



CCBE RESPONSE TO EUROPEAN COMMISSION CONSULTATION OF STAKEHOLDERS ON EUROPEAN JUDICIAL TRAINING

Conseil des barreaux européens – Council of Bars and Law Societies of Europe

association internationale sans but lucratif

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Introduction

The Council of Bars and Law Societies of Europe (CCBE) is the representative organisation of around 1 million European lawyers through its member bars and law societies from 31 full member countries, and 11 further associate and observer countries.

On 29 October 2010, the CCBE as a member of the Justice Forum received a letter from the European Commission together with a consultation on the issue of European Judicial Training. The consultation is aimed at helping the Commission in preparing a Communication on European judicial training, which will be published in September 2011.

The CCBE secretariat circulated the Commission's consultation to its member delegations on 2 November 2010 with the request to provide their comments/views on the consultation. Based on their views, the consultation was discussed at the CCBE Training committee and with members of the CCBE Justice Forum group.

The CCBE would like to submit the following comments in response to the Commission Consultation of Stakeholders on European Judicial Training:

1) Scope of European judicial training activities:

- a) *Member States have the primary responsibility regarding judicial training and its content at national level. Should Member States include training on EU law (substantive and procedure law) and national judicial systems in university curricula?*

Yes, this should be provided and already is in many Member States.

- b) *Should Member States include this type of training as prerequisite for appointment to some professions of justice?*

While knowledge of EU law is highly desirable for national judges, it should not be a prerequisite for judicial office. Judicial appointment is within the discretion of the Member States. As stated at a) above, many judges will have studied EU law during their university degree.

- c) *As far as initial and continuous training of legal practitioners on EU matters are concerned, primary responsibility also lies with Member States.*

For initial training primary responsibility is for the Member States. For continuing training primary responsibility is with local bars and law societies. The CCBE welcomes the ongoing involvement of the European Commission in continuing training in European law through the facilitation of such training.

2) Target audience of European judicial training activities:

- a) *While priority should be given to training of judges and prosecutors, would you agree that it is necessary for the proper implementation of EU legislation that additional support should be given to the training of lawyers who, in many court cases, are the ones to raise issues relating to the proper implementation of EU legal instruments?*

All actors in the judicial sphere – judges, prosecutors and lawyers are of equal importance. The training of lawyers in European law is critical as lawyers are the gatekeepers of the judicial sphere. In

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most fields of law, it is client, advised by his lawyer who decides whether a case should be brought to court.

b) *Should other legal professions be targeted as well: court judicial staff, notaries, mediators?*

While it is desirable that training be given to other legal staff, priority should be given to training for lawyers, prosecutors and judges.

c) *Should the training of legal translators and interpreters be considered part of European judicial training?*

See the answer to 2b) above.

3) Training needs of the different legal practitioners:

a) *What are the training needs in EU legislation and EU legal instruments of the different types of legal practitioners involved in European judicial cooperation?*

There are a wide diversity of training needs. It is impossible to limit any prospective training as legal practitioners practice in so many different areas. Training should be practice oriented, provided at geographically convenient locations and provided at a reasonable cost.

The CCBE believes that the following suggestions of skills and knowledge might help to contribute to the realisation of a common European judicial area:

- Knowledge of the legal order, procedures and institutions of the European Union:
 - Knowledge of main doctrines of EU law (principles of supremacy, direct applicability and direct effect) and the methods of interpretation used by the Court of Justice of the European Union
 - Knowledge of the legal order and procedure of the Court of Justice of the European Union
 - Knowledge of the EU's decision-making process
 - Knowledge of how to find, research and use EU law
 - Practical advocacy skills regarding the EU institutions
- Ability to recognise the relevance of EU law for lawyers' practice
- Knowledge of substantive EU law relevant to the lawyers' area of practice
- Knowledge of the relation between EU institutions and national authorities and various instruments facilitating exchange of information (for example, regarding the European arrest warrant)
- Implementation of EU law into national law in comparative national terms
- Knowledge of legal aid instruments
- Knowledge of basic procedural and alternative dispute resolution systems within the EU
- Knowledge of the legal order and procedure of the European Court of Human Rights
- Knowledge of European legal languages
- Comparisons between different legal systems of EU Member States, for example:
 - a compilation of materials which could be contained e.g. on the E-justice portal (and/or European Judicial Network) including information on the profession itself;

- a mapping of the differences between the legal systems could also contain an indication of how the EU in its organisation and legislation has drawn on various legal systems.

