

Joint opinion in response to the EC Consultation of stakeholders on European Judicial Training of the
Network of Presidents of the Supreme Judicial Courts of the EU
Association of Councils of State and Supreme Administrative Jurisdictions of the EU
European Network of Councils for the Judiciary

General Principles

The Networks consider it helpful to set out certain general principles before turning to answer the specific questions.

1. The creation of a Common Area for Justice and the building of Mutual Confidence can only be achieved through a well thought-out programme for judicial training, which includes training in EU law and understanding of national judicial systems
2. Judicial training is for judges, prosecutors and court officers. It is important that lawyers who practice before the court are also properly trained.
3. Judicial training must be of the highest quality which resources permit. To ensure that resources are used to the optimum extent training must be properly coordinated and evaluated.
4. The achievement of an optimum level of judicial training is primarily the responsibility of Member States. Within Member States it is the shared responsibility of the executive and the judiciary, with the judiciary being responsible for ensuring that the actual training is carried out effectively and independently.
5. The cost of training is not merely the provision of travel, accommodation and teaching. The more substantial element is the cost of the time the judge spends away from his primary work of hearing and deciding cases.

Topics of reflection

1. Scope of European Judicial Training activities

It would be expected that legal education in a university would always include training in EU-law and that each student would have some education in understanding different national legal systems.

As EU law now encompasses most areas of legal practice, it would be highly unlikely that anyone of sufficient competence to be appointed a judge or admitted to practice as a lawyer would not also have some knowledge and understanding of EU law.

2. Target audience of European judicial training activities

We agree that judges, prosecutors and court officials should be the primary target of training and it must be carried out at the cost of the Member State with appropriate support from the EU.

Training for lawyers is different. It is not judicial training. It is however, necessary that any lawyer who practices in areas where EU law is relevant to a case should also be trained in EU law; such training is best carried out separately from judicial training. It must however be a question for each State as to the extent to which training for lawyers is provided at the cost of the State or at the cost of each individual lawyer.

Training for interpreters and legal translators is not judicial training. It is however necessary to train them in basic court proceedings including where appropriate basic legal terminology and technical terms used in EU instruments.

3. Training needs of the different legal practitioners

The training needs of judges and prosecutors have to be assessed by reference to the work they do. A judge who deals with a specific area of the law has specific training needs. It is important that training is directed to the work the judge does, as to train a person in areas that he does not do is not only an inefficient use of resources but will be seen as of little practical relevance. This is an important issue for judges who deal with EU law only very occasionally.

In States where sufficient resources are available to train all judges (including sufficient overall judge time to decide cases within a reasonable time and avoid backlogs), it is desirable that continuous training be compulsory for judges and the time for training be guaranteed to the judge.

Particular emphasis should be given to training of younger judges.

4. Increase the number of European Judicial training activities

Significant numbers of areas of EU law are presently covered in training courses provided either by national institutions or universities or bodies such as ERA. It is essential that there be a detailed and comprehensive survey of what is available and the extent to which different institutions are offering the same or similar courses. At present it is difficult for judges and other practitioners to have a clear picture of the different courses available and their relative merits.

It would be desirable that in the different main areas of practice, the courses to be financed by EU support were scrutinized through a scheme with an advisory body which could express a view about the content and relevance of courses and evaluate the feedback provided by those who attended courses. We understand that DG Environment has a scheme with some of these features.

Competition between institutions is desirable. However, for competition to operate on a level playing field it must be open and transparent and full information provided by the scheme suggested must be readily available.

An increase in the financial contribution by the EU is indispensable; the monitoring should be in accordance with the scheme described.

5. Increase participation in European judicial training activities

It is clear that the EU should primarily promote judicial training in EU law. It is also desirable, to the extent finances allow, that there is training in the understanding of other national systems. Such training in the understanding of other national systems is necessary to promote mutual confidence. Training jointly arranged between States in a regional grouping or between States in different parts of the EU should be encouraged to promote such understanding.

6. Improve the quality of EU co-financed projects

We have addressed the issue under paragraph 4.

7. Common curricula on EU legislation

We consider the development of common curricula on EU legislation desirable, as a basic level of common understanding in the areas of law in which they work is desirable for judges across the EU. This development should take place under the guidance of EJTN and other training bodies.

8. Training methodologies

This issue is clearly a topic to be addressed by training institutes by reference to the level of judge and the area of law being taught. Emphasis must be on theory and practical issues as well as on identifying issues of EU law. There is plainly substantial scope for e-learning.

9. Language training

Training in the language of another Member State is relevant to two issues:

1. The ability to understand a common language such as English or French in use across all Member States;
2. The ability to understand the language of another State so that a judge can acquire a detailed understanding of the law and legal system of that particular State.

Each has a different objective. It is clearly desirable that judges who attend European events can communicate in the same language without translation and be able to read common materials without the need for translation.

It is also desirable to encourage mutual confidence that training is available in the language of other Member States so that within each State that there are at least some judges who can acquire the necessary understanding of other legal systems.

The priority must however be to direct resources to training in law rather than languages.

10. Exchanges

Much practical and useful work in exchanging knowledge and practice is accomplished through Networks such as the undersigned Networks. These Networks provide a very valuable means of contact between the judiciaries and judicial systems of the different states. It is desirable to create

within the existing networks, networks of judges who specialize in particular areas of the law, such as the implementation of the European Arrest Warrant.

The best type of exchange programmes for individual judges is a programme which takes into account the nature and level of work done by the judge. For example at the level of the Supreme Courts a tailor made programme of about two weeks works very well. It permits a judge to obtain a detailed knowledge of the work of the court he visits and to study other areas in which he is interested. He will then report back to his own court, where he can speak to all the other judges and tell them about the practices of the other Supreme Court he has visited. Such visits require a very considerable organization if they are to be valuable.

However, at other levels of the judiciary the type and length of individual exchange is different. In some cases a week may well be sufficient particularly where the State being visited is one where those visiting it are unlikely to be able to understand the language used in court, as the provision of an interpreter is not normally feasible. In other cases where a judge has a specific project and is fluent in the language a longer visit may bring benefit. It is difficult to see how there can be fixed and in flexible periods. In general, given the present financial conditions, periods of more than a week may be impracticable for many court systems; a month's absence would, save for a special project, be impossible.

At levels below the supreme courts there is a very significant issue in relation to numbers as there are over 80.000 judges in the EU. As time spent on an exchange is time that would otherwise be spent in hearing and deciding cases the cost-benefit analysis of a scheme which permitted only a small proportion to take part in exchanges must be questionable. One of the difficulties experienced is conveying to others what has been learnt.

An alternative to exchange programmes of the traditional types for individual judges would be regional exchanges and jumelages between courts. These involve regular exchanges between different members of two or three courts so that over a period of time each court gets to know the members of the other and the way in which that other court works.

Another alternative is to encourage exchanges by judges and lecturers who teach at national training institutions so that they teach at training institutions in another Member State as well as their own State. This may be a more effective means of imparting knowledge about other judicial systems than visits by groups of judges to the training institutions of other Member States.

The European Law Institute

Consideration is being given by the Networks to follow with interest the establishment of a European Law Institute with limited functions along the lines of the American Law Institute. It is envisaged that the Institute would bring together academics, judges and practitioners in providing practical statements of the law in particular areas.