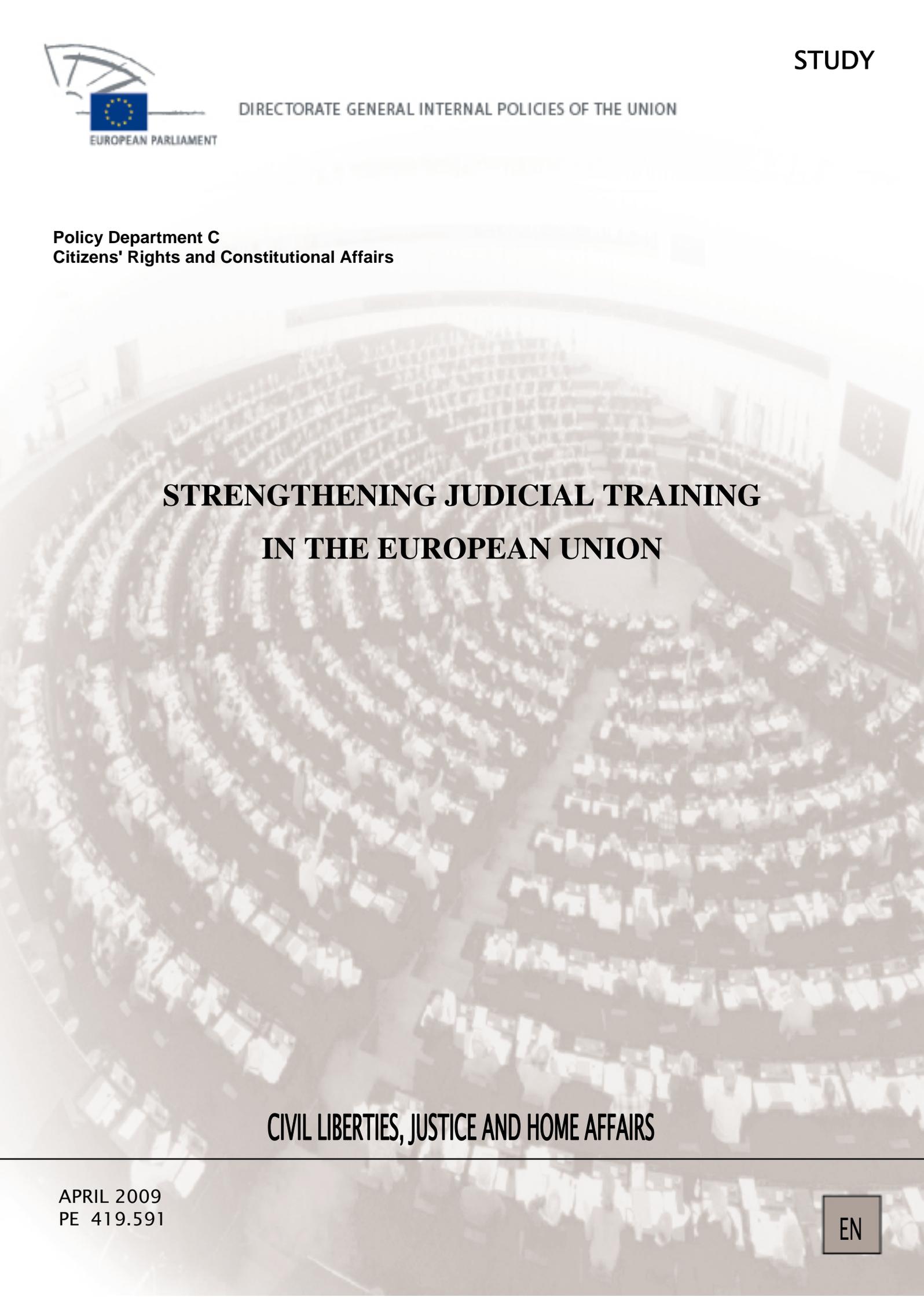


Policy Department C
Citizens' Rights and Constitutional Affairs



**STRENGTHENING JUDICIAL TRAINING
IN THE EUROPEAN UNION**

CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS



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**Directorate-General Internal Policies
Policy Department C
Citizens' Rights and Constitutional Affairs**

STRENGTHENING JUDICIAL TRAINING IN THE EUROPEAN UNION

STUDY

Abstract:

Judicial training is vital for the development of a common judicial culture in the EU and for guaranteeing the homogeneous implementation of EC/EU law.

The principle of mutual recognition existing in judicial cooperation since the Tampere Programme – and confirmed in the Hague Programme and the future Lisbon Treaty – entails a thorough knowledge of the various EC and EU instruments.

Community financial programmes exist today to facilitate Member States' and other actors' training costs. The actors in the field of judicial training are in fact varied, even though the national schools play a core role.

Various initiatives have suggested – or suggest – strengthening judicial training. Although all major stakeholders agree on the need to reinforce judicial training – and this can be seen in the various latest initiatives – there does not seem to be one distinct option to do so.

This note seeks to summarise and analyse these initiatives and the reactions to them, as well as to make some operational recommendations on how to make the most effective use of the resources dedicated to this purpose.

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SUMMARY

- Although many instruments have been adopted at EU level in the field of judicial cooperation, those adopted under the principle of mutual recognition should carry particular importance in the legal awareness of any national magistrate. The principle of mutual recognition is the cornerstone of judicial cooperation in both civil and criminal matters. This principle entails thorough knowledge of the provisions of the different Community and European texts applicable throughout the EU.
- If the adoption of texts under the principle of mutual recognition in civil matters has duly followed the Programme of measures set up after the Tampere Council, the number of instruments adopted under this principle for judicial cooperation in criminal matters is less impressive; the European arrest warrant being the only instrument vastly used in the Member States.
- Judges, prosecutors and judicial staff should also feel secure in their knowledge of with Community/European law when acting as first judges of Community law.
- A number of specific programmes have been adopted by the Council to fund judicial training in specific legal areas: criminal justice, fundamental rights and citizenship and civil justice.
- Various actors are – in a non-coordinated way – proposing judicial training in the EU. National schools and court authorities are the legitimate holders of this responsibility. Nevertheless, where European judicial training is concerned, the institutions have recognised the fundamental or important role of the European Judicial Training Network and some institutes such as the Academy of European Law and the European Centre for Judges and Lawyers – European Institute of Public Administration. Other actors such as the Consultative Council of European Judges, the European Commission for the Efficiency of Justice and the Lisbon Network are also participating in strengthening judicial training in a broader European area.
- The Commission, the Council and the Parliament have each adopted important documents regarding judicial training. In 2006 the Commission adopted a Communication on judicial training in the European Union; the Council a Resolution in 2008; and the Parliament a Resolution based in particular on the “Diana Wallis Report”.
- The Justice Forum is another initiative of the Commission from 2008. It has been meeting specifically to discuss the issue of judicial training in the EU.
- Presidency initiatives have been mainly carried out by the French Presidency, in particular with the Bordeaux Conference. The Czech Presidency has not yet proposed any specific initiatives in the field of judicial cooperation.
- The above-mentioned documents by the EU institutions, Presidency initiatives and the Member States’ reactions to them, reflect that there exists a common

understanding: not only of the principle that the training judges, prosecutors and judicial staff in EU law contributes to the development of a genuine European judicial culture; but also of the scope of the training that is needed by these three groups of professionals. The latter ranges from personal skills (e.g. language training), to achieving a fundamental understanding of the general principles of EU law and relevant primary and secondary legislation; and from receiving practical and directly applicable training in the use of judicial cooperation instruments and relevant procedures for cooperating with the ECJ (e.g. the preliminary ruling), to obtaining at least a basic understanding of the legal systems and procedures of other Member States.

- With respect to training methodologies, there also appears to be general agreement on the need to combine traditional face-to-face training activities with more flexible and time- and cost-effective IT- and web-based learning methodologies. However, this note indicates that the latter should be considered as a supplement rather than as a replacement for face-to-face training for several reasons. In particular, attending face-to-face training sessions allows for more practical and practice-oriented learning. Moreover, by facilitating for such training to take place in multi-country groups, the participants also gain the opportunity to take part in more informal exchanges of experiences and, to identify good judicial practices, which, in turn, supports the building of reciprocal trust and confidence.
- The various programmes and EU financial resources allocated to the exchange and multi-country training programmes illustrate that the European Commission has understood that national judiciaries and judicial training institutions have insufficient funds to meet all the national and EU law-related training needs. Having said this, the note also stresses the need to simplify the application procedures for EU grants for such activities and to accelerate the approval procedure in order to increase the number of training activities in EU law.
- Finally, the note questions the appropriateness of pushing for the development of a harmonised EU law curriculum as well as the need to establish new pan-European structures as proposed by some actors in the field, and in particular in the so-called Wallis Report. Rather, it is recommended to encourage cooperation between national judicial training institutions and existing pan-European level training institutions, professional networks and associations, etc., who specialise in the delivery of EU legal and procedural training. Such cooperation could cover both the training of end-users (i.e. judges, prosecutors, etc.) and the development of national training capacities through programmes for training of trainers on issues of EU law and judicial cooperation.

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STUDY

STRENGTHENING JUDICIAL TRAINING IN THE EU

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1. INTRODUCTION

*Full and unreserved cooperation among judicial authorities of the Member States is based on mutual understanding and trust. This therefore requires the practitioners concerned to have a better knowledge of the judicial systems of the Member States and the legal instruments on which judicial cooperation within the European Union is based.*¹

The need for training has been expressed by different professional bodies. A strict approach would limit the question of European training to judges, prosecutors and judicial staff. It is nevertheless important in our view not to forget other professionals who, similarly, need to gain a thorough knowledge of European law: lawyers, law enforcement officers, military judges, justices of peace, judges in commercial courts, prison officials etc...

