



**Réseau Européen de Formation Judiciaire
European Judicial Training Network**

WORKING GROUP 'PROGRAMMES'

Subgroup Civil

European Civil Training Guidelines



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GENERAL INTRODUCTORY PART

In this document, the main fields relevant for judicial training in the area of European civil justice will be assessed.

To do so, all potential themes have been gathered and listed under the following (each of them hereinafter referred to as ‘Chapter’):

- A) Civil Judicial Cooperation
- B) European Civil Procedure
- C) Intellectual Property

Each Chapter consists of several sub-chapters (each of them hereinafter referred to as ‘Sub-Chapter’) which should, seen all together, present the complete area of relevance for judicial training in European civil justice.

Within each Sub-Chapter, different topics will be identified (each of them hereinafter referred to as ‘Topic’) and assessed according to the following five main categories (each of them hereinafter referred to as ‘Main Category’):

1. Introduction

In relation to each Topic, the main features of the European legal instrument will be shortly presented as well as its relevance to the judiciary and recommended content of the training programme will be outlined.

2. Instruments and case law

Within this point, the relevant legal instruments as well as landmark decisions of the ECJ/CFI and national courts will be listed. The key points of the decisions will be explained very shortly.

3. Trainers

In relation to each Topic or Sub-Chapter, the guidelines will assign a recommendable profile of the trainers. Trainers can be categorized in six main groups:

A) International experts

Non-exclusive examples for international trainers are representatives of the Hague Conference on Private International Law, the Council for Europe, etc.



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B) EU experts

European experts would be representatives of the EU-organs such as the European Court of Justice, the Court of First Instance, the Council, Commission, and European Parliament. Furthermore, trainers would be representatives of the relevant EU-agencies such as the European Judicial Network in Civil and Commercial Matters, the European Consumers Centres Network ECC-Net and other.

European experts should be especially deployed for specialised seminars, workshops, and study visits.

C) National practitioners

National experts would be defined as practitioners with a special knowledge on EU civil justice, its implementation in their member state, and experience with cross-border cooperation in this regard.

Trainers might be representatives of the national ministries of justice, judicial councils, judges and prosecutors, administrators, lawyers, attorneys, court clerks, notaries and other of the appropriate profile according to the topic covered.

Given this professional background and experience, national experts should be especially deployed in specialised seminars and workshops.

D) Experts academia/Scholars

Academic experts would be university professors and associate professors, researchers, doctorates and assistant professors.

Experts of the academia would be representative of both, national universities as well as 'EU universities' such as the College of Bruges, the European University Institute of Florence, etc.

Academic experts should be especially deployed for basic courses and distance learning courses.

E) Experts of training institutions

Experts from the national training institutions can be defined as judges, prosecutors, magistrates and trainers working in the national judicial schools and are therefore very familiar with the special content-wise, organisational, and pedagogical requirements of judicial training.

F) Experts of NGOs

Experts from NGO can be defines as lawyers, researchers, doctorates that work for national and European NGO's. They are of an essential importance in topics with direct personal effects such as family questions, international child abduction, legal aid and other.

Depending on the topic, experts from NGOs should be especially deployed in specialised seminars.



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4. Trainees

Furthermore, the potential trainees for each sub-topic are defined and assign respectively. Trainees can be divided into the following categories:

A) Senior judges

This group covers judges that have long-standing experience in the field and are extremely familiar with practical problems and solutions in the daily juridical work.

B) Junior judges

This group covers young judges that have just started their career within the jurisdiction. Having just passed university, members of this group usually have a very state-of-the art theoretical legal knowledge but only few practical experience.

C) Senior prosecutors

This group covers judges that have long-standing experience in the field and are extremely familiar with practical problems and solutions in the daily juridical work.

D) Junior prosecutors

This group covers young judges that have just started their career within the jurisdiction. Having just passed university, members of this group usually have a very state-of-the art theoretical legal knowledge but only few practical experience.

E) Futures

The following persons might fall within the group of aspirants:

- Students at the end of their studies that have very good chances and proven interest to become a judge or prosecutor
- Post-gradual students in the relevant fields
- Trainees such as, for instance, the French ‘auditeurs de justice’, Spanish ‘jueces en prácticas’ or the German ‘Referendare’ that have very good chances and proven interest to become a judge or prosecutor.

5. Methodology

A recommendation for the training method is given for each Topic or Sub-Chapter. Training methods can be divided as follows:



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A) Training method

A1) Basic seminars:

Basic seminars should be defined as training events in which the overall structure of the respective field of law shall be presented. Their optimal length should range between 3-5 days. The objective of such a training is to introduce participants to the topic and allow them to gain a comprehensive understanding of the theme.

Basic seminars can be combined with *complementary advanced e-learning courses*.

Furthermore, a basic seminar can be *combined with a study visit* to, for instance, a European institution or agency, other judicial schools, etc.

A2) Specialized seminars

Specialized seminars should be defined as training events in which a certain topic is presented in detail. The optimal length of such a seminar would be between 2-3 days. The objective of such a training should be to offer an intensive training on a very specific topic. An in-depth training can include practical training methods such as case studies and workshops, the main training however would consist of advanced presentations of the respective topics.

Specialized seminars can be combined with complementary advanced e-learning courses.

A3) Workshops

Workshops should be defined as events in which the focus is on practical training. The ideal length of a workshop would be 1-2 days. Training methods used in a workshop should range from case studies, analysis of questions that the instruments put and possibilities for answering them as well as possible proposals for modification, moot courts and other role games.

A4) Study visits

Study visits will offer participants the opportunity to get a realistic insight into the daily work of the European institutions and agencies as well as their national counterparts such as Courts, central authorities etc. Such an experience will help to better understand the work of these institutions, the role they can play to support the practitioners, obstacles that might appear and in this way, further the (mutual) trust in and consequently usage of these institutions.

