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COMMISSION STAFF WORKING PAPER

European Judicial Training Network - State of play and options

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1. INTRODUCTION

In order to follow paragraph 43 of the conclusions¹ of the Laeken European Council on the need to encourage the training of magistrates, Coreper on 10 April 2002 discussed the question of how the French proposal of November 2000 for creating a European Judicial Training Network should be taken forward. The Presidency concluded that further preparatory work was needed on this question and invited the Commission to present, at a future meeting of the JAI Councillors, a paper outlining the current state-of-play and the options for actions in this field. This with a view to preparing the possible discussions on this issue at the JHA Council on 13 and 14 June 2002.

This paper responds to that request from Coreper. Although the relevant paragraph from Laeken is essentially concerned with criminal matters, the opportunity has been taken to address the question of networking and of training of judges in the area of judicial cooperation in civil as well as penal matters.

2. STATE-OF-PLAY

2.1. Existing European Judicial Networks in general

Two judicial networks have already been created by Council decision in the JHA field so far. The European Judicial Network, covering criminal matters, and the European Judicial Network in civil and commercial matters.² The network in criminal matters was set up already in 1998, while the network in civil matters was created in 2001 and will become operational towards the end of this year. In both cases, however, the principal focus is to support judicial cooperation within their respective scope, though the civil network's mandate would not rule out discussion of training questions.

2.2. The existing European Judicial Training Network

As far as a judicial network specifically committed to training is concerned, a "charter" was signed in October 2000 between representatives of authorities and institutions responsible for training of judges in all Member States. This led to the establishment of a training network which became operational as of 1 January 2001, with a general assembly, a steering

¹ "Eurojust and judicial and police cooperation in criminal matters

43. (...) The European Council calls for a European network to encourage the training of magistrates to be set up swiftly; this will help develop trust between those involved in judicial cooperation."

² Joint Action of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network.
Council Decision (EC) of 28 May 2001 establishing a European Judicial Network in civil and commercial matters.

committee and a secretariat. The training network has met regularly for the purpose of preparing and coordinating common projects in the context of the JAI cooperation programmes and for exchanging information between its members. Since the charter did not entail the creation of a legally constituted structure the training network does not have its own budget, or any permanent staff. Financing is partly borne by the members of the training network and partly through grants for individual projects. The secretariat of the training network is temporarily managed by the Europäische Rechtsakademie (ERA) in Trier, Germany.

2.2.1. Support from the European Union for activities in the field of judicial training and the existing training network

The structures responsible for training of judges in the Member States have been cooperating for several years. Support to stimulate networking and contacts between legal practitioners of the Member States in general goes back to 1996 with the launching of the first JHA cooperation programmes (i.e. GROTIUS).

In the years 2000 and 2001 concrete measures for the support for training of judges have taken the form of co-financing of individual projects carried out by one or several members of the existing training network. 18 projects were selected and supported with the total grants amounting to approximately EUR 842 000:

- Under Grotius 2000, 6 projects were selected for support totalling EUR 197 000.
- Under Grotius-civil 2001, 3 projects were selected for support totalling EUR 182 000.
- Under Grotius II criminal 2001, 9 projects were selected for support totalling EUR 463 000.

A majority of these projects has focussed on furthering mutual knowledge of the legal and judicial systems of the Member States. Projects have also covered specific measures for the setting up of the training network as such, including the creation of a website.

Under the Robert Schuman Project (1999-2001) the Commission has also supported a large number of training projects on Community law for legal practitioners, including judges. A limited number of these projects focussed on the area of judicial cooperation.³

2.3. The French proposal for a Council decision

In November 2000 France presented an initiative with a view to adopting a Council decision which would provide the European Judicial Training Network with a more formal structure. The proposal was based on article 31 and 34(2)(c) TEU and limited in scope to criminal matters.

The purpose of the proposal is to foster consistency and efficiency in the training activities carried out by members of the judiciary in the Member States. A further eight specific objectives to be pursued to fulfil this mandate are listed in article 3(2) of the proposal. An annual programme of activities would be drawn up to fulfil the mandate and achieve the

³ For further details, see the Commission's Report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the implementation of the Robert Schuman Project 1999-2001, SEC(2002)157, 07.02.2002.

objectives. The training network would be made up of national schools and institutions of the Member States specifically responsible for training professional judges and prosecutors. Each Member State would appoint up to three training officers to represent it in the training network. The implementation provides for the following:

- A Governing Board, made up by the training network members, a Commission representative, a representative of the General Secretariat of the Council and a representative of the Council Europe,
- A General Secretariat to be provided by the Commission,
- A Scientific Committee, and
- A Secretary General.

The financing of the functioning and of the activities of the training network would come from the Community budget, covering expenditure for the operating costs, the financing of the programme of activities and for the development of training aids.

No “fiche financière” accompanied this initiative.

The initiative met with a generally favourable reception when presented to the Council in November 2000. It was discussed at one meeting of the Article 36 Committee in March 2001, where certain delegations questioned the need for an initiative of this character while others favoured extending it to civil matters also. Since then no substantial progress has been made. The discussion in Coreper on 10 April 2002 showed a continuing divergence of views between the Member States.

3. OPTIONS

The three main options, if the Council wishes to take this forward, would seem to be:

- The adoption of an act of the Council to formalise by means of an EU legislative instrument the existence of the network;
- The creation of a new Community agency; or
- Continued use of and improved support for the existing network.

3.1. Option 1 - the creation of a training network through an act of the Council

Based on the precedents constituted by the various networks that have been created so far through Council decisions⁴, the following would appear to be the main issues that would need to be addressed.

⁴ Besides the two main networks mentioned above reference may also be made to Council Decision of 28 May 2001 setting up a European Crime Prevention Network (act adopted pursuant to title VI of the TEU).