The object of this paper is to give an overview of the current difficulties existing in the field of training in European law and European training in general, as well as suggesting improvements. Fundamental principles or why this European training is needed will be firstly explained. The following sections of the paper will deal with Community financial programmes available for judicial training and the main actors involved in the training for EU law. Finally the different initiatives aimed at enhancing judicial training in the EU and reactions to them will be mentioned. Throughout the paper, observations, proposals and, ultimately operational recommendations aimed at strengthening the current training situation will be made.

¹ Council, General Secretariat, European Judicial Training Network: - Draft Conclusions of the Council, 23 May 2003, 9702/03.

2. WHY IS EUROPEAN JUDICIAL TRAINING NEEDED?

2.1 The creation of an area of justice and the principle of mutual recognition of decisions

The Tampere Programme

Tampere, 15 and 16 October 1999: the European Council holds a special meeting on the creation of an area of freedom, security and justice, making full use of the possibilities offered by the Treaty of Amsterdam. The result was the adoption of significant conclusions which would prove vital for the following five years, among them:

5. The enjoyment of freedom requires a genuine area of justice, where people can approach courts and authorities in any Member State as easily as in their own (...). Judgements and decisions should be respected and enforced throughout the Union, while safeguarding the basic legal certainty of people and economic operators (...)

33. Enhanced mutual recognition of judicial decisions and judgements and the necessary approximation of legislation would facilitate co-operation between authorities and the judicial protection of individual rights. The European Council therefore endorses the principle of mutual recognition which, in its view, should become the cornerstone of judicial co-operation in both civil and criminal matters within the Union. The principle should apply both to judgements and to other decisions of judicial authorities(...).²

In these two conclusions, the European Council formulates two essential statements: first, the enjoyment of freedom, which includes the right to move freely throughout the Union, necessitates a **genuine European area of justice**. One of the elements of this area of justice is that citizens should not be prevented from moving from one Member State to another, fearing that their access to justice is jeopardised. Another element is that judgments and decisions should be respected and enforced throughout the Union. This should operate through the mutual recognition of judicial decisions. Hence the second important statement: **the principle of mutual recognition should become the cornerstone of judicial cooperation in both civil and criminal matters**.

In order to apply this principle in civil matters, the European Council asked the Commission to make a proposal *for further reduction of the intermediate measures which are still required to enable the recognition and enforcement of a decision or judgment in the requested State. As a first step these intermediate procedures should be abolished for titles in respect of small consumer or commercial claims and for certain judgments in the field of family litigation (e.g. on maintenance claims and visiting rights). Such decisions would be automatically recognised throughout the Union without any intermediate proceedings or grounds for refusal of enforcement.*

² Tampere European Council, 15 and 16 October Presidency Conclusions.

This **abolition of the *exequatur*** – the declaration of enforceability of foreign judicial decisions, which is usually necessary in most legal systems – being a first step only applied to certain types of decisions (small consumer and commercial claims and certain judgments in the field of family litigation), would later become the final goal of the principle of mutual recognition of decisions³.

In criminal matters, the Tampere Programme gave three “legislative” indications as to the implementation of the principle of mutual recognition:

- the classical **formal “extradition” process within Member States, which should be replaced by a simple transfer of those persons;**
- pre-trial orders, *in particular those which would enable competent authorities to quickly secure evidence and seize assets;*
- **evidence gathered should be easily admissible before the courts of other Member States.**

Programme of measures implementing the principle of mutual recognition

Another important conclusion, as far as the principle of mutual recognition is concerned, was adopted in Tampere:

37. The European Council asks the Council and the Commission to adopt, by December 2000, a programme of measures to implement the principle of mutual recognition. (...)

Draft programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters⁴

This Programme identifies existing and future **areas of mutual recognition** (for example, rights of access, maintenance claims and uncontested claims), current and further **degrees of mutual recognition** – a second series of measures should lead to the *[a]bolition, pure and simple, of any checks on the foreign judgment by courts in the requested country allows national judgments to move freely throughout the Community. Each requested State treats these national judgments as if they had been delivered by one of its own courts* – and **stages of mutual recognition**, the final objective of which would be the *general abolition of *exequatur**.

The Programme also identifies **measures ancillary to the principle of mutual recognition**: an instrument for the taking of evidence, establishment of the European Judicial Network on civil and commercial matters, minimum standards of civil procedure, harmonisation of rules on, or minimum standards for, the service of judicial documents, measures to facilitate the enforcement of judgments, including those allowing identification of a debtor’s assets, measures for easier access to justice, measures for

³ Draft programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters OJ C 12 15.01.2001 p.8.

⁴ OJ C 12 15.01.2001.

easier provision of information to the public, and measures relating to harmonisation of conflict of law rules.

Programme of measures to implement the principle of mutual recognition of decisions in criminal matters

This Programme was adopted by the Council by the end of 2000⁵. Similarly to civil and commercial matters, the Council determines various areas in which mutual recognition should apply. Nevertheless, the Council also insists on mutual recognition *being a gradual and realistic process* of recognition rather than a *definitive programme*. The Council understood the time and efforts that would be needed to implement in a coherent and harmonised way the principle of mutual recognition. Nevertheless, it did not mention training for implementing this principle.

The programme established covered all stages of judicial procedure: from enforcement of pre-trial orders (for instance keeping evidence and freezing the assets, arrest warrants, non-custodial supervision measures), to sentencing (recognition and enforcement of prison sentences, transfer of persons, fines, confiscation), and post-sentencing decisions.

The Hague Programme

After the Tampere Programme, the European Council adopted on 5 November 2004 the Hague Programme for strengthening freedom, security and justice in the European Union for the following five years, one of the objectives of which was *to carry further the mutual recognition of judicial decisions and certificates both in civil and criminal matters*⁶.

In the area of justice one of the general objectives for the following five years was the *full employment of mutual recognition* and in more specific terms **confidence building and mutual trust**: *Judicial cooperation both in civil and criminal matters could be further enhanced by strengthening mutual trust and by progressive development of a European Judicial culture based on diversity of the legal systems of the Member States and unity through European law. (...)*⁷

The principle of mutual recognition of decisions/confidence building and mutual trust are in fact inter-related, and the former can hardly survive without the latter. The abolition, pure and simple, of any checks on the foreign judgment by courts in the requested country can only operate in effective terms if the judge in the requested country **trusts** her/his colleague in the Member State of origin.

⁵ OJ C 12 15.1.2001, p. 10-22 and COREPER 24 November 2000 13750/1/00, Rev 1.

⁶ The Hague Programme: strengthening freedom, security and justice in the European Union, 16054/04, 13.12.04.

⁷ Idem.

Taking this close bond into account, the European Council recognises that *[s]trengthening mutual confidence requires an explicit effort to improve mutual understanding among judicial authorities and different legal systems* and concludes by **establishing a link between the mutual confidence and the importance of judicial training**: *Exchange programmes for judicial authorities will facilitate cooperation and help develop mutual trust. An EU component should be systematically included in the training of judicial authorities. The Commission is invited to prepare as soon as possible a proposal aimed at creating, from the existing structures, an effective European training network for judicial authorities for both civil and criminal matters, as envisaged by Articles III-269 and III-270 of the Constitutional Treaty*⁸.

Again in June 2005, in the Council and Commission Action Plan Implementing the Hague Programme on strengthening freedom, security and justice in the European Union, the chapter dedicated to “Strengthening Justice” refers to confidence building and mutual trust, and the *[c]reation, from the existing structures, of an effective European training network for judicial authorities for both civil and criminal matters*⁹ is stressed as a way to achieve it.

In recent years, many measures have been adopted to implement the principle of mutual recognition as suggested by the Programme: the **Regulation 805/2004 creating a European Enforcement Order**¹⁰, the **Regulation 1896/2006 creating an European order for payment procedure**¹¹ and the **Regulation 861/2007 establishing the European Small Claims procedure**¹², among others, are the concrete results of the work that has been developed in the area of mutual recognition of decisions where the final goal of **abolition of exequatur** has been accomplished.

It is the national judges – being the first judges of Community law – who will apply these instruments and, therefore, the principle of mutual recognition of decisions. The only way they can do this properly is if they have a profound knowledge of the instruments and the way they work.

Other instruments ancillary to the above principle have also been adopted: Council Regulation 1348/2000 on the service in the Member States of judicial and extrajudicial documents¹³, later repealed by Regulation 1393/2007 of the European Parliament and of

⁸ The Hague Programme: strengthening freedom, security and justice in the European Union, 16054/04, 13.12.04.

⁹ Council and Commission Action Plan Implementing the Hague Programme on strengthening freedom, security and justice in the European Union, 9778/2/05 Rev 2, 10 June 2005.

¹⁰ Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, OJ L 143, 30.04.2004.

¹¹ Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, OJ L 399, 30.12.2006.

¹² Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 June 2007 establishing a European Small Claims Procedure, OJ L 199, 31.07.2007.

¹³ OJ L 160, 30.06.2000.

the Council of 13 November 2007¹⁴; Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters¹⁵; Regulation 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)¹⁶; and Regulation 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)¹⁷. These are just some examples of existing Community instruments that the judges of the Member States have to apply.

