as the ramifications of the European Economic Community on the legal profession started to be seriously considered. During the decades which followed and through to the present day, the CCBE has been in the forefront of advancing the views of European lawyers and defending the legal principles upon which democracy and the rule of law are based.

Training of lawyers has always been one of the priorities of the CCBE's work; the Bars and Law Societies of the CCBE recognise that

"the exercise of the profession of lawyer requires a very high standard of professional competence of their members, and those aspiring to become members of the legal profession. Such a high standard of professional competence of lawyers is a cornerstone for the furtherance of the rule of law and democratic society; [...]."<sup>126</sup>

The provision of high quality services - which requires high quality training - and the furtherance of a common European judicial area are key CCBE concerns. Through its Training committee<sup>127</sup>, the CCBE develops training policies concerning both initial and continuing training of lawyers in order to respond to these concerns.

### Aim

The aim of the present paper is to provide a comprehensive overview of the CCBE's work in the field of training of European lawyers.

As the European Single Market becomes more open and integrated, the number of cross-border legal transactions increases, together with that of the interactions between the different national laws of the Member States of the EU. This leads to a greater need for lawyers from different Member States to familiarise themselves more with the legal systems of their neighbours, and with EU law, to ensure that the latter is applied consistently at all levels.

The promotion of the European dimension of lawyers' training has been an important element in the CCBE's work as will be shown in the following sections.

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<sup>124</sup> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, The Netherlands, and the United Kingdom.

<sup>125</sup> Montenegro, Turkey, Albania, Andorra, Armenia, Bosnia and Herzegovina, Former Yugoslav Republic Of Macedonia (FYROM), Georgia, Moldova, Serbia, Ukraine.

<sup>126</sup> CCBE Recommendation on Training Outcomes for European Lawyers of 23 November 2007, available at [http://www.ccbe.org/fileadmin/user\\_upload/NTCdocument/EN\\_Training\\_Outcomes1\\_1196675213.pdf](http://www.ccbe.org/fileadmin/user_upload/NTCdocument/EN_Training_Outcomes1_1196675213.pdf)

<sup>127</sup> The CCBE Training committee is composed of expert lawyers and Bar / Law Society representatives who deal with training issues at national level. Currently, the CCBE Training committee has 22 members coming from 14 different European countries: Austria, Belgium, Czech Republic, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Poland, Slovak Republic, Spain, and the United Kingdom. More details about the Training committee are available at [http://www.ccbe.eu/index.php?id=94&id\\_comite=13&L=0](http://www.ccbe.eu/index.php?id=94&id_comite=13&L=0).

## INTRODUCTION

Ever since its foundation in 1960, the CCBE has been studying training issues concerning the profession of lawyer. The level of work intensified with the adoption of the various Lawyers' Directives (Services, 1977<sup>128</sup> - Recognition of Professional Qualifications, 1989<sup>129</sup> – Establishment, 1998<sup>130</sup>).

The first CCBE Code of Conduct for Lawyers<sup>131</sup> - adopted in October 1988, after six years of preparatory work - contained a specific article on 'Training Young Lawyers', aiming to ensure that future generations of lawyers have knowledge of the laws and procedures in other Member States. After revisions carried out in 1998, 2002 and 2006, the latest version of the Code provides in Article 5.8 that lawyers should maintain and develop their professional knowledge and skills taking proper account of the European dimension of their profession<sup>132</sup>. In addition, both the CCBE Code and the CCBE Charter of Core Principles of the European legal profession of 2006 require the lawyer to be competent<sup>133</sup>.

At the 'European Presidents Conference'<sup>134</sup> that took place in Vienna in February 1997, the CCBE received an official request from the conference to propose measures and explore the way forward as regards the training of lawyers in Europe.

The request resulted in the adoption of an 'Interim report of the CCBE on the harmonisation of the training of lawyers in Europe: Quality harmonisation – The current situation and the ways forward'<sup>135</sup>. The report takes stock of the education and training of lawyers in Europe - highlighting the substantial differences in the preparation of young lawyers for the legal profession and the continuing training requirements of Bars and Law Societies. The report recommends that further research and work be undertaken as far as university education; practical training of lawyers and continuing training are concerned.

In November 2000, the 'CCBE Resolution on training for lawyers in the European Union'<sup>136</sup> specified in more detail the actions to be undertaken by the CCBE. The Resolution asks the CCBE to prepare detailed recommendations in a number of areas and emphasises the importance of 'Community law' and 'European legal systems' in all legal training. The Resolution stated:

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<sup>128</sup> Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services.

<sup>129</sup> Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration.

<sup>130</sup> Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained.

<sup>131</sup> The CCBE Code of Conduct applies to cross-border activities of lawyers. The latest version of the Code is available at [www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/EN\\_Code\\_of\\_conductp1\\_1306748215.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_Code_of_conductp1_1306748215.pdf).

<sup>132</sup> The Code's Memorandum specifies that "Keeping abreast of developments in the law is a professional obligation. In particular it is essential that lawyers are aware of the growing impact of European law on their field of practice".

<sup>133</sup> See Principle (g) of the Charter of Core Principles of the European Legal Profession and Article 3.1.3 of the Code of Conduct for European Lawyers, which are both available at [www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/EN\\_Code\\_of\\_conductp1\\_1306748215.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_Code_of_conductp1_1306748215.pdf); the commentary to the Charter specifies with regard to the lawyer's professional competence that: "The lawyer cannot effectively advise or represent the client unless the lawyer has the appropriate professional education and training."

<sup>134</sup> The 'European Presidents Conference', which traditionally takes place every year - since 1973 - in Vienna, provides an occasion for Presidents of Bars and Law Societies to discuss topical issues of common interest. For more information, please consult the website of the European Presidents Conference, available at: [http://www.e-p-k.at/www\\_epk/getFile.php?sprache=2](http://www.e-p-k.at/www_epk/getFile.php?sprache=2).

<sup>135</sup> Adopted in February 1998. The report is available at: [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/Frieders\\_enpdf1\\_1183977329.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/Frieders_enpdf1_1183977329.pdf).

<sup>136</sup> Available at: [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/form\\_enpdf1\\_1183977205.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/form_enpdf1_1183977205.pdf).

## Recommendations

These recommendations should cover the following principles:

1. "training and examination in professional practice before gaining a legal professional qualification, and the duration and content of such training;
2. practical on-the-job training (such as a 'stage' or pupillage) under the supervision of a lawyer, before or where appropriate after, qualification;
3. all legal training in the EU to take account not only of domestic requirements but also of:
  - the use of Community law focused on concrete and practical applications of that law;
  - an introduction to characteristic features of great European legal systems;
  - knowledge of the European Code of Conduct;
  - training of trainers;
4. compulsory continuing training, with minimum components relating to the number of hours that all EU lawyers should complete annually and the proportion of hours dedicated to Community law and European comparative law".

