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REPORT

on the role of the national judge in the European judicial system
(2007/2027(INI))

Committee on Legal Affairs

Rapporteur: Diana Wallis

CONTENTS

Page

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the role of the national judge in the European judicial system (2007/2027(INI))

The European Parliament,

– having regard to Article 61 of the EC Treaty, which provides for the progressive establishment of an area of freedom, security and justice including measures in the field of judicial cooperation in civil and criminal matters,

– having regard to the Hague Programme for strengthening freedom, security and justice in the European Union[1], adopted by the Brussels European Council on 5 November 2004, and to the Commission's communication of 10 May 2005 on "The Hague Programme: Ten priorities for the next five years" (COM(2005)0184),

– having regard to the call, made on 14-15 December 2001 by the Laeken European Council, for a European network to encourage the rapid setting-up of training for the judiciary, with a view to helping to develop trust between those involved in judicial cooperation,

– having regard to its resolutions of 10 September 1991 on the founding of an Academy of European Law for the European Community[2] and of 24 September 2002 on the European Judicial Training Network[3],

– having regard to the Commission's communications of 29 June 2006 on judicial training in the European Union (COM(2006)0356), of 5 September 2007 on a Europe of results: applying Community law (COM(2007)0502), and of 4 February 2008 on the creation of a Forum for discussing EU justice policies and practice (COM(2008)0038),

– having regard to Council Decision 2008/79/EC, Euratom of 20 December 2007 amending the Protocol on the Statute of the Court of Justice[4], and the consequent modifications of the Court of Justice's Rules of Procedure introducing an urgent preliminary ruling procedure,

– having regard to Articles 81(2)(h) and 82(1)(c) of the future Treaty on the Functioning of the Union, as inserted by the Treaty of Lisbon, which would provide a legal basis for measures aimed at providing support for the training of the judiciary and judicial staff,

– having regard to Rule 45 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs (A6-0224/2008),

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[1] OJ C 53, 3.3.2005, p. 1.
[2] OJ C 267, 14.10.1991, p. 33.
[3] OJ C 273 E, 14.11.2003, p. 99.
[4] OJ L 24, 29.1.2008, p. 42.

A. whereas a survey carried out for the purposes of this resolution during the second half of 2007 highlighted:
   – significant disparities in national judges' knowledge of Community law[5] across the European Union, with awareness of it being sometimes very limited,
   – the urgent need to enhance the overall foreign language skills of national judges,
   – 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 life-long training of national judges in 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 Justice,
   – 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,

B. whereas the primary responsibility for judicial training, including its European dimension, rests with the Member States; whereas the above-mentioned Hague programme contains a statement by the European Council that "an EU component should be systematically included in the training of judicial authorities"[6], and whereas the training of the judiciary in each Member State is nevertheless a matter of common concern for the EU institutions and every Member State,

C. whereas Community law must not be perceived as an area reserved for an elite body of specialists, and whereas training opportunities in this area must not be confined to judges of the higher courts, but rather extended equally to judges at all levels of the judicial system,

D. whereas certain bodies supported financially by the Community are increasingly successful, and already train judges and state prosecutors in large numbers,

E. whereas knowledge of foreign languages is crucial in ensuring proper judicial cooperation, in particular in civil and commercial matters, in areas where direct contact between judges is provided for, and in ensuring access to exchange programmes for judges,

F. whereas the current average duration of the preliminary ruling procedure, despite constant efforts on the part of the Court of Justice, remains excessively long and considerably reduces the attractiveness of this procedure for national judges,

G. whereas the Court of Justice has held that it is for the Member States to establish a system of legal remedies and procedures which ensure respect for the right to effective judicial protection of rights derived from Community law[7],

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[5] For the purposes of this resolution, references to Community law should be understood as also including Union law.
[6] OJ C 53, 3.3.2005, p. 1, at p. 12.
[7] Case C-50/00 P *UPA* [2002] ECR I-6677, at paragraph 41.

H. whereas nothing in this resolution should be taken as affecting the independence of judges and of the national legal systems, in accordance with Recommendation No. R(94)12 of the Committee of Ministers of the Council of Europe and the 1998 European Charter on the statute for judges,

The national judge as first judge of Community law

1. Notes that the European Community is a community based on the rule of law[8]; notes 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, not least in the light of the recent achievements by the Community legislature[9] to involve them more actively in, and accord them greater responsibility for, the implementation of Community law;

2. Welcomes the Commission's acknowledgment that national judges play an essential role in ensuring respect for Community law, for example through the principles of the primacy of Community law, direct effect, consistency of interpretation and state liability for breaches of Community law; calls on the Commission to pursue its efforts in this direction in addition to sectoral initiatives already in place; furthermore, 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

3. Considers that language is the main tool of practitioners of justice; considers that the current level of foreign language training for national judges, in conjunction with the actual level of knowledge of Community law, limits not only possibilities for judicial cooperation on specific instruments, but also the development of mutual trust, proper use of the *acte clair* doctrine, and participation in exchange programmes; calls on all players involved in judicial training to give specific attention to the training of judges in foreign languages;

4. Notes that the application of Community law by national judges is a complex challenge for national judges, particularly for those in the Member States which joined the European Union in May 2004 and subsequently, making it necessary to step up measures to promote professional training for judges in those Member States;

5. Is, moreover, of the opinion that, by enacting a series of regulations containing conflict-of-law rules, the Community legislature has made a policy choice which involves the likely application of foreign law by national judges, possibly also entailing the use of a comparative approach; considers that these elements, taken together, further strengthen the case for increasing foreign language training;

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[8] Judgment of the Court of Justice of 23 April 1986 in Case 294/83 '*Les Verts'* v *European Parliament* [1986] ECR 1339, at paragraph 23.

[9] See for example Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

6. Considers that it is in the public interest to enhance the language skills of the judiciary in the Member States; calls on the Member States, therefore, to ensure that such training is free of charge and easily accessible, and to explore the possibility of judges being able to study a foreign language in a Member State where it is spoken, for example in conjunction with participation in a judicial exchange;

7. Considers access to academic literature in the judge's mother tongue to be important for a better understanding of Community law, and notes the apparent scarcity of specialised literature on Community law in certain official languages of the EU, for example concerning private international law issues, and the grave potential consequences this has for the construction of a common legal order reflecting a diversity of legal traditions; therefore calls on the Commission to support the development of such literature, particularly in the less-spoken official languages;

Access to relevant sources of law

8. Notes that complete and up-to-date information on Community law is not available in a systematic and proper manner to many national judges, and that Community law is sometimes poorly represented in domestic official journals, codes, commentaries, periodicals and textbooks and based on translations of uneven quality; calls on the Member States to renew efforts in this area;

9. Is of the opinion that a true European judicial area in which effective judicial cooperation can take place requires not only knowledge of European law, but also mutual general knowledge of the legal systems of the other Member States; highlights the inconsistencies in the treatment of foreign law throughout the European Union and considers that this important issue should be addressed in the future; takes note in that respect of the Commission's forthcoming horizontal study on the treatment of foreign law in civil and commercial matters, and of the ongoing studies within the framework of the Hague Conference on Private International Law;

10. Welcomes the Commission's intention to support the improved availability of national databases on national court rulings concerning Community law; considers that these databases should be as complete and user-friendly as possible; considers, moreover, that the Conventions and Regulation on jurisdiction and enforcement of judgments in civil and commercial matters would be a case in point for a European database, given their frequent use by national judges;

11. Is of the opinion that all national judges should have access to databases containing pending references for preliminary rulings from all Member States; considers it equally useful for judgments of referring courts applying a preliminary ruling to be further publicised, as is already touched upon in the Court of Justice's information note on references from national courts for a preliminary ruling[10];

12. 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-

[10] OJ C 143, 11.06.2005, p. 1, at paragraph 31.

to-date legal sources efficiently;

13. Welcomes the Commission's commitment to publish citizens' summaries of Community legal acts, and considers that such non-legalistic summaries would also help legal practitioners to access relevant information more quickly;

14. 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;

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

15. 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;

16. Takes note of the growing success of the exchange programme for members of the judiciary; encourages the European Judicial Training Network to make it accessible to the widest number of judges, and to ensure an adequate inclusion of judges from civil, commercial and administrative backgrounds; welcomes the Network's activities in the field of language training and the extension of the exchange programme to the Court of Justice, Eurojust and the European Court of Human Rights;

17. Regards the availability of national judges to participate in basic and advanced training as a major logistical and financial issue for Member States; considers, in principle, that judges should not have to bear any of the costs related to their training in Community law; requests the Commission to provide Parliament with estimates for each Member State of the cost involved in temporarily replacing judges who participate in exchange programmes;

18. Takes note of the Commission's assessment that the most appropriate option for promoting training in the European judicial area is currently financial support to various bodies through the Fundamental Rights and Justice Framework Programme for 2007-2013, and that the question of developing European judicial training structures towards other forms could be raised again when that programme comes to an end;

19. Calls on the Commission to evaluate rigorously the results of this framework programme, in the light of this resolution, and to formulate new proposals for the development and diversification of measures to promote professional training for judges;

20. Considers, however, that the time is ripe for a pragmatic institutional solution to the

question of judicial training at EU level which makes full use of existing structures whilst avoiding unnecessary duplication of programmes and structures; calls, therefore, for the creation of a European Judicial Academy composed of the European Judicial Training Network and the Academy of European Law; calls for this institutional solution to take account of relevant experience gained in running the European Police College;

21. Considers that national judges cannot adopt a passive attitude to Community law, as made clear by the Court of Justice's case-law on national courts raising Community law issues of their own motion[11];

22. Calls for the training of candidates for judicial appointment to be strengthened from the earliest point onwards and by analogy with the above sections concerning national judges;

A reinforced dialogue between national judges and the Court of Justice

23. Considers that the preliminary ruling procedure is an essential guarantee of the coherence of the Community legal order and the uniform application of Community law;

24. Calls on the Court of Justice and all parties concerned to further reduce the average length of the preliminary ruling procedure, thus making this crucial opportunity for dialogue more attractive to national judges;

25. 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;

26. Considers that limitations on the Court of Justice's jurisdiction, particularly those concerning Title IV of the EC Treaty, unnecessarily prejudice the uniform application of Community law in those areas, and send a negative message to the vast majority of judges dealing with such matters, making it impossible for them to establish direct contact with the Court of Justice and creating unnecessary delays;

27. Regrets that, under Article 10 of the Protocol on transitional provisions annexed to the Treaty of Lisbon, the powers of the Court of Justice with respect to acts in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of that Treaty are to remain the same as they are under the present EU Treaty for a transitional period of five years; welcomes, however, the declaration made by the Intergovernmental Conference concerning that article of the Protocol and accordingly urges the Council and the Commission to join with Parliament in re-adopting those acts in the field of police cooperation and judicial cooperation in criminal matters which were adopted before the entry into force of the Lisbon Treaty;

28. In view of the introduction of an urgent preliminary ruling procedure, agrees with the Council that it is important for the Court of Justice to provide guidance to which national

[11] Cases C-312/93 *Peterbroeck* [1995] ECR I-4599, C-473/00 *Cofidis* [2002] ECR I-10875 and C-168/05 *Mostaza Claro* [2006] ECR I-10421.

judges could refer when deciding whether to request the urgent procedure;

29. Calls on the Court of Justice to consider all possible improvements to the preliminary ruling procedure which would involve the referring judge more closely in its proceedings, including enhanced possibilities for clarifying the reference and participating in the oral procedure;

Laws better tailored to application by national judges

30. Takes note of the creation of a Forum for discussing EU justice policies and practice, and calls on the Commission to ensure that the Forum carries out its deliberations in a transparent manner; notes the Commission's commitment to report on a regular basis both to Parliament and to the Council;

31. Insists on the need for clearer language in Community legislation, and greater terminological coherence between legal instruments; supports in particular the use of the projected Common Frame of Reference in European contract law as a better law-making instrument;

32. Instructs its President to forward this resolution and the documents accompanying it to the Council, the Commission, the Court of Justice and the European Ombudsman.

EXPLANATORY STATEMENT

Your Rapporteur sought first and foremost to hear from those directly concerned by this report, i.e. national judges. On 11 June 2007, she held a hearing in the Legal Affairs Committee in which judges from Romania, Hungary, the United Kingdom and Germany were able to relate their experiences with Community law. A detailed survey was sent to all Member States during the second half of 2007 in order to hear from as many national judges as possible. More than 2300 judges responded to it, and its first results are published as an annex to this draft report. Your Rapporteur also 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 the application of Community law on the other.

Secondly, the draft report focuses on the European actors whose work relates to national judges. On 10 September, the Secretary General of the European Judicial Training Network made a presentation to the Legal Affairs Committee and responded to Members' questions. On 18 October 2007, your Rapporteur made a fact-finding visit to the Court of Justice to meet several judges and Advocates General, focusing primarily on the role of national judges in the context of the preliminary ruling procedure. Finally, she was represented at an experts meeting on judicial training organised by the Commission on 4 February 2008 which included presentations by the European Judicial Training Network, the Academy of European Law, the European Institute of Public Administration and others. This draft report also comes at a time when Parliament is giving increased attention to the effective application, *inter alia* by national judges, of the laws which it adopts with the Council.

The draft 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 ambitions. The first precondition to this is a much greater focus on judges' language skills. The draft report also makes a series of recommendations aimed at ensuring that national judges play a greater role in the European Union judicial system. Apart from the issue of language, it also covers better access to information, legal training, the role of the national 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 makes law, in particular, by making the process more transparent.

ANNEX: QUESTIONNAIRE SENT TO NATIONAL JUDGES

Summary and analysis of responses received[12]

INDEX

[12] This document is an analysis by the *Rapporteur* of individual responses from judges who presented their personal views and experiences in relation to Community law in response to a survey made during the second half of 2007. This exercise could therefore not in any way be exhaustive, nor does it attempt to present objective facts or a "scoreboard" in the sense of those developed by the European Commission. For the purposes of this report, references to Community law should be understood as also including Union law.