It should be noted that **the national judge will** not only have to know how to apply the Community instrument, but, **in certain cases, will also have to apply foreign law**¹⁸. **Training in a foreign legal system is therefore also essential.**

The path of adoption of instruments implementing the principle of mutual recognition in the area of **judicial cooperation in criminal matters** has been less rapid than in the area of judicial cooperation in civil matters.

Although many other instruments have been adopted in the field of judicial cooperation in criminal matters, only four Council Framework Decisions have been adopted under the principle of mutual recognition:

- Council Framework Decision **2002/584/JHA** of 13 June 2002 on the European **arrest warrant and the surrender procedures** between Member States;
- Council Framework Decision **2003/577/JHA** of 22 July 2003 on the execution in the EU of orders **freezing property or evidence**;
- Council Framework Decision **2005/214/JHA** of 24 February 2005 on the application of the principle of mutual recognition to **financial penalties**;
- Council Framework Decision **2006/783/JHA** of 6 October 2006 on the application of the principle of mutual recognition to **confiscation orders**.

Out of those four instruments, the European arrest warrant is clearly the one where most implementation efforts have been made by the Member States, and which is the most used by national judicial authorities. Framework Decisions, although third pillar instruments, are binding as to the results to be achieved by Member States. Therefore, they should, or they will, in the future be implemented in the national legislation of all EU Member States.

If national judges are not sufficiently aware of the existence of the EU instruments – especially those implementing the mutual recognition principle – or if they do not know how to apply them properly, all the work that has been developed in the recent years will be rendered useless. Training is therefore crucial.

After the Hague Programme

¹⁴ OJ L 324, 10.12.2007.

¹⁵ OJ L 174, 27.06.2001.

¹⁶ OJ L 199, 31.07.2007.

¹⁷ OJ L 177, 04.07.2008.

¹⁸ Rome II and Rome I that deal with law applicable.

With the Hague Programme coming to an end in 2009, the Commission has decided to launch a wide-ranging public consultation on “Freedom, Security and Justice: What will be the future?”; a consultation on the priorities for the next five years (2010-2014).

The High-Level Advisory Group on the Future of European Justice Policy¹⁹ sent its contribution in June 2008²⁰. The High-Level Advisory Group points out that the work at European level has focused on the implementation of the principle of mutual recognition as the basis of judicial cooperation: *To date, we have created a unique area where the judgments and judicial decisions in civil and commercial matters are being recognised and enforced, and thus can circulate freely*²¹. Furthermore, the post-Hague Programme should continue to enhance mutual trust in the legal systems of other Member States by establishing minimum rights – this is the basis for the principle of mutual recognition²².

In a chapter dedicated to the dissemination of a judicial culture which aims to increase the mutual trust that should exist between both judges and prosecutors of Member States who work daily in the European legal system, as well as the mutual trust that should exist between the citizens and their own judicial systems, the High-Level Advisory Group stresses that training, namely of judges and prosecutors, should be directed towards: training in foreign languages, thematic sessions on practical subjects (fight against terrorism, mediation, etc.) corresponding to the implementation of instruments adopted by the European Union, training of trainers in conjunction with the different schools and institutes, and a shared discussion on ethic matters²³.

The Lisbon Treaty

Two important changes have, in particular, been brought about by the Lisbon Treaty.

First of all, for the first time, the principle of mutual recognition is mentioned in the relevant treaty articles that deal with judicial cooperation: article 81 paragraph 1 for judicial cooperation in civil matters: *The union shall develop judicial cooperation in civil matters (...), based on the principle of mutual recognition of judgments and decisions in extra judicial cases*; and article 82 paragraph 1 for criminal matters: *Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions (...)*.

Secondly, for the first time, the support of training of the judiciary and judicial staff is mentioned as one of the specific measures that should be adopted by the European

¹⁹ Members of the Group are six justice ministers personally coming from the two Trio-Presidencies (Germany/Portugal/ Slovenia and France/Czech Republic/Sweden) and one representative from the third Trio-Presidency (Spain/Hungary/Belgium). The group is chaired by the Presidency of the Council of the European Union and the Vice-President of the European Commission. The European Parliament is invited to participate in ministerial discussions.

²⁰ Proposed Solutions for the Future EU Justice Programme, 11549/08, June 2008.

²¹ Idem p.19.

²² Idem p.20.

²³ Idem p.52.

Parliament and the Council – article 81.2.h) and article 81.1 – in the area of judicial cooperation both in civil and criminal matters.

The enjoyment of freedom, which includes the right to move freely throughout the Union, necessitates a **genuine European area of justice**. One of the elements of this area of justice is that citizens should not be prevented from moving from one Member State to another, fearing that their access to justice is jeopardised. Another element is that judgments and decisions should be respected and enforced throughout the Union. This should operate through the principle of mutual recognition of judicial decisions and mutual trust, the former being a **cornerstone of judicial cooperation in both civil and criminal matters**.

The abolition, pure and simple, of any checks on the foreign judgment by courts in the requested country can only operate effectively if the judge in the requested country **trusts** their colleague in the Member State of origin. Strengthening mutual confidence requires an explicit effort to improve mutual understanding among judicial authorities and different legal systems; this could be accomplished through **judicial training**.

European judicial training should not only cover the different legal systems, but also – and maybe especially – the **instruments that apply the principle of mutual recognition and the instruments that are ancillary to this principle**: it is the national judges – being the first judges of Community law – who will apply those instruments. The only way they can do this properly is if they have a profound knowledge of the instruments and the way they work.

2.2 The national judge as Community judge

The Treaties do not establish the creation of “Community Courts” in the Member States. The national court is therefore the normal Community court to hear and determine all cases which do not fall within the jurisdiction of the Court of Justice or the Court of First Instance. Consequently, the national judge is the first judge of Community law as they are, in fact, the one who will apply Community law to the “everyday” lives of the individuals as a result of the principles of direct effect and harmonious interpretation. The national judge can even find its Member State liable for breaches of Community law as a result of the principle of state liability.

In order to do so, the national judge has to be as familiar and comfortable with Community law as they are with pure national law, and needs to be aware of its characteristics and effect in the national legal system. Training guarantees that the national judge performs their task effectively.

The important role of the national judge with regards to enforcement of Community law is secured through a dialogue with the European Court of Justice. Via the preliminary ruling procedure, the national judge has the possibility and sometimes the obligation to ask the Court of Justice questions on the interpretation of primary and secondary

Community law and on the validity of secondary Community law²⁴. By means of this cooperation the uniform interpretation and application of Community law is ensured.

This duty of the national judge is essential for the proper functioning of the Community legal system.

This is even more so when, according to the recent case law of the Court of Justice, the principle of state liability includes cases of breaches by the judiciary when deciding in last instance²⁵. This breach can include the non-referral by a national court adjudicating in last instance of a question regarding the interpretation of Community law to the Court of Justice. Again, national judges have to be entirely familiar with this procedure in order to perform this crucial role efficiently.

3. COMMUNITY FINANCIAL PROGRAMMES AVAILABLE FOR JUDICIAL TRAINING

The Framework Programmes were established to provide coherent support to the area of freedom, security and justice under the financial perspectives 2007-2013. Each of the three objectives – freedom, security and justice – is supported by a Framework Programme supporting and linking each policy area.

As regards Justice, the General Programme “Fundamental Rights and Justice” consists of five Specific Programmes²⁶:

- . Fight against violence (Daphne III)
- . Drugs prevention and information
- . Civil justice
- . Criminal justice
- . Fundamental rights and citizenship

Out of these five, three mention the promotion or support of judicial training as one of their specific objectives: the Specific Programme “Criminal Justice”, the Specific Programme “Fundamental rights and citizenship” and the Specific Programme “Civil Justice”.

3.1 The Specific Programme “Criminal Justice” 2007-2013

This Programme was established by the Council Decision 2007/126/JHA of 12 February 2007²⁷ and it has a budget amounting to €196.2 million for the whole period of 2007-2013. It provides financial support for activities seeking to promote judicial cooperation

²⁴ Article 234 EC Treaty, article 35 EU Treaty for the judicial cooperation in criminal matters area and article 68 EC Treaty for all areas covered by Title IV of the EC Treaty.

²⁵ Koble v. Republik Österreich (Case 224/01) [2003] ECR I-10239.

²⁶ The financial package for the whole framework programme is €542.90 million for 2007-2013.

²⁷ Council Decision of 12 February 2007 establishing for the period 2007 to 2013, as part of the General Programme on Fundamental Rights and Justice, the Specific Programme ‘Criminal Justice’, OJ L 58, 24.02.2007.

in criminal matters with the aim of contributing to the creation of a genuine European area of justice based on mutual recognition and mutual confidence.

Another of its general objectives (article 2, 1, c)) is *to improve the contacts and exchange of information and best practices between legal, judicial and administrative authorities and the legal professions: lawyers and other professionals involved in the work of the judiciary, and to foster the training of the members of the judiciary, with a view to enhancing mutual trust.*

The Programme will aim in particular to promote *training in Union and Community law for the judiciary, lawyers and other professionals involved in the work of the judiciary* (article 3,e).