EU and other institutions to be especially mentioned for the purposes of these guidelines are:

- European Court of Human Rights (ECHR)
- European Court of Justice (ECJ)
- European Judicial Network in Civil and Commercial Matters (EJN-Civil)
- European Consumer Centres Network (ECC-Net)



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A5) Distance learning courses

Within the framework of the so-called e-learning, a further possibility for distance learning courses arises. These courses can last between 3-6 months. Courses can cover the area of basic courses as defined above as well as in-depth courses although the main focus should lie on basic courses that can offer a very comprehensive overview on European civil justice. Methods used in this courses can be: explanatory papers to be read, multiple-choice tests, case studies, videos, multiconferencing, virtual forums etc.

The distance e-learning programme can be completed by a final (and if possible also initial) attendance session.

B) Complementary e-learning

Basic seminars, specialized seminars and workshops can be completed by an advanced e-learning programme.

B1) Within the frame of *basic seminar*, such a programme could consist of introductory papers that the trainee can read beforehand and that are tested by multiple-choice questions. Due to the complementary nature of these activities they could last (depending on the topic) between 4-6 weeks.

B2) For *specialised seminars*, the e-learning tool can be used to allow participants to begin the course on the same level of knowledge by offering them an initial introductory training at home. Again, the training can consist of explanatory papers to the topic and multiple-choice questions. Due to the specialised nature of these activities they could last (depending on the topic) between 4-6 weeks.

B3) In the framework of *workshops*, the e-learning tool can offer a method to prepare participants already in-depth, so within the time of the workshop, time can be exclusively devoted to the problems of solving actual cases.

C) Priority

In the area of European civil justice, development is still vast and many new field are just entered on the EU level. Therefore, it is extremely difficult to assess which areas of law will become relevant in which timeframe in addition to the existing legislation. Nevertheless, these guidelines will also classify the level of priority that should be given to the listed topics. However, it should be noted that these levels can be quickly overruled.

Three different priorities are assigned to the each sub-topic:

C1)Top priority

C2)Priority

C3)Recommendable

Again, it is essential to emphasize that these assignment of a sub-topic to the category might considerable change according to the developments of the EU civil justice legislation.



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D) Format

Depending on the objective of the course, different formats of training can be essential. Potential formats for training courses are:

- D1) District*
- D2) Regional*
- D3) National*
- D4) Trans-national*
- D5) EU-wide*

A training event that constitutes a basic seminar and or specialised seminars that focus of the national implementation of a European law should preferably be held on a *district, regional, or national* level depending whether a national-wide approach is required as well as on mere practical reasons such as the size of a country and amount of trainees.

Especially with regard to civil justice in the EU, cross-border cooperation gains more and more importance. Thus, especially workshops but also to basis and specialised seminars, that are held on a *trans-national* can provide immense added value. It furthers the understand of the problems within the legal systems of the *EU-wide* counterparts, enhances mutual trust in each other and provides for a network of contacts.

6.- Tabular Overview

At the end of these guidelines, a tabular overview on all topics and recommended methods can be found. In this way, a quick reference list can be provided.

Topic	1. Instruments and case law	2. Trainers	3. Trainees	4. Methodology
	List of documents	A) International experts B) EU experts C) National practitioners D) Experts academia/Scholars E) Experts training institutions F) Experts of NGOs	A) Senior judge B) Junior judges C) Senior prosecutor D) Junior prosecutors E) Futures	Training method: A1) Basic seminar A2) Specialised seminar A3) Workshop A4) Study visit A5) Distance learning course E-learning B1) basic seminars B2) specialised seminars B3) workshops Priority C1)Top priority C2)Priority C3)Recommendable Format D1) District D2) Regional



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				D3) National D4) Trans-national D5) EU-wide
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CIVIL JUDICIAL COOPERATION

1.- Introduction

The basic foundations for judicial cooperation in civil matters were already laid in 1968 with the conclusion of the Brussels Convention on Jurisdiction and Enforcement regulating competences, recognition and enforcement of legal titles. In 1997 the Treaty of Amsterdam defined the Union as an “Area of Freedom, Security and Justice” and in doing so transferred the area of judicial cooperation in civil matters (and other important areas) to the First Pillar. Since then, cooperation in civil matters can be - and is - regulated by classic Community legislation. Thus, today’s *acquis communautaire* in the field of judicial cooperation is characterised by the transition from using Conventions, which cannot enter into force until they have been ratified by all member states, to creating unified acts in the form of Regulations, Directives, Decisions or Framework Decisions.

At the Tampere summit in October 1999, the EU Ministers confirmed the important role that mutual recognition plays in EU judicial cooperation. They held that enhanced mutual recognition of judicial decisions and judgments as well as the approximation of legislation would facilitate cooperation between authorities and improve the judicial protection of individual rights. As a consequence, the “programme of mutual recognition” was adopted in November 2000 by the EU Council of Ministers. The Treaty of Nice brought further progress since it initiated a transition to a procedure of co-decision under Article 251 EC for legislative measures in the field of judicial cooperation in civil matters (with the exception of family matters).

Judicial cooperation in civil and commercial matters provides the basis for a functioning single market, in which the free movement of persons as well as goods and services is guaranteed. However, a properly functioning single market does not only require that the cooperation between courts of the Member States of the European Union is improved and simplified (by establishing the appropriate legal framework) but also that it is accelerated. Therefore - namely in order to speed up the cross-border transmission of judicial and extra-judicial documents as well as the taking of evidence in transnational cases and to foster cooperation between the judicial authorities in general - it is essential to coach and instruct national judges who have to apply and implement the instruments in force. Hence, a judicial training curriculum in the area of civil cooperation should comprise assorted legal instruments as well as constant and fundamental jurisprudence concerning these instruments.



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Since judicial cooperation in civil and commercial matters is such a vast legal area, the curriculum that eventually emerges from the various training guidelines drafted by the EJTN should be built around the trainees' needs and anxieties. Therefore, emphasis must be laid on those instruments which national judges mostly deal with and which they consider difficult to implement. A selection of topics could be identified as part of an orientation phase before carrying out new training programs through a basic evaluation of national judges' training needs.