(b) Overview of individual responses

(i) Community law as an integral part of national law and the national judge as a passive arbiter
(ii) Perception that Community law only affects cross-border situations
(iii) Quantity and complexity of Community legal acts
(iv) An additional burden
(v) Hostility to Community law per se
(vi) An area unfortunately reserved for specialists
(vii) Generational challenges
(viii) A role to develop in the future
(ix) Insecurity
(x) An obvious reality
(xi) Proactive attitude of judges
(xii) Judicial cooperation in civil matters
(xiii) Consumer matters
(xiv) Difficulty in applying the acte clair *doctrine*

7. Measures to ensure a better understanding and use of Community law by national judges

(a) Summary of suggestions
(b) Improvements in all aspects of Community law training for judges

(i) More legal training
(ii) Specific emphasis on practical aspects of training
(iii) Exchanges and contacts between judges from different Member States
(iv) Creating a common judicial culture
(v) E-learning
(vi) Specific comments regarding ERA
(vii) A European school for the judiciary
(viii) Harmonising the way in which judgments are drafted

(c) Better access to information

(i) More information generally
(ii) Academic or specialised literature
(iii) Regular thematic newsletters
(iv) Judgment databases
(v) Integrating Community law in national codes and textbooks
(vi) Improving the search function on Curia and Eur-lex
(vii) More awareness and better visibility of Community law
(viii) Interoperability of national and Community legal databases

(d) Improvements in the way Community legislation is made

(i) Better law-making
(ii) Codification and official compendia of Community law
(iii) Better translation of legal acts and ECJ judgments

(e) Improve the linguistic capacity of judges
(f) Improvements by national authorities and judiciary

(i) Better transposition and implementation of Community law
(ii) More time available for training
(iii) A body within the ministry to assist judges with Community law matters
(iv) Specialised judges within national courts and "liaison" judges
(v) e-Justice
(vi) Role of national supreme courts

(g) The EU must "do less better"

(vii) Less legislation, more reference to subsidiarity
(viii) Abolishing direct effect

(h) Improvements at ECJ level

(i) Form and style of judgments
(ii) Closer contact with national judges

(i) Training lawyers
(j) Changing fundamental characteristics of the Union

8. Copy of the questionnaire sent to national judges

1. General information

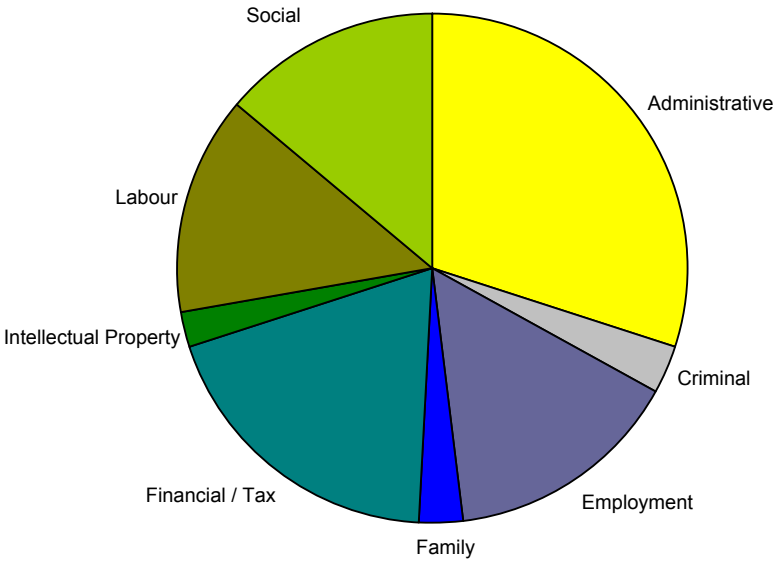
On 18 July 2007, a questionnaire was sent by your *Rapporteur* to all Permanent Representations, for circulation to national judges. The total number of responses exceeded 2300, in eight Community languages. For practical reasons, a first selection was made on the basis of the completeness of the answers received, and to reflect the best possible balance between Member States. The total number of answers processed as a first step was 1160, with the remaining answers and several questions kept for a subsequent analysis. Answers were received from all 27 Member States, with most answers analysed coming from Germany (44%), Poland (19%), France (6%), Bulgaria (6%), Slovenia (5%) and Austria (4%).

(a) Balance of responses between "old" and "new" Member States

A substantial number of respondents came from Member States having acceded in 2004 and 2007 (37%) and thus there is a fair balance between these answers and those from other Member States (63%).

(b) Type of courts covered

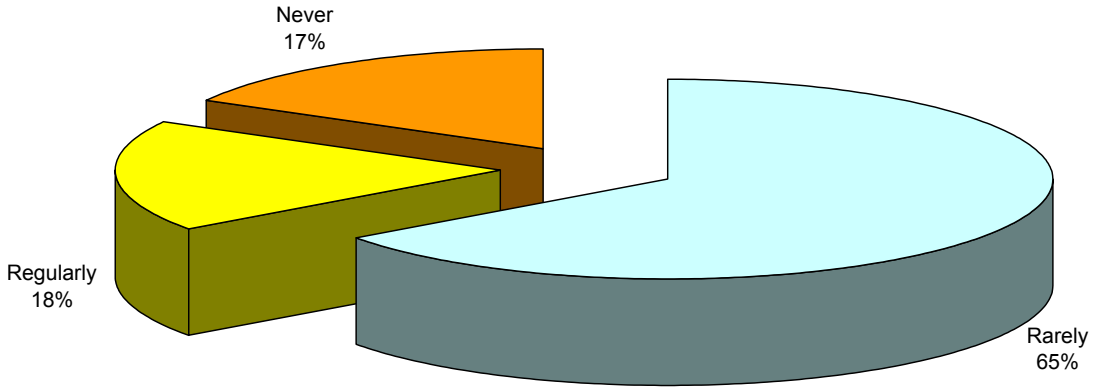
The survey covered a wide variety of courts, with the largest contingents being administrative, employment, financial, social and labour courts.



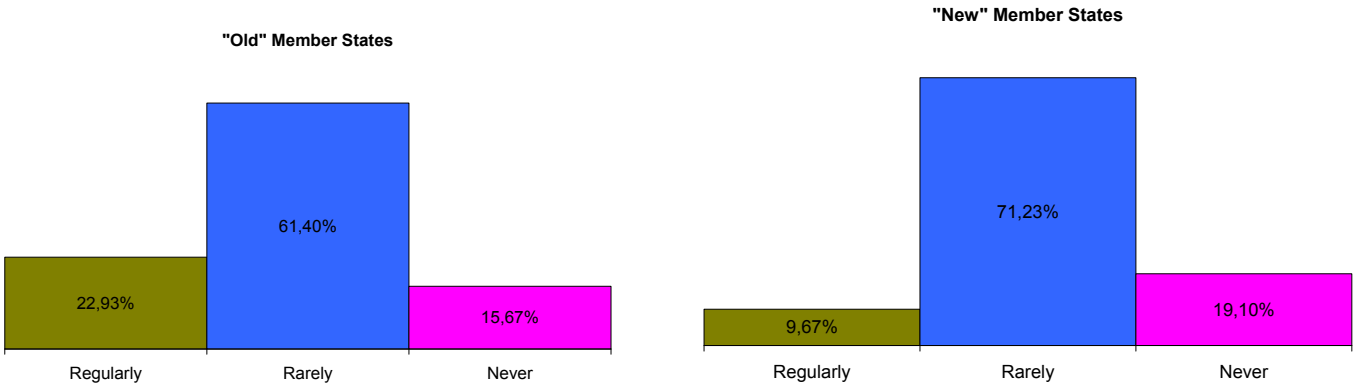
2. Access to Community law

(a) Knowledge of Access to Community law

A small minority of respondents (8%) claimed they did not know how to access Community law sources at all. Of those who did know how to access Community law, 18% accessed case-law of the Court of Justice (hereinafter, ECJ[13]) regularly whilst a large majority (65%) only did so rarely, and 17% never did so.



Certain discrepancies in knowledge were apparent throughout the EU. Knowledge of access to Community law was more likely to be unknown in "old" Member States (10%) than in "new" ones (5%). However, amongst those judges who did know how to access Community law, judges from the "old" Member States consulted ECJ case-law more regularly (see chart below).



The answers varied also widely in relation to the subject area of the national court. For example, intellectual property judges, judges dealing mainly with financial or taxation matters, and administrative judges (75%, 60% and 46%

[13] This expression is understood in the widest sense, comprising the Court of First Instance and Civil Service Tribunal.

respectively) were much more likely to consult ECJ case-law regularly than their colleagues in courts dealing with labour/employment issues or social law (20% and 25% respectively). Finally, not a single responding judge dealing with family or criminal law claimed to consult ECJ case-law regularly.

(b) Linguistic barriers

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

(i) Case-law from other Member States

The main complaint concerned access to foreign judgments, including for example those of the supreme courts of each Member State. Several judges mentioned the fact that technical terms were particularly difficult to understand in a foreign language. One German judge specialised in financial matters considered that reading the decisions of courts in other Member States was important but so time-consuming it was almost impossible, given judicial time-constraints. A French judge would not refer to foreign jurisprudence or commentary because of the risk of imprecision or misunderstanding which could have very serious consequences for individuals. Finally, another judge had real difficulties in applying foreign law when that law was designated by the relevant conflict rules.

(ii) Translation issues

Many judges from "new" Member States, in particular Poland, Slovenia and Hungary, complained that not all ECJ case-law prior to accession had been translated into their language. Several judges from "new" Member States were not aware that any of the *acquis*, and in particular that ECJ case-law existed in their own language. A substantial number of judges from a wide variety of Member States commented on the question of translation of judgments. Many judges expressed concern at the time it took for all linguistic versions of an ECJ judgment or Advocate General Opinion to be available. Numerous judges considered the quality or reliability of translations of Community acts or case-law into their language to be inadequate. A German judge also noted certain discrepancies between linguistic versions of a same Community act.

(iii) Comparing different linguistic versions of Community acts

Several judges had substantial difficulties in comparing different language versions of a Community act for interpretation purposes, to see whether there existed a need to make a preliminary reference. The breadth and quality of this comparative exercise will depend on the judge's linguistic capacity. Several judges referred to this exercise, concluding that they were unable to carry it out meaningfully (see also section 4(g)(*ix*) on a related point).

(iv) Availability of information other than legislation or case-law

A few judges mentioned the unavailability of academic commentaries on Community law in their language to be problematic. Several specific items of information were finally referred to, such as the newsletter of an EU agency (the OHMI[14]) or certain explanations provided by the Commission of legislative proposals.

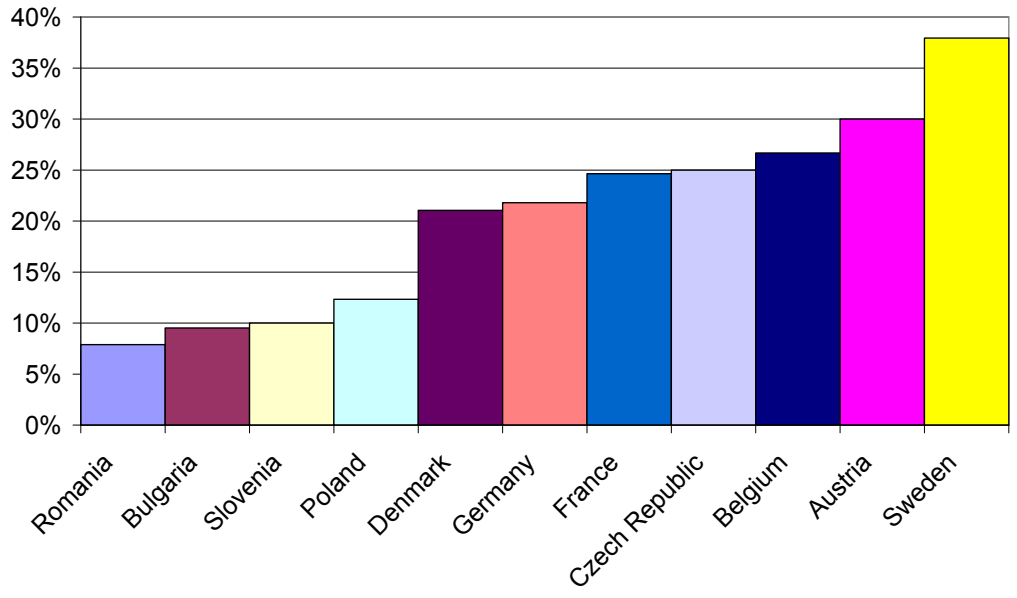
(v) Obscurity of Community law itself

Setting aside the issue of translation, many judges considered that what made access to Community law the most difficult was the way it was framed. One judge commented that the obscurity of Community law in general made it difficult to apply in national courts. A similar comment was made more insistently in respect of the style of the ECJ's judgments, and in particular the reasoning or justification which was not always clearly understood by national judges (see section 7 below).

(c) Legal linguistic training

On average, only 20% of respondents had participated in at least one language course covering legal issues. This figure would seem to hide certain discrepancies between Member States, as can be seen in the chart below.

(i) Participation in legal linguistic training per Member State

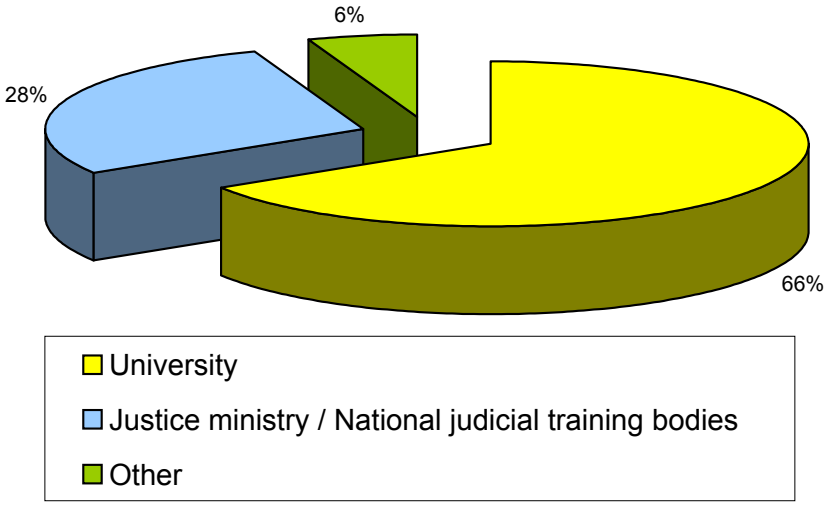


Eleven Member States were taken into account in the above chart, as the number of responses from the remaining Member States was not considered

[14] The newsletter is available at http://oami.europa.eu/en/office/press/default.htm.

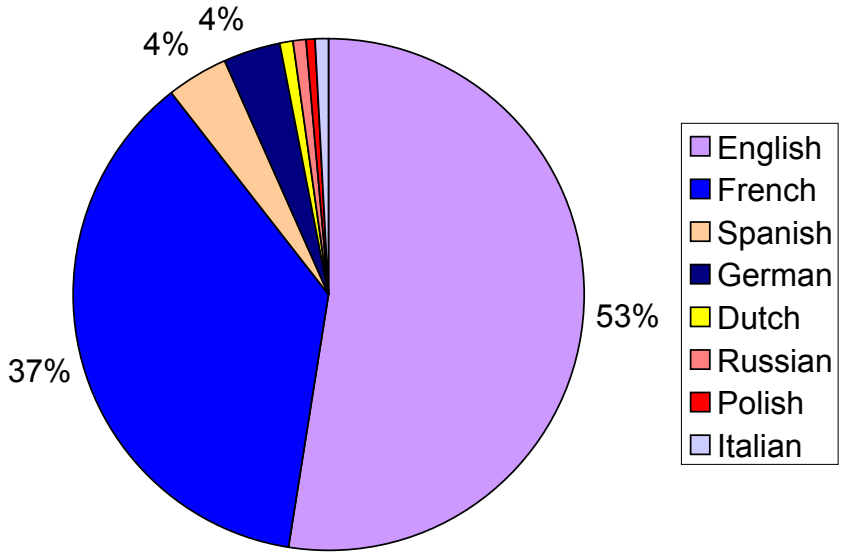
sufficient to provide reliable data. It appears from the data available that participation rates at such legal linguistic courses remains relatively limited in all Member States (below 40%), that it is low for most but not all Member States having acceded in 2004, and that it is very low (less than 10%) for Romania and Bulgaria.