The following section summarises the main policy work which the CCBE has undertaken following the adoption of the Resolution of November 2000.

## 1. MAIN AREAS OF POLICY WORK IN RECENT YEARS

### 1.1. Continuing training

Continuing training is of great importance to lawyers and their clients. For anyone seeking legal advice, it is important to know that their lawyer is familiar with the latest developments in the fields in which they practise.

The CCBE recognises this importance, and therefore considers that all lawyers in Europe should participate in continuing (professional) training programmes, and that the Bars and Law Societies of the CCBE should all develop, in their own specific way, programmes and/or regulations for continuing training.

Over the past 10 years, the CCBE has carried out important work in the area of continuing training. The work was undertaken with the aim of assisting national Bars and Law Societies wishing to introduce continuing training regimes within their home jurisdictions.

In response to the CCBE Resolution on training for lawyers of November 2000, the CCBE adopted on 28 November 2003 a 'Recommendation on continuing training'<sup>137</sup> which sets out the:

- 'Areas of continuing training' - the chosen area of practice, including the applicable European Community law, and deontology;

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<sup>137</sup> At [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/ccbe\\_recommendation\\_1\\_1183977067.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/ccbe_recommendation_1_1183977067.pdf).

- 'Methods of continuing training' - attendance at lectures, seminars, meetings, conferences and congresses; e-learning; writing of articles, essays, books; teaching; and any other activity recognised by the profession; and
- 'Evaluation and Monitoring of continuing training'- continuing training undertaken by lawyers should be regularly evaluated<sup>138</sup>.

The Recommendation is not intended to impose a solution or obligation<sup>139</sup>, but to encourage the adoption of continuing training regimes and to confirm a culture of quality and training for lawyers, in the public interest.

In order to continue its support to its members, the CCBE published in November 2006 a Model Scheme for Continuing Professional Training.<sup>140</sup> The model scheme, which is again neither binding nor mandatory for the Bars and Law Societies of the CCBE, provides a set of articles which can serve as an example for Bars and Law Societies wishing to introduce continuing training - the model articles indicate the issues that Bars and Law Societies will need to deal with, and pay special attention to, when adopting a continuing training regime.

In 2011, the CCBE carried out a survey in order to see how many Bars and Law Societies provide for continuing training regimes. It showed that most countries introduced continuing training over the last decade, especially in and after 2005. Currently, 18 out of 32 CCBE full member countries have a specific mandatory continuing training regime: Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Ireland, Italy, Lithuania, Luxembourg, Norway, Poland, Romania, Sweden, Switzerland, the Netherlands and the United Kingdom<sup>141</sup>. Countries which do not have a specific mandatory regime nevertheless provide various continuing training opportunities for their lawyers.

Continuing training remains on the CCBE's agenda: more and more lawyers nowadays undertake training activities in Member States other than their own one – these lawyers have a strong interest to ensure that their training activities, wherever they follow them, are recognised by their relevant Bar or Law Society. The CCBE is in the process of preparing recommendations to deal with the issue of mutual recognition of continuing training obligations – so that, for instance, a Portuguese lawyer established in Portugal following training in the Czech Republic would not have a problem having his/her Czech training recognised<sup>142</sup>. This work will be of particular importance in light of the CCBE's European Training Platform project (see below 'Projects in the field of training').

## 1.2. Training outcomes for European lawyers

The 'CCBE Recommendation on Training Outcomes for European Lawyers' of 23 November 2007<sup>143</sup> is one of the major training documents adopted by the CCBE in the last few years. The Recommendation lays down the CCBE's views on the main training outcomes - knowledge, skills and competences - necessary for a European lawyer.

The Recommendation is composed of three sections – 'Who lawyers are', 'What lawyers do' and 'How lawyers should work':

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<sup>138</sup> This "could be done with a weighted allotment of hours/credit points being given for the various methods and duration of training. Control over fulfillment of continuing training obligations (including the consequences of non-completion) could include a system of self-certification by lawyers subject to checks and should be administered by the competent Bar or Law Society on the basis of domestic law or other rules or regulations where appropriate".

<sup>139</sup> The CCBE has no official power to adopt binding requirement for its members.

<sup>140</sup> At [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/en\\_training\\_ccbe\\_mod1\\_1182247022.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/en_training_ccbe_mod1_1182247022.pdf).

<sup>141</sup> The CCBE website provides information and links to all national continuing training regimes.

<sup>142</sup> In 2001, following the adoption of the Establishment Directive 98/5/EC, the CCBE dealt for the first time with the issue of cross-border continuing training obligations – the Guidelines on the implementation of the Directive provide that a lawyer shall be subject to the continuing professional education rules of the host State Bar, except where the home State Bar has rules which oblige the lawyer to continue home State professional education wherever he or she is based. The Guidelines also encourage Bars and Law Societies to develop flexible continuing professional education rules which will permit migrant lawyers to satisfy them by undertaking continuing professional education not only in host State law but also in home State law.

<sup>143</sup> At [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/EN\\_Training\\_Outcomes1\\_1196675213.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_Training_Outcomes1_1196675213.pdf).

"1. The first section sets out the outcomes relating to deontology and professional rules. Their function is to make future lawyers aware of their professional identity and of the role of the profession within the administration of justice and in society at large. Through mastering these outcomes future lawyers learn who lawyers are.

2. The second section's outcomes relate to the execution of the mission of lawyers. They describe, in general terms, the theoretical and practical knowledge that lawyers should have in order successfully to perform their functions. Through mastering these outcomes future lawyers learn what lawyers do.

3. The third section's outcomes are related to the organisation of the activities of lawyers. If lawyers, fully aware of their mission and role, and in possession of all the necessary technical skills are to perform their functions more effectively, they must understand these outcomes as they explain how lawyers should work."

As far as the European dimension of lawyers' training is concerned, the Recommendation provides, inter alia, that a lawyer should have a:

"[a] thorough understanding of the principal features and the major concepts, values and principles of the legal system, including the European dimension (including institutions, procedures);

[b] detailed knowledge beyond the core of the basic legal system and knowledge in at least some specialised fields of law"; "The core knowledge includes in particular knowledge of civil law (obligations, tort, property law and the law of succession), constitutional and administrative law, human rights law, criminal law and European Law."

### 1.3. The consequences of the Morgenbesser judgment

Over the years since it was decided, the CCBE has studied very closely the consequences of the decision of the Court of Justice in the case *Morgenbesser* (case C-313/01, decision of 13 November 2003) which in essence extends the right of mobility to those still in training and not yet fully qualified as lawyers.

The case concerned a French national, Christine Morgenbesser, who - after being awarded with the title of *maîtrise en droit* (law degree) in France - spent some time training with a law firm in France and then with a legal practice in Genoa, Italy. Her application for enrolment with the register of trainee lawyers of the Bar of Genoa was refused on the ground that she was neither qualified to carry on the profession of lawyer in France<sup>144</sup> nor did she hold the necessary professional qualification for enrolment on the register of *praticanti* in Italy. When Ms Morgenbesser applied to the Università degli Studi di Genova for recognition of her law degree, she was informed that this could be done provided she completed a course of two years, passed 13 examinations and submitted a thesis.