Additionally, as far as eligible actions are concerned (article 4), the Programme will specifically support *an operating grant to co-finance expenditure associated with the permanent work programme of the European Judicial Training Network which pursues an aim of general European interest in the field of training of the judiciary.*

Finally, article 6, paragraph 1 establishes that: *Access to the Programme shall be open to institutions and public or private organisations, including professional organisations, universities, research institutes and legal and judicial training/further training institutes for legal practitioners, non-governmental organisations of the Member States.*

For 2009, the Commission has proposed in its Work Programme a budget of €30.4 million²⁸ to implement the specific “Criminal Justice” programme. One of priorities for action grants identified by the Commission for 2009 is **judicial training** both for transnational projects and for projects developed by national training institutions in coordination with the European Judicial Training Network. The priority will be training in EU legal instruments and policies, language training and developing a European judicial culture. In the area of operating grants, one of the priorities is for activities pursued by the organisation to complement EU activities in the area of **improving professional skills of legal practitioners and defining training curricula.**

3.2 The Specific Programme “Fundamental Rights and Citizenship” 2007-2013

This Programme was established by the Council Decision 2007/252/JHA of 19 April 2007²⁹ and it has a budget amounting to €93.8 million for the entire period of 2007-2013. One of its objectives is to improve the contacts, exchange of information and networking between legal, judicial and administrative authorities and the legal professions, **including judicial training by way of support**, with the aim of better mutual understanding among such authorities and professionals (article 2, 1, d).

Article 7 paragraph 1 establishes that: *Access to the Programme shall be open, inter alia, to institutions and public or private organisations, universities, research institutes, non-*

²⁸ Available on http://ec.europa.eu/justice_home/funding/jpen/doc/awp_jpen_2009_en.pdf

²⁹ Council Decision of 19 April 2007 establishing for the period 2007-2013 the specific programme ‘Fundamental Rights and citizenship’ as part of the General programme ‘Fundamental Rights and Justice’, OJ L 110, 27.04.2007.

governmental organisations, national, regional and local authorities, international organisations and other not-for-profit organisations (...).

The priorities established by the Commission for 2008 in its Work Programme 2008 – Specific Programme “Fundamental Rights and Citizenship”³⁰, include **training** and networking between legal professions and legal practitioners: *There is a need to develop and strengthen a shared culture of fundamental rights within the European Union. This requires that the legal, judicial and administrative authorities, legal professionals and practitioners have a good knowledge and understanding of the principles laid down in Art 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights. Training and awareness raising are means to achieve this goal. The Commission will support training on the Charter, as well as cooperation and exchange of information between the legal profession and all legal practitioners in the area of fundamental rights*³¹.

3.3 The Specific Programme “Civil Justice” – 2007-2013

This programme was established by Decision 1149/2007/EC of the European Parliament and of the Council of 25 September 2007 establishing for the period 2007-2013 the Specific Programme ‘Civil Justice’ as part of the General Programme ‘Fundamental Rights and Justice’³² and it has a budget amounting to €100.85 million for the entire period of 2007-2013. It provides financial support for activities seeking to promote judicial cooperation with the aim of contributing to the creation of a genuine European area of justice in civil matters based on mutual recognition and mutual confidence.

It has one of the same general objectives as the Specific Programme ‘Criminal Justice’: (article 2, 1, d): *to improve the contacts, exchange of information and networking between legal, judicial and administrative authorities and the legal professions, including by way of support of judicial training, with the aim of better mutual understanding among such authorities and professionals* .

As far as specific objectives are concerned, among others, the Programme will aim to promote *the training of legal practitioners in Union and Community law* (article 3,e).

Additionally, the Programme will specifically support *operating grants to co-finance expenditure associated with the permanent work programmes of the European Network of Councils for the Judiciary and the Network of the Presidents of the Supreme Judicial Courts of the European Union, insofar as it is incurred in pursuing an objective of general European interest by promoting exchanges of views and experience on matters concerning case-law and the organisation and functioning of the members of those networks in the performance of their judicial and/or advisory functions with regard to Community law* (article 4, d).

³⁰ Available on http://ec.europa.eu/justice_home/funding/rights/doc/awp_rights_2008_en.pdf

³¹ Idem, p.4.

³² OJ L 257, 03.10.2007.

Finally, article 7 establishes that: *Access to the Programme shall be open to institutions and public or private organisations, including professional organisations, universities, research institutes and legal and judicial training institutes for legal practitioners, international organisations and non-governmental organisations of the Member States.*

In its draft Decision on the 2009 annual work programme for the specific programme “Civil Justice”³³, the Commission established as one of the priorities for the allocation of action grants: *Projects aimed at improving the contacts, exchange of information and networking between legal, judicial and administrative authorities and the legal professions, including by way of support of judicial training, with the aim of better mutual understanding among such authorities and professionals*³⁴.

Finally, it should be mentioned that in its Resolution 2007/2027 (INI) (see 5.2 below), the European Parliament considered that in principle, judges should not have to bear any of the costs related to their training in Community law. The Parliament also calls on the Commission to rigorously evaluate the results of the Fundamental Rights and Justice Framework Programme 2007-2013 and to formulate new proposals for the development and diversification of measures to promote judicial training.

The financial framework programmes are an essential tool to guarantee financial support to training activities for the judiciary. The specific operating grant *to co-finance expenditure associated with the permanent work programme of the European Judicial Training Network* is an excellent initiative. However it is regrettable that such a possibility does not exist in the specific framework programme ‘Civil Justice’ adopted by the Council and the European Parliament.

4. MAIN ACTORS IN THE FIELD OF JUDICIAL TRAINING

4.1 National training schools

Organisation and implementation of judicial training falls primarily under the responsibility of each Member State. There are generally two types of trainings offered: initial and continuous.

As far as initial training is concerned, Member States have chosen very different approaches. For instance, the UK organises an *induction programme* for newly appointed judges. France and Portugal are organising initial trainings of two and a half years and two years respectively, before a candidate can officially exercise themselves as a judge or prosecutor.

Continuous training seems to have developed over recent years in most European countries. For instance the Judicial Studies Board (JSB) in the UK aims to become a Judicial College by 2010 and to improve the frequency of training sessions. *The protected*

³³ Available on http://ec.europa.eu/justice_home/funding/civil/doc/awp_2009_en.pdf

³⁴ Idem.

time should be five days per year according to the JSB³⁵. The French National School of Magistrates (Ecole Nationale de la Magistrature) proposes training sessions on European and international law. Nevertheless, it should be noted that continuous training has only been made compulsory for French magistrates since 1 January 2008. As stated by the Commission in its 2006 Communication (see 5.1 below) [t]here are sometimes major inequalities in access to training as between judges, prosecutors and lawyers³⁶.

Continuous training is of essence a limited training since only a few days per year can be dedicated by any professional to this activity. Therefore, other forms of training, such as e-learning, should be developed in addition to “face-to-face” training. This new possibility could even be implemented on a compulsory basis for judges, prosecutors and judicial staff to complement their initial and continuous training.

The fact that a number of Member States distinguish between recruitment and training of judges and prosecutors should not prevent those two bodies of professionals to have common training programmes where substantive knowledge of EU law or legal linguistic training are concerned.

Common training activities could be organised associating at least two national schools or national training institutes. This is already the case in the Netherlands, for instance, regarding specific training dedicated to the European Arrest Warrant. Courses were organised by the SSR (national training institute for members of the judiciary in The Netherlands) in cooperation with Germany and Belgium³⁷.

4.2 The European Judicial Training Network

The European Judicial Training Network (EJTN) was created in October 2000 on the basis of a Charter adopted in Bordeaux. The EJTN was later registered under Belgian law as a non-profit International Association³⁸. A French initiative was presented to the Council in 2000 and aimed at adopting a Council Decision which would have provided the European Judicial Training Network with a more formal structure. This project was abandoned after the EJTN had registered under Belgian law. Today a total of 29 national - mostly training institutes - are members of the network. The Academy of European Law (ERA) is also a member of the EJTN³⁹. The network has furthermore welcomed a few observers such as Croatia, Bosnia Herzegovina, Norway, the Council of Europe and the Commission.

³⁵ Judicial Studies Board, Annual Report 2007-2008.

³⁶ Communication from the Commission to the European Parliament and the Council on judicial training in the European Union, 29.06.2006, COM(2006) 356 final, paragraph 10.

³⁷ Evaluation Report on the Fourth Round of Mutual Evaluations “The Practical application of the European Arrest Warrant and corresponding surrender procedures between Member States” Report on the Netherlands, 27 February 2009, 15370/2/08.

³⁸ Its Statutes were approved by Royal Decree of 8 June 2003.

³⁹ www.ejtn.net

The EJTN implements cross-border training opportunities⁴⁰ and exchange programmes for judges and prosecutors and for trainers. On its website it also provides practical details on different e-learning tools, such as the *CoPen training* programme (see 4.4 below), and it disseminates information about relevant open enrolment training programmes offered by selected training organisers.

The EJTN is presented as a privileged partner of the European Judicial Network⁴¹ and of the European Judicial Network in civil and commercial matters⁴².

Although an operating grant was established for the EJTN by the Programme ‘Criminal Justice’⁴³, the EJTN needs strengthening. This point is already mentioned in a number of official EU documents since the Laeken European Council of December 2001⁴⁴. Strengthening the EJTN would allow the EJTN to propose more trainings and design common EU training programmes.

Similarly to a cooperation existing between CEPOL and Europol for a number of training events, cooperation between the EJTN and Eurojust should also be established.

A judicial “Erasmus” exchange programme could be launched. This idea is currently being proposed for other professional areas (e.g. the French Presidency proposed a military “Erasmus” in its Work Programme) and an Erasmus for the judiciary was also suggested during a seminar organised by the European Judicial Network⁴⁵. A judicial “Erasmus” would not have to be implemented at only the initial training level. A judge, a prosecutor or a judicial staff member could opt for such a programme under continuous training.

4.3 The European Institute of Public Administration and the Academy of European Law

Both institutes propose fee-based trainings designed for judges, prosecutors and judicial staff. Both are also recognised by EU institutions as major European judicial training partners, and both have grant agreements with the European Commission.