When creating a basic outline on how the training of European Judges on Civil Cooperation could and should be enhanced and which fields and issues must be emphasised, a basic distinction between topics that frequently affect individual citizens (such as divorce and parental responsibility, bankruptcy, maintenance claims, alternative dispute resolutions, consumer issues as well as simplified and accelerated procedures) and topics that judges most often are confronted with (such as enforcement of judgements, service of documents and taking of evidence) should be made, for the latter's needs define the main field of attention in the present context.

2.- Instruments and case law

a) General Instruments on Civil and Commercial Matters

- Council Resolution of 25 May 2000 on a Community-wide network of national bodies for the extra-judicial settlement of consumer disputes;
- Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings;
- Commission Decision of 25 September 2001 adopting a manual of receiving agencies and a glossary of documents that may be served under Council Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters;
- Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;
- 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;
- Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims;
- Council Decision of 5 October 2006 on the accession of the Community to the Hague Conference on Private International Law;



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- Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure;
- Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure;
- Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II);
- Commission Decision of 16 July 2007 amending Decision 2001/781/EC adopting a manual of receiving agencies and a glossary of documents that may be served under Council Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters;
- Decision No 1149/2007/EC of the European Parliament and of the Council of 25 September 2007 establishing for the period 2007-2013 the Specific Programme Civil Justice as part of the General Programme Fundamental Rights and Justice;
- Council Decision of 15 October 2007 on the signing, on behalf of the Community, of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;
- Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters;

b) Family Matters

- Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children concluded in October 1996;
- Council Act of 28 May 1998 drawing up, on the basis of Article K.3 of the Treaty on European Union, the Protocol on the interpretation by the Court of Justice of the European Communities of the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters;
- Council Decision of 19 December 2002 authorising the Member States, in the interest of the Community, to sign the 1996 Hague Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children;



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- 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, repealing Regulation (EC) No 1347/2000;

c) EJN- Civil

- Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters;

d) Case Law Court of Justice of the European Communities

- International Jurisdiction, Recognition and Enforcement (General)
 - Mines de Potasse d'Alsace 30 November 1976
 - Sanders 14 December 1977
 - Bertrand 21 June 1978
 - Denilauer 21 May 1980
 - Klomps 16th June 1981
 - Ivenel 26 May 1982
 - Kalfelis 27 September 1988
 - Eifer 4 March 1982
 - Gubish Maschinenfabrik 8 December 1987
 - Reichert 10 January 1990
 - Rich 25 July 1991
 - Mulox 13 July 1993
 - Solo Kleinmotoren 2 June 1994
 - Custom Made Commercial 29 June 1994
 - Tatry 6 December 1994



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- Shevill 7 March 1995
- Van den Boogaard 27 February 1997
- Benincasa 3 July 1997
- Mietz 27 April 1999
- Dammsommer 27 January 2000
- Krombach 28 March 2000
- Renault 11 May 2000
- Coreck Maritime GmbH 9 November 2000
- Préservatrice Foncière Triard 15 May 2003
- Tacconi 17 September 2002
- Petra Engler 20 January 2005
- Gruber 20 January 2005
- GIE 26 May 2005
- Verdoliva 16 February 2006

- International Jurisdiction, Recognition and Enforcement (Family)
 - Kertin Sundelind 29 November 2007
 - “C” 27 November 2007

- Insolvency Proceedings
 - Semiconductor Belgium 17 March 2005
 - Susanne Staubitz-Schreiber 17 January 2006
 - Eurofood 2 May 2006



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- Service of Documents
 - Leffler 8 November 2005
 - Plumex 9 February 2006
 - ASML 14 December 2006

e) Further Information: Green Papers

- Green Paper On Alternative Dispute Resolution
- Green Paper On Injunctions Of Payment And Procedures Related To Small Claims
- Green Paper On Law Applicable To Contractual Obligations
- Green Paper On Maintenance Obligation
- Green Paper On Transnational Successions
- Green Paper On The Transparency Of Debtors' Assets

3.- Trainers

Civil Judicial Cooperation is one of the basic topics for the development of an effective Area of Justice. It's a topic directly connected with the daily tasks of practitioners as all instruments are intended not as theoretical tools, but as practical ones. This means that the profile of trainers is to be essentially practical, even though this doesn't mean a lack of commitment to accuracy.

Nevertheless, and due to the different nature of the topics covered, the profiles of trainers can be different so that the best qualities of them all are applied in the areas in which their intervention is of more interest. Even in some areas the intervention of trainers with different profiles is considered to be of real interest as it will provide trainees with a wide scope of all the perspectives from which a topic is to be treated.



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Based on the nature of the topics, a possible suggestion of the profiles of trainers can be the following:

- **General Topics:** They present an overall view of the foundations of civil judicial cooperation and the institutions and technical instruments that are at the disposal for its implementation. Due to that, the profile of trainers is that of persons with a broad vision of the process, thus experts from the EC or members of the European Judicial Network in Civil and Commercial Matters (all of them and specially the d) foreseen in the Decision creating the Network) are perfectly suited for this task. They have an updated information of the topics covered and can offer their experience and information of the most recent events in the process. Besides this, also experts and scholars could be perfectly suited for this task as they have a broad knowledge of the topics and a general vision that can suit perfectly well into the development of general training actions (A, B, D)

- **International Jurisdiction:** This topic needs an in depth analysis of rules on jurisdiction, order in which to implement them, connecting points in each issue, case law and other. Due to the nature of the matter, the intervention of persons devoted to training (experts, scholars, specialised trainers in judicial training institutions) is considered as basic as a very in depth study of the topics is needed. Besides them, rules on jurisdiction need a proper implementation and in this area the rule of practitioners (essentially judges as well as in some places also prosecutors as they also are responsible for the good implementation of international jurisdiction rules due to the relation they have with state sovereignty) is essential as in many cases the rule of the judge is basic as some of the rules can be applied ex officio and the problems related to them and all possibilities on their implementation are to be taken into consideration (C,D,E).