3.1.1. Institutional issues and questions of competence

First, on the presumption that one single training network covering judicial cooperation in civil as well as criminal matters should be set up, that two separate Council acts would almost certainly be required: one based on article 65 (or possibly article 66) TEC and the other on article 31 TEU. For the purpose of creating what in practice should be one single structure it would be logical that the content of these two acts should be identical. However:

- The protocols on the position of Denmark, Ireland and the United Kingdom as concern title IV TEC makes it clear that the Council act based on article 65 TEC would only apply to between 12 and 14 Member States. This alone would ensure that the two acts could not be absolutely identical.
- The institutional structure, in terms of the management of the network, the role of the Commission and the Member States etc, should also in logic be the same in both acts. Experience of setting up the various networks so far indicates, however, that the solutions chosen in this regard have in practice been very different depending on the legal basis (first/third pillar).

Secondly, if Community financing is envisaged, the management of the budget to be allocated to a training network set up in this way would have to be in full conformity with the principle of the Commission as responsible for implementation of the Community budget and the principles for financial management this entails.

Thirdly, certain limits on the scope (in terms of objectives) of such a structure may be imposed as a result of the competence of the EU/EC and the particular legal bases in question. The organisation of the judiciary and the legal systems, including the training of judges, is the competence of the Member States. Consequently, it could be questioned whether a training network created in this way could, for example, by itself organise and implement training courses for judges.

Fourthly, a structure set up in this way would have to respect the independent nature of its member institutions in the implementation of the Council act(s) in question.

Fifthly, as regards the more precise definition of the objectives for a training network set up in this way, care would have to be taken to avoid any overlap or duplication of efforts with the existing networks in the penal and civil field. This relates also to activities on information on EU/EC acts for legal practitioners, an activity that is closely related to training activities.

3.1.2. Budgetary and administrative impact

Community financing could cover administrative as well as operational expenditure arising from a training network set up by a Council act. The allocation of credits would be made on an annual basis. However, a dedicated budget should, provided it is within the limits of the current financial perspective, allow for a reasonable degree of multi-annual programming and implementation of the network's activities.

The budgetary impact as such cannot be quantified with any precision since this would depend, among other things, on the management structure actually chosen for its implementation and the intensity of its activities (number of meetings etc). However, by way of simple illustration, the European Judicial Network for civil and commercial matters was allocated a budget of EUR 560 000 in 2001.

The situation is the same as concerns the administrative consequences for the Commission; any estimate of the precise impact cannot be made without knowing the intensity of the activity in question. The management structure has obviously a direct influence on this assessment, as has the possibilities for the Commission to externalise any or all of the tasks that could be entrusted to it.

3.2. Option 2 - the creation of a network through a Council act setting up a new Community agency

This solution can be seen as a “suboption” of the above since a Council act would be necessary but the implementation would be entirely different. It would entail the creation of a new Community body with its own staff, budget, and objectives/activities to be further defined. A number of implementing provisions would be needed (financial regulation etc) as well as a permanent office to be located in a Member State of the EU.

This solution gives rise to the same institutional issues as outlined under section 3.1.1 above, with the obvious exception of the management structure. The budgetary and administrative impact of this solution can be presumed to be higher than that of the previous one, in view of the need to create a new and independently functioning entity. For the same reason this solution will also be more time-consuming, in terms of when a training network created in this way could become operational. The Commission cannot today say whether the budgetary credits needed for this solution would be available under the constraints of the current financial perspective. The proportionality of this solution, in view of the (in comparison with existing agencies) limited objectives of such a body, would have to be carefully assessed also.

3.3. Option 3 - continued cooperation using and improving the support for the existing training network

This option would not entail the adoption of any specific Council act(s) for the purpose of setting up a training network. Rather, the existing training network would remain as it is now: an independent body. Without going into any details as to how such a body would wish to conduct its activities the following observations can be made.

Firstly, no issues concerning the Community’s competence in this field or the need for safeguarding the independence of the network and of its members arise in relation to this option. If the training network remains a private structure not formally linked to the Community, it will have full freedom to define its mission, scope of objectives and activities etc, including adjusting these on a continuous basis if/when the need arises.

Secondly, the following instruments are or will be available as concerns financial support from the Community budget.

- The framework programme for judicial cooperation in civil matters allows for co-financing of individual projects, as has been done before under the Grotius-programmes. It allows also for co-financing of the general activities of the network. A pre-condition for the latter is that the network would constitute itself formally with a legal personality. Subject to the relevant conditions, the network would then be eligible to apply for grants to support its activities in general, not being confined to individual projects. This could cover a financial support for the running of its secretariat.
- The proposed title VI framework programme, currently under negotiation in the Council, will allow for co-financing of individual projects also. The proposal does not, however,

include co-financing of the general activities, but a revision of the proposal for this purpose, along the lines of the “civil” programme, could be envisaged.

Both the above programmes are due to be endowed with larger budgetary credits than their predecessors. The annual programmes of these two framework programmes would allow for a priority to be given to training projects should the Commission and the Member States so wish.

A further effect of the network constituting itself formally would be that it could itself apply for project financing also, instead of through one or several of its members.

These financing possibilities are available on an annual or bi-annual basis. For obvious reasons the Commission cannot give any form of commitment as to the actual award of financial support to applications that may be submitted for support under any of its programmes since these applications will be in competition with others.

An additional contribution to the network’s budget could also come directly from the Member States, but the Commission is obviously not in a position to assess the willingness of Member States to contribute.

In summary, and under the conditions outlined above, the two Community instruments taken together (and with the necessary amendment to the Title VI programme) would allow for financial support for both specific activities and the secretariat of an independent training network, possibly supplemented by contributions from the Member States.