European Centre for Judges and Lawyers – European Institute of Public Administration (EIPA)

⁴⁰ Those training opportunities are described in a catalogue in the EJTN website.

⁴¹ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network, article 4.3.

⁴² Proposal for a Decision of the European Parliament and of the Council amending Council Decision 2001/470/EC establishing a European Judicial Network in civil and commercial matters, 23.6.2008, COM(2008)380 final, p.15.

⁴³ OJ L 58, 24.2.2007, p.13.

⁴⁴ Presidency Conclusions, European Council meeting in Laeken, 14 and 15 December 2001. SN 300/1/01 REV 1, p.13.

⁴⁵ European Judicial Network Secretariat, Judicial cooperation: from practitioners’ expectations to the Union’s legislative policy (on the 10th anniversary of the European Judicial Network in criminal matters) – General report on the seminar, 23.01.2009, 5682/09.

Founded in 1981 by the then 12 EEC Member States, EIPA has been dedicated to the organisation and delivery of seminars, training courses, consultancy, research and publications as well as Master programmes for more than 25 years. Its members include nearly all the current EU Member States, and it serves the national and regional public administrations of the EU Member States and Candidate Countries as well as the European institutions. It is unique in its mandate, its multicultural and multidisciplinary approach, its services, which are based on a combination of practical and scientific know-how provided by its in-house experts, and in its close relationship with Member States and the EU institutions.

The *European Centre for Judges and Lawyers* (ECJL) was established in 1992 in Luxembourg as a specialised centre dedicated to the provision of EIPA services – and in particular, highly specialised and practical seminars, training courses and study visits – which meet the needs of the judiciary, practising lawyers and others both in the public and private sectors, who work with or need to know about European law issues, whether this relates to the interpretation or implementation of EU law and/or to the administration of justice⁴⁶.

Academy of European Law (ERA)

On an initiative of the European Parliament, the Academy of European Law (ERA) was also founded in 1992. It is a public foundation, based in Trier, Germany, and its members include the majority of EU Member States.

Its mission is to promote the awareness, understanding and good practice of EU law by providing legal professionals with training and a forum for debate. Through its organisation of conferences, seminars, study visits, language courses and publications, ERA enables judges, lawyers in private practice, business and public administration, academics and others who encounter legal issues in their work to gain a wider and deeper knowledge of the diverse aspects of European law⁴⁷.

The ECJL (EIPA) and ERA are both cited in the Resolution of the Council on the training of judges, prosecutors and judicial staff in the European Union adopted during the Justice and Home Affairs meeting on 24 October 2008, and by the Communication of the Commission on judicial training in the EU (29.06.2006). The Council encourages the Commission and the Member States to *simplify procedures* in order to allow available funds *to be allocated within shorter timeframes*, thereby confirming the importance of these institutes in the strengthening of judicial training in the EU⁴⁸.

4.4 Other actors

⁴⁶ EIPA, Annual Report 2007, www.eipa.eu

⁴⁷ www.era.int

⁴⁸ Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council on the training of judges, prosecutors and judicial staff in the European Union, 2008/C 299/01.

CEPEJ, CCEJ and the Lisbon network (Council of Europe)

The Committee of Ministers of the Council of Europe has established some advisory bodies on justice policies – the Consultative Council of European Judges (CCJE) and the European Commission for the Efficiency of Justice (CEPEJ) – and a specific judicial training network, the Lisbon Network.

The **European Commission for the Efficiency of Justice** was established on 18 September 2002 with Resolution Res(2002)12 of the Committee of Ministers of the Council of Europe. The aim of the CEPEJ is to improve the efficiency and functioning of justice in the Member States of the Council of Europe, and to develop to this end the implementation of the instruments adopted by the Council of Europe.

In the cited resolution, when mentioning the principles that inspired it, the status and role of the legal professionals is pointed out and training is referred to⁴⁹.

The **Consultative Council of European Judges** is an advisory body of the Council of Europe on issues related to the independence, impartiality and competence of judges. It has an advisory function and prepares opinions for the attention of the Committee of Ministers or for other Council of Europe bodies.

On 27 November 2004, CCEJ delivered its Opinion no 4 on **appropriate initial and in-service training for judges at national and European levels**⁵⁰. Among other significant considerations, it is important to mention paragraphs 43 and 44 of this Opinion:

43. Whatever the nature of their duties, no judge can ignore European law, be it the European Convention on Human Rights or other Council of Europe Conventions, or if appropriate, the Treaty of the European Union and the legislation deriving from it, because they are required to apply it directly to the cases that come before them.

44. In order to promote this essential facet of judges' duties, the CCJE considers that member states, after strengthening the study of European law in universities, should also promote its inclusion in the initial and in-service training programmes proposed for judges, with particular reference to its practical applications in day-to-day work.

The **Lisbon Network** was set up in 1995 as part of the legal cooperation programmes in order to enable the different judicial training bodies in Europe to become better acquainted with each other, to exchange information on matters of common interest and

⁴⁹ Training i. Initial and on-going training is a right and a duty of all those involved in the judicial service and is an essential requirement for justice to fulfil its functions. ii. Initial and on-going training of legal professionals shall be guaranteed, in particular by taking into account the relevant Council of Europe international legal instruments referred to in Appendix II.

⁵⁰

[https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE\(2003\)OP4&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3](https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2003)OP4&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3)

to support, by means of this dialogue, the setting up or further development of judicial training facilities in the Member States of the Council of Europe. The members of the Network are national judicial training institutions. In its strategy document adopted in September 2006, the Lisbon Network emphasises that: *unless the right training is provided for legal professions, judicial systems cannot function effectively and will forfeit public trust*⁵¹. It also stresses that the Lisbon Network has to move on from an information exchange network to a body tasked at the pan-European level with providing active support to improve judicial training and ensure complementarity with the work of the European Union.

In June 2008, in its tenth Plenary Meeting, the Lisbon Network adopted a document establishing cooperation modalities with the European Judicial Training Network (EJTN)⁵².

Cooperation between all actors of judicial training is essential to share good practices, to use synergies, and also for complementarity reasons.

Other initiatives

The **European Judicial Network** is planning to organise language trainings in order *to strengthen mutual trust between (its) contact points*⁵³. Additionally, the European Judicial Network has received interesting replies to a questionnaire relating to judicial training on the evaluation of the tools for judicial cooperation in criminal matters. A common *curriculum* for prosecutors, seminars themed by area or subject of regional crime, standardising legal language with the creation of a glossary of equivalents in the main EU languages, are just some of the many suggestions that were made by national judicial authorities to the network⁵⁴.

The **European Criminal Law Academic Network (ECLAN)** has been meeting regularly since 2005. It is mainly composed of Academics from different countries. One of the objectives of ECLAN is *the training of actors of criminal justice, mainly civil servants magistrates and lawyers*⁵⁵. Within that framework, an interesting online training project – *CoPen-Training* – has been launched with the *Université Libre de Bruxelles*. It is partially financed by the Commission and the modules are currently being updated. This training tool is designed to help national trainers to include in their training modules EU judicial and law enforcement cooperation in criminal matters. It can also be used by magistrates in their daily work. Any interested person can download this programme free of charge⁵⁶.

⁵¹ Available on http://www.coe.int/t/dghl/cooperation/lisbonnetwork/presentation/Strategie_en.pdf

⁵² Available on http://www.coe.int/t/dghl/cooperation/lisbonnetwork/rapports/RL_2008_1_EJTN_en.pdf

⁵³ European Judicial Network Secretariat, 8th Meeting of the informal working group of the European Judicial Network (The Hague, 27 October 2008), 18 December 2008, 17439/08.

⁵⁴ European Judicial Network, Replies to the questionnaire on the evaluation of the tools for judicial cooperation in criminal matters, 26 January 2009, 5684/09.

⁵⁵ www.eclan.eu

⁵⁶ www.copen-training.eu

“Training the trainers” should indeed be a decisive step in the overall enhancement of judicial training in the EU. Training trainers obviously entails a reduced number of persons to be trained, thus resulting at the end of the chain in a greater number of persons benefiting from that training. The question of the content of – as well as the methodologies for – the training remains decisive. The different initiatives mentioned below (part 5) have tried to tackle this issue by suggesting common European training programmes.

5. INITIATIVES IN THE FIELD OF JUDICIAL TRAINING

5.1 Communication from the Commission on judicial training in the European Union

The Communication from the Commission dated 29.06.2006 is an interesting and innovative document⁵⁷.

The Commission lists all actors playing or potentially playing an important role in the field of judicial training:

- The Commission stresses the core role of the EJTN;
- Nevertheless Eurojust, the Judicial Network in Civil Matters and the Judicial Network in Criminal matters could also *organise local training*⁵⁸;
- Other institutions such as universities, the ECJL-EIPA and ERA are also already working in this field.

The Commission confirms that financial support by the European institutions should be continued and/or strengthened toward the EJTN and institutes such as EIPA and ERA.

The Commission suggests that EU training should more specifically target:

- some judges exercising “specific powers”: judges working in the area of competition, civil justice and criminal justice – *especially for the implementation of mutual recognition* – should improve this knowledge;
- trainers of judges and prosecutors.

Lawyers and police officers should also participate in *exchanges of views and experience* with judges and prosecutors. The Commission does not go as far here as proposing common training (see our comment below in 5.5). Nevertheless, considering the role of lawyers is to be *decisive*, their European training should also be strengthened, according to the Commission⁵⁹.