- **Service of documents, taking of evidence, recognition and enforcement:** This area of training (essentially centred in service of documents and taking of evidence) needs a very deep knowledge of procedural rules and their practical implementation. Thus the most suited profile for trainer could be that of an expert legal practitioner (judge, huissier...) that knows well know the instruments need to be applied, and how they are to be integrated into national procedural rules. In family matters there is also big interest in integrating social agents into training actions due to the different aspects that this area is to cover. Thus experts from administrations and NGO's devoted to this area of action could also be of great importance. In relation to the action of networks and the institutional instruments that could be of use in helping a proper development of civil judicial cooperation, also the intervention of members of networks and EU experts are of an essential importance (B, C, F).

- **Private International Law:** This topic (as it happened with international jurisdiction), needs an in depth analysis of the rules on private international law, order in which to implement them, connecting points in each issue and other. Due to the nature of the matter, the intervention of persons devoted to training (experts, scholars, specialised trainers in judicial training institutions) is considered as basic as a very in depth study of the topics is needed. Once the law to be applied is set, the problem of how to implement a foreign legislation (if that's the case) is the second hurdle that needs to be taken into consideration. In this area the intervention of persons responsible coming from central authorities and members of the Civil Network is basic as they are the persons foreseen in the instruments responsible for information in this area. This makes them the most suited for training in this area



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essentially by explaining how information is to be available either institutionally or through electronic means (databases, modules on basic foreign law ...) (B, D, E).

- Recognition and enforcement of judicial decisions: This area of training needs a very deep knowledge of procedural rules on enforcement of judicial decisions. Thus the most suited profile for trainer could be that of an expert legal practitioner responsible for civil enforcement (judge, huissier, authorities responsible for civil enforcement...) that knows well know the instruments need to be applied, and how they are to be integrated into national procedural rules (C).

4.- Trainees

In relation to those to whom training is to be addressed, an important consideration is to be made from the beginning. It's no other than making clear that training in the topics object of this document is essential so that all legal practitioners (specially judges and in many topics also prosecutors as they both are the professional covered under the actions developed by EJTN) have a knowledge of the basic points mentioned before, depending the deepening of that knowledge on the profiles they have (futures or serving judges/prosecutors).

- Futures: All persons aspiring to be integrated into the Judiciary (judges or prosecutors) are considered as requiring at least a basic knowledge of the possibilities involved in civil judicial cooperation. That training is to be provided by University (while they get their law degrees) and can be a requirement of selection procedures by including this basic knowledge as one of the topics of selection procedures (maybe with different approaches for judges and prosecutors if the selection is differentiated). In those countries where an initial training is foreseen, this knowledge is to be included as part of the training program (by deepening the basic knowledge they are required to have), so that all new judges (and in some degree also prosecutors) know how to implement the instruments and whom to access in case they need additional information (members of Networks, central authorities etc...).

- Senior/Junior judges/prosecutors: Due to the importance of civil judicial cooperation in the daily tasks of judges (and in some degree also prosecutors), ongoing training programs need to offer training in these topics both by a general program that offers a wide training in all topics, and also by specialised seminars. They are to be offered yearly to all members of the Judiciary so that they all can get access to this training as part of their curricula.

5.- Methodology

Judicial Cooperation in civil and commercial matters is primarily a practical topic but still (in order to apply the instruments correctly) judicial trainees initially have to gain a basic understanding of the respected instruments. Therefore, multi-layered approach should be used in training.



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a) General Instruments on Civil and Commercial Matters (A1, A2, A3, B1, B2, B3):

This area of action is one of the basic ones and practically all training formats could be of use.

- Basic Seminars: They offer a good profile when an overall view of one topic is to be treated (either a general view on civil judicial cooperation or one of the instruments). This enables a good first contact with a topic for those (futures or serving judges or prosecutors) that have the first approach to civil judicial cooperation.

- Specialised Seminars: The format of Seminar can also be considered of much use in case a topic is to be treated on its own (with possible combination of other methods) or a new one has appeared.

- Workshops: They are the most suited method for the training into the use of electronic implementation instruments (use of atlases, databases ...) and for the analysis of specific instruments and mostly their practical implementation. In this second type of workshops the results of the debate (either by the summing up of conclusions or the answer to a questionnaire on problematic topics with possibilities of response) are essential and they need to be made available publicly to all those that were not able to attend either electronically – websites, e-mail...- (even workshops in different places could be developed with a final summing up session of delegates)

- E-learning: This can be considered as one of the most suited methods for training on civil judicial cooperation for serving judges and prosecutors as the topics are perfectly suited for clear documents in which the instruments are explained and for practical cases. E learning enables access to a very wide audience and is perfectly suited for those who don't have the possibility of attending seminars or conferences. In any case it's essential to develop a program suited for the conditions of the topic covered (duration adapted to length), and also to develop strategies that enable an active participation of those to whom training is addressed.

As all judges and prosecutors in the EU need to have this knowledge, it can be considered as a top priority (C1). Due to its very open nature, these training actions can be developed at different geographical levels, even though as e-learning opens an unrestricted access, it could be of use to develop this action in a range as wide as possible (D4, D5). Besides this and in order as to provide direct training on this topic to all judges and prosecutors in the EU, also national or regional training activities could be developed (D2, D3).

b) Family Matters A2, A3, B2, B3):

In this area also different methodologies could be applied always taking into account that the topic covered has a specialised nature, this means that the systems which could be of more use in training these topics are:

- Specialised Seminars: The format of Specialised Seminar is considered as the best as in this area very specific topics with their consequences are to be included.

- Workshops: They are the most suited method for the analysis of instruments in this very special area and their practical implementation. As mentioned before, the results of



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the debate (either by the summing up of conclusions or the answer to a questionnaire on problematic topics with possibilities of response) are essential and they need to be made available publicly to all those that were not able to attend.

- E-learning: This can be considered as one of the well suited methods for training as it enables access to a very wide audience. E-learning methodologies could be developed further in order to create e-workshops and family law chat-rooms, enabling a quick exchange of information and online debates.