(ii) Legal linguistic training providers



The above chart shows that a large majority of respondents who studied foreign legal terminology did so at university, generally during their law studies. A substantial proportion of these people studied such courses whilst at a university in a Member State other than their own, for example, as part of the Erasmus programme or on an LLM programme. A small minority (6%) attended courses which were not provided by a University, their national ministry or a judicial training body. Such "other" courses were provided by the British Council, the Goethe Institute, the European Law Academy, the European Judicial Training Network, PHARE, and in one case, by a private teacher.

English was the most sought-after language (53%), with French being the other major language (37%). Some judges took courses in Spanish and German (4% each), with other languages appearing only very rarely (see below).



3. Training in Community law

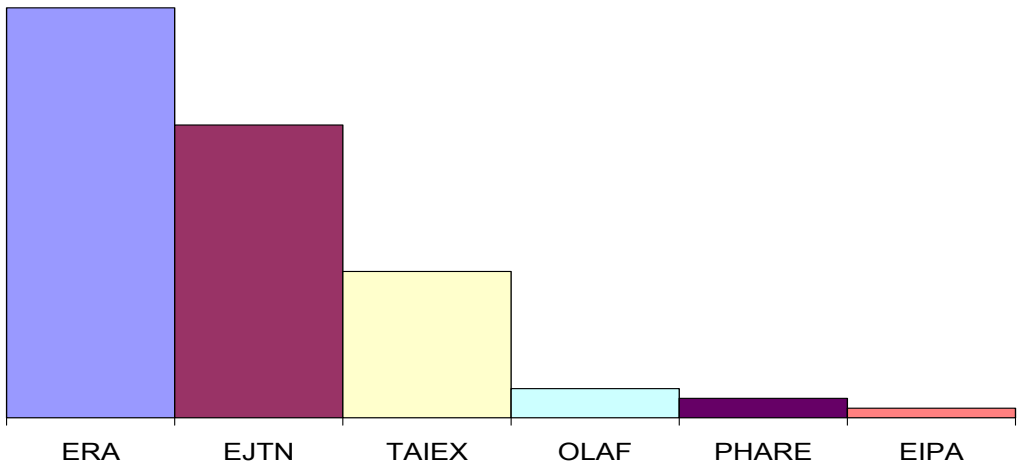
(a) General

61% of respondents had never attended a European training programme or any national training programme concerning Community law. 33% of respondents had attended a national training programme concerning Community law. 14% of respondents had attended a programme organised by a European body. Finally, 10% of respondents had attended courses organised both by national authorities and courses organised by a European body.

A clear link existed between the attendance of national and European training courses. Judges that had attended a course organised by a national authority were more likely to also have attended courses organised by European bodies.

(b) Training courses organised by European bodies

Seminars and training courses organised by the European Law Academy in Trier were most cited. The European Judicial Training Network and its exchange programme for judges came up often, whilst several judges from "new" Member States attended TAIEX and PHARE programmes (see below). Several judges raised the question of cost, and a large majority considered that such courses must not entail any personal financial burden for the judges concerned. One German judge considered that covering travel and accommodation costs alone was insufficient as the training course itself was expensive.



Note: this classification is purely indicative, given that ERA has organised a large number of seminars on behalf of TAIEX and PHARE for the "new" Member States, for example.

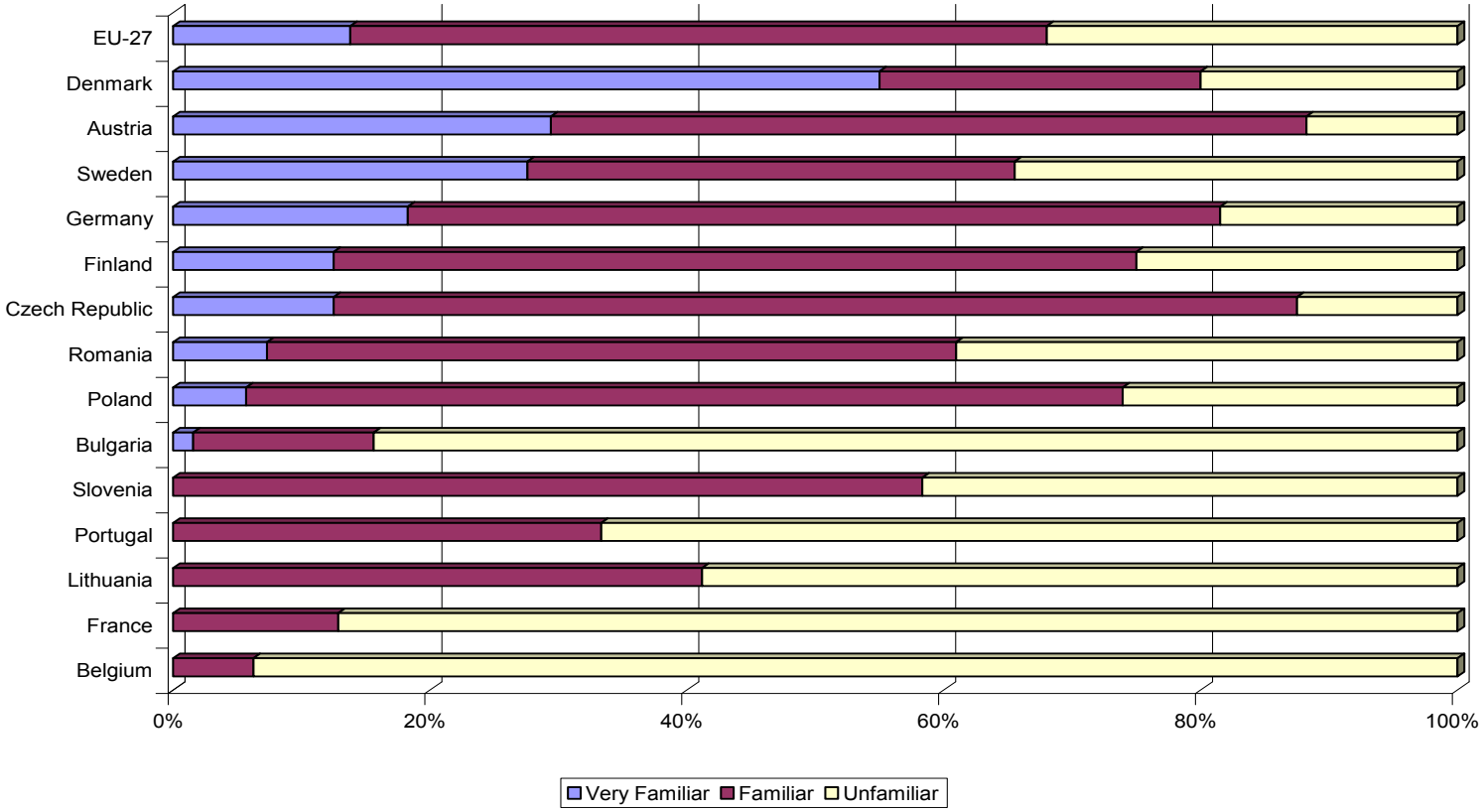
4. The Preliminary ruling procedure

(a) Familiarity with the procedure

A clear majority of responding judges (54%) considered themselves familiar with the procedure to refer to the European Court of Justice. However, it also appears that respondents were twice as likely to consider themselves unfamiliar with the procedure (32%), as they were to consider themselves very familiar with it (14%).

There would appear to exist wide discrepancies between the different Member States. In Bulgaria, Belgium and France for instance, the vast majority of respondents (84%, 87% and 94% respectively) considered themselves unfamiliar with the preliminary ruling procedure. Austrian, Czech and German respondents considered themselves the least unfamiliar with the procedure (12%, 13% and 18% of "unfamiliar" responses respectively).

It also appears that the Member States with the largest proportion of respondents who considered themselves very familiar with the preliminary ruling procedure were Denmark, Austria and Sweden, ie. not founding Member States (see the chart below).



When comparing the familiarity with the preliminary ruling procedure with the

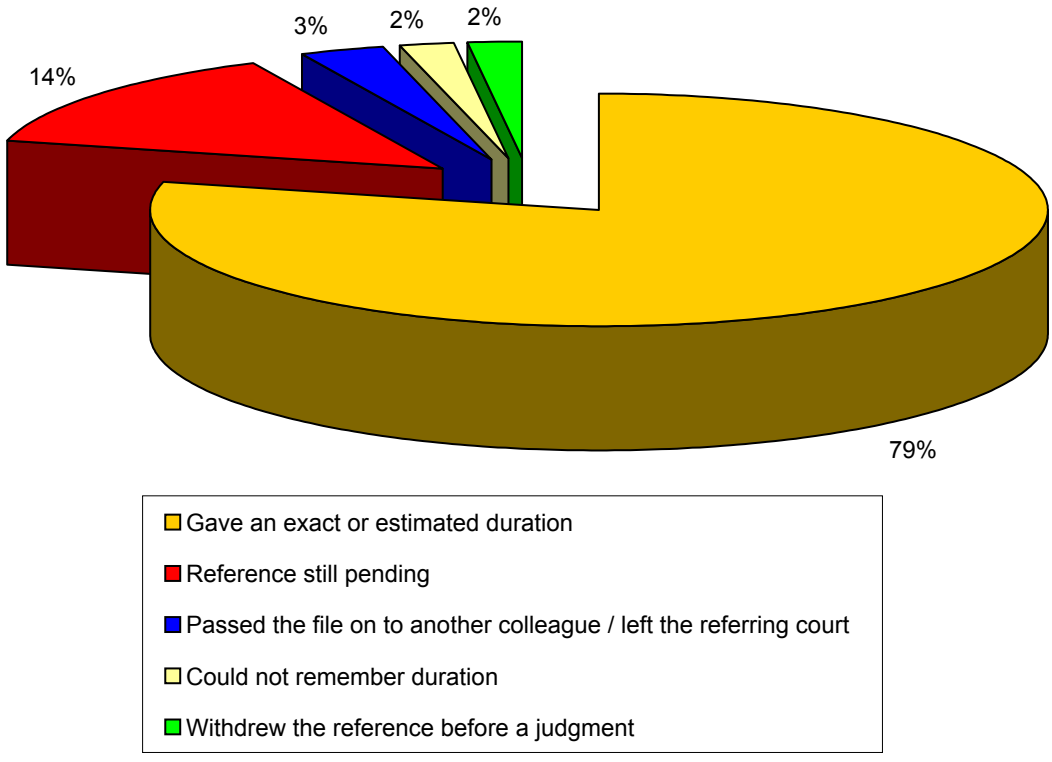
areas in which the responding courts operated, it appeared that judges specialising in financial or tax law (eg. VAT etc...) were more aware of the procedure (52% very familiar - 48% familiar - 0% unfamiliar).

(b) Practical Experience with References

123 responding judges claimed to have made at least one reference for a preliminary ruling in the course of their professional career. This equates to slightly more than 5% of the total number of responses. This figure was divided unequally amongst the Member States, with Hungary being the only "new" Member State represented, with six references.

Several judges had considered making a reference, and one judge in a social court had refrained from doing so because the parties were concerned that this would unduly lengthen the proceedings. Two other judges in a first instance court were keen to make a reference to the ECJ, but could not do so because of the limitations on the ECJ's jurisdiction under Title IV EC, in particular concerning questions of immigration.

Most respondents were relatively detailed in their answers on this point, as can be seen in the chart below.



(c) Length of procedure before the ECJ

The average length of the preliminary ruling procedure was 18,5 months. This figure is impossible to compare to the ECJ's own statistics, as contained in its annual reports, because some of the references taken into account by judges in their responses to the present survey date back to the 1980s and beyond. The average obtained here is about one and a half months less than the latest available average for completed cases from the ECJ (19,8 months in 2006).[15] One referral lasted more than 35 months, whereas in eight cases was completed within a year.

When asked whether they considered any specific part of the preliminary reference procedure to be excessively long, most judges (43%) responded negatively. A substantial number of judges (36%) considered that the procedure as a whole was too lengthy, one judge from the United Kingdom stating that this could be explained by the fact that the ECJ was overworked. Both a Swedish and a German judge expected the reference to be lengthy because the questions asked were themselves very long and complex. Finally, two judges considered the procedure in their case to be fast, one of the judgments having been handed down by the ECJ without oral proceedings or an Advocate General Opinion.

Turning to the answers relating to specific parts of the procedure, the most criticised part was the oral procedure, highlighted both by a Finnish and by a German judge. One German administrative judge criticised the length of the period within which Member States can present their written observations. Finally, one respondent's reference was delayed by two successive changes in the allocation of his case within the Court of Justice's chamber structure.

(d) Reformulation of questions referred

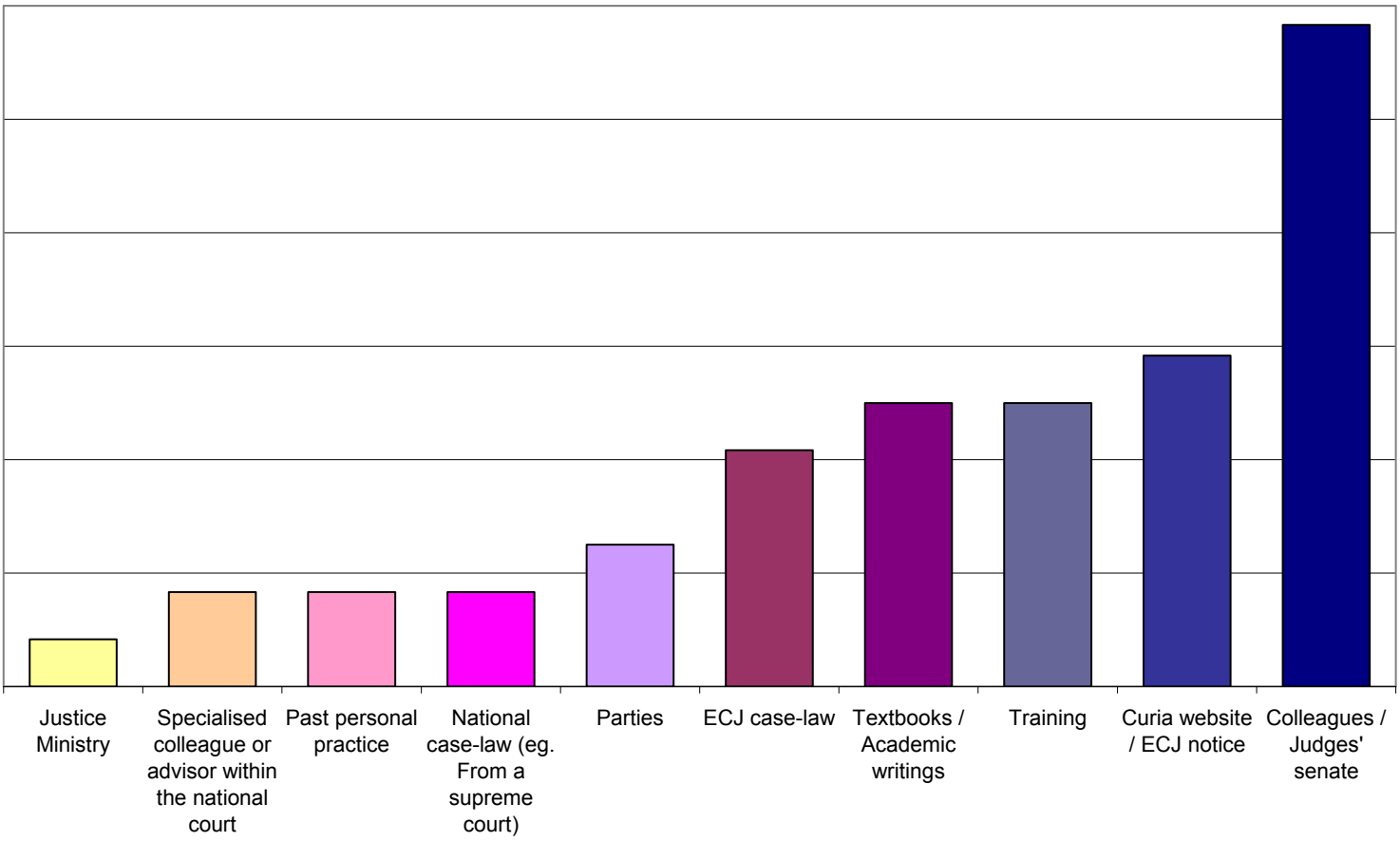
Only a small minority of judges (11%) who had experienced a preliminary ruling procedure stated that their questions were reformulated to some extent by the Court of Justice. Two judges' questions were completely reformulated, and one judge from the United Kingdom considered this reformulation excessive. Four further references were only slightly reformulated. In one case, the judge considered that the meaning of the question was further highlighted by the ECJ's reformulation. In another case, the ECJ combined two questions into one.