b) *Within the EU acquis, should there be any areas of priorities?*

It is difficult to indicate any priorities as European law is now so pervasive and lawyers practice in some many diverse fields. Our view of the training necessary is set out at a) above.

c) *What are the training needs that are not yet covered and which would be necessary to support the development of the European Area of Justice?*

These training needs relate to the kind of training that is necessary rather than specific areas of law. There is a need to bring together practitioners through training at a European level through conferences, exchanges and electronic means. However, this must be supplemented by training provided at the local level of a practice based nature and which is inexpensive. Some of this training should be of an interactive or "hands on" nature. This training is costly to provide and will require financial support to reach the greatest number.

d) *What are the training needs of legal practitioners that could best be covered by training activities organised at European level?*

One of the most effective methods of training that can be organised at the European level is online training. This could involve the promotion of for example:

- E-learning courses, seminars and conferences
- Recorded trials that can be analysed through online fora
- Online demonstrations on the use of existing and/or upcoming website research tools (for instance, EurLex)

We have also detailed other training methods in our response to 3a) and c) above. It is important to bring legal practitioners from various jurisdictions together for conferences and seminars on EU law. This helps to disseminate EU knowledge and its practical application. To receive funding participants in such seminars/conferences may be asked to provide training to fellow legal practitioners in this local area.

4) Increase the number of European judicial training activities:

a) *Would an increase of funds at national and EU levels dedicated to European judicial training activities be part of the answer?*

Yes it would. Such funding must also be applied to training for lawyers and prosecutors as they are equal partners with judges in the judicial sphere.

b) *Would monitoring and follow-up of implementation by Member States of obligations and/or recommendations regarding continuous training of legal practitioners be a step in the right direction?*

No. The regulation of continuing training is within the competence of Member States and in many States has been delegated to the national bar. There are significant differences at national level with no continuing training required in some states, continuing training based on prescribed hours in other states and training based on outcomes to be achieved in others. These differences follow on from considerable differences in the qualification process in different Member States.

5) **Increase participation in European judicial training activities:**

- a) ***What should EU policy be in order to promote the training of more legal practitioners in EU legislation and national judicial systems?***

EU policy should be to encourage the provision of relatively inexpensive, practice based training in as many accessible locations as possible.

- b) ***Can you suggest any ways to increase the participation of legal practitioners in training activities on EU legislation and in activities involving participants from several Member States and in activities taking place in another country?***

These training activities could be recognised by local bars and law societies as fulfilling national continual training obligations. Activities that involve legal practitioners travelling to other states must be heavily subsidised and extensively marketed and advertised.

6) **Improve the quality of EU co-financed projects:**

- a) ***What should EU policy be regarding its financial programmes in order to increase the quality of judicial training projects presented for EU co-financing?***

The procedures for accessing funding should be as straight forward as possible. At present there is a perception of European Commission funding initiatives as being too complex and bureaucratic and too difficult for small bars to apply to. It would be very helpful if guidance was provided on applying for funding.

- b) ***Would you have any suggestions to help improve the quality of projects, in addition to guidelines and indicators elaborated by the Commission?***

Local bars and law societies could evaluate training given and get direct feedback from attendees. However, they will require assistance in doing so. This could be provided by a European Commission website giving information and training on obtaining such feedback.

- c) ***Apart from the provision of guidelines and quality indicators elaborated by the Commission, what would help project promoters to propose, set up and implement high-quality projects?***

The process for applying should be as simple and transparent as possible. Support will be necessary to ensure that smaller bars and regional promoters are aware of the funding and feel that they can apply for it.

7) **Common curricula on EU legislation:**

- a) ***Could the definition of common curricula on EU legislation for the different legal professions be useful and, if so, why?***

No. It should remain within the competence of Member States. This is due to the considerable differences in legal education in the Member States.

- b) ***What would be encompassed by such curricula?***

See the answer to a) above.

8) Training methodologies:

a) *What are the training methodologies that would be the most useful to develop among legal practitioners: the knowledge of EU legislation, the knowledge of national judicial systems and the know-how on implementation and application of EU legislation?*

Courses, seminars and conferences are valid methods of theoretical and practical training, especially when combined with more interactive methods such as round table discussions and moot courts.

The meeting of lawyers with members of the judiciary and other legal professionals to exchange knowledge and experience can add tremendous value to the learning environment.

Such training can be run in existing facilities provided by European institutions or by Bars and Law Societies (rotating venue).