Finally, the Commission proposes some innovative means of enhancing judicial training in the EU amongst which:

- the use of e-learning tools;

⁵⁷ Communication from the Commission to the European Parliament and the Council on judicial training in the European Union, 29.06.2006, COM(2006)356 final.

⁵⁸ Ibid, paragraph 19.

⁵⁹ Ibid, paragraph 34.

- periods of training in the premises of the European Court of Justice and of Eurojust.

The Commission confirms that it *wishes to give financial support to the training of legal professions in Union and Community law under the 2007-2013 framework programme on fundamental rights and justice* and reserves the discussion on the creation of a structure similar to CEPOL in the judicial area until the end of that programme (2013).

5.2 Report of Diana Wallis on the role of the national judge in the European judicial system

On 9 July 2008 the European Parliament adopted a resolution on the role of the national judge in the European judicial system⁶⁰. The initiative report had been tabled for consideration in plenary by Diana Wallis MEP on behalf of the Committee on Legal Affairs.

In order to draft the report,

- the Rapporteur held a hearing in the Legal Affairs Committee, during which judges from Romania, Hungary, the United Kingdom and Germany related their experiences with Community Law;
- a survey to be completed by the judges was also sent to the Member States, and its first results are published as an annex to the draft report;
- the Rapporteur participated in a hearing on the application of Community law organised on 3 May 2007 by Monica Frassoni MEP, which included a presentation from a French judge; thus highlighting the close connection between the role of national judges on the one hand and, and the application of Community law on the other;
- the Rapporteur carried out a fact-finding mission at the Court of Justice to meet several judges and Advocates General, focusing primarily on the role of national judges in the context of preliminary ruling procedure;
- the Rapporteur was represented at an experts meeting on judicial training organised by the Commission on 4 February 2008, which included presentations by the EJTN, ERA, EIPA and others⁶¹.

The report seeks to build on existing initiatives to propose a more structured framework for judicial training in the European Union which is capable of fulfilling future ambitions⁶². It also makes a series of recommendations aimed at ensuring that national judges play a greater role in the European Union judicial system. The report covers the problem of languages, better access to information, legal training, the role of the national

⁶⁰ 2007/2027(INI).

⁶¹ Explanatory Statement, Report on the role of the national judge in the European judicial system (2007/2027 (INI))

⁶² Idem.

judge in the preliminary ruling procedure, and finally how the Community legislator could facilitate the national judge's task by improving the way in which it creates law, in particular, by making the process more transparent.

The abovementioned questionnaire, annexed to the report, includes questions related to **access to Community law⁶³, information and training⁶⁴, preliminary references⁶⁵, national procedures⁶⁶ and general questions⁶⁷**.

The total number of responses to the questionnaire exceeds 2300 from all 27 Member States. **The number of answers processed in the report was 1160, with most responses analysed coming from Germany (44%), Poland (19%), France (6%), Bulgaria (6%), Slovenia (5%) and Austria (4%).** The survey covered a wide variety of courts, with the largest contingents being administrative, employment, financial, social and labour courts.

The answers highlighted:

- significant disparities in national judges' knowledge of Community law⁶⁸ across the European Union, with awareness of it being sometimes very limited;
- the urgent need to enhance the overall foreign languages skills of national judges⁶⁹;
- the difficulties experienced by national judges in accessing specific and up-to-date information on Community law;
- the need to improve and intensify the initial and lifelong training of national judges in Community law⁷⁰;

⁶³ For instance: Do you know how to have access to Community Law? How often do you consult ECJ case-law?

⁶⁴ For instance: Do you consider that language constitutes a barrier to adequate information on Community law? Have you ever participated in a European training programme? Are you aware of any national training programmes concerning Community law? Do national networks exist at a judicial or ministerial level to inform judges about pending preliminary references from national courts, relevant case-law in other Member States, case-law of the ECJ?

⁶⁵ For instance: How familiar are you with the procedure for referring a question to the ECJ? Have you ever made a preliminary reference to the ECJ? Under your national law, can the parties to a trial before a lower court ask for a preliminary reference to the ECJ? Can a national judge in your Member State make a preliminary reference to the ECJ of his/her own motion? Are there in your Member State any specific bodies designed to assist judges in making a reference for a preliminary ruling to the ECJ?

⁶⁶ For instance: Are there, in your Member State, specific provisions relating to the application of Community legislation and general principles of Community law? In your experience, how often is Community law raised by the parties? Can a national judge in your Member State raise points of Community law of his or her own motion?

⁶⁷ For instance: How do you consider your role as "first judge of Community law" in your daily work? Would you recommend any improvements to the preliminary ruling mechanism? What do you consider would be helpful for a better understanding and use of Community law?

⁶⁸ References to Community law should be understood as also including Union law.

⁶⁹ 39% of respondents considered that foreign languages constituted a barrier to adequate information on Community law.

⁷⁰ 61% of respondents had never attended a European training Programme or any national training programme concerning Community law.

- the judges' relative lack of familiarity with the preliminary ruling procedure, and the need to reinforce the dialogue between national judges and the Court of Justice⁷¹;
- the fact that Community law is perceived by many judges as excessively complex and opaque;
- the need to ensure that Community law lends itself better to application by national judges.

It is significant to point out that among the suggestions sent by the respondents in the area of measures to ensure better understanding and use of Community law by the national judges, 51.1% related to **thorough and continuous training** in European law throughout a judge's studies and career. Secondly came calls for more and better information (21.5%) and proposals on how to make this information available. In the specific area of improving training, 73% mentioned that more legal training was needed; 12% mentioned that specific emphasis should be given to practical aspects of training; and 7% mentioned exchanges and contacts between judges from different Member States.

The **European Parliament resolution**, taking the results of the survey and Diana Wallis' report into account, deals with six topics: the national judge as first judge of Community law; issues relating to language; access to relevant sources of law; towards a more structured framework for judicial training in the European Union; a reinforced dialogue between national judges and the Court of Justice; and laws better tailored to application by national judges.

The following are some of the considerations and requests of the European Parliament concerning each of the topics:

The national judge as first judge of Community law

The European Parliament stresses that the European Community is a community based on the rule of law and that: *Community law remains a dead letter if it is not properly applied in the Member States, including by national judges, who are therefore the keystone of the European Union judicial system and who play a central and indispensable role in the establishment of a single European legal order.* It moreover calls on the Commission to proceed without delay with the publication of an information note on actions for damages for breaches of Community law by national authorities.

Issues relating to language

The European Parliament considers that language is the main tool of practitioners of justice and calls on all players involved in judicial training to give specific attention to the language training of judges – training that should be free of charge and easily accessible. One should indeed remember that there are series of regulations containing conflict-of-law rules, which often entail the application of legislation of other Member States.

⁷¹ 32% of respondents consider themselves unfamiliar with the procedure and only around 5% have made at least one reference for a preliminary ruling.

The European Parliament also believes that access to *academic literature in the judge's mother tongue* is important for a better understanding of Community law and calls on the Commission to support the development of such literature, particularly in the less-spoken official languages.

Access to relevant sources of law

The European Parliament calls on the Member States to renew efforts in order *to make available to national judges up-to-date information on Community law in a systematic and proper manner.*

The European Parliament is of the opinion that all national judges should have access to databases containing pending references for preliminary rulings from all Member States and considers, given the wealth of online information available on Community law, that judges must be trained not only in the substance of the law, but also in how to access up-to-date legal sources efficiently.

The European Parliament also encourages the development of *online tools* and initiatives in the field of *e-learning*, which, whilst not being a complete answer to training, should be seen as complementary to face-to-face contact between judges and trainers.

From this view it is essential to mention the European e-Justice Portal that is intended to be a one-stop-shop and a single user-friendly entry point to the whole European e-Justice system. This tool is currently being developed by the Commission and should be available by the end of 2009.

Towards a more structured framework for judicial training in the European Union

In this aspect, the European Parliament calls for the EU component in the training at national level of all members of the judiciary:

- to be systematically incorporated into training for, and examinations to enter, the judicial professions;*
- to be further strengthened from the earliest possible stage onwards, with an increased focus on practical aspects;*
- to cover methods of interpretation and legal principles which may be unknown to the domestic legal order, but which play an important role in Community law.*

The European Parliament also considers 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; [and] calls therefore for the creation of a European Judicial Academy composed of the EJTN and the Academy of European Law (...)*⁷².

⁷² Similarly, the draft Report with a proposal for a European Parliament recommendation to the Council on development of an EU criminal justice area (European Parliament, Committee on Civil Liberties, Justice and Home Affairs, Maria Grazia Pagano, 2009/2012(INI)), recommends the creation of a European Judicial Academy.

Finally, the European Parliament calls for the training of candidates for judicial appointment to be strengthened from the earliest point onwards, and by analogy, following the above suggestions and proposals concerning national judges.

Establishing new trans-European institutions or academies is both costly and time consuming.

Although not specifically mentioned by the European Parliament, one should be aware that the treaties do not provide for a legal basis for the harmonisation of a judicial training in EU law at a national level.

In view hereof, we believe that **rather than establishing new institutions, all structures that already exist and have experience in judicial training should be involved in a more structured framework/strategy for judicial training.**

A reinforced dialogue between national judges and the Court of Justice

In this area, the European Parliament calls on the Court of Justice and all parties concerned to *further reduce the average length of the preliminary ruling procedure and urges the Commission to investigate whether any national procedural rules constitute an actual or potential hindrance to the possibility for any court or tribunal of a Member State to make a preliminary reference*, as provided for in the second paragraph of Article 234 of the EC Treaty, and *to pursue vigorously the infringements which such hindrances represent*.