(e) Guidance in referring questions to the ECJ

60% of referring judges considered that they had guidance to formulate their reference whereas 40% did not. Among those who had no guidance, four judges considered that guidance was neither necessary nor appropriate.

[15] Court of Justice, Annual report 2006, table 8 at p.87.

Those respondents who did seek guidance did so in a number of ways. The most popular source of guidance was other colleagues within the judge's court (29%). The Court of Justice's website and the Court's notice on the matter (15%), training (13%), textbooks and academic writings (13%) were all relatively popular. Further sources cited were the ECJ's own case-law (10%), the parties' submissions (6%), case-law from national supreme courts (4%), past personal experience (4%), a specialised judge or advisor in the court (4%), and finally the justice ministry (2%). A substantial number of judges sought guidance from a combination of the above sources.



(f) Impact of ECJ ruling on national proceedings

A large majority of respondents (89%) found the ECJ's ruling readily applicable to the facts of the case, thus enabling a reasonably unproblematic conclusion to the preliminary reference procedure. One judge considered that the judgment was so clear that only the costs were left to be decided at national level.

A minority (11%) did not feel that the judgment enabled a clear decision at national level. One judge considered the answer completely unusable, and

another stated that a crucial and explicit question had specifically been left aside by the ECJ. Another judge considered that it was best to ask straightforward questions to the ECJ ("yes/no" questions) in order to avoid ambiguous answers which would be difficult to apply to the facts of the case.

In three cases, the ruling led to a change in, or abolition of, national legislation, whereas in two other cases, the national judges considered that their correct application of the preliminary ruling was later overturned on appeal. One judge considered this to be a "generational problem", with appeal or supreme courts not giving sufficient recognition to the primacy of Community law.

One further case saw an out-of-court settlement which removed any need to apply the preliminary ruling. Finally, the parties in two further cases submitted further facts after the ECJ's ruling, making it inapplicable on the facts.

(g) Recommendations for improving the procedure

This section must be distinguished from the sections above (4(b)-(f)). Indeed here, suggestions for improvement to the procedure were sought from all responding judges, irrespective of whether they had made a reference or not.

The 210 answers received have been classified in different themes which are further developed below. As can be seen in the chart on p.19, judges mainly called for more training and better access to information on the procedure (42%). A very large number of respondents (24%) criticised the length of the procedure. The style and reasoning of ECJ judgments was criticised by 10% of respondents. Furthermore, a number of judges (6%) suggested various internal reforms concerning the ECJ. Finally, an equal number of judges proposed to involve referring judges more closely in the preliminary reference procedure.

(i) More training and better access to information

The most frequently recommended improvement to the preliminary ruling procedure (42%) was related to the training of national judges and better access to information on the procedure. A French judge stated that a certain amount of expertise on the subject-matter and the procedure was an essential precondition to be able even to consider making a reference. The first series of suggestions therefore sought to remedy the “fear of the unknown”, as expressed by one German judge. This would include situations in which judges were deterred from even considering making a reference because of a lack of expertise, but also where a reference is not made for fear of the ECJ declaring it inadmissible. Ideas included specialised legal and linguistic training courses with a very strong emphasis on concrete aspects (eg. Lithuanian and Estonian judges were particularly numerous in suggesting practical workshops and mock cases), legal publications and visits to the

Court of Justice.

Some respondents asked for basic up-to-date information or a regular e-newsletter on pending and completed preliminary rulings. Many called for an official form, template or good practice guidelines which they could use to make a reference. A first instance judge in Germany recommended the drafting of a guide on preliminary references, in cooperation with national authorities, along the lines of the practice guide used for the Directive on the Taking of Evidence.[16] One judge commented that he or she would be more comfortable with the procedure if there were clearer indications as to how the facts should be summarised in the reference. On the other hand, two judges, from France and Poland commented however that they were entirely satisfied with the official guidance provided in 2005 by their respective ministries and available online.

A second very common theme was the fear of duplicating a question referred previously to the ECJ. In this respect, a judge suggested the idea of an atlas of questions already referred, organised by subject-area along the lines of the model developed in the area of judicial cooperation in civil matters.[17] Another idea was a horizontal mechanism to make all EU judges systematically aware of references made in their subject area. A Bulgarian judge commented that the procedure for checking whether the intended questions had already been referred should in any event be simplified. A German patent judge considered that the information on individual references published in the Official Journal of the European Union was insufficient and should be completed.

A third recurring theme was the desire to be able to obtain all relevant information on preliminary references via the internet. One Polish respondent went further and suggested that it should be possible to make a reference electronically.

(ii) Speeding up the procedure

The perceived excessive length of the procedure featured very prominently in judges' comments from sixteen Member States. The consequence of this length was considered to be a chilling effect on references. Many judges claimed to know the procedure but refrain from using it because of the delay involved. For instance, an Austrian judge considered that such delays were totally unacceptable in the area of social law. One German judge from a higher court had particular difficulty in understanding the reason for the delay between the end of the oral procedure and the handing down of the preliminary ruling, and that similar delays in a purely domestic context would

[16] Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters; the guide is available at: http://ec.europa.eu/civiljustice/evidence/docs/evidence_ec_guide_en.pdf

[17] The Judicial Atlas in Civil Matters is accessible at: http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm

probably be considered abusive or illegal. Several judges also reversed the reasoning to conclude that the existing untapped potential among national judges would mean that the ECJ risked being swamped with references should the duration of the procedure decrease.

Several judges called for the particular acceleration of the procedure in certain urgent cases, such as in the area of asylum. One judge considered that references for a preliminary ruling should be given priority over other types of cases before the ECJ, whilst another wanted to see the existing accelerated procedure used more frequently.[18]

Few judges actually made suggestions as to how long the average procedure should last. However, one Finnish judge proposed 3-4 months and a Swedish judge suggested 7-8 months.

(iii) Style and content of ECJ judgments

The style and content of ECJ judgments was of particular concern to many judges, particularly but not exclusively from Germany. The most frequent complaint related to the linguistic clarity of judgments. Another series of answers related to the excessive length of judgments. One Finnish judge, for instance, wanted to see shorter judgments more akin to judgments of the Finnish supreme administrative court. Several judges considered that the reasoning of the ECJ was often too general or abstract to be able to be properly applied to the facts of national cases. Some other judges were uncomfortable with the way in which the ECJ deals with precedent. One judge would have liked judgments to be more explicit on how they relate to previous case-law whilst another preferred a system predominantly based on principles rather than precedent. Finally, one judge suggested that the ECJ make more use of *obiter dicta*.

However, not all responses under this heading were complaints. One judge found the ECJ's dialogue with national courts "refreshingly different" from the way referring judges were treated by her domestic constitutional court.

(iv) Engaging more intensively with the referring court

A substantial number of judges wanted to see closer involvement of the referring judge in all stages of the procedure. One financial judge from Germany stated that following enlargement, the risk of judges, Advocates General or ECJ staff involved in any particular preliminary ruling being unfamiliar with any given domestic legal system was even greater than before. She highlighted the fact that this often became clear only after the Advocate General’s Opinion, and it was then too late for the national judge to do

[18] The accelerated procedure is provided for in Article 104a of the ECJ's Rules of Procedure whilst the newly inserted Article 104b introduce an urgent procedure and sets out the rules applicable thereto.

anything. She therefore recommended a formal opportunity for comments from the referring judge even though she realised this went against the speeding up of the procedure and should therefore be kept within a very short time-frame. Several respondents concurred in more general terms.

A labour court judge recommended a mandatory consultation of the referring judge before the ECJ could reformulate any part of the reference. Another judge called for a "dialogue" to reformulate the questions as appropriate. A further proposal made by two respondents consisted in inviting the referring judge to participate in the oral procedure, in order to ensure that the ECJ ruling remained relevant to the pending domestic case. One judge specialising in financial matters would have liked to see a "special chair" for referring judges who make the effort to be present at the ECJ for the hearing, and the possibility for them to answer questions from all sides and to greet the *juge rapporteur*.

(v) Reforming the working structures of the ECJ

Respondents from a wide range of Member States proposed structural changes to the ECJ. The most frequent proposal was to encourage the specialisation of ECJ judges and to create specialised chambers to that effect. This was said to make ECJ judgments more acceptable to specialised national judges.

A Danish judge suggested transferring competence to hand down preliminary rulings to the Court of First Instance in certain areas where the ECJ's case-law was already well-developed. A German judge from a regional supreme administrative court proposed involving the Advocates General more closely in the national proceedings forming the subject of the reference. One Austrian judge went further and proposed Community first instance courts based in all Member States. A further idea came from a German judge who wanted to see ECJ judges directly elected by national judges rather than appointed by common accord of the governments of the Member States, as is currently the case under Article 223(1) EC.

Finally, two supreme court judges from different Member States were of the opinion that the ECJ should only consider ruling on the most relevant cases for the Community legal order, ie. a form of optional jurisdiction.

(vi) Limiting the right to refer

A small number of German and Danish judges, mainly from second instance courts, proposed limitations to the right of first instance courts to refer questions to the ECJ. One judge considered that lower courts should consult the relevant higher court before being allowed to refer a question to the ECJ. Another stated that first instance judges relied on the preliminary reference mechanism as a way to avoid having to decide on difficult cases. One

respondent proposed to grant to the parties the power to block a judge's decision to make a reference.

(vii) Increasing the ECJ's material jurisdiction

Several judges from Germany were keen to see the ECJ's jurisdiction fully expanded to the areas covered by Titles IV EC and VI EU, in particular asylum and immigration. Similarly, two Polish judges called on their Member State to make a declaration within the meaning of Article 35(2) EU.

(viii) Specialised assistance

A number of answers, mainly from "new" Member States, called for the creation or reinforcement of national bodies or helpdesks designed to assist judges intending to make a reference. Others preferred the idea of having specialised assistants within each court, or within higher courts. Finally a magistrate working in a court of cassation called for the setting up of a service within the Court of Justice which national judges could contact directly to better direct their research efforts.

(ix) Relaxing the acte clair criteria

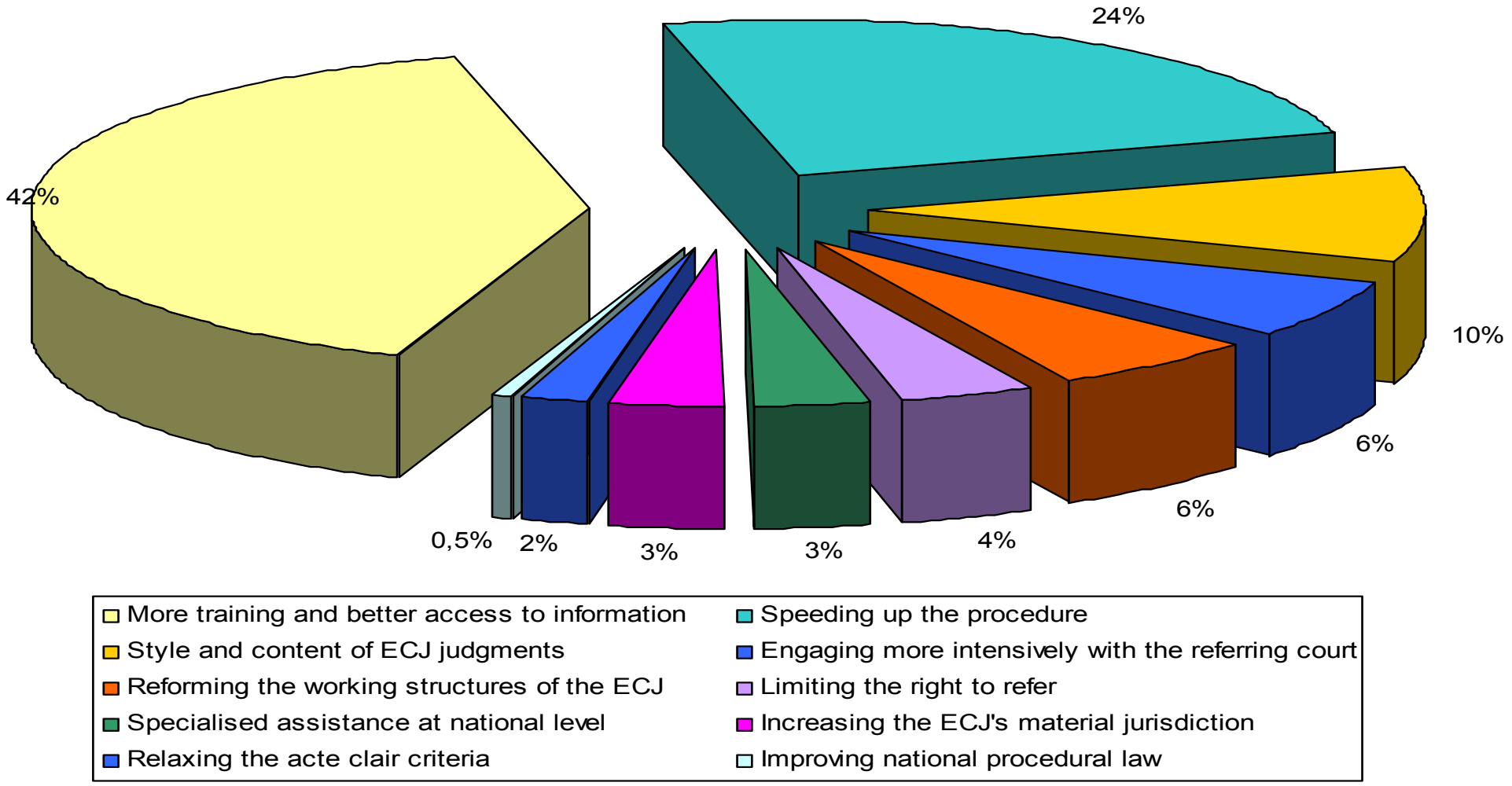
Several respondents considered that the criteria for applying *acte clair* should be loosened, given the ever wider and more frequent application of Community law. One supreme court judge commented that if national courts applied Article 234(3) EC strictly in accordance with the criteria laid down in the ECJ's case-law[19], the ECJ would be flooded with requests from higher courts. A first instance judge found that the concept of a court "against whose decisions there is no judicial remedy under national law" was unclear.