The case ended before the Court of Justice of the European Union which held that the "Italian authorities cannot refuse enrolment in the register of 'praticanti' to the holder of a 'maîtrise en droit' issued in another Member State. The host Member State must compare the diplomas, taking account of the differences between the national legal systems and, in appropriate cases, require the person concerned to show that he or she has acquired the learning and skills that are lacking."<sup>145</sup>

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<sup>144</sup> She would have still been required to obtain the certificate of aptitude necessary for qualification as an *avocat*.

<sup>145</sup> See press release of the Court of Justice which is available at <http://curia.europa.eu/jcms/upload/docs/application/pdf/2009-03/cp0399en.pdf>.



The judgment led the CCBE to adopt an Analysis and Guidance<sup>146</sup> intended for Bars and Law Societies aimed at assisting them when dealing with Morgenbesser-like applications.

The CCBE Analysis and Guidance lists the duties of the ‘Competent Authorities’ – which in most cases will be a Bar or Law Society<sup>147</sup> - in relation to the comparative evaluation of qualifications:

- a) The duty of the competent authority is to assess applicants’ competences holistically, that is to say they must assess all the applicant’s abilities, knowledge and competences to carry out the professional role of “lawyer” in the host country.
- b) The knowledge, learning and skills of applicants have to be taken as a whole, and there can be no prior requirement of equivalence of the academic stage of training.<sup>148</sup>
- c) The competent authority must assess not only the academic and other stages of training but also the professional experience of the migrant. This has been a requirement since the Vlassopoulou<sup>149</sup> case whose ruling in this respect has since been incorporated into Directive 89/48/EEC.
- d) The “professional qualification” of the migrant, wherever gained (at §58), has to be taken into account.
- e) National competent authorities should have already a “list of subjects” required in their own Member States. This list should be normally reduced to a smaller list of topics “knowledge of which is essential in order to be able to exercise the profession” (Article 1(g) of Directive 89/48/EEC). This is the yardstick against which the migrant applicant’s professional qualification should be judged, taking into account objectively justified contextual differences mentioned in items 5 above and f) below.
- f) Objective differences in the context of training and legal practice however can be taken into account. [...]”.

Ever since the decision, the Training committee of the CCBE has followed the implementation of the judgment at national levels. In 2012, the committee started gathering detailed information on how Bars and Law Societies implement the decision<sup>150</sup>.

#### 1.4. European Judicial Training

The CCBE has welcomed the efforts of both the European Commission and the European Parliament over recent years to bring lawyers within the scope of European Judicial Training, so as to recognise the role of lawyers within the administration of justice - after all, lawyers are traditionally the first persons that users of justice contact, and therefore

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<sup>146</sup> [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/morgenbesser\\_guidanc1\\_1183976940.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/morgenbesser_guidanc1_1183976940.pdf).

<sup>147</sup> The CCBE Analysis and Guidance specifies in this context: “The competent authority for this “new” mode of entry to the legal professions may not have been designated in national law and practice. It will be the authority that admits applicants to the traineeship (post-academic) stage of preparation for becoming a lawyer. In most cases this will be a Bar or Law Society. There is some merit in having a centralised approach to help ensure uniformity of decision-making and to prevent conflicting precedents from arising. Bars and Societies, should seek to get national law altered to designate and allocate them, or a central authority where relevant, the task of this comparative assessment. It is true that in the absence of such clarification, EC law still operates to require them to undertake this task anyway, but EC law nevertheless requires certainty and a lack of proper “routes” for migrants could be deemed a “hindrance” to mobility and in itself be an infringement of EC law.”

<sup>148</sup> See case C-234/97 Teresa Fernández de Bobadilla v Museo Nacional del Prado, Comité de Empresa del Museo Nacional del Prado and Ministerio Fiscal [1999] ECR I-4773, noted at (2001) 50 ICLQ 168.

<sup>149</sup> Case C-340/79 Vlassopoulou [1991] ECR I-2357 and re-affirmed in case C-238/98 Hocsman [2000] ECR I-6623.

<sup>150</sup> Information on how national Bars and Law Societies deal with the judgement can be downloaded from the CCBE website, at <http://www.ccbe.eu/index.php?id=424&L=0>.

they are a fundamental pillar for the creation of confidence in the European judicial area. The CCBE has contributed to the political discussions with its own contributions setting out the training needs of lawyers<sup>151</sup>.

To step up training of legal professionals in EU law, the CCBE believes it important that 'Training kits' about EU law instruments, and in particular new instruments, be developed. This could help in backing the political agenda of the EU in a practical way and improve implementation of EU law<sup>152</sup>. The European Commission has prepared such training material in the past for very specific and selected EU instruments, but the CCBE is of the opinion that the European Commission should consider how this could be achieved more widely.

## 2. PROJECTS IN THE FIELD OF TRAINING OF LAWYERS

### KEY FINDINGS

- The CCBE's experience shows that training of lawyers can be improved through EU funding.
- Although diversity can bring added value, the development of projects by the CCBE has brought a measure of helpful harmonisation to the different Member States' practices.
- The CCBE is currently implementing two major training projects: the European Training Platform and (jointly with the European Institute for Public Administration - EIPA Luxembourg) a Study on the state of play of lawyers' training in EU Law.

One of the tools which has shown a significant impact on the training of lawyers is the implementation of EU co-financed projects that have as their objective, specifically, the training of legal professionals. Although different member bars have initiatives at the national level, only an EU project can reach the totality of European lawyers. This is the reason why the CCBE has undertaken some EU projects in the field of training, as we will see below.

Currently, the CCBE is implementing two projects that, even if focused on training, have a different scope. Firstly, the CCBE is developing an IT tool which will help lawyers to find training opportunities in other EU Member States and in other languages, helping to break down barriers in training. Secondly, the CCBE is participating in a study whose aim is to understand the degree of training in EU Law that European lawyers receive both during the induction period (when lawyers may be regarded as trainee lawyers and will not have been registered on the main list of qualified practitioners) and during continuous professional training (once the lawyer has been admitted to the bar); this second study will be very useful to put into place proposals to make the training of lawyers, especially in EU law, a training without borders.

### 2.1. The European Training Platform

The European Training Platform (ETP) will consist of an IT platform which will provide information about courses for lawyers in a cross-border context. Although the final format of the system has not yet been established, all relevant information from national and European-level training providers about training activities and courses will be made

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<sup>151</sup> CCBE comments on European legal training, available at [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/EN\\_22\\_10\\_10\\_CCBE\\_com1\\_1288165534.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_22_10_10_CCBE_com1_1288165534.pdf); CCBE recommendations on the Stockholm programme, available at [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/EN\\_Recommendations\\_f1\\_1257324965.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_Recommendations_f1_1257324965.pdf).