Furthermore it is generally viewed as an asset that the trainers themselves, in addition to being skilled teachers, have hands-on experience with the subject taught. It is therefore considered that it would be of interest to lawyers if courses could be held by EU personnel, specialised lawyers and qualified trainers who are dealing with the relevant subject on a daily basis and can place the theory in a practical context.

Provision of "Training kits" about EU law instruments, prepared by the European Commission, (for instance, DVDs) is helpful as would be training on new instruments promoted by the EU. This could back the political agenda of the EU in a practical way and help improve implementation.

Support for Web portals (linked to or part of the e-justice portal):

- Providing information about EU training programmes scheduled by Bars and Law Societies and by other qualified training providers
- Containing a secure Intranet where DVDs and other material can be uploaded
- Supporting a forum where participants can share ideas
- Providing information about the structure of the lawyer's profession
- Listing or linking to legal textbooks on national law and national legislation especially those which already exist in other European languages
- Publication of seminars and conference documents

In order to facilitate participation by lawyers, especially sole practitioners or lawyers from small firms, e-learning could be used as a training method.

b) *Should different training methodologies be envisaged depending on the objective of the training and depending on the target audience?*

Yes, see answer to a) above.

9) Language training:

a) *Is knowledge of a second language necessary for legal practitioners?*

Knowledge of a second language is desirable for most professions, including legal practitioners, but is not necessary.

b) *Should their training in a second language be part of national training schemes or of European judicial training?*

No. It is for Member States to decide whether knowledge of a second language should be required.

- c) ***Could it be possible to envisage that legal practitioners learn a second language from scratch in the course of their initial or continuous training or should it be a prerequisite for appointment?***

A mandatory requirement to learn a second language can only be imposed by Member States. Legal practitioners can be encouraged to learn languages as part of continuing training.

- d) ***Should any objectives be set for language training of legal practitioners at European level and, if yes, which ones?***

No, see answer to c) above.

10) **Exchanges:**

- a) ***What type of European exchanges between legal practitioners, especially judges and prosecutors, would be most useful to meet their training needs?***

It is important to develop placement programmes as they are a key tool to foster mutual confidence and trust in the European legal systems. They help improving academic and practical knowledge and skills as well as legal language abilities at the same time. Several national lawyer organisations have carried out such placement programmes.

Such programmes should cover:

- Practical placements in law firms
- Practical placements in national courts
- Placements in EU institutions and bodies
- Short study trips to familiarise with the EU institutions and bodies

- b) ***What would be the best way to increase the number of judges and prosecutors taking part in exchanges?***

It is difficult for the CCBE to comment on making such exchanges attractive to judges. In order for these placement programmes to work for lawyers/prosecutors, it is important to:

- Prepare written guidelines for placement programmes which should include:
 - Comprehensive description of knowledge and skills to be obtained
 - Length: depending on the purpose of the programme and the specific needs of the lawyer, placements could range from a few days (short study trips of 2-3 days, for instance), a few weeks to a few months or up to 1 year.
- Require the lawyer/prosecutor to disseminate their experience and the knowledge obtained on arrival home
- Publicise the placement opportunities and their purpose

- c) ***Could exchanges between national judicial schools and other training structures be a way to increase the number of judges and prosecutors taking part in exchanges, since courts are not necessarily designed to host significant numbers of trainees?***

Yes. It would make them aware of the need for further cooperation between institutions & Member States.

d) *Could focusing on young and newly appointed judges and prosecutors be a way to ensure the maximum long-term impact of the exchanges?*

Not necessarily. While young and newly appointed judges/prosecutors/lawyers may be more willing to avail of such exchanges, they are of greater benefit to longer serving judges/prosecutors/lawyers.

e) *Would a month be the most appropriate length for such exchanges between judges and prosecutors in order to optimise the benefits of the exchange?*

Based on availability one month would be appropriate. Longer exchanges would be of even greater benefit. However, to ensure that exchanges do occur shorter periods should also be contemplated. The longer the exchange period, the more difficult it becomes for more experienced lawyers to participate as they may either be sole practitioners or be playing a managerial role in their firms.

f) *How might it be possible to promote exchanges between lawyers while not favouring only big practices but also smaller ones and while not financing intra-practice exchanges?*

This will be difficult to achieve. Shorter exchanges of a week or two might help. Information on such exchanges would need to be widely disseminated and firms of different sizes and in different practice areas would need to be involved.