(x) Improving national procedural law

One judge was concerned that German procedural law would allow the facts to be ascertained a second time, once a reference for a preliminary ruling had potentially been sent by the first instance court. This re-examination of the facts would jeopardise the usefulness of the ECJ's ruling, given that it would be based on an obsolete set of facts.

[19] For instance, see case C-283/81 *CILFIT*, ECR [1982] p. 3415 at paragraphs 16-20.

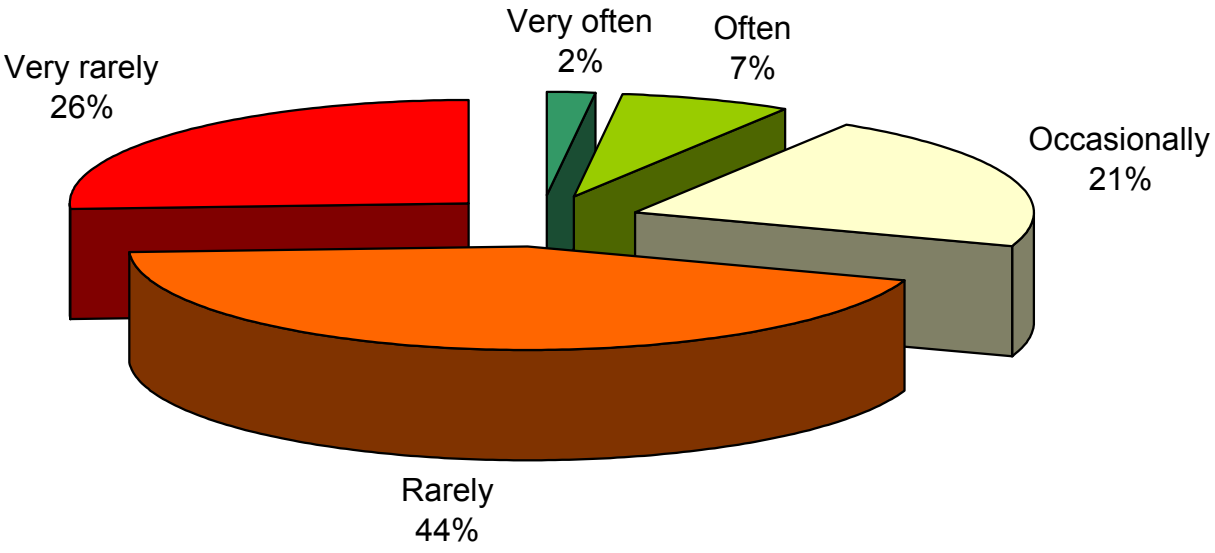
Suggestions for improving the preliminary reference procedure



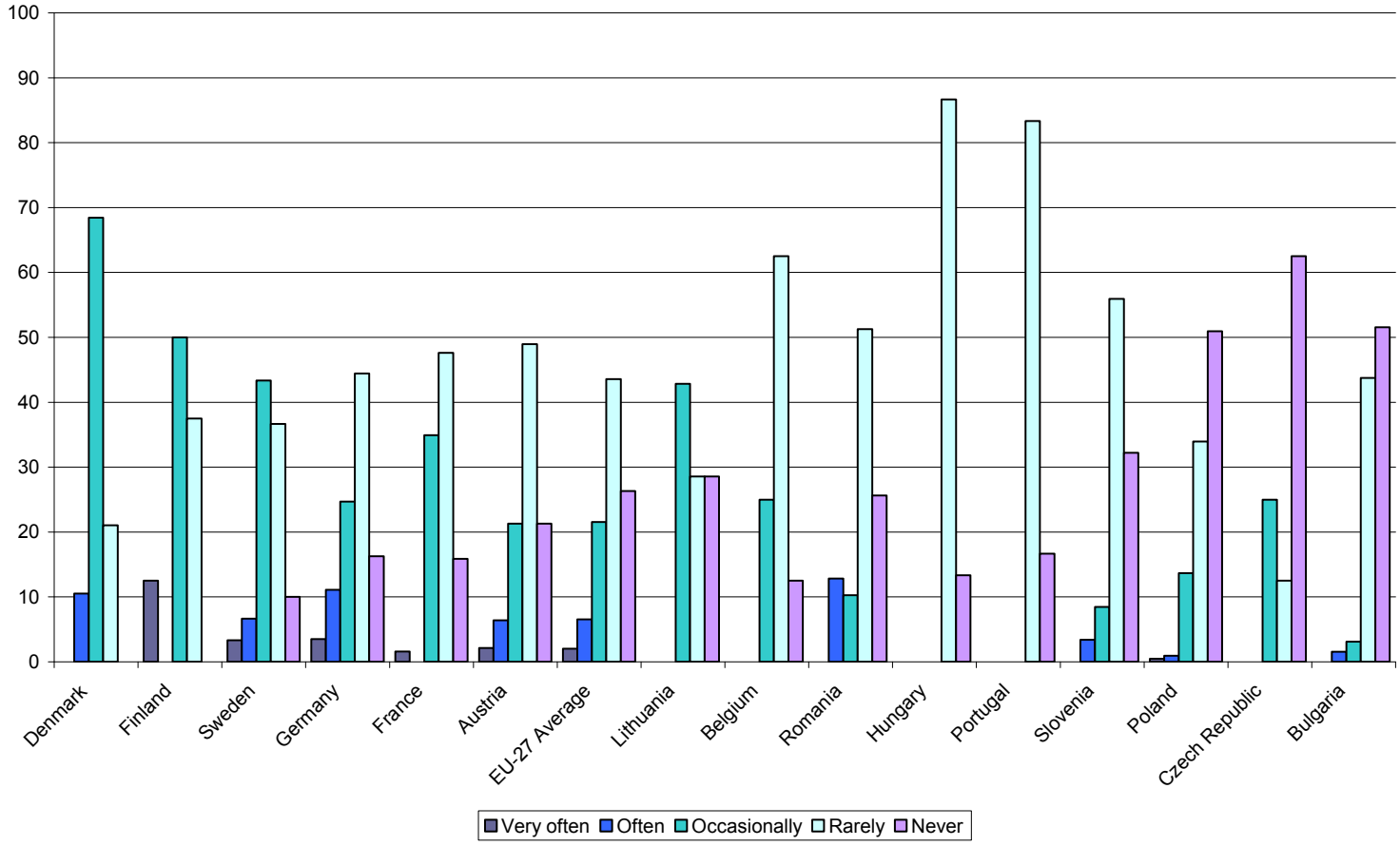
5. Raising of Community law by the parties

(a) Frequency

With more than a thousand answers to this question (1109) it appears quite clearly that Community law is rarely raised by the parties before national judges (see chart below).

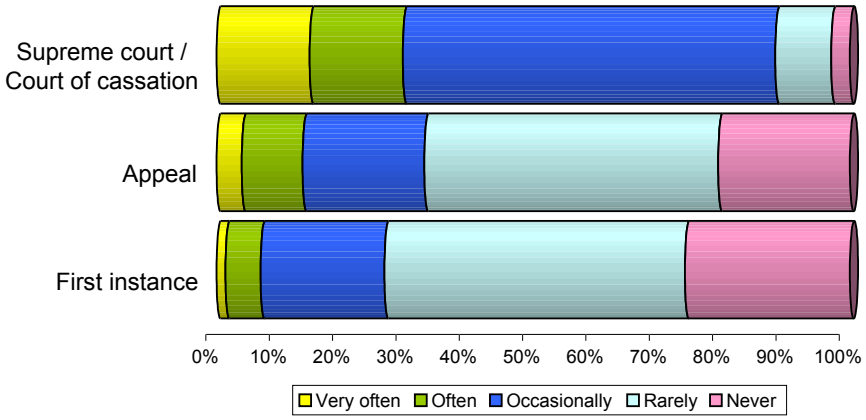


Using a weighted indicator, the chart below indicates from left to right in ascending order the Member States in which the parties are perceived by responding judges to raise Community law the most frequently. Certain Member States could not be included in this chart for lack of sufficient responses. Except for Belgium and Portugal, it appears that there is a relatively clear trend, with Community law being raised more frequently in "old" Member States. It is notable, for instance, in Bulgaria, Poland and the Czech Republic that Community law was "never" raised before a majority of judges. Generally speaking, Community law was "rarely" raised before a majority of judges, except in Denmark, Finland and Sweden, where it was raised more frequently.



Using the same weighted indicator, it also appears that Community law was pleaded most in courts specialised in financial, intellectual property, and administrative matters. 9% of all respondents noted that Community law was pleaded "often" or "very often" before them. However, this figure went up to 41% for financial courts, 28% for administrative courts, and 25% for intellectual property courts.

Furthermore, responses also clearly indicate that the higher the court, the more likely Community law is likely to be pleaded before it. This trend becomes particularly clear for supreme courts and courts of cassation, as can be seen in the chart below).



(b) Areas concerned

The 533 responses analysed reflect the fact that Community law permeates numerous and diverse areas of activity at national level. Two very frequently cited areas are consumer protection (9%) and civil and procedural law (11%). Competition policy (9%), sex discrimination (8%), employment (7%), fundamental freedoms (6%), the environment (5%), customs (4%) and VAT (2%) featured quite prominently in the responses. It is also notable that many judges referred to questions of asylum (3%).

Respondents who cited agriculture mainly referred to the common organisation of markets, including milk products. Judges referring to the fundamental freedoms predominantly cited issues relating to the free movement of persons (free movement of workers and the Citizenship Directive[20]). A number of related issues were raised, such as the posting of workers, the portability of pensions and social security. Reference was also made to free movement of goods, in particular pharmaceuticals, and free movement of services, especially health services and services which can be provided without crossing a border (eg. online gambling). Freedom of establishment was overwhelmingly referred to in the context of transfers of undertakings.

Several aspects of competition policy were mentioned: cartels, vertical restraints, mergers and state aids. The same can be said with regard to intellectual property rights (designs, copyright, trademarks, patents,

[20] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 229, 29.6.2004, p. 35.

Enforcement Directive[21]).

A very wide variety of areas relating to consumer protection were touched upon, including package travel, doorstep selling, abusive "prize-winning" mailings and redress. In the area of civil and procedural law, judges referred to the recognition, jurisdiction and enforcement of judgments in civil and commercial matters[22], the Rome Convention[23], limitation periods, contract law and Community legislation on the service of documents, legal aid[24] and the taking of evidence. This civil aspect was also apparent in the frequent references to the Brussels II "bis" Regulation[25] and maintenance in the context of family law cases.

A small number of judges, mainly from Romania and Bulgaria, referred to the European Court of Human Rights and Article 6 of the ECHR.

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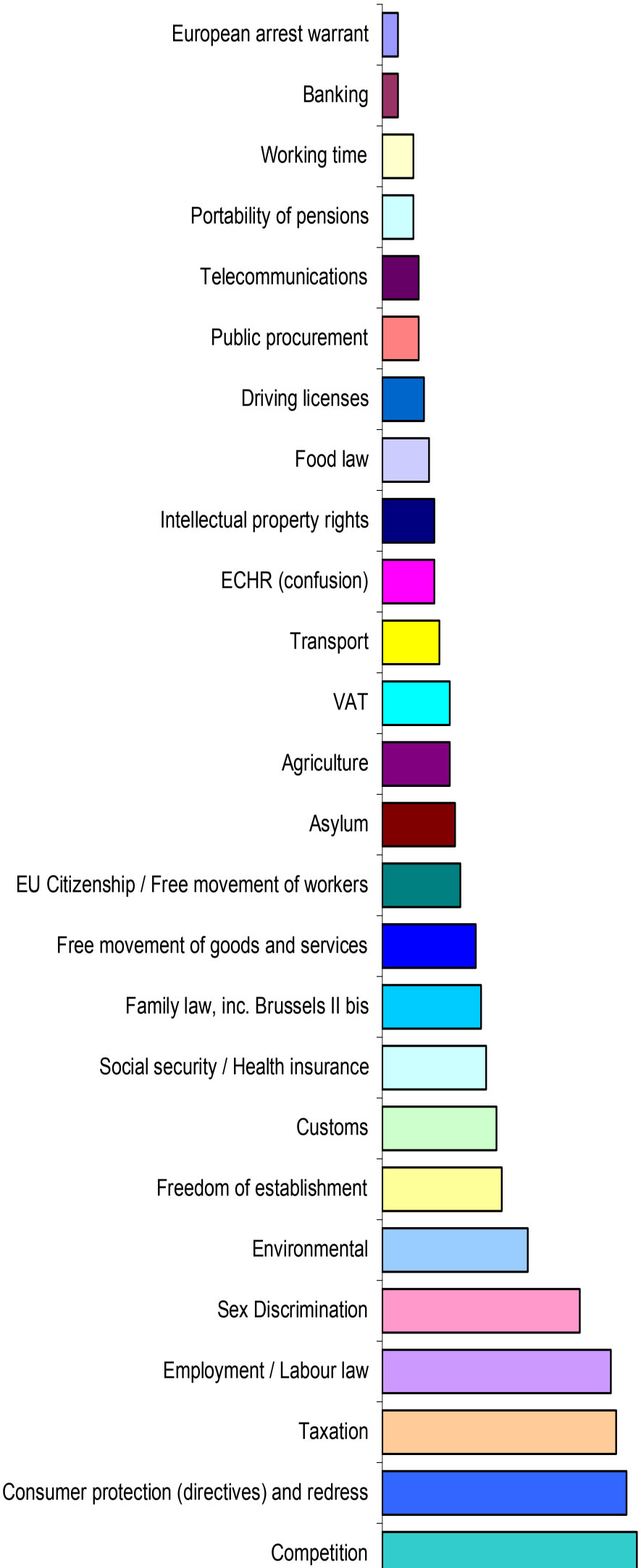
[21] Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, OJ L 157 30.4.2004, p.16.

[22] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJL 012, 16.01.2001, p.1.

[23] Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (80/934/EEC), OJ L 266 , 09.10.1980, p.1.

[24] Council Directive 2003/8/EC of the Council on improving access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, OJL 26, 31.1.2003, p.41.

[25] Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, OJ L 338, 23.12.2003, p.1.


European arrest warrant
Banking
Working time
Portability of pensions
Telecommunications
Public procurement
Driving licenses
Food law
Intellectual property rights
ECHR (confusion)
Transport
VAT
Agriculture
Asylum
EU Citizenship / Free movement of workers
Free movement of goods and services
Family law, inc. Brussels II bis
Social security / Health insurance
Customs
Freedom of establishment
Environmental
Sex Discrimination
Employment / Labour law
Taxation
Consumer protection (directives) and redress
Competition

(c) Why such areas come before national judges

43 judges gave reasons as to why certain areas of Community law were raised by the parties before them. By far the most frequent answer given (42%) related to apparent or potential incompatibility between directives and national implementing measures. A Romanian judge commented that this judicial function was important for the application of Community law on the ground. Directives in the area of consumer protection were often referred to in this respect, including the Distance Selling Directive[26] and the question of e-commerce. Employment law and discrimination were also mentioned by several judges in this context. A Finnish judge stated that the reason Community law was raised in the case of sex discrimination was because the parties often assumed that it would grant them broader rights than domestic law.