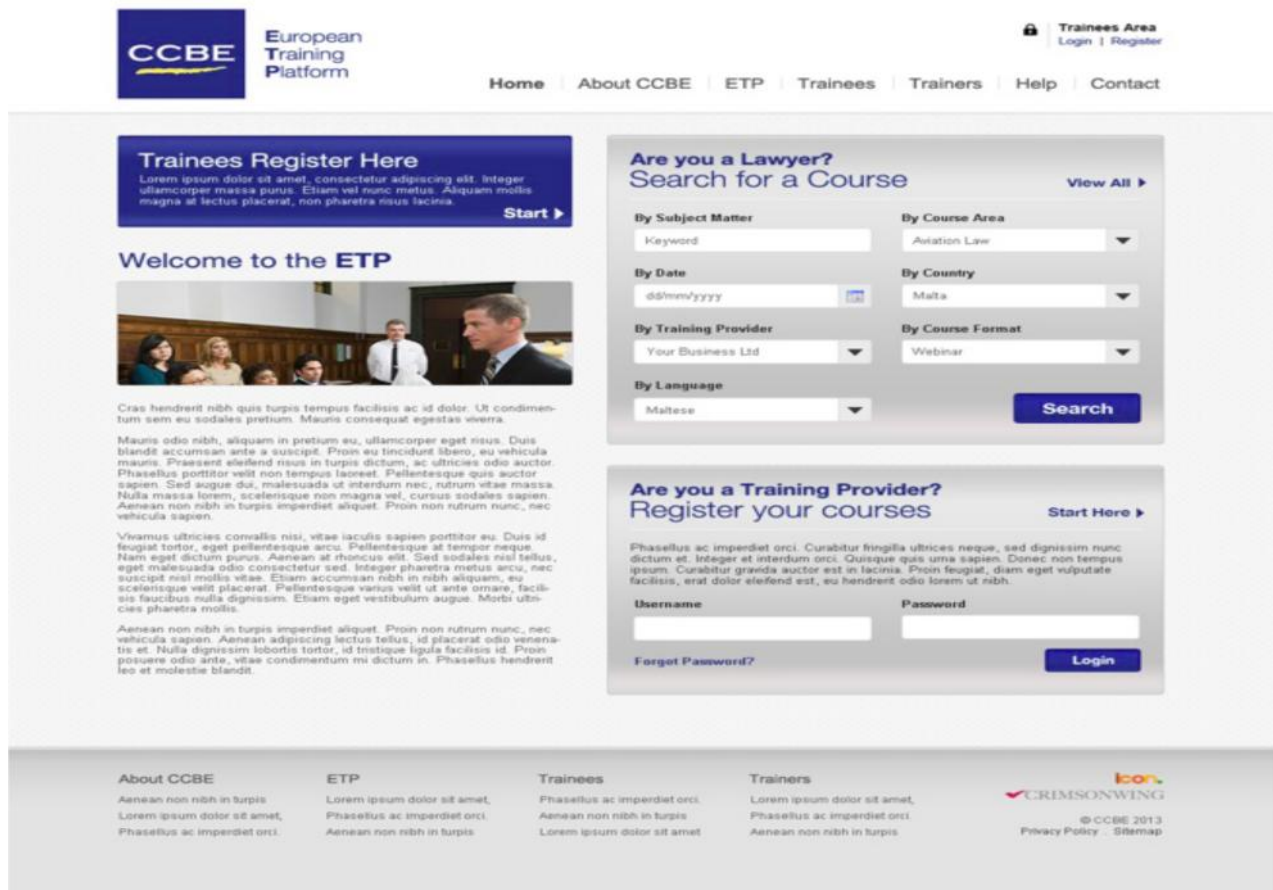
<sup>152</sup> See also CCBE comments on European Legal Training of 2010, cited above.

available on-line. Lawyers will therefore be able to access the widest and most inclusive catalogue of EU and national law courses across the EU. The system is intended to allow custom search according to predefined search fields (such as title of the course, venue, date, language, continuing education accreditation and practice area), which will make it easier for lawyers to find a training course tailored to their needs. The project started on 1st February 2013 and will run for a period of two years. Once implemented, the ETP will be hosted in the European Commission’s e-Justice portal and should serve as a model for future training initiatives by other professions.

It goes without saying that the successful implementation of ETP will be a win-win solution for all parties involved. For training providers, the platform will be a powerful marketing and communication tool to promote their activities and become more visible both at home and abroad. For lawyers, the platform will increase the level and accessibility of information on training courses in other EU countries, by offering the possibility of a personalised and time-saving search. For the European Commission, the project will contribute significantly to the implementation of the European e-Justice strategy, as well as to the broader vision of a common European legal culture.

The positive benefits of ETP regarding the training of lawyers is clear if, for instance, we take the example of a Spanish lawyer, established in France, who represents a shipping company in a contract law case where English law is applicable. To be able to perform her duties, she is interested in having intensive courses in English contract law during the summer months organised by a bar, college, university or other training provider in London. At present, this information is scattered, and access presupposes some prior knowledge of local training providers. By using the online training platform, the process of finding the right course will be much easier, less time-consuming and more user-friendly.

Figure 1: A possible interface for the European Training Platform



## 2.2. Study on the state of play of lawyers training in EU Law

In 2012, The European Commission's Directorate for Justice (DG Justice) published a tender on training of legal professionals, following the European Commission's Communication "Building trust in EU-wide justice, a new dimension to European judicial training"<sup>153</sup>, which was divided in 4 lots. Lot 2 was dedicated to training of lawyers. The objective of lot 2 is to present a study on the state of play of lawyers' training in EU Law comprising the following elements:

- Elaboration of a state of play of training in national legal systems and traditions as well as in European Union law and judicial cooperation procedures of lawyers in private practice in the EU and Croatia;
- Definition and identification of best practices in training of lawyers in private practice in national legal systems and traditions as well as in European Union law and judicial cooperation procedures;
- Recommendations to improve such training;
- Recommendations to promote exchanges of best practices and disseminate these best practices between lawyers' legal professional organisations and/or training providers in the EU and Croatia.

The CCBE presented a joint offer with EIPA-Luxembourg to draw up the study. The offer was approved by DG Justice, and the consortium CCBE-EIPA started to work in February 2013. The consortium is assisted by contact points appointed by the CCBE's national delegations. The final results of the study, which will be drawn up making extensive use of questionnaires distributed to different stakeholders (such as national bars and law societies, national training providers and individual lawyers) are expected to be presented to the European Commission at the end of 2013. Basic information about the project, as well as about the project's research findings, will be available for public consultation at the project's website: <http://training-lawyers.eipa.eu>.