In relation to the priority level of this training and due to the importance of the topic covered and the affection of persons, it can be considered as a top priority (C1) as it's been indicated by the European Commission. In relation to the geographical level of these training actions and due to the specialised nature of the training, it could be better done at a trans-national or EU-wide level so that the results could be as useful as possible (D4, D5).

c) EJM- Civil:

The objective of this learning is no other than offer full information of the capabilities that EJM-Civil gives to all practitioners in the field of civil judicial cooperation. Due to its practical nature the format of Workshop (A3) can be considered as the most suited one, being considered a training of much interest (C2). In relation to the format, it could be well dealt at national or regional level (D2, D3), so that a good direct contact could be get between judges and prosecutors and members of the Network so that the relation is fluid.

6.- Tabular Overview

CIVIL JUDICIAL COOPERATION				
Topic	1. Instruments	2. Trainers	3. Trainees	4. Methodology
General Instruments on Civil and Commercial Matters	* Council Resolution of 25 May 2000 on a Community-wide network of national bodies for the extra-judicial settlement of consumer disputes; * Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings; * Commission Decision of 25 September 2001 adopting a manual of receiving agencies and a glossary of documents that may be served under Council Regulation (EC) No 1348/2000 on the service in the Member States of judicial and	A B C D	A B C D E F	A1,A2, A3 B1, B2, B3 C1 D2, D3, D4, D5



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	<p>extrajudicial documents in civil or commercial matters;</p> <p>* Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;</p> <p>* 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;</p> <p>* Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims;</p> <p>* Council Decision of 5 October 2006 on the accession of the Community to the Hague Conference on Private International Law;</p> <p>* Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure;</p> <p>* Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure;</p> <p>* Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II);</p> <p>* Commission Decision of 16 July 2007 amending Decision 2001/781/EC</p>			
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	<p>adopting a manual of receiving agencies and a glossary of documents that may be served under Council Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters;</p> <p>* Decision No 1149/2007/EC of the European Parliament and of the Council of 25 September 2007 establishing for the period 2007-2013 the Specific Programme Civil Justice as part of the General Programme Fundamental Rights and Justice;</p> <p>* Council Decision of 15 October 2007 on the signing, on behalf of the Community, of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;</p> <p>* Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters</p>			
Family Matters	<p>* Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children concluded in October 1996;</p> <p>* Council Act of 28 May 1998 drawing up, on the basis of Article K.3 of the Treaty on European Union, the Protocol on the interpretation by the Court of Justice of the European Communities of the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters;</p> <p>* Council Decision of 19 December</p>	A B C D E	A B C D E F	A2, A3 B2, B3 C1 D4, D5



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	<p>2002 authorising the Member States, in the interest of the Community, to sign the 1996 Hague Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children;</p> <p>* 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, repealing Regulation (EC) No 1347/2000;</p>			
EJN – Civil	* Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters;	B C	A B C D E	A3 C2 D2, D3

EUROPEAN CIVIL PROCEDURE

1.- Introduction

The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007 sets the legal foundation for the action of the European Union in the future. Among the areas covered, art 65 of the Treaty on the Functioning of the European Union covers also civil procedures as it states that: “1. The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States. 2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring: (e) effective access to justice; (f) the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.

This rule is directly founded in art 65 of the Treaty of the European Community in which there’s also a special mention on civil procedure, being that the cornerstone of the action developed by the EU in this field so far. This article says that: “Measures in the field of judicial cooperation in civil matters having cross-border implications, to be taken in accordance with Article 67 and in so far as necessary for the proper functioning of the internal



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market, shall include: ... (c) eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States”.

Thanks to the rule mentioned above, the EU has started an essential action in the field of civil procedure and access to justice, being the document that set the path towards the implementation of the possibilities foreseen “The Hague Programme; Strengthening Freedom, Security and Justice in the European Union” that was part of the Presidency Conclusions agreed on the Brussels Summit, 4/5 November 2004. On it, there’s a special mention to civil justice and specially to aspects directly related to civil procedure and access to justice. In particular it appears in the parts of the Programme related to Justice when it says that: “The European Council underlines the need further to enhance work on the creation of a Europe for citizens and the essential role that the setting up of a European Area for Justice will play in this respect. A number of measures have already been carried out. Further efforts should be made to facilitate access to justice and judicial cooperation as well as the full employment of mutual recognition. It is of particular importance that borders between countries in Europe no longer constitute an obstacle to the settlement of civil law matters or to the bringing of court proceedings and the enforcement of decisions in civil matters.... 3.4.1 Facilitating civil law procedure across borders. Civil law, including family law, concerns citizens in their everyday lives. The European Council therefore attaches great importance to the continued development of judicial cooperation in civil matters and full completion of the programme of mutual recognition adopted in 2000. The main policy objective in this area is that borders between countries in Europe should no longer constitute an obstacle to the settlement of civil law matters or to the bringing of court proceedings and the enforcement of decisions in civil matters...”.

In order as to fulfil these objectives, the action developed by the EU in this field so far has been very important in the last years, up to the point of the adoption of common procedural rules that are to be applied in the EU as that’s the case with the European Order for Payment Procedure Regulation (EC) Nr 1896/2006 and the European Small Claims Procedure Regulation (EC) Nr 861/2007.

The proposal of this document is no other than that of proposing basic training guidelines in the area of European Civil Procedure so that a clear identification of the main topics in which judges and prosecutors of the EU need to get training in this field, so that a real European judicial culture could be established giving the principles of mutual recognition and confidence a foundation for putting them into action.