Community law was also referred to as an aid to interpret national law which was either incomplete or lacking. A first instance judge in Germany considered that, although Directives were generally transposed satisfactorily, people often did not realise that Community law was behind a national measure, and therefore would fail to notice cases of incorrect transposition. Another German judge, this time from a higher regional court, commented that national law often lagged behind Community law.

A point often made by respondents (14%) was that Community law was raised by parties in areas which by nature implied a cross-border activity or interdependence between Member States (eg. customs, transport, commercial law, insolvency, free movement of persons).

A number of judges (14%) highlighted the fact that where the Community had legislated intensively in a given area, parties were more likely to know about it and refer to it. The areas of environment law and telecoms were cited in this respect. A similar point was made in relation to the existence of abundant ECJ case-law in a given area which could readily be referred to, for instance, concerning competition law, or civil and commercial law.

For several respondents (12%), the main reason why Community law was invoked was because of the unusually international outlook of certain litigants and the financial interests at stake. The point was made in relation to free movement of goods, intellectual property rights, competition and company law.

Concerning civil procedural law in particular, 9% of respondents considered that action had been taken at Community level to facilitate access to justice and simplify the work of judges, and therefore that parties preferred to rely

[26] Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, OJL 144, 04.06.1997, p.19.

directly on Community instruments. Two Slovenian judges stated that such instruments increased legal certainty and transparency. Other judges made the same point specifically in relation to exequatur and insolvency.

Finally, several judges explained why Community law was not raised by the parties, or why parties were in fact very reticent to refer to it. Public authorities only did so when they were specialised in a particular area. The same was said of other parties, for example, in the area of competition law where important economic interests were at stake. Lawyers were said to be more secure with national case-law which, one judge commented, was more well-known and legally certain. Another judge from a higher German court in a border area commented that the level of knowledge of Community law varied very widely among parties. This was the main factor determining the frequency with which Community law was raised.

6. The national judge as a "first judge" of Community law

853 judges responded to this question. As the answers varied very widely in content, they will be analysed firstly according to certain indicators, and secondly in the form of a thematic overview.

(a) A general indication of judges' attitudes

The first indicator aims to give some impression of the judges' attitude towards playing a part in the Community legal order. The most frequent answer expressed serious engagement and a strong sense of responsibility that Community law was now an integral part of the national legal order and had to be applied where relevant (48%). A large number of judges (17%) expressed indifference to this role. A number of respondents (13%) were apprehensive of Community law and a small number (2%) were actually fearful of it. On the other hand, 8% of respondents expressed curiosity to learn more about it, and an identical proportion was enthusiastic about their role. A small minority of judges (4%), including one Danish judge who had obtained a PhD in European law, was very self-confident in this respect. Indeed, one Bulgarian judge from a regional court was actually "proud" to be able to apply Community law, even though this was an extra challenge.

The second indicator attempts to measure the perceived difficulty of this role for national judges. The overwhelming majority of national judges found this task either difficult (52%) or very difficult (23%). On the other hand, a minority of respondents found the task either relatively straightforward (7%) or actually easy (18%).

The third and final indicator tries to ascertain how relevant this role is to respondents. In this case, the answers were also particularly clear, with a vast majority of judges considering their role as first judge of Community law to be either totally irrelevant in their daily work (27%), nearly irrelevant (26%) or minor (25%). A further 4% currently felt unconcerned by Community law, but hoped that this would change with time, given the recent accession of their Member State. Finally, a minority (14%) considered this role to be important and some (4%) considered it crucial to their daily activities.

Thus, if we were to present a profile of a typical first instance judge, based on the answers to this question, it could be summarised in this way:

> *"I see myself primarily as a national judge. I take Community law seriously, although it is a big responsibility to deal with such a complex body of law. Also, I rarely come across it in my daily work because the parties hardly ever raise it."*

(b) Overview of individual responses

(i) Community law as an integral part of national law and the national judge as a passive arbiter

A very large number of judges responded that they did not perceive themselves as first judges of Community law, nor did they think of their daily work in that way, because national law already incorporated Community law. Indeed, many respondents, particularly from Poland, stated that national law correctly implementing Community law entirely removed the need to make use of the principle of direct effect of Directives. Therefore, most judges stated that they would only apply Community law directly and independently of any implementing measure if the parties specifically raised it. One German administrative judge saw himself as a "door opener" to the ECJ for those parties who wanted to go that far. One Polish judge described this attitude as being "rather passive" in this respect. A common observation which often followed was that neither the parties, nor the lawyers ever relied on Community law to any meaningful extent. As a result, one Polish judge observed that accession to the European Union had not resulted in any tangible change in his daily work.

(ii) Perception that Community law only affects cross-border situations

A French appeal court judge commented that many judges still did not realise that Community law applied beyond cross-border cases.

(iii) Quantity and complexity of Community legal acts

A French judge commented that he perceived Community law "with fear" because it was an unknown body of law which was difficult to access and that lawyers had even more trouble accessing it than judges. This apprehension was echoed by a German second instance court judge who considered the terminology used in Community law to be “foreign” or “alien”. A further recurring worry was the sheer extent of Community secondary legislation, and the impression that it is continually evolving and increasing in quantity and complexity. Several judges, including some who showed considerable enthusiasm and interest in Community law, considered that keeping up to date in specific areas was particularly challenging.

(iv) An additional burden

Respondents regularly expressed concern at the fact that their workload made any in-depth examination of Community law issue very difficult indeed, if not impossible. This point was reinforced by the perception that one needed to invest significantly more time to gain a satisfactory understanding of a point of

Community law than the time needed for a similar examination of domestic law.

(v) Hostility to Community law per se

Several judges were hostile to the influence of Community law over national law. One German judge from a financial court was of the opinion that the influence of Community law increased the risk of "bad" judgments and undermined legal certainty. Finally one labour court judge felt rather “provoked” at being brought into playing a role in the Community legal order.

(vi) An area unfortunately reserved for specialists

One German judge criticised the fact that first instance judges rarely had the technical means to get to grips with Community law, and the initiative rests most often with highly qualified lawyers.

(vii) Generational challenges

Several judges who were never taught EU law during their studies due to their age, including one French judge sitting in an appeal court and one German judge in his mid sixties found the Community legal order particularly challenging.

(viii) A role to develop in the future

A number of judges from "new" Member States looked very much to the future. For instance, a Slovenian judge stated that this particular aspect of the judge’s work would grow naturally in time.

(ix) Insecurity

Several judges felt insecure when applying Community law. The legal tradition was not as familiar and the methods of interpretation were different than those normally used. One administrative judge felt that Community law had a dimension which she could not grasp in her daily work.

(x) An obvious reality

On the other hand, a sizeable minority of judges clearly felt more comfortable having direct contact with Community law, considering it to be an "obvious reality". One Italian judge claimed to be well aware of the implications of being a first judge of Community law, but only hoped that colleagues in other Member States felt the same way. A further respondent considered that, although this reality was becoming increasingly obvious to judges, parties and lawyers were not necessarily following suit. An Austrian judge who admitted being initially hostile to Community law commented that, the more he applied

it, the more "self-evident" it became. A German administrative judge went further to consider that the role was "thrilling but difficult" because Community law was still relatively new and not supported by adequate training and library facilities.

Two administrative courts in Germany made the point that it was a good thing that most questions of Community law could be immediately clarified at first instance without multiple appeals. It was counter-productive to only consider these points in higher national courts because this dragged cases on unnecessarily. A French commercial judge stated that first instance judges were often on the "front line" of Community law, and often in face of opposition from higher national courts. Another German judge was constantly "accompanied" by Community law. Whilst, it did not take center stage (*im Vordergrund*), it was however always there at the back of his mind (*im Hinterkopf*).

(xi) Proactive attitude of judges

One French judge stated that certain reflexes had to be developed because a lot of provisions of Community law had to be raised of the judge's own motion rather than being raised by one of the parties.

(xii) Judicial cooperation in civil matters

Several respondents specifically referred to their use of instruments in the field of judicial cooperation in civil matters (Article 61(c) EC), in particular the Brussels I Regulation, the Legal Aid Directive and the Regulation on Service of Documents[27]. A family judge was specifically interested in applying the Brussels II "bis" Regulation, as it brought clear 'added value' to European citizens.

(xiii) Consumer matters

One judge considered that Community law was particularly vital in the area of consumer protection, but that most national colleagues failed to perceive this.

(xiv) Difficulty in applying the acte clair *doctrine*

According to two judges from different supreme courts, it was sometimes difficult to determine whether the *acte clair* doctrine applied to a given case. The most apparent reason for this was that it was hard to ascertain whether any national court in another Member State had considered a similar issue and what its decision had been.

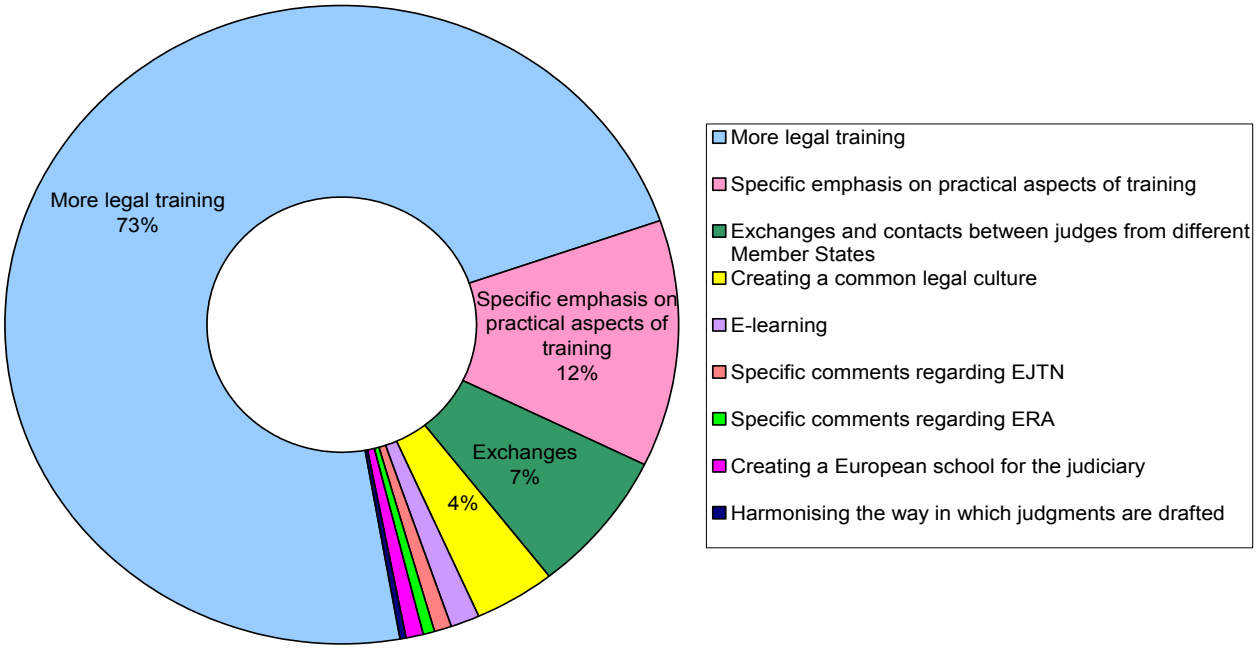
[27] Council regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, OJL 160 , 30.06.2000, p.37.

7. Measures to ensure a better understanding and use of Community law by national judges

(a) Summary of suggestions

790 respondents offered comments or suggestions on this open question. Thorough and continuous training in European law throughout a judge's studies and career was by far the most popular suggestion (51,1%) and many practical comments were made in that respect (see below – section b). Second came calls for more or better information (21,5%) and proposals on how to make this information available. Calls for better law-making at Community level were widespread (9,4%). To conclude, four categories were more or less equally popular: the issue of language training (4,4%), the way in which Community law should be dealt with at national level (4,3%), calls for Europe to do less but to do it better (4,1%) and finally issues concerning the ECJ and its judgments (3,7%). A chart reflecting these results is to be found on p.44, at the end of section 7.

(b) Improvements in all aspects of Community law training for judges



(i) More legal training

An overwhelming majority of respondents in this category (75%) backed an increase in Community law training at all levels. Firstly, a few judges were of the opinion that Community law should become a core or mandatory course in university law degrees, as is already the case in some Member States. A French judge considered that Community law was sometimes not sufficiently integrated into national curricula in areas where Community competence had

been widely exercised. Respondents insisted even more on the importance of Community law training, particularly on the preliminary ruling procedure, when it came to national schools for future magistrates and judges.

There were several recurrent suggestions on the subject of professional training for practising judges. First of all, training had to be free of charge for judges. One judge considered that such training was in the public interest, and part of the service offered to the public. A German labour court judge found that there was great demand for such courses, but that places were limited and that a financial contribution was often requested from participants. Secondly, training had to be regular, or even constant, with some judges considering it would only be effective if it was made mandatory. Thirdly, general training in Community law was sought primarily at national level, and as close as possible to the respondent's place of work. There was also substantial demand for more specialised courses and here an opposite trend was noticeable, with judges sometimes requesting that such specialised courses be organised at a European level for example in the form of a conference with participants from other Member States. Fourthly, general training had to reach the largest possible number of national judges from all court levels.

Finally training was referred to by several judges as important for motivational reasons. Community law was a daunting body of law, and courses could help overcome certain doubts in this respect.

(ii) Specific emphasis on practical aspects of training

A large number of mainly Polish, but also Hungarian, Slovenian, Bulgarian, Romanian and German judges demanded that national training be more practical and less focused on theory. This should include case studies or workshops with experts. A substantial number were also keen to visit EU institutions, specifically the ECJ.

(iii) Exchanges and contacts between judges from different Member States

Numerous respondents from a very balanced array of Member States noted the importance of exchange programmes for judges within the EU. The most important aspect was the opportunity to discuss matters of common concern with judges from other Member States and see how they deal with similar problems in a different judicial context. According to a German judge, exchanges were key to judges "thinking outside of their national box", and thus broadening their horizons. Furthermore, several Dutch, Belgian, Slovenian and German judges were personally interested in traineeships at the ECJ.

A certain amount of frustration was also expressed in relation to the perceived

shortage of places for participants on exchange programmes. For example, one judge considered that only judges working in the justice ministry could participate, whereas another judge considered exchange programmes to be reserved for a privileged elite but did not state any particular reason why.

This section also incorporates responses which called for more contact between national judges, in the form of specialised networks for example, but falling short of an actual exchange. A German judge highlighted the importance of having a personal, as opposed to an anonymous, connection with judges in other Member States. A judge from a supreme court commented that exchanges of view between judges from all over the EU was even essential in order to apply the *acte clair* doctrine, which required the national judge to check what other results domestic courts had reached and whether the diversity of interpretive outcomes reached was liable to prejudice the uniform application of Community law.