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<sup>153</sup> [http://ec.europa.eu/justice/criminal/files/2011-551-judicial-training\\_en.pdf](http://ec.europa.eu/justice/criminal/files/2011-551-judicial-training_en.pdf)

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## **TRAINING OF COURT STAFF**

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### **ABSTRACT**

Court staff in the EU represents more than 282.000 persons working in courts and prosecutors' offices.

Which of their tasks have EU law aspects? Can training on EU Law help them to better provide a quality service to the citizens?

Describing which tasks have EU law aspects and how existing training activities address is a first step. The prospect of developing more cross border projects is welcomed by training providers but they have to be designed to fill the needs of court staff

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## EXECUTIVE SUMMARY

### Background

Training of legal practitioners in EU law has been widely acknowledged as necessary to the construction of a common legal culture amongst legal practitioners, to the proper and uniform implementation of EU law in all Member States as well as to better delivery of justice to EU citizens. This study does not address only the court staff which have had a legal education, whether at university or in professional colleges, before being recruited. The study does not limit itself to those for which a legal background is a prerequisite to recruitment.

Whereas the definition of lawyers, judges, notaries, etc as legal practitioners do not raise any question, should court staff be considered as legal practitioners? Which of their tasks and roles could play a part in the development of a European judicial culture?

Which topics with EU law aspects are the most relevant to their daily tasks and how to develop awareness of the fact that European citizens expect the same level of communication and protection of their rights in judicial procedures in any of the EU Member States where they are concerned by a judicial procedure?

The study also address the problem of cooperation between training providers, which are mostly active at regional or national level, and for which does not exist any European level network.

The structures in charge of training of court staff, whether ministries of justice or training institutes, have shown a great willingness to participate in the study and a great interest for discussing for the first time with their colleagues from other Member States. Since this study constitutes the first opportunity for direct contacts, presentation of national training systems have led to the creation of a glossary, to ensure a common understanding of the issues discussed. (see Annex 1)

### Aim of the note

While the ongoing study aims at bringing together representatives of structures responsible for training of court staff to:

- Map out all categories of court staff in the Member States
- Establish a state of play of existing training activities, and analyse which have EU law aspects
- Initiate an assessment of needs regarding training of court staff in EU Law
- Develop cross-border cooperation between training providers

Can targeted and well-designed training of court staff in EU law or other national judicial systems can contribute to the improvement of European judicial culture? Can it also play a role to improve participation of court staff in delivering a quality service to citizens, businesses and legal practitioners?

The objectives of the note and workshop are to raise awareness of the issues relative to court staff training amongst the participants of the Conference and obtain their input to better inform the study, with a view to final drafting of recommendations for improvements.

## GENERAL INFORMATION

### Context of the study

Training of legal practitioners in EU law has been widely acknowledged as necessary to the construction of a common legal culture amongst legal practitioners, to the proper and uniform implementation of EU law in all Member States as well as to better delivery of justice to EU citizens.

Training of legal practitioners has been under discussion at European-level since the first resolution of the European Parliament, dating from 10 September 1991<sup>154</sup> which mentions the importance of the jurisprudence of the European Court of Justice for legal practitioners and the difficulty of uniform application of EU law at national level as reasons for developing European support to training of judges, public prosecutors, civil servants as well as lawyers employed in the private sector and in social organisations.

The Council has also been discussing judicial training since its conclusions of 2000 deciding upon the creation of the European Judicial Training Network. Since then, the importance of training of court staff on EU law has always been mentioned in Council's documents related to European judicial training. However, no actions specific to court staff were discussed.

The entry into force of the Lisbon Treaty has given new impetus to European level interest and support to training of "the judiciary and judicial staff".

Articles 81 and 82 TFEU provided a legal basis for new texts adopted at EU level, such as:

1. The European Parliament resolution of 17 June 2010<sup>155</sup> on judicial training in the Stockholm Programme which insisted on the importance of judicial training for developing a common European legal culture
2. The European Commission Communication<sup>156</sup> "Building trust in EU-wide justice: a new dimension to European judicial training", which amongst other issues, determined the perimeter of European Judicial Training (EJT), calling for support to training to all legal professions involved in implementation of the EU Law in the justice systems, including judges, prosecutors, court staff, lawyers, notaries and bailiffs.

The findings of this Communication were supported by the Council's conclusions of 19 and 27-28 October 2011<sup>157</sup> and by the European Parliament's resolution of 14 March 2012<sup>158</sup> on judicial training.

To give concrete support to its resolutions and establish new steps for development of training of legal practitioners in EU Law, in November 2011 the European Parliament proposed a Pilot Project on European judicial training.

The European Commission adopted on 16 April 2012 an implementing Decision<sup>159</sup> serving as a financing decision which was followed by a call for tender "implementation of the pilot project – European judicial training" published on 12 July 2012 and including four lots.

Lot 3 concerned a "Study on the state of play of court staff training in EU law and promotion of cooperation between court staff training providers at EU level". The call for tenders underlined that, contrary to other professions involved in the justice system, court staff, in

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154 OJ C267, 10.10.1991, p.33

155 OJ C 236 E, 12.8.2011, p.130 P7\_TA(2010)0242

156 COM(2011)511 final 13 September 2011

157 Draft Council conclusions – 19 October 2011

158 Texts adopted, P7\_TA(2012)0079

159 C(2012)2331 final



its variety, is not directly represented at EU level regarding issues relative to training. Furthermore the national training providers are not currently in regular contacts with each other's cross-borders.

## Objectives of the study

Whereas the definition of lawyers, judges, notaries, etc. as legal practitioners do not raise any question, should court staff be considered as legal practitioners? Which of their tasks and roles could play a part in the development of a European judicial culture?

In view of the scarcity of data, establishing a state of play and enabling discussions between national representatives are important objectives of the study. Building synergies and common objectives between national training providers to develop training on EU law can only happen once solid data has been gathered. Mutual understanding is an important prerequisite to such developments and takes time and concerted efforts.

This is why the objectives of the study are the following:

- Mapping out the categories of court staff to
  - Establish a description of each court staff category in each Member State
  - Determine which categories are concerned by implementation of aspects of EU law, and contacts with other national judicial systems
  - Describe which aspects of EU law are relevant for those categories in order to determine a perimeter for future action
- Establishing a state of play of court staff training in EU law through collection of data pertaining to:
  - the description of national training systems regarding court staff, especially how they include training on EU law
  - the description of the main training providers, which have a role to play in developing further training of court staff on EU law
  - a description of the existing training activities specifically on EU law aspects, be they organised at European, national, regional or even local level
- developing cooperation between training providers through:
  - common work on needs assessment
  - meetings at European level
  - common work on drafting recommendations

A mix of desktop research, direct contact with training institutions at national level, questionnaires and meetings is being used to fulfil these objectives.

## 1. COURT STAFF IN EU MEMBER STATES

### 1.1. Counting court staff

According to the figures of the 2012 CEPEJ Evaluation Report on the European Judicial Systems, "non-judges" and "non-prosecutors" staff active in courts and prosecutors' offices number more than 282 000 persons.