2.- Instruments and case law

In the task of setting the basic topics in which judicial training is considered to be needed in the field of European civil procedure, and in order as to provide a clear and structured view of them, the following areas could be distinguished:

- Civil Procedure
- Access to Justice
- Mediation



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CIVIL PROCEDURE

Instruments

- European Union
 - Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on Combating Late Payment In Commercial Transactions
 - Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 Creating a European Order for Payment Procedure.
 - Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July Establishing a European Small Claims Procedure
 - Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to Periods, Dates and Time Limits
 - National legislation complementing Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 Creating a European Order for Payment Procedure and Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July Establishing a European Small Claims Procedure
- Council of Europe
 - Recommendation no. R (84) 5 of the Committee of Ministers to Member States on the principles of civil procedure designed to improve the functioning of Justice
 - Recommendation no. R (95) 5 of the Committee of Ministers to Member States concerning the introduction and improvement of the functioning of appeal systems and procedures In civil and commercial cases
 - Recommendation TR (2003) 17 of the Committee of Ministers to Member States on enforcement
- Hague Conference
 - Convention of 1 March 1954 on Civil Procedure

Case Law

- Court of Justice of The European Communities
 - Case C-312/93 Peterbroeck [1995] and joined cases C-430/93 and C-431/93 Van Schijndel And Van Veen [1995] of 14 December 1995
 - Case C-366/95 Landbrugsministeriet of 12 May 1998
 - Case C-53/04 Marrosu And Sardino [2006] of 7 September 2006
 - Case C-1/06, Bonn Fleisch Ex- Und Import GMBH of 28 June 2007



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ACCESS TO JUSTICE

Instruments

- European Union
 - Council Directive 2003/8/EC of 27 January 2003 to Improve Access to Justice in Cross-Border Disputes by Establishing Minimum Common Rules Relating to Legal Aid for Such Disputes
 - Commission Decision of 26 August 2005 Establishing a Form for the Transmission of Legal Aid Applications Under Council Directive 2003/8/EC
 - Commission Decision No 2004/844/EC of 9 November 2004 Establishing a Form for Legal Aid Applications under Council Directive 2003/8/EC to Improve Access to Justice in Cross-Border Disputes by Establishing Minimum Common Rules Relating to Legal Aid for Such Disputes
 - National legislation developing the Directive
- Council of Europe
 - European Agreement on the Transmission of Applications for Legal Aid - Strasbourg, 27.I.1977
 - Recommendation No. R (81) 7 of the Committee of Ministers to Member States on Measures Facilitating Access to Justice
 - Recommendation No. R (93) 1 of the Committee of Ministers to Member States on Effective Access to the Law and to Justice for the Very Poor
- Hague Conference
 - Convention of 1 March 1954 on Civil Procedure
 - Convention of 25 October 1980 on International Access to Justice

Case Law

- Court of Justice of the European Communities
 - Case C-20/92 Hubbard of 1 July 1993
 - Case C-323/95 David Charles Hayes of 20 March 1997
 - Case C-43/95 Data Delecta Aktiebolag of 26 September 1996
- European Court Of Human Rights
 - Case Airey/V. Ireland of 9 October 1979
 - Case Essaadi/V France of 26 February 2002
 - Case Del Sol /V. France of 26 February 2002



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MEDIATION

Instruments

- European Union
 - Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of Mediation in Civil and Commercial Matters
 - National legislation developing the Directive
- Council of Europe
 - Recommendation No. R (98) 1 of the Committee of Ministers to Member States on Family Mediation
 - Recommendation No R (2002) 10 of the Committee of Ministers to Member States on Mediation in Civil Matters

3.- Trainers

Civil Procedures and Common Rules on them are one of the basic topics for the development of an effective Area of Justice as it's a topic directly connected with the daily tasks of practitioners, due to this, all instruments are intended not as theoretical tools, but as practical ones based on the direct implementation that some of them have in the daily work of Courts. This means that the profile of trainers is to be essentially practical, even though this doesn't mean a lack of commitment to accuracy.

Nevertheless, and due to the different nature of the topics covered, the profiles of trainers can be different so that the best qualities of them all are applied in the areas in which their intervention is of more interest. Even in some areas the intervention of trainers with different profiles is considered to be of real interest as it will provide trainees with a wide scope of all the perspectives from which a topic is to be treated.

Based on the nature of the topics, a possible suggestion of the profiles of trainers can be the following:

- General Topics on Common Procedures: They present an overall view of the foundations of common civil procedural rules. Due to that, the profile of trainers is that of persons with a broad vision of the process, thus international and EU experts (where possible) and persons devoted to training (university professors, specialised trainers in judicial training institutions) is considered as basic as a very in depth study of the topics is needed (A, B, D and E).
- Common Civil Procedures: This area of training needs a very deep knowledge of procedural rules and their practical implementation. Thus the most suited profile for trainer could be that of an expert legal practitioner (judge, clerk, prosecutor...) that knows well know the instruments need to be applied, and how they are to be integrated with national procedural rules. In this task also persons devoted to training (university professors, specialised trainers



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in judicial training institutions) can be of great interest so that a broad vision of the practical implementation of the topics can be attained (C, D and E).

- **Access to justice:** In this part of the curricula the essential profile for becoming a trainer belongs to the persons integrated into institutions responsible in each country for all matters related to legal aid (Bar Associations, Public Administrations, NGO's and other depending on the national situation). They can explain the situation in different countries, explain the practical implementation of trans-national legal aid questions (requests for legal aid in another country, conditions for getting legal aid in other countries and other) and can offer their services in the solution of problems arisen. Besides the intervention of these professionals, that of members of the Judiciary or other legal practitioners (where they are not engaged in the institutions mentioned above such as lawyers, legal representatives such as "avoués" in France or "procuradores" in Spain) can be of interest as the effects of these questions in the civil procedure needs also to be treated (C and F).

- **Mediation:** This is a very specialised topic in which both the benefits and possibilities that mediation offers and the integration of mediation into civil procedures need to be treated. Due to this the intervention of both mediators, psychologists and experts in civil procedure is to be taken into consideration as they could offer a broad view of the topics, possibilities of mediation and integration of mediation possibilities in procedures. This means that both a theoretical as well as a practical view (not only juridical) needs to be given (C, D, E and F).

4.- Trainees

In relation to those to whom training is to be addressed, an important consideration is to be made from the beginning. This is no other than making clear that training in the topics object of this document is essential so that all legal practitioners (specially judges and in many topics also prosecutors) have a knowledge of the basic points mentioned before, depending the deepening of that knowledge on the profiles they have (futures or serving judges/prosecutors).