One first instance judge from Italy recommended EU subsidisation of online forums to discuss issues of common concern, and also stressed that the foreign language skills of individual judges was a determining factor and sometimes a barrier to entry in such interaction on a transnational level. Finally, a Swedish judge insisted on exchange programmes as a way of reducing the "fear" of foreign law sometimes experienced by colleagues. However, such exchanges required personal engagement and even inspiration.

Several German judges gave specific feedback on EJTN. One judge had participated in an exchange and was particularly enthusiastic about discovering aspects of another legal system and was available for further initiatives. The other two respondents were content with what EJTN offered, but considered that the opportunities available was both insufficient and not well enough known by national judges.

(iv) Creating a common judicial culture

A substantial number of judges wanted to see more fostering of a common legal culture in Europe of which Community law formed an integral part. For example, a French first instance commercial judge commented that Community law must not be seen as an area reserved for an elite of specialists, but rather be part of the everyday life of lawyers and judges. Similarly a German administrative judge stated that Community law had to become natural in the consciousness of judges and the public. A German respondent from a financial court made the point that in fact the judge had a huge responsibility with regard to Community law. In cases where citizens' rights were affected, they could rely of various Community instruments; but in the case of a breach of the Habitats Directive[28], for example, the environment

[28] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of

could not similarly "speak up" and therefore the judge had to be particularly vigilant.

Another judge found that national views on the role of the judiciary should be to some extent be brought closer together, as regional difference were currently very considerable. It was argued that such interpenetration had taken place long ago for lawyers. A French judge argued that greater osmosis between national and Community courts could be conducive to creating a common judicial culture in Europe.

(v) e-Learning

The issue of e-learning featured occasionally in the answers received. One Slovenian judge made the point that some older judges were unfamiliar with new technologies and preferred the printed medium. Several judges nevertheless saw the internet as a potentially useful tool for self-training. It was also emphasised that this should be complementary to, and not a substitute for, face to face contact between judges.

(vi) Specific comments regarding ERA

Several judges commented specifically on the seminars offered by ERA. The feedback was that such courses were either good or essential, but that the question of financing the participation in such courses had to be addressed, which is the same point as that made above in relation to training generally.

(vii) A European school for the judiciary

Three judges mooted the idea of a European agency or body whose task it would be to offer training courses in Community law at European level without replacing the primary role of national authorities. One Portuguese respondent called for such European courses to be mandatory, and for national training bodies to then take example on the European courses offered. One judge from a supreme administrative court considered that the creation of such a body was essential to make Community law into "living law", that is, law which was applied at national level. The respondent noted that unfortunately national experts on Community law in administrations and courts were often not the ones brought to apply Community law on the ground.

(viii) Harmonising the way in which judgments are drafted

A French judge recommended that the techniques used for drafting judgments in each Member State should be studied and, to some extent, harmonised.

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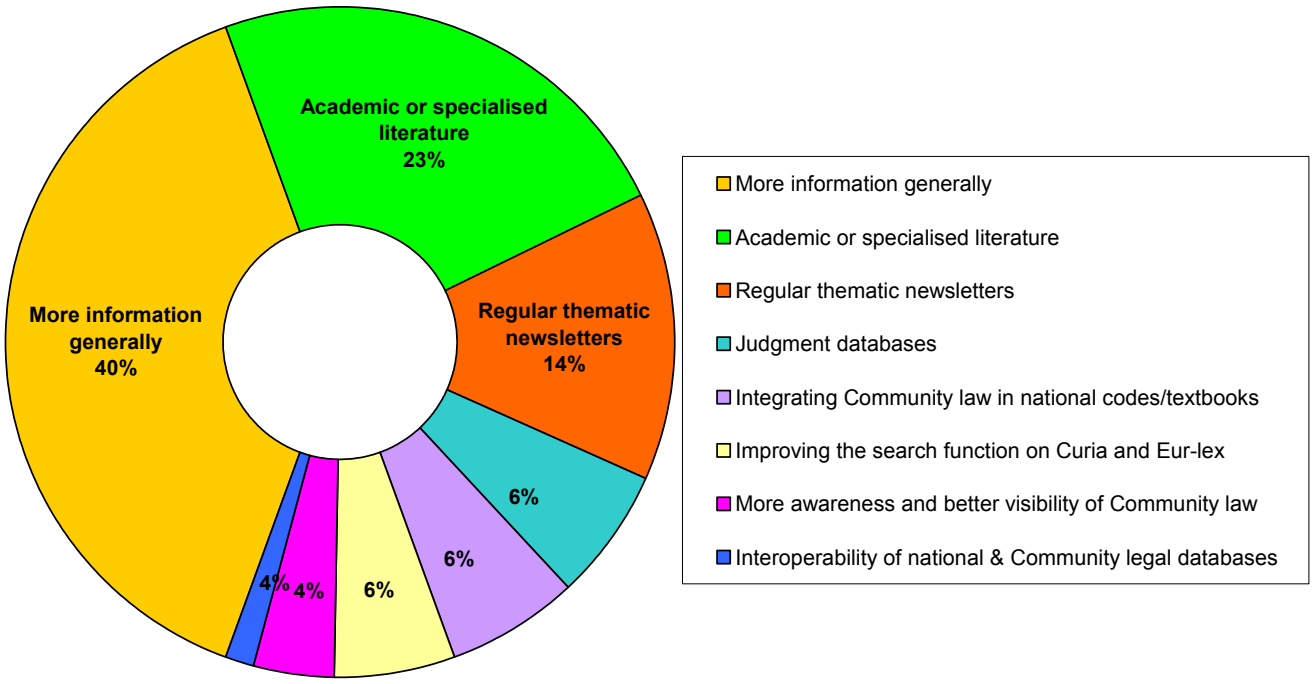
wild fauna and flora, OJ L 206, 22.7.1992, p. 7.

(c) Better access to information



(i) More information generally

Many judges called for more information on Community law. The general fear was that of not being properly updated in a specific area, given that Community law was a very fast-moving body of law. The danger of saturating judges was also highlighted by a few respondents for whom a balance had to be struck between a chronic lack of information on the one hand, and a flood of documents on the other. For instance, an Austrian judge found that information on Community law available on the internet was presented in a disorderly fashion, making it unclear whether a particular document was the latest available version or already obsolete.

Information was requested in the judge's mother tongue. Specific information about the preliminary reference procedure was often mentioned, as were information on latest developments in Community law, and on the division of competences between Member States and Community.

(ii) Academic or specialised literature

Many judges, particularly from "new" Member States (by decreasing order of frequency: Poland, Slovenia, Lithuania, Hungary), touched on several aspects relating to the academic world and research. A supreme court judge noted the difficulty in accessing academic works published in other Member States. A

financial judge in Germany concurred and commented on the lack of cross-border linkage of research in the field of Community law. Furthermore, books on Community law were both expensive and not widely available to the public. A Polish judge added that currently, her court could not afford to purchase such books given their price.

Respondents were strongly of the opinion that any essential academic commentaries or books should be accessible in the language of the judge, however widely spoken that language was. One judge called for Community-funded translation of a selection of well-established publications.

Finally, both a magistrate acting as an adviser to a court of cassation and a first instance judge encouraged the further development of academic literature in the field of Community law. It was insufficiently represented in national legal journals for instance, and often published too late.

(iii) Regular thematic newsletters

A considerable number of respondents called for a regular newsletter on Community law matters, but also on judgments in other Member States relevant to their subject area. The main focus was on an email-based resource, but several judges expressed a preference for paper versions. The newsletter had to be sent regularly (eg. three or four times per year), in a light and compact format, and above all had to be efficiently targeted and thus entirely relevant to national judges. One second instance judge in Germany thought that such a specialised newsletter would encourage judges to keep up-to-date in their particular area without having to trawl through a mass of mostly irrelevant material.

(iv) Judgment databases

Several judges commented on the lack on information on case-law in Member States other than their own. They mentioned the idea of a judgment database collating judgments or summaries of judgments from national courts concerning Community law. A supreme court judge stated that such a comprehensive database was currently lacking and that information on foreign judgments should in any event be free of charge and accessible in the original language and in English. Other suggestions included a network of national databases, and a facility allowing national judges from all Member States to upload their judgments onto the European database. One judge pointed to the efforts of the International Association of Refugee Law Judges whose database had encountered difficulties due to lack of funding[29]. Finally, a German judge considered that the *Jurifast* database available on the website of the Association of the Councils of State and Supreme Administrative

[29] The database is available at: http://www.iarlj.nl/Database/searchform_English.htm

Jurisdictions of the European Union[30] contained adequate information on judgments in other Member States. It also gave a good overview of pending preliminary rulings and the application of preliminary rulings by national courts.

(v) Integrating Community law in national codes and textbooks

A number of respondents from first instance courts in France and Germany called for the integration of Community legislation and related case-law in national codes and practitioners' handbooks and commentaries, given that it was so far underrepresented. A judge from a supreme regional court in Germany was of the opinion that if Community law was more prominently linked to national law in such reference books, then it would not be perceived as a legal order totally distinct from national rules.

(vi) Improving the search function on Curia and Eur-lex

A few respondents called for more user-friendly search functions to access legislation and ECJ judgments. Various suggestions were offered in that respect, including searching by keyword within judgments, making the search more "problem-related", and modernising the appearance of the search engines.

Finally, one respondent suggested making judgments more interactive by enabling readers to click on case references in any given judgment and be able to automatically link up to that judgment, rather than having to carry out a new search. A further suggestion was to consider making available older Advocate General Opinions which were not always available online.

(vii) More awareness and better visibility of Community law

Ensuring that Community law was more visible in the national media and explaining how this body of law affects the daily lives of citizens throughout the EU was important for several respondents from Sweden, Cyprus and Spain.

(viii) Interoperability of national and Community legal databases

Rather than the creation of a European database as proposed above in section 7(c)(*iv*), two judges proposed the better integrate Community law search functions within well-known and often-used national legal databases, such as the German *Juris* legal information system.

[30] The database is available at: http://www.juradmin.eu/en/jurisprudence/jurifast/jurifast_en.php

(d) Improvements in the way in which Community legislation is made

(i) Better law-making

A very large proportion of respondents (71%) proposed changes at Community level related to the way in which laws are made.

One series of answers insisted that the language and structure of legislation must be clearer and more systematic. A wish for greater simplification, less ambiguity and more precision in legislation expressed by a first instance judge from Bulgaria was typical of many of these responses. A German first instance judge proposed avoiding excessive cross-referencing to older legislation. A French first instance judge commented that the complexity of Community acts and formulations sometimes reached “surrealist” levels, and that the Regulation on Plant Varieties[31] and the Brussels II "bis" Regulation were examples of this. Two respondents commented that the application *ratione temporis* of Regulations and especially Directives was difficult to ascertain and presented in an unhelpful manner. A judge specialised in financial matters also recommended a streamlining of the official names of Directives and Regulations, which were considered ill-suited for reference in judgments. Another point made in relation to language was that it had to be more consistently used across different legislative instruments. However, a German judge considered that ambiguity and complexity was an inevitable product of the unwillingness of Member States to harmonise their legal systems, even to a modest extent.

A last instance patent judge highlighted the fact that certain provisions were inserted into Community acts at the very last minute. It was nevertheless incumbent on the Community legislator to make sure that such last-minute additions were compatible with the *acquis* and fitted into a logical regulatory system.

The lengthy preambles of certain Community acts were criticised as superfluous by several judges.

Two judges called for an increased use of Regulations as opposed to Directives, for reasons of legal certainty and clarity. Several respondents called for more transparency by Council and Parliament during the legislative process so as to help teleological interpretations of acts once adopted.

Finally, one judge who had been involved as an expert in the network on the Common Frame of Reference in the area of European contract law saw a need for a more systematic consultation of the judiciary by the Commission before it came forward with legislative proposals.

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[31] Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights, Official Journal L 227 , 01.09.1994, p.1.

(ii) Codification and official compendia of Community law

The idea of codifying Community law, thus avoiding the need to refer to multiple sources in order to solve a legal question was quite prominently referred to by French and German judges (22%). Many judges saw this as part of a greater effort towards simplifying Community law and ensuring better access to information.

(iii) Better translation of legal acts and ECJ judgments

A small number of Polish judges and a Finnish judge (in total, 6% of responses related to this theme) would have liked to see better translations of Community legal acts and judgments.

(e) Improvements in the foreign language skills of judges

Judges from a very wide variety of Member States, with "new" Member States strongly represented, were keen to prioritize language training for judges. A large number of respondents who made other suggestions also mentioned this as an accompanying suggestion. Indeed, a Slovenian judge saw this as absolutely urgent, whilst a Polish judge commented that insufficient knowledge of other languages was a fundamental problem preventing progress on other fronts.

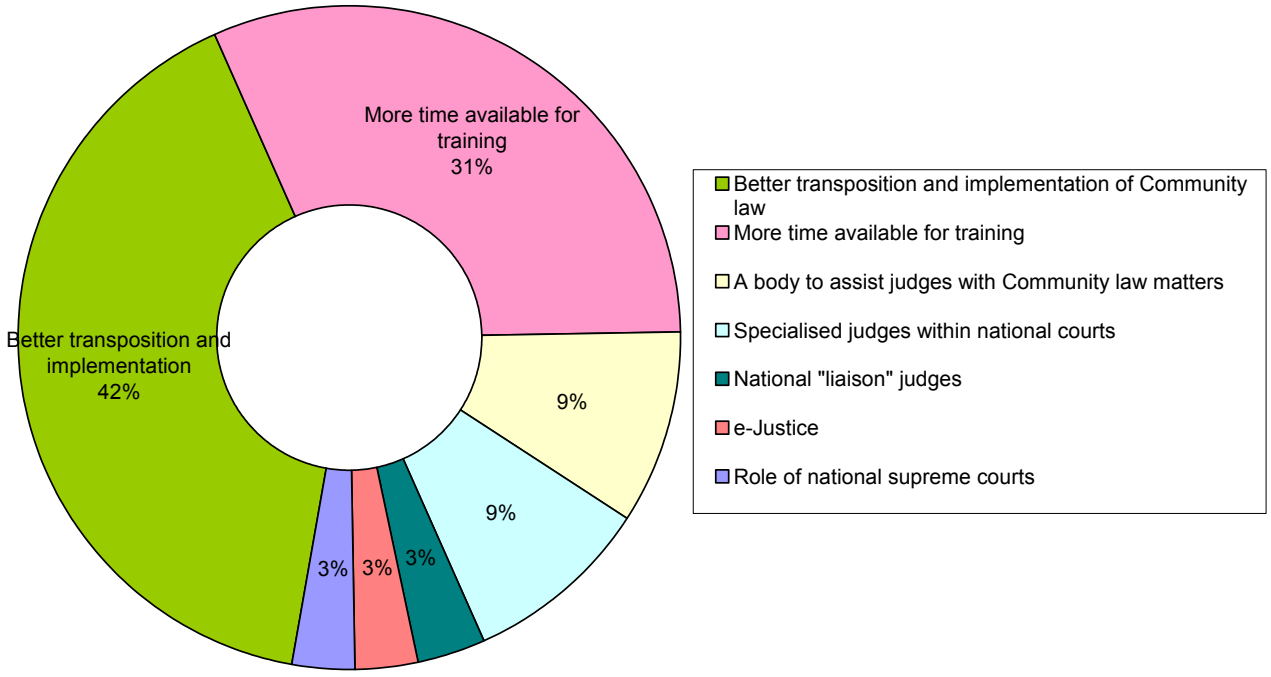
An Italian judge commented that knowledge of language was a precondition to direct contact between judges in different Member States which, in turn, was a cornerstone for judicial cooperation in civil and criminal matters. A German judge built on this concept to suggest the idea of a template indicating the foreign language capacity of all judges in a particular field, to facilitate cross-border cooperation using instruments such as the Regulation on the Taking of Evidence.