The European Parliament also calls on the Court of Justice to consider all possible improvements to the preliminary ruling procedure; this would more closely involve the referring judge in its proceedings, including enhanced possibilities for clarifying the reference and participating in the oral procedure.

It is also important to underline the Commission's opinion on the proposal to create a European Judicial Academy composed of the EJTN and the Academy of European Law: *The Commission shares Parliament's view concerning the need to rationalise the existing structures and avoid duplication. However, at this stage the Commission is not in favour of creating a European Judicial Academy since this would require the establishment of a new Community agency. While the Commission does not rule out this possibility in the medium term, at this stage it prefers judicial training at European level to be organised in a coordinated and equitable way among the various players, including the EJTN, the Academy of European Law and the EIPA.*

The principle of direct effect, harmonious interpretation and state liability, and the power to make a reference for a preliminary ruling give the national judges a fundamental role in the EU legal system. *However, there is a dissymmetry between that important role and the importance that has been given to training. National judges report, among other*

*problems, lack of training in Community law, language problems and lack of suitable text books*⁷³.

5.3 Council Resolution adopted at the JHA meeting of 24 October 2008⁷⁴

After recalling reasons for why the training of judges, prosecutors and judicial staff is so important today in the European Union (see part 1 of this study), the Council emphasises the central role which should be played by the EJTN and the fact that EIPA and ERA have been organising training courses for *legal professions and judicial staff*, including judges and prosecutors.

The resolution stresses the following points as being the core *guidelines* in designing and implementing European judicial training. The following areas should be enhanced:

- Knowledge of the EU's primary and secondary law;
- Knowledge of the procedures to be applied in front of the European Court of Justice (in particular the preliminary ruling procedure);
- Knowledge of other legal systems within the EU;
- Knowledge of European e-justice tools;
- Knowledge of language(s) of the EU other than the mother tongue of the persons concerned.

The resolution offers some practical guidance for Member States regarding the means to be used to obtain these results:

- Setting up comparative law courses;
- Developing exchange programmes particularly through the Judicial Exchange Programme⁷⁵;
- Opening national training courses to judges, prosecutors and judicial staff from other Member States;
- Incorporating the knowledge of EU law into the already existing national trainings by using *guidelines* to be developed by the EJTN;
- Developing e-learning systems;
- Developing *common European training programmes* with the help (for the content) of the EJTN.

Due to the importance placed on the EJTN in this resolution, the Council calls for a financial strengthening of this network.

The Council, while mentioning the crucial role of the EJTN, recognises the importance of the training provided by EIPA and ERA. In our view, the Council does not follow

⁷³ Diana Wallis, Speech delivered to Europe Week Giessen in Germany on 5 May 2008.

⁷⁴ Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council on the training of judges, prosecutors and judicial staff in the European Union (2008/C 299/01).

⁷⁵ The Judicial Exchange Programme is "a pilot project created at the demand of the European Parliament to develop exchanges between judges and prosecutors within the European Union in order to facilitate direct contact between judicial authorities and to develop mutual confidence". http://ec.europa.eu/justice_home/funding/2004_2007/exchanges

through its idea of creating a harmonised European training programme. EIPA and ERA need to be associated with the work of the EJTN in order to propose trainings that fit within a common *European strategy on training*⁷⁶. If this is already the case of ERA – being part of the EJTN – it is not yet so for EIPA. We would therefore suggest the active participation of EIPA within the EJTN.

The Council will review the implementation of these guidelines by the end of 2012 at the latest, on the basis of a report of the Commission.

5.4 The Justice Forum

The Justice Forum was established by the Commission's Communication of 4 February 2008 on the creation of a Forum for discussing EU justice policies and practice⁷⁷. The Forum was officially launched on 30 May 2008 and was created following the European Council's request in the Hague Programme, for the establishment of a system providing an objective and impartial evaluation of the implementation of EU policies in the field of justice.

It is composed by Member States, judicial bodies, practitioners, specialist non-governmental organisations, academics and users of justice systems. The Commission will invite a representative of the Council of Europe and Eurojust, and the European Judicial Networks (in criminal and in civil and commercial matters) are to be represented as well as relevant professional European networks active in the justice field at EU level. The Commission also intends to involve academic networks (European Criminal Law Academic Network ECLAN, International Association of Penal Law AIDP, Eurodefensor) in order to promote a scientific, objective approach and to enable a robust exchange of views by including experts with differing views. The Commission also intends to include the ECJ and the Fundamental Rights Agency of the European Union in the most appropriate way⁷⁸.

The objective of the Forum is to provide a permanent mechanism for consulting stakeholders, which meets regularly, reviews and provides feedback on EU justice policies, as well as practicing in a transparent and objective manner, with the possible aim of launching new legal instruments. By bringing professionals together, the purpose is that the Forum will furthermore promote mutual trust between EU justice systems.

Sub-groups are to be constituted on the basis of specific fields of interest or issues identified as warranting attention. Some will cover civil justice; others will face criminal justice matters and examine particular subjects, such as access to legal aid, user satisfaction with the Court system (e.g. speed and fairness), treatment of victims,

⁷⁶ Communication from the Commission to the European Parliament and the Council on judicial training in the European Union, 29.06.2006, COM(2006) 356 final, paragraph 1.5.

⁷⁷ COM/2008/0038 final

⁷⁸ Communication from the Commission on the creation of a Forum for discussing EU justice policies and practice of 04.02.2008.

translation and interpretation services, hearing of the parties, respect of fair trial rights, rapid enforcement of claims and better access to justice for consumers⁷⁹.

The second sub-group meeting of the Justice Forum took place on 11 November 2008 in Brussels. The topic discussed was “Judicial training and the needs of legal professionals to apply EU law”. *Some practitioners gave examples of their local practice and their way of dealing with training on EU law and many ideas on how the training could be organised, on what subject and by whom were discussed*⁸⁰.

In the conclusions, the need for better access to information by the national judges and the need to develop tools to support the national training programmes were mentioned. The issue of linguistic problems and the fact that judicial training is a responsibility of the Member States was also pointed out⁸¹.

The Justice Forum is an interesting initiative that should be further developed.
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5.5 Initiatives of the Presidencies

In the 18-month programme of the Council, the (then) future French, Czech and Swedish Presidencies endeavoured to *work at establishing common guidelines and initiatives for training of judges and justice personnel*⁸².

French Presidency

Work Programme⁸³

The French Presidency had the ambition to *promote the emergence of a common legal culture within the European Union* and – in particular – *promote European training of judges and professionals in the justice system*. France launched a specific training cycle relating to the fight against terrorism, with the participation of the EU Counter Terrorism Coordinator. In addition, the Bordeaux Conference was already announced in the French Work Programme.

The “Bordeaux Conference” *The future of training of magistrates and judicial personnel in the European Union 21-22 July 2008*

The Bordeaux Conference was held on the initiative of Mrs Rachida Dati, Minister of Justice and Keeper of the Seals. It brought together in particular all main stakeholders in

⁷⁹ Communication from the Commission on the creation of the Forum for discussion EU justice policies and practice of 04.02.2008, paragraph 37.

⁸⁰ Flash meeting report, DG JLS/E1 IZ kb D (2008) 19850.

⁸¹ These conclusions are not mentioned in the flash report of the meeting but are part of the personal notes that the writer took as representative of EIPA in the mentioned Forum Justice meeting.

⁸² The future French, Czech and Swedish Presidencies, 18-month programme of the Council, 30 June 2008, 11249/08.

⁸³ French Presidency of the Council of the European Union, Work Programme, 1 July-31 December 2008, Europe Taking Action to meet today’s Challenges.

the field of judicial training in the EU: National training schools, the EJTN, EIPA's European Centre for Judges and Lawyers and ERA. Participants agreed on the current crucial need for training in European law and foreign languages, in order to be able to operate and cooperate correctly.

Participants further discussed the idea of establishing common training modules and teaching material. In fact, unlike training for police officers – for which a specific school exists at the European level (CEPOL) – judicial training mainly remains in the hands of national schools for the judiciary and/or court administration bodies. One reason for this is that a number of Member States consider that the education of lawyers and judicial training remain a national prerogative⁸⁴. Another reason is that the EJTN does not, for the time being, have the means to design and implement trainings by itself; meanwhile pan-European institutions like EIPA and ERA are dependent on providing fee-based training (both through open enrolment seminars and EU and bilaterally funded projects).

Because of the strong demand in European law training, an agreement was reached at the Conference on the importance of dedicating adequate resources to the European Judicial Training Network. As far as funding is concerned, the Commission agreed to continue funding part of the EU training; the remaining part is to be completed by Member States.

It should be noted that the resolution of the Council adopted three months later on 24.10.2008 follows most of the conclusions of the Bordeaux Conference.

Czech Presidency

As far as the Czech Presidency is concerned, no initiative relating to judicial training has been announced in its Work Programme⁸⁵. Nevertheless, in this document, the Czech Presidency insisted on *deepening international cooperation in the education and training of police personnel*. In addition, the Czech Presidency is also favourable towards *the completion and implementation of a common curriculum* as far as CEPOL is concerned.

Judicial cooperation and law enforcement cooperation should, in our view, be looked at as “the two faces of the same coin”. Competent judicial and law enforcement authorities are working on the same types of crimes and sometimes even implement the same European legal instruments (e.g. the 2002 Council Framework Decision on Joint Investigation Teams). Establishing efficient European judicial cooperation means, for both of them, knowing the scope of each other's powers and remit at the European level. Therefore, we share the view that – whenever possible – Member States should organise common training activities on European instruments (e.g. Joint investigation teams, European arrest warrant, or freezing and confiscation orders).