- **Futures:** All persons aspiring to be integrated into the Judiciary (judges or prosecutors) are considered as requiring knowledge of the possibilities that common procedures and mediation provide as well as topics related to access to justice and specially legal aid. That training is to be provided by University (while they get their law degrees) and can be a requirement of selection procedures by including this knowledge as one of the topics of selection procedures (maybe with different approaches for judges and prosecutors if the selection is differentiated). In those countries where an initial training is foreseen, this knowledge is to be included as part of the training program (by deepening the knowledge they are required to have and centring that training mostly on practical issues), so that all new judges (and in some degree also prosecutors) know how to implement the instruments correctly. Even tough specialised training could be seen as a positive action, training activities addressed to them need to be centred in the General Topics on Common Procedures.

- **Senior/Junior Judges and Senior/Junior Prosecutors:** Due to the importance of European civil procedure (in all the aspects mentioned above) in the daily tasks of judges (and in some degree also prosecutors), on-going training programs need to offer always training in



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this topics both by a general program that offers a wide training in all topics, and also by specialised seminars. They are to be offered yearly to all members of the Judiciary so that they all can get access to this training as part of their curricula. If the system foresees a proper organisation of training on the topics covered, the general part is to be offered to junior judges and prosecutors and the more specialised part to senior judges and prosecutors, even though as mentioned before, if some of them have a general knowledge from the beginning of their service as judges/prosecutors, a specialised training should also be offered to junior judges and prosecutors.

5.- Methodology

European Civil Procedure is a topic in which both a theoretical and a practical approach needs to be considered as it has a direct effect in the development of civil trans-national procedures.

The theoretical approach provides an accurate and technical knowledge of the instruments and the techniques with which to implement them. The practical vision enables access to the essential information needed for a good application of them, the solution of problems and the good knowledge of the society in which it is to be done.

Due to the wide scope of the topics covered, a multiple approach can be taken by putting together different techniques: seminars (basic and specialised), workshops, distance learning, e-learning, study visits and other. This proposal offers a wide range of methods that could be of use in trying to provide the best knowledge in the different areas mentioned above.

- **General Topics on Common Procedures:** This topic offers an overall view of all the matters included under “civil procedure” in the sense given in this proposal. Due to this the format of basic conferences is of much use as it enables a first approach to the topic. The format of these seminars can be of a meeting lasting some days or an e-learning format with possible combination of both by having conferences before and/or after the e-learning part of the activity (A1, B1). As all judges and prosecutors in the EU need to have this knowledge, it can be considered as a top priority (C1). Due to its very open nature, these training actions can be developed at different geographical levels, even though as e-learning opens an unrestricted access, it could be of use to develop this action in a range as wide as possible (D4, D5). Besides this and in order as to provide direct training on this topic to all judges and prosecutors in the EU, also national or regional training activities could be developed (D2, D3).

- **Common Civil Procedures:** Training on these topics is considered as more specialised, as an in depth study of the instruments, their relation with national law, and the implementation problems needs to be done. To achieve it, training methods that enable a certain degree of specialisation are considered as the most adequate. Thus formats such as specialised seminars (in the format of conferences, e-learning or a combination of both) can be of real interest, as the development of workshops in which groups of experts can put in common possible answers to common problems in the implementation of the instruments (A2, A3, B2 and B3). The results can be object of publications (in paper but basically on electronic format) so that people not attending the activity can have access to them personally



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or in libraries (physical or electronic). The possibilities of a very open system of dissemination of the information that is accessible to all EU judges and prosecutors can make the developing of training activities in this area a priority, even though not in the absolute level given to the general training mentioned above (C2). In relation to the geographical level of this training actions and due to the specialised nature of the training, it could be better done at a trans-national or EU-wide level so that the results could be as useful as possible (D4, D5).

- **Access to Justice:** In relation to access to justice, the basic ideas mentioned above on common civil procedures could be applied, even though due to the more restricted nature of the topic the most suitable format for training could be that of specialised seminars and workshops (A2, A3) where all participants are present with all possibilities of diffusion mentioned, making this action also a priority (C2). In relation to the geographical level of this training actions and due to the specialised nature of the training, it can also be said that it can be better done at a trans-national or EU-wide level so that the results could be as useful as possible (D4, D5).

- **Mediation:** All what has been mentioned on access to justice can be applied to mediation with the possible integration of study visits on the practical implementation of mediation techniques (A4)

The methods, priority and levels mentioned above are the essential ones even though it's essential to point out that to get the best results, a multiple approach is the one that can be considered as more useful by using different methodologies in a training action. So conferences can be combined with workshops so that participants in the conference can have a much proactive role in the treatment of some topics or questions submitted to them offering concrete and precise conclusions of their debates. E-learning can be combined with initial and/or final conferences or workshops that offer a deepening into the knowledge acquired or to be acquired mostly in those areas in which a personal direct contact is much needed. Due to the benefits that a multiple approach offer, it's up to the responsible in the design of the activity to make a good combination of all possibilities, so that the results can be achieved and the activity makes a contribution into the development of an area of Justice and the promotion of mutual confidence.