Table 2: Court staff in the European Union

Member State	non judges staff	non prosecutor staff	
Austria	4 642	332	
Belgium	5 632	2 759	
Bulgaria	5 866		
Croatia	6 944	38	
Cyprus	463	100	
Czech Republic	9 498	1 527	
Denmark		unknown	
Estonia	976	80	
Finland	2 285	168	
France	21 105		
Germany	53 649	10 322	
Greece	6 760		
Hungary	7 713	2 245	
Ireland	1 028	109	
Italy	24 661	9 409	
Latvia	1 601	395	
Lithuania	2 489	775	
Luxembourg	303	37	
Malta	374	39	
Netherlands	6 674	3 807	
Poland	35 946	7 408	
Portugal	6 631	1 756	
Romania	8 481	3 044	
Slovakia	4 468	706	
Slovenia	3 274	226	
Spain	unknown	1 926	
Sweden	unknown	607	
United Kingdom	England and Wales	unknown	4 793
	Northern Ireland	unknown	377
	Scotland	1 500	1 188
	total	222 963	59 343

Source: 2012 CEPEJ report - evaluation of the European judicial systems<sup>160</sup>

<sup>160</sup> [http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default\\_EN.asp?](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_EN.asp?)

These figures concerns staff active in very different judicial systems and may be slightly undervalued. Furthermore their exact tasks and roles in each Member States are not yet described at European level and thus cannot be compared.

A few Member States have not provided any figures in answer to the request from the Council of Europe. As direct contacts are being established by the project team with ministries of justice and training institutions, requests for additional information have been sent out. In some cases, answers are or will be approximate (for instance in Spain a lot of the non-judge court staff is recruited by regional governments and not systematically counted separately from the rest of the regional civil servants). Once a full accounting is done we might reach more than 300 000 persons in the 28 Member States, even taking into consideration that the study is not including the non-prosecutor staff of the UK and Ireland.

To be sure to contact all relevant institutions and training providers the project team had to determine the exact perimeter of the study: which professions or categories should to be included under the term “court staff” for the purpose of the study?

## 1.2. Court staff in the Member States: who are they?

The term “Court staff” as used in the call for tender should be considered as a generic term, not linked to the work organisation of any specific national court system. This term, which appears in conclusions of the Council, reports of the European Commission and resolutions of the European Parliament, has never been defined at European level.

Defining the target group is a challenge, in view of the variety of judicial systems implying different choices for repartition of tasks between legal professions. It is not possible to determine the perimeter of the study just by listing tasks of the professions under consideration.

In countries where there are two different orders of courts – administrative courts and judicial courts, court staff of both orders are included in the perimeter of the study as administrative courts are implementing many aspects of EU Law.

In most countries, court staff will be understood as staff providing administrative and/or legal support to the judiciary (judges and prosecutors), ensuring the smooth running of the court through administration and technical support. This includes staff from both administrative and judicial courts. It does not include judges and prosecutors in training – which in some judicial systems also hold positions in courts for a certain number of months or years.

Discussions with members of the judiciary show that the term “court staff” is spontaneously used to refer to very different categories and professions according to the national judicial system – in some cases only staff with legal backgrounds such as assistants to judges or Rechtspfleger are mentioned, in other cases staff with no specific qualifications with simple implementing tasks such as typing or filing.

However even the definition of the judiciary varies from one Member State to another. This is why staff of public prosecutors offices will be included in the study only in countries where public prosecutors are considered to be part of the judiciary. This will create a slight difference in the results between common law countries and continental law countries, but inclusion of staff from public prosecution offices in common law countries would extend the study to cover a lot of issues relative to law enforcement and create an even greater difference between common law countries and continental law countries.

In most Member States, court staff is considered to be part of the public service. However, there are always exception to this, for instance with the court staff of commercial courts in France.

For some tasks such as enforcement of court decisions in civil matters, the professionals responsible for enforcing court decisions can be public servants in some countries or members of a private sector regulated profession. In such situations, the study will cover only civil servants.

The diversity of professions and tasks means that training of court staff in a EU context is a challenge. As the study is starting to show, there are nearly no tasks

## 2. TRAINING COURT STAFF ON EU LAW

### 2.1. Court staff: how are they concerned by training on EU Law?

The study does not address only the court staff which have had a legal education, whether at university or in professional colleges, before being recruited. The study does not limit itself to those for which a legal background is a prerequisite to recruitment.

The status and tasks of court staff can vary greatly from one Member State to another. This is reflected in the diploma or training requirements to access these professions, but also by the ratio of court staff to judges/prosecutors, as shown in the CEPEJ statistics.

Describing in detail the tasks of each category of court staff will allow for analysing which of those tasks have - or will soon have, in line with the evolution of EU legislation - EU law aspects, whatever the status and the level of legal expertise of each category of court staff.

Training on EU law can be relevant for court staff providing support to the judiciary in the context of cross border procedures, for court staff working in contact with the public when they have to address the concerns of citizens from other EU Member States, for court staff in general in relation to their involvement in different stages of judicial processes, to ensure respect of rights of the parties.

However, training of court staff is organised unevenly in some Member States, with some categories of court provided only with on-the-spot training, which can help with day to day tasks, but does not build a general understanding of the law, or of the ongoing reforms of a judicial systems.

### 2.2. What topics for training of court staff on EU Law?

Judges, prosecutors and lawyers are concerned by all aspects of EU Law and this is reflected in the overall approach to their training.

On the other hand, court staff is mostly implementing national procedures and rules. With the development of EU legislation over the years, which of those procedures are directly informed by EU law or have to be implemented in line with the EU fundamental rights framework?

Training activities with EU law aspects should be organised for court staff only if they are relevant to their everyday tasks. Analysing this in detail is necessary first to avoid wasting resources in irrelevant training activities and secondly to ensure that court staff willingly registers for such training activities during continuous training. Participants in the various regional meetings have underlined that due to the heavy workload of court staff in all EU Member States, organising efficient and well-targeted training activities is as crucial for court staff as it is for prosecutors or judges.

Only by listing tasks for which there are aspects of EU Law and listing the categories of court staff concerned by them, can it be possible to determine the EU law topics which have

to be included in court staff training at national level, and which can eventually lead to cooperation between training providers at European level. This analysis has not yet been done in a systematic way for all topics, even though most participants have readily mentioned legal instruments in cross border judicial cooperation (both in criminal and in civil matters) as obvious topics for training of court staff. However the list of relevant topics with EU law aspects should be longer and the final results of the study should provide national training institutes with a basic kit to analyse their national situation with respect to impact of EU law on court staff tasks.