An Austrian judge questioned whether language courses should be made compulsory for judges or trainee-judges. All respondents agreed, in line with previous answers on legal training, that such courses should be free of charge for participants.

Finally, a judge from the United Kingdom warned against linguistic insularity but also recalled the limited budgets on which judiciaries were run.[32] Little interest had been shown in making use of his varied linguistic expertise, and he had not taken matters further, sticking to domestic law.

(f) Improvements by national authorities and judiciary

[32] See 2006 Edition of the Report *European Judicial Systems* of the European Commission for the Efficiency of Justice (CEPEJ), p.17-44.



(i) Better transposition and implementation of Community law

The most popular answer focusing on the role of national authorities (42%) was the request for better transposition and implementation of Community law at domestic level. Transposition had to be prompt and full. Two judges warned against the dangers of "goldplating", ie. adding further requirements in the national transposition measures which were not contained in the original Directive. Several judges, including a French court of appeal judge, considered it essential that tables be published which indicated where each part of any given Directive had been incorporated into national law. Finally, one suggestion was to require the publication of the Directive together with the national act or instrument transposing it, which would raise awareness of the source of the national act.

(ii) Better conditions for training

Many judges (31%) noted that creating training opportunities was ineffective if a judge's workload made it impossible to find time for such training. Several respondents considered themselves overstretched and in an unenviable situation professionally. One judge commented that training in Community law was not taken into account for promotions and appointments, and this was a clear disincentive to learn more about Community law.

(iii) A body within the ministry to assist judges with Community law matters

A small minority of judges considered that a specialised body forming part of their national justice ministry would be ideally placed to assist them. Judges from all courts could turn to this body for particular research questions or urgent queries.

(iv) Specialised judges within national courts and "liaison" judges

Several Swedish first instance judges considered it good practice for each judge within a given court to keep updated on a particular area (including Community law) and answer related questions from colleagues. A further idea was that of court coordinators for European law, as introduced in the Netherlands.

A Belgian judge was keen for his Member State to import the role of liaison judge to facilitate cooperation between courts in cross-border disputes, for example in family matters, as already existing in certain Member States.

(v) e-Justice

One respondent from a trial court in Poland encouraged the development of "e-Justice" and, in particular, an enhanced use of information technology within the court system.

(vi) Role of national supreme courts

Several first instance judges felt that national supreme courts should make further efforts to align their case-law with that of the Court of Justice which in some instances better protected the consumer.

(g) The EU must "do less better"

(i) Less legislation, more reference to subsidiarity

A large number of judges called for the EU to produce less legislation and for the ECJ to be less activist in its interpretation of the Treaties and secondary law. Too much law was considered in itself to be "unjust" for citizens, and some judges found this intimidating. Self-restraint was the keyword here, particularly at legislative level through a stricter application of the principle of subsidiarity. Areas in which judicial activity was perceived to be excessive included health matters and non-harmonised profit tax.

(ii) Abolishing direct effect

Only a few respondents found it difficult to get to grips with the principle of

direct effect. For instance, one judge considered it extremely difficult to have to explain to a party that it had lost a case, even though it had scrupulously respected domestic law. These respondents therefore recommended reverting to a strictly dualist system according to which Community law would only produce legal effects through national implementing laws. Infringement proceedings would be the only tool available to the Commission to ensure that Member States properly discharged their obligations under the Treaties, and individual citizens had no part to play in this international process.

(h) Improvements at ECJ level

(i) Form and style of judgments

Many judges had problems understanding the judgments of the ECJ. The main point of criticism from German judges was the lack of systematic reasoning and internal and external consistency of rulings, although one respondent commented that judges from that Member State were arguably too concerned about this. Most complained that the ECJ's style was very different from the style adopted domestically, and this meant that studying ECJ judgments required extraordinary efforts. A judge from the United Kingdom also considered ECJ judgments to be sometimes opaque, and recommended that judgments would be easier to apply at national level if they adoped the fuller and clearer style seen in Advocate General Opinions.

(ii) Closer contact with national judges

Several judges from first instance to last instance thought that a reinforced dialogue between national and Community courts could be instrumental in ensuring a better use of Community law amongst the national judiciary. This essentially repeats the strongly expressed desire of national judges to be more involved in all stages of the preliminary reference procedure (see section 4(g)*(iv)*), and to have more contact with ECJ judges and officials in the framework of their training.

Further points relating to the ECJ's website are dealt with above in section 7(c)(*vi*).

(i) Training lawyers

Given the important reliance of a large number of judges on the parties to raise any point of Community law (see section 6(b)*(i)*), it seemed natural for a number of respondents (6%) that the focus should be more on training the lawyers than on training themselves. If lawyers relied more on Community law where it was relevant to their submissions, judges would be brought more often to analyse such issues.

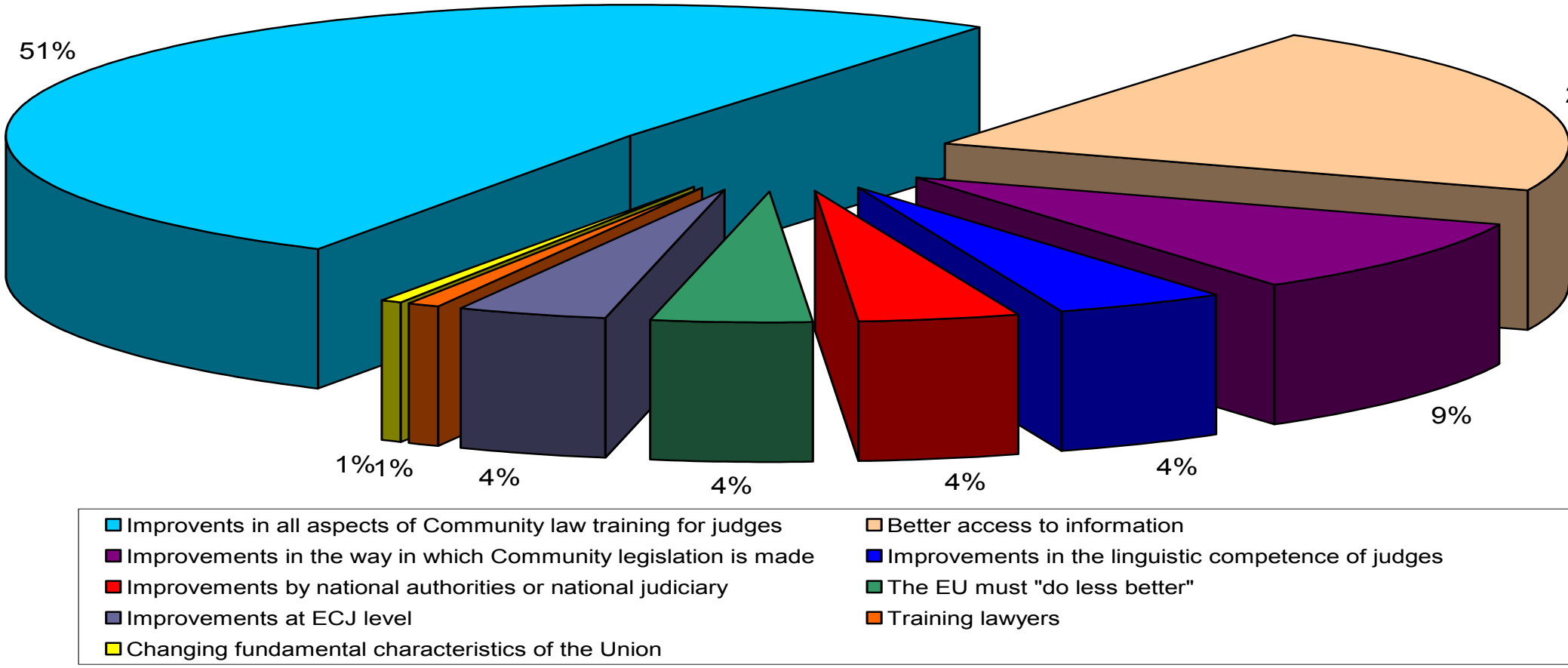
However, much work remained to be done. According to a Belgian appellate judge, most lawyers had not yet assimilated the existence of the Community legal order, and perceived the EU more as a bureaucracy than as a legislature. A judge from a supreme administrative jurisdiction noted with disappointment that the domestic bar association had stopped offering Community law courses because such courses were not sufficiently in demand and therefore too costly.

(j) Changing fundamental characteristics of the Union

A very small proportion of judges suggested more radical changes in the European Union's constitutional structure. The most popular candidate for change was the linguistic regime of the Union with several judges calling for English to be the single working language in the Union, or even the only authentic language for Community acts, in order to facilitate communication between judges and to eliminate any problems related to translation and authoritative interpretation. Finally, one judge recommended merging the EC and EU Treaties into a single Treaty, as proposed by the Constitutional Treaty signed in 2004.[33]

[33] Treaty establishing a Constitution for Europe, 16.10.2004, OJC 310/1

Suggestions for a better understanding and use of Community law



8. Copy of the questionnaire sent to national judges

ЕВРОПЕЙСКИ ПАРЛАМЕНТ PARLAMENTO EUROPEO EVROPSKÝ PARLAMENT EUROPA-PARLAMENTET
EUROPÄISCHES PARLAMENT EUROOPA PARLAMENT ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΟΒΟΥΛΙΟ EUROPEAN PARLIAMENT
PARLEMENT EUROPÉEN PARLAIMINT NA hEORPA PARLAMENTO EUROPEO EIROPAS PARLAMENTS
EUROPOS PARLAMENTAS EURÓPAI PARLAMENT IL-PARLAMENT EWROPEW EUROPEES PARLEMENT
PARLAMENT EUROPEJSKI PARLAMENTO EUROPEU PARLAMENTUL EUROPEAN
EURÓPSKY PARLAMENT EVROPSKI PARLAMENT EUROOPAN PARLAMENTTI EUROPAPARLAMENTET

COMMITTEE ON LEGAL AFFAIRS

THE ROLE OF THE NATIONAL JUDGE IN THE JUDICIAL SYSTEM OF THE EUROPEAN UNION

QUESTIONNAIRE

Please circle the correct answer and elaborate where necessary.
This questionnaire is anonymous.

I. Access to Community law

A. Do you know how to have access to Community law? *YES - NO*

If so, how do you have access to Community law?

- internet access: EUR lex - CURIA - Other: _____
- information / training organised by the national authorities
- information / training organised by European networks
- other:_____

B. How often do you consult ECJ case-law?

- *Regularly / Rarely / Never*

II. Information and training

A. Do you consider that language constitutes a barrier to adequate information on Community law? *YES - NO*

- Do you consider any information to be particularly difficult to access in your language? Give details: _____
- Have you ever participated in a language course covering legal issues? *YES - NO*. If so, give details: _____

B. Have you ever participated in a European training programme such as TAIEX/ EJTN/ ERA etc? *YES - NO*

If so, please answer the following questions:

- Name of the programme: _____
- Was your participation financed? *YES - NO*
  - If so, to what percentage? _____ %

- Did you consider *your* financial participation expensive? *YES - NO*
- Do you consider your participation to training sessions should be free of charge? *YES - NO*

- Is the participation to such training sessions subject to conditions? *YES - NO*
  - If so, explain: _____
- How many times have you taken part in such training sessions? _____x

C. Are you aware of any national training programmes concerning Community law? *YES - NO*

If so, give details: _____

Have you ever participated in such a national programme? *YES - NO*

If so, please answer the following:

- Name of the programme: _____
- Was your participation financed? *YES - NO*
  - If so, to what percentage? _____ __ %
  - Did you consider *your* financial participation expensive? *YES - NO*
  - Do you consider your participation to training sessions should be free of charge? *YES - NO*
- Is the participation to such training sessions subject to conditions? *YES - NO*
  - If so, explain: _____
- How many times have you taken part to such training sessions? _____x

D. Do national networks exist at judicial or ministerial level to inform judges about:

- pending preliminary references from national courts? *YES - NO*
- relevant case-law of courts in other Member States? *YES - NO*
- case-law of the ECJ? *YES - NO*

III. Preliminary references

A. How familiar are you with the procedure for referring a question to the European Court of Justice?

- *Very familiar / Familiar / Unfamiliar*

B. Have you ever made a preliminary refrence to the European Court of Justice? *YES - NO*

If so, please answer the following questions:

- How long did the procedure take (from referral to ECJ judgment)?
  - Did you consider any part of the procedure to be excessively long? If so, give details: _____
- Were your questions substantially reformulated by the Court? *YES - NO*
  - If so, to what extent? _____
- Did you have sufficient guidance in order to formulate the questions referred? *YES - NO*
  - If so, where from? _____
- How did the European Court of Justice's answer impact on the national proceedings; was it easily applied to the facts? _____

C. Under your national law, can the parties to a trial before a lower court ask for a preliminary reference to the

ECJ? *YES - NO*

If so,

- Can such a request be denied? *YES - NO*
- Should a refusal be reasoned? *YES - NO*

D. Can a national judge in your Member State make a preliminary reference to the European Court of Justice of his/her own motion (without the parties having argued them)? *YES - NO*

- In your Member State, is a lower court's decision to make a preliminary ruling itself subject to appeal? *YES - NO*
  - If so, under which circumstances? _____

E. Are there in your Member State any specific bodies designed to assist judges in making a reference for a preliminary ruling to the European Court of Justice? *YES - NO*

- If so, please specify: _____

IV. National Procedures

A. Are there, in your Member State, specific provisions relating to the application of Community legislation and general principles of Community law such as:

- interpretation in conformity with Community law? *YES - NO*
  - If so, please explain: _____
- the power to set aside national law which is contrary to Community law? *YES - NO*
  - If so, please explain: _____

B. In your experience, how often is Community law raised by the parties?

- *Very often / Often / Occasionally / Rarely / Never*

If so, which areas are most concerned, and why ?_____

C. Can a national judge in your Member State raise points of Community law of his or her own motion (without the parties having argued them)? *YES - NO*

If so, to what extent does this occur in practice (you could give concrete examples)?

V. General Questions

A. How do you consider your role as the "first judge of Community law" in your daily work?

B. Would you recommend any improvements to the preliminary ruling mechanism?

C. What do you consider would be helpful for a better understanding and use of Community law?

D. Feel free to add any comments or suggestions.

(END)

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	29.5.2008
Result of final vote	+: 22 –: 0 0: 0
Members present for the final vote	Carlo Casini, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Neena Gill, Piia-Noora Kauppi, Katalin Lévai, Antonio Masip Hidalgo, Hans-Peter Mayer, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis, Jaroslav Zvěřina, Tadeusz Zwiefka
Substitute(s) present for the final vote	Sharon Bowles, Luis de Grandes Pascual, Sajjad Karim, Georgios Papastamkos, Gabriele Stauner, Jacques Toubon
Substitute(s) under Rule 178(2) present for the final vote	Mario Mauro