The European Commission is also recognising these complementarities and these similar needs in various crime areas. For instance, there is *a need for continuous training on*

⁸⁴ These views are not reflected in the published minutes/conclusions but are part of the personal notes that the writer took as representative of EIPA in the mentioned conference.

⁸⁵ Work Programme of the Czech Presidency, Europe without barriers, 1 January-30 June 2009.

*cyber crime issues for law enforcement and judicial authorities*⁸⁶. Another example: the EU Counter Terrorism Coordinator suggests associating the judiciary and/or Eurojust to develop common minimum training standards in financial investigations⁸⁷.

Therefore, in our view a partnership should also be established between the European Judicial Training Network and CEPOL.

6. CONCLUSION and WAY FORWARD

6.1 Content, Methodologies and Financing

Based on the previous parts of this note, it can be concluded that the Member States and EU institutions agree that the training of judges, prosecutors and judicial staff in EU law *contributes to the development of a genuine European judicial culture*⁸⁸.

There is also general agreement that the *scope* of the training, which is needed by these professionals, can be summarised as follows:

- Language training in at least one EU language different from the mother tongue of the person receiving the training;
- Training in primary EU law and on general principles of EC/EU law;
- Training in secondary EU law with an emphasis on EU legal instruments, whether adopted under the first or the third pillar, and on instruments applying the principle of mutual recognition;
- Training in the role of the national judge as a Community judge. This includes practical training on how the national judiciary can obtain help in their interpretation and application of EU legislation through, e.g. European Court of Justice (ECJ) decisions or procedures. In particular, the national judges need practical training on the preliminary ruling procedure (e.g. when and how to ask questions to the ECJ) as a guarantee of common interpretation – or determination of the validity – of the various Community legal instruments;
- Training on comparative law in order to have a better knowledge of other legal systems within the EU. This is particularly important when the EU law leaves the possibility for magistrates to apply the law of their counterpart (e.g. on civil law issues), or when the counterpart should understand why a specific decision was taken in another Member State when applying an EU instrument (e.g. within the frame of cooperation in criminal matters such as decisions relating to the European arrest warrant).

⁸⁶ Communication from the Commission to the European Parliament, the Council and the Committee of the regions. Towards a general policy on the fight against cyber crime, 22.5.2007, COM(2007)267 final.

⁸⁷ EU Counter Terrorism Coordinator, Revised Strategy on Terrorist Financing, 17 July 2008, 11778/1/08.

⁸⁸ Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council on the training of judges, prosecutors and judicial staff in the European Union, 2008/C 299/01, paragraph 2a).

With respect to *training methodologies*, the various legislation, resolutions, programmes, reports and opinions discussed in the previous parts of this note furthermore illustrate a common understanding among the Member States that:

- there is a need to combine cost-effective IT-based training methods with the more expensive and time consuming face-to-face training;
- face-to-face training, in order to be effective, involves a reduction of traditional lecturing and an increase of interactive, problem-solving based learning, i.e. through:
 - case studies, where the judges/prosecutors actively participate in solving cases (either alone or in groups) and then compare the result of their work with the outcome of other trainees and/or the other relevant courts,
 - simulation exercises, such as completing a standard request or order form (e.g. for a European payment order), asking preliminary questions to the ECJ or exchanging information via electronic means,
 - study visits and exchange programmes,
 - training on how to use IT and other Open Space Technologies, etc.
- the most pragmatic and effective way to combine, on the one hand, enhancement of national judiciaries' EU law capacities and, on the other hand, the building of confidence and trust between the national jurisdictions, is through trans-European or multi-country training activities, where judicial professionals from different Member States can meet, work and learn together, in order to exchange knowledge and experiences about each other's legal systems and procedures.

As indicated above in part 3 of this note, there is no doubt that the European Commission has understood that the national judiciaries and judicial training institutions have insufficient funds to meet all the national and EU law-related training needs, or that it is trying to "put its money where its mouth is". The various programmes and significant *financial resources* allocated to exchange and multi-country training programmes document this situation.

Having said this, our experience is that the intended beneficiaries more often than not are discouraged from applying for the grants for a combination of reasons: the national training schools and court administration authorities are often both under-funded and -staffed; the application procedures are often complicated, and thus time-consuming; the Commission's financial regulations applicable to EU grants; the limited possibilities to obtain at least some coverage of the staff costs involved in organising such events; and the co-financing requirement.

While we feel that the type of training and confidence-building actions generally promoted through the EU (co-)funded programmes are relevant, useful and necessary, we are convinced that

- a simplification of the formal application forms and procedures,
- an increased eligibility of costs related to the preparation and organisation of training programmes and activities, and
- a reduction of the time it takes to obtain approval of an application

would increase the number of applications and, thus, the number of capacity- and confidence-building activities that are implemented.

6.2 Structural Framework

There remain doubts as to whether or not there is a will among the Member States, let alone a legal basis, for the development of a harmonised EU curriculum⁸⁹, and this with respect to the general legal education, specialised preparatory judicial education or continuous training.

In the view of the authors of this note, it is also doubtful whether the development of a common law curriculum or the establishment of new pan-European structures are in fact pragmatic or cost-efficient solutions to enhance the EU law capacities among the Member State judiciaries.

First of all, taking into account the different legal systems and traditions of the Member States, it is questionable whether a “one-size-fit-all” curriculum can be established with equal applicability in all Member States. Secondly, it may appear contentious as to whether it would be appropriate to use public funds to establish additional judicial training structures, the efforts and activities of which would to a large extent duplicate those already being provided by existing structures. Here we remind the reader of the professional EU law training capacities already available in the national educational and judicial training institutions and/or court administration bodies, as well as the various pan-European professional networks and specialised vocational training institutes, most of which have been established and/or are currently supported by EU funds.

How then can we achieve the objectives set out in the various legislation, decisions, programmes – and even in the future Lisbon Treaty – described previously in this note?

The answer may lie in the European Commission’s Communication on Judicial Training, which considers that: [t]he *point of strengthening the European component of national training is to achieve more widespread familiarity with Union mechanisms. There is also a need to develop a more fully integrated type of training, conceived and implemented at European level.*⁹⁰

As set out above in section 6.1, it is generally accepted that the content and methodology in the area of vocational training for the judiciary are important since they – all other things being equal – should facilitate the communication and cooperation between practitioners of law in one Member State to another. Given the growing number – as well as the increasing complexity – of cross-border cases in both criminal and civil matters, all indicators point towards increasing

⁸⁹ Op. cit. above in section 5.2

⁹⁰ Communication on Judicial Training in the European Union, COM (2006) 356, 29 June 2006

- recognition of the need for vocational training of the judiciary in EU law and judicial cooperation instruments to grow, and
- use of the possibility to combine specialised training on particular instruments with learning about other Member States' legal systems by participating in trans-European (or at least multi-country) training initiatives.

Considering the scope of the training needed (in terms of topics, contents and number of people to be trained), as well as the differences which exist from one Member State to the next (in terms of both the structure and procedures of the national legal system, as well as the content of and approach to basic law education and EU law education), we believe that the above-mentioned training actions need to be carried out by national schools and European-wide providers, as well as coordinators of EU law training.

The reason for this is that while national universities and judicial training bodies are paying more and more attention to the development of national EU law education and training capacities, they do not have sufficient resources to follow all developments or to develop specialised practical training capacities in all aspects of the ever-growing body of EU law, procedures and judicial cooperation instruments.

This is where the many existing European-level training institutions and pan-European professional networks specialising in EU law, procedures and judicial cooperation enter the scene. They specialise not only in the content and practical implementation of EU law and procedures etc., but also in comparing and identifying good practices in the application of the said rules and cooperation instruments. They are thus ideally placed – either alone and/or in cooperation with the national judicial training institutions – to deliver such specialised training programmes, to organise study visits and to coordinate exchange programmes; thus supplementing the capacities and work of the national institutions.

The national judicial training institutions, by having a choice of several European training providers and organisers, are thus given the opportunity to identify good training practices; both in terms of programmes, contents and methodologies which match their needs, their legal and educational cultures, and which they can incorporate into their own programmes.

For these reasons the authors of this note would recommend following the approach suggested by both the European Commission in its 2006 Communication and the Council in its 2008 Resolution⁹¹, namely to make enhanced use of the existing European training providers and networks to focus on the development, organisation and delivery of the training suggested above in section 6.1. The national judicial schools/court administrations and the existing European-level training providers and networks should furthermore be encouraged, both politically and by being able to obtain the necessary financial support, to establish longer running cooperation programmes. These should aim not only to develop and implement specialised EU law training activities for “end-users” (i.e. judges, prosecutors and other judicial staff), but also to identify and transfer good

⁹¹ Cf. above in sections 5.1 and 5.3.

training practices to the national judicial training bodies, including the development of training programmes and materials, as well as training methodologies appropriate to the specific target group.

This approach would have two additional advantages: firstly, it would not only motivate, but obligate, the European training providers and networks to continuously develop their knowledge, expertise and methodologies in line with the legislative developments; and secondly, by encouraging multi-country activities, the legal professionals from different countries would obtain the opportunity to meet and, while establishing a common understanding of the various EU rules and judicial cooperation instruments etc., go beyond their national legal background to think about European law beyond the traditional concepts of law, learning and understanding the legal systems of other Member States; thus creating trust and an improved cross-border judicial cooperation.