The process has started during the different meetings with representatives of ministries of justice or national training providers which have led to listing the following general topics:

- Civil law and procedures
  - Cross-border civil procedures
- Commercial law and procedures
  - Cross-border commercial procedures
- Criminal law and procedures
  - Cross-border criminal procedures
- Procedural rights in criminal procedures (such as access to interpretation & translation, access to a lawyer, access to information, etc.)
- Service of judicial and extra-judicial documents\*
- Enforcement of court decisions
- Human rights
  - Access to justice
  - Rights of the victim
  - Rights of the child
- Administrative law and procedures
- Competition law and procedures
- Environmental law and procedures
- Assistance to judges and/or public prosecutors
- Management of courts
  - E-justice (organisation of Information Technology & Communication, videoconferencing)
  - Data protection
  - Authentication of judicial and extra-judicial documents
  - Court programming/management of court agendas
  - Human Resources/personnel issues

- Budget
- Health & safety, building administration
- Others

Some practical aspects of management of courts have been added as they appear open possibilities for cooperation between training providers. National codes or norms of court staff ethics or deontology should also directly target the way court staff implement EU legislation and jurisprudence relative to access to justice, rights of the victims or defendants.

The list of topics constitutes a basis for analysing which existing training activities include EU law aspects or should include EU law aspects. They seem to touch on key issues where training of court staff is crucial to ensure a high level of professionalism, competence and commitment to delivery of impartial justice.

### 2.3. Finding out about existing training activities on EU Law

Direct contacts with ministries of justice, court services and national training providers show that in most Member States, training of court staff is the responsibility of one or two training departments or one or two main training providers.

In a few countries, the situation is more complex: training of court staff is the responsibilities of Länder in Germany; three different court services structures exist in the UK, in line with the different judicial systems; continuous training of court staff in Spain is mainly the responsibility of the autonomous regions; even in centralised France, the organisation of training of administrative courts, general judicial courts and commercial courts is the responsibility of three different structures, namely the training department of the State Council, the national clerks schools and the professional association of commercial clerks.

Collecting information on existing training activities with EU law aspects has started, through questionnaires and also three meetings which have taken place in September and October in Edinburgh, Dresden and Madrid.

Information is collected on training activities taking place both in the induction period (professional training taking place before, during or just after accessing the profession) or all along the career through continuous training activities

Discussions show that most training activities for court staff do not currently mention EU law even when it is at the origin of the national legislation being presented. There are some exceptions which can be considered as good practices – for example, the Romanian grefieri receive practical training on how to fill judicial cooperation forms (both in civil and criminal cases) during their induction period at the coala National de Grefieri (SNG) and the Spanish “Secretario Judicial” receive specific continuous training regarding cross border judicial cooperation procedures.

Figures on training activities are currently being collected and will be analysed

Most participants in the regional meetings have indicated interest for developing the EU law aspects of training activities, either by mentioning these aspects in the training description when they are already integrated in existing training activities, or by developing new training activities in line with newly adopted EU legislation.

Participants also pointed out that some of the court staff could usefully participate in training activities with EU law contents implemented for judges and/or prosecutors.

One unexpected benefit of such a project is the fact that training providers from the same country (those where responsibilities for training are shared) find here an opportunity to exchange and to discover potentials for cooperation.

## 2.4. Developing cross border cooperation between training providers

There is no network at European level which can bring together all national training providers or represent all categories of court staff. In this context, very few cross border contacts exist between national training providers specifically regarding training of court staff. A few of the training providers have experience in cross border cooperation and participation in EU co-funded projects in the framework of EJTN for projects concerning judges and/or prosecutors

Initial contacts indicate a rising awareness of the necessity of contacts at European level, in line with a rising awareness of the EU law aspects included in topics on which court staff are trained or should be trained.

The meetings organised in the course of the project (Edinburgh, Dresden, Madrid) have received a very positive answer from national training providers and organisers. They are seen as a first opportunity to learn about how other Member States organise training of court staff with a few to developing new partnerships to improve national or regional training offers.

In this context, the issue of the cost of European projects is raised time and time again and further work is needed in the analysis of the practical ways for cooperation to see where savings can be made through common work – for example working together to develop training contents on EU law – in order to save inevitable additional costs linked to cross border contacts – from travelling costs to interpretation. Further work is also necessary to ensure that national training providers can develop cross border projects which fulfil criteria for application for EU funds.

It is unlikely that cross border cooperation could mean that one cross border project could involve court staff from all Member States, in view of the differences in their tasks and professions. But it is possible to look rather at possibilities for closer cooperation between a smaller number of Member States which can work together due to similarities in judicial organisation or training system or have on a regular basis cross border cases in their courts due to common languages or common borders.

For instance closer judicial cooperation already exist between the members of the Visegrad group (Czech Republic, Hungary, Poland and Slovakia). Such existing enhanced cooperation mechanisms could be expanded to include the issue of training of court staff, including implementation of EU law and better understanding and development of better understanding of other national judicial systems.

All participants agreed that cross border cooperation could also usefully apply to “soft skills” such as day to day communication with citizens, management, languages, etc.

## 2.5. Can training of court staff in EU Law improve court work?

A court, a public prosecutor office is complex, continuously evolving organism, needing efforts and input from all person involved in its works, whatever their status, in order to deliver and efficient justice, reduce backlogs, implement in a coherent manner European legislation and jurisprudence.

As for any other workplace, courts and prosecutors offices evolve towards more knowledge-intensive work and a decrease in simple implementing tasks. For instance, with increased

computerisation of courts in all Member States, court staff who had been recruited as typists had to evolve and learn about digital filing systems, case management systems which, to be used properly, imply the need for a better understanding of procedures and processes, even for tasks which are about judicial decisions.

More and more EU legal instruments are being adopted which have an impact on the tasks of court staff in general (procedural rights in criminal matters are a recent example). Ensuring that court staff have a general understanding of the importance of these legal instruments for their work is a way to ensure that their skills and knowledge do not become obsolete in a fast evolving legal environment.

Training is also a way to increase motivation and acceptance of change is particularly important for low-skilled staffs that have entered their career with no specific qualifications. "The workplace learning potential is the factor on which the professional growth of workers depends."<sup>161</sup>

Developing highly personalised pathways for categories of higher court staff is also a way to harness and maintain skills and improve management of courts and public prosecutors offices as well as optimum service to citizens, businesses and legal professions. These pathways can ignore EU Law elements, which constitute the framework of national legal developments in EU Member States.

Some training can take place in the workplace, however ensuring consistent skill levels in court staff in a Member State require a national training strategy, which has been developed by Ministries of justice or national training providers in recent years. Integrating EU law elements and cross border cooperation in those strategies is acknowledged by most participants in the study to be a challenge. Collecting and sharing good practices on this matter is an important aspect of the study.

Further discussions for concrete solutions on this matter will be taking place during a European Conference in Dijon, France on 5-6 February 2012.

### 3. INTERIM CONCLUSION

As the study is still ongoing (the final results will be known in April 2014), the current note is an opportunity to ask input from readers regarding the training needs of court staff as well as the impact of their training in the overall improvement of service of justice to the citizens. Of course, training cannot be separated from a well-designed national structure for court staff professional development and proper human resources management.