6.- Tabular Overview

EUROPEAN CIVIL PROCEDURE				
Topic	1. Instruments	2. Trainers	3. Trainees	4. Methodology
General Topics on Common Procedures	Documents on: - Civil Procedure. - Access to Justice. - Mediation	A B D E	E B D	A1 B1 C1 D2, D3, D4, D5



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Common Civil Procedures	<p><u>EU</u> *Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on Combating Late Payment In Commercial Transactions * Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 Creating a European Order for Payment Procedure. * Regulation (EC) No 861/2007of the European Parliament and of the Council of 11 July Establishing a European Small Claims Procedure * Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to Periods, Dates and Time Limits * National legislation complementing Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 Creating a European Order for Payment Procedure and Regulation (EC) No 861/2007of the European Parliament and of the Council of 11 July Establishing a European Small Claims Procedure <u>COUNCIL OF EUROPE</u> * Recommendation no. R (84) 5 of the Committee of Ministers to Member States on the principles of civil procedure designed to improve the functioning of Justice * Recommendation no. R (95) 5 of the Committee of Ministers to Member States concerning the introduction and improvement of the functioning of appeal systems and procedures In civil and commercial cases * Recommendation TR (2003) 17 of the Committee of Ministers to Member States on enforcement <u>HAGUE CONFERENCE</u> * Convention of 1 March 1954 on Civil Procedure</p>	C D E	A (B) C (D)	A2, A3 B2, B3 C2 D4, D5
Access to Justice	<p><u>EU</u> * Council Directive 2003/8/EC of 27 January 2003 to Improve Access to Justice in Cross-Border Disputes by Establishing Minimum Common Rules Relating to Legal Aid for Such Disputes * Commission Decision of 26 August 2005 Establishing a Form for the Transmission of Legal Aid Applications Under Council Directive 2003/8/EC * Commission Decision No 2004/844/EC of 9 November 2004 Establishing a Form for Legal Aid Applications under Council Directive 2003/8/EC to Improve Access to Justice in Cross-Border Disputes by Establishing Minimum Common Rules Relating to Legal Aid for Such Disputes * National legislation developing the Directive</p>	C F	A (B) C (D)	A2, A3 C2 D4, D5



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	<p><u>COUNCIL OF EUROPE</u> * European Agreement on the Transmission of Applications for Legal Aid - Strasbourg, 27.I.1977 Recommendation No. R (81) 7 of the Committee of Ministers to Member States o Measures Facilitating Access to Justice * Recommendation No. R (93) 1 of the Committee of Ministers to Member States on Effective Access to the Law and to Justice for the Very Poor <u>HAGUE CONFERENCE</u> * Convention of 1 March 1954 on Civil Procedure * Convention of 25 October 1980 on International Access to Justice</p>			
Mediation	<p><u>EUROPEAN UNION</u> * Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of Mediation in Civil and Commercial Matters National legislation developing the Directive <u>COUNCIL OF EUROPE</u> * Recommendation No. R (98) 1 of the Committee of Ministers to Member States on Family Mediation * Recommendation No R (2002) 10 of the Committee of Ministers to Member States on Mediation in Civil Matters</p>	C D E F	A (B) C (D)	A2, A3, A4 C2 D4, D5



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INTELLECTUAL AND INDUSTRIAL PROPERTY IN EUROPE

General introduction

Unlike international law and the applicable treaties on the subject, the Treaty on the European Union does not mention the various domains of intellectual property. The closest reference can be found in article 30 of the Treaty which mentions industrial and commercial property. Nevertheless, this has not prevented the European Community from adopting several regulations and directives within this domain.

In the 1960s, the European Commission began to investigate the trade barriers between Member States by means of using intellectual property rights. In order to overcome these barriers, the Commission proposed, on the basis of article 95 of the Treaty, a number of instruments for harmonising national laws on intellectual property; directives in the domains of trade mark law, design law and copyrights were adopted in this way.

Community law largely draws its inspiration on this subject from international law. Judicial training is not confined simply to Community law. Among the international conventions or treaties, it would be useful to make a distinction between the instruments which are applicable to all areas of intellectual property and those specific to certain laws. This distinction can be found in the following guidelines, which first of all propose some general training on this common approach (I) and then go on to mention training on specific areas of intellectual property (II, III, IV, V). Furthermore, it may be noted that certain subjects are interlocked, to the extent that the protection of one law may be covered at national level by several pieces of legislation (to cite an example, an unregistered design or model may be protected by copyright law in certain States; similarly, a three-dimensional mark may sometimes be registered as a design or model, etc.). The various training modules must therefore take this interaction into account. They must also take into consideration, on one hand, the fact that certain aspects of national legislation have specialised judges (e.g. patent law in certain countries) and on the other hand, that specialised courts have been established in certain Member States for trade marks and designs and models. These specialised judges may receive more in-depth training in certain areas.

I. – Intellectual and industrial property in its international and Community context

Training content

Training on the subject of intellectual and industrial property in its international and Community context aims to analyse the following elements:



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- the content and hierarchy of international and Community texts
- the role and the articulation of competences between national, Community and European jurisdictions
- the interpretation of texts by national jurisdictions
- jurisdiction, applicable law and judgements
- respecting intellectual property laws
- compensation and assessment of damages
- civil and criminal actions

Instruments

(a) Treaties, international conventions, TRIPS Agreements on intellectual property in general

- the Geneva Treaty on trade marks adopted on 27 October 1994 (http://www.wipo.int/treaties/en/ip/tlt/trtdocs_wo027.html) WO 027 EN
- the Marrakesh Declaration of 15 April 1994 (http://www.wto.org/english/docs_e/legal_e/marrakesh_decl_e.htm)
- Council Decision of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994), OJ L 336 from 23 December 1994, p 1-2
- Annexe 1C of the Agreement on Trade-Related Aspects of Intellectual Property Rights concerning trade (TRIPS) (www.wto.org/English/docs_e/legal_e/27-trips.pdf)
- The Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886, art. 2, 7 (http://www.wipo.int/clea/docs_new/en/wo/wo001en.html (Industrial property and copyright law: multilateral Treaties, 1997/05/No. 9-01 "IPLEX disc":2003))
- The Paris Convention for the Protection of Industrial Property of 20 March 1883, amended on several occasions, http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.html

(b) Primary Community law

Consolidated versions of the Treaty on the European Union and the Treaty establishing the European Community, Official Journal No C 321E of 29 December 2006 (Articles 30, 81, 82, 96, 95, 157, 163, 251, 295, 308, 310)

(c) Conflicts of jurisdiction (jurisdiction, recognition and judgements) and conflicts of laws of intellectual property



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- Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, (Brussels I) of 22 December 2000, OJ L 12 of 16 January 2001, p. 1-23

- Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), OJ L 199 of 31.7.2007, p. 40-49

(d) Enforcing intellectual property rights, border control and assessment of damages

- Statement