

## **Discussion document**

### **Judicial training: how to improve the training of legal professionals in the European Union**

#### **Informal meeting of the Justice and Home Affairs Ministers**

**Gödöllő, 20-21 January 2011**

The entry into force of the Treaty of Lisbon and the objectives set out in the Stockholm Programme have paved the way for a substantial increase in the level of activity of the European Union in the field of judicial cooperation, both in civil and in criminal matters. Over the next years, Member States will be called upon to implement existing legislative and non-legislative instruments in this field, as well as to participate in the adoption of new instruments.

However, this increased law-making activity must proceed in parallel with a harmonious and effective practical application of these tools. In this respect, the role of national judicial authorities (judiciary and judicial staff<sup>1</sup>), as well as that of other professional persons engaged in the concrete functioning of justice, is central.

In ensuring that judicial authorities may contribute to the fullest extent to the creation of a true area of freedom, security and justice, as required by Article 3(2) of the Treaty on European Union, the first condition is that these authorities have an in-depth knowledge of EU legal instruments in this field, a sufficient knowledge of foreign languages, and that they partake of a common European judicial culture. All persons involved in the judiciary and judicial staff, when discharging their duties, should be conscious of the fact that they form part of a European judicial system and that they apply instruments that they have in common, whether Directives or Regulations, Framework Decisions or Decisions.

Appropriate training is a key factor in this respect, as outlined in the Stockholm Programme.

Enhancing the level of knowledge of European law and the EU's instruments on judicial cooperation throughout the Union is a fundamental step towards enhancing mutual trust among judicial authorities in the Union, which is in turn the cornerstone of the mutual recognition of judicial decisions.

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<sup>1</sup> See Articles 81(2)(h) and 82(1)(c) TFEU

## **The objectives to be pursued**

In November 2008 the Council of the European Union and the Governments of the Member States approved a Resolution on the training of judges, prosecutors and judicial staff in the European Union<sup>2</sup>, encouraging Member States to improve the knowledge of the EU's primary and secondary law, to disseminate information on the legal systems and law of other Member States, to increase the opening of their national training courses to professionals from other Member States and to develop and stimulate direct exchanges between legal professionals, in the framework of existing training structures. It also called for a strengthening of the European Judicial Training Network (EJTN).

The European Parliament in its Resolution of 17 June 2010 on Judicial Training urges the Commission to produce proposals with the cooperation of Member States as soon as possible for the creation of a network of legal training bodies across the Union accredited to provide familiarisation courses in national, comparative and European law for members of the judiciary on a stable, ongoing basis, and calls on the Commission to come forward with concrete proposals for funding.

The Stockholm Programme, approved by the European Council on 11 December 2009<sup>3</sup> states (points 1.2.6 and 3.2.1.) that in order to foster a genuine European judicial culture, it is essential to step up training on EU-related issues and to make this systematically available through European Training Schemes. The objective to be pursued is that by 2015 a substantial number of legal professionals should have participated in such training or exchange programme. In its Action plan for the implementation of the Stockholm Programme, the Commission announced the presentation in 2011 of a Communication on European training for all legal professions.

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<sup>2</sup> Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council on the training of judges, prosecutors and judicial staff in the European Union (2008/C 299/1), OJ C 22.11.2008, n. 299, p. 1

<sup>3</sup>The Stockholm Programme — An open and secure Europe serving and protecting citizens, OJ C 115, 4.5.2010, p. 1–38

## **The current situation**

In the light of these intentions, the current state of affairs is largely unsatisfactory, and we could ask whether time has not come, with the advent of the Lisbon Treaty, to take a qualitative step in the direction of finding European solutions for stepping up judicial training as called for by the Stockholm Programme?

At European level, training for judges, prosecutors and other legal professionals is provided by a number of institutions, bodies and organs. Among these is the European Judicial Training Network. Likewise, a number of activities are organized by the European Institute for Public Administration (EIPA) or by the European Law Academy (ERA), and other private training providers financed through EU funds, donations and participation fees. Unlike in the field of police cooperation, no central Academy exists for judicial training.

As far as ERA is concerned, from 2000 to 2009 6,591 judges and prosecutors have attended training activities (out of whom 1,181 in 2009).

The 2009 Annual Report of EIPA shows that its European Centre for Judges and Lawyers, based in Luxembourg and focusing its training activities on European law and the administration and quality of justice, provided training to a total of 1,393 professionals in 2009 (and to comparable numbers of professionals in the previous years).

Lastly, concerning exchange programmes, the EJTN has overseen for 2009 a total of 271 short-term exchanges ('Erasmus type' programmes), as well as 'training for trainers' programs for 60 persons as contained in the EJTN corporate presentation.

Considering that the gross number of judges, prosecutors and trainers for the judiciary in the EU Member States amounts to ca. 160,000 persons, it is evident that the numbers set out above represent a small fraction of the effort needed in order to obtain the results envisaged in the Stockholm Programme: the goal of providing appropriate training on EU related matters to half of the legal practitioners involved in European cooperation by 2015 seems very far indeed.

Appropriate structures may not be enough for stepping up judicial training. Exchange programmes and seminars, common courses and consequently communication between judicial professions, instruments of cooperation in criminal or civil matters cannot function properly without an adequate level of understanding of the legal terminology used by other countries' professionals.

Another substantial barrier is the heavy workload of judicial professionals in many Member States, which makes it difficult for practicing judges and prosecutors to participate in exchanges, spend weeks abroad or to deal with their colleagues visiting their jurisdiction.

Training of judges, prosecutors and judicial staff may not be enough for creating a genuine area of justice. Proceedings usually do not start at the court but when the client first meets with an attorney. Other legal professions are engaged in extrajudicial proceedings as notaries or in executions as bailiffs. Thought may be given to opening training facilities to those legal professions as well.

On the basis of the data and considerations set out above, the Ministers are invited to express their opinion on the following questions:

1. How could judicial cooperation be best improved by way of judicial training? Which areas should be the focus of training activities, i.e. national law, practical training on implementation of European law and legal instruments, general knowledge of European law or language skills as a prerequisite?
2. Should European judicial training be open to all legal professionals as implied by the Stockholm Programme, giving priority to judges and prosecutors, or to judges, prosecutors and judicial staff as defined in the Council Resolution?
3. Do Ministers consider that enhancing the level of judicial training should include the creation of new European structures? How should exchange programmes for professionals be improved and be managed? Would exchanges organised during initial training have the greatest impact?
4. How could European judicial training and exchanges be best financed?