Many Member States are undertaking reforms of their justice system, with a view to develop efficiency of justice. Such reforms can succeed only with the support and involvement of all professions participating in judicial processes.

The EU institutions consider that justice would be better served to the citizens if implementation of EU Law was done in a coherent way all across the EU and call for the development of a European judicial culture.

Targeted and well-designed training of court staff in EU law or other national judicial systems can contribute to this objective.

Cross border cooperation can furthermore help introduce in court staff training new points of views, promote interest in taking part in training activities with a view to harnessing the skills and improving knowledge of all staff working in courts and public prosecutors' office,

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<sup>161</sup> DG Research - Adult and continuing education in Europe - 2013 - see bibliography



and where necessary to encourage staff to work towards better day to day organisation of their workplace

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## ANNEX I

### Glossary

Academic training: Completion of higher education studies before undertaking any further form of training in order to become a professional court staff. For some categories of court staff, academic training is not a prerequisite for entry into the profession.

Access to information: [Directive 2012/13/EU](#) on the right of information in criminal proceedings was adopted on 22 May 2012. It established a common basis for a “letter of rights”. It can also be referred to as “information on defendants’ rights”.

Apprenticeship: training period or part of a training period during which a trainee is embedded in one or several workplaces. Apprenticeship for a court staff can take place in a variety of workplaces and is not limited to courts. Its precise organisation is determined by national rules or on an ad hoc basis. Apprenticeship can be combined or not with formal courses.

**Blended learning:** training activities which include both e-learning and face to face training activities. To be considered as bone fide training, the overall activity has to be organised according to a set programme and include explicit training objectives.

**Coaching:** individual professional support for personal professional development. This personal support is done in a structured manner with measurable objectives and is sometimes considered as part of the training activities.

**Continuous training:** any professional training taking place during the course of a career, whatever the topic. It may also be referred to as career development, continuing training.

**Court staff:** professionals/staff working in judicial and administrative courts as well as public prosecutors' offices (only in the countries where public prosecutors are members of the judiciary).

For the purpose of this study, this term does not cover judges and prosecutors themselves, nor trainee judges and trainee prosecutors. The study does not include professionals working in probation offices and jails, nor forensic doctors.

According to the way the national judicial system is organised, the role of these professionals varies from purely administrative tasks, to support to the judiciary and even, in some cases, to some specific judicial tasks.

**Cross-border exchanges:** in the context of this study, a difference is made being training activities\* and cross-border exchanges. Cross-border exchanges consist of allowing a person (in this case a court staff) to spend some time (for a minimum of one day) in a court in another Member State and to attend and observe the activities of that court.

**E-learning:** an online training activity, which takes place in a structured manner, and includes a training programme fulfilling specific training objectives. The term covers online activities such as accessing online information, answering questionnaires, watching podcasts, participating in online discussions, participating in web streaming sessions, etc. It can be combined with face to face training. The combination of the two methods is called blended learning (see definition).

**European Judicial Training :** In the Communication [COM\(2011\)511](#) "Building trust in EU-wide justice : a new dimension to European judicial training", European judicial training is described as covering training of judges, prosecutors, but also lawyers, notaries, bailiffs and court staff on EU law or the law of other member states.

**Face to face training -** Any training activity\* which requires the simultaneous presence in the training premises of trainers and learners.

**Induction period:** Taking into consideration the variety of national judicial systems, the induction period may or may not exist. If it exists, it concerns a period during which an individual, undertakes specific professional training either as through an apprenticeship, courses or a combination of both. It can take place before or after the person becomes being a full-fledged court staff but is always linked to the beginning of a career in a specific court staff category or profession. Probation periods during which newly recruited court staff have training obligations can be considered as induction periods.

**Initial training:** see induction period

**Service of judicial and extra-judicial documents:** this term can apply to transmission of documents between parties in civil and commercial proceedings. The [Hague convention](#) of 1965 and the EU [Regulation 1393/2007](#) use this terminology.

**Training:** For the purpose of this study, the term training will be used to cover acquisition of knowledge as well as acquisition of know-how, in particular in relation to legislation of other EU Member States, EU law, linguistic skills and organisation of judicial and legal systems in the EU, but also management and administration of courts.

**Training activity:** any structured activity organised for the purpose of training an individual or a group of persons, with a training programme set up to fulfil well-defined training objectives. It can take place through face to face training (workshops, seminars, conferences, etc.) or online tools (e-learning) or a combination of both (blended learning).

**Training organiser:** any organisation or structure, which is responsible for setting up the general training system\* for court staff, for instance determining regulations and norms, whereas at national or regional level. Some training organisers are also training providers.

**Training provider:** any structure, profit or non-profit which regularly organises training activities\* relevant to the professional development of one or several categories of court staff. This study will consider the training providers offering training activities related to:

- the law, especially European Union law
- legal and judicial organisation of other member states,
- training activities related to the acquisition of competences in legal terminology of other European languages
- management and administration of court

**Training system:** Training systems set up the rules and general framework for the organisation of training of court staff. They can be established at national level but also regional level. A training system indicates for instance the rules for induction and continuous training for all or certain categories of court staff.

**Organisation of training activities\*** for a specific individual is either done in the context of a training system where similar rules are applied to all court staff, or in ad'hoc manner if such a framework does not exist.

**Nota bene:** the Study's Glossary is a work in progress which evolves according to the feedback of representatives of ministries of justice and/or training institutes. Its purpose is to ensure that all participants in the study describe the same concepts behind the same words. It will evolve and grow during the whole duration of the project and the final version will only appear in the final project (end March 2014)

## ANNEX II

### Composition of the Consortium managing the study

The Consortium in charge of the project is made of:

- EIPA's ECJL (European Centre for Judges and Lawyers), Luxembourg
- JCI (Justice Coopération Internationale) representing also the CNHJ (Chambre nationale des huissiers de justice) and the ENG (École nationale des greffes), France
- Centro de Estudios Juridicos (CEJ), Spain
- Krajowa Szkoła S downictwa i Prokuratury (KSSIP), Poland

- The Scottish Court Services (SCS)
- Staatsministerium der Justiz und für Europa, Sachsen, Germany (Justiz Sachsen)

The Consortium has been built to include institutions from countries with common law as well as continental law systems, centralised and decentralised training systems, a variety of languages and contacts in many Member States.

ECJL has been providing training on EU law since 1992 to all legal practitioners including some court staff.

Ecole Nationale des Greffes, Centro de Estudios Juridicos, Krajowa Szkoła S downictwa i Prokuratury are national training providers for court staff.

Scottish Court Services and Staatsministerium der Justiz und für Europa are in charge of organising the training framework in their territory.

JCI (Justice Coopération International) has a longstanding track record regarding participation in EU justice projects.

The CNHJ participation underlines the importance of all professions involved in cross border enforcement of court decisions, some of which are court staff.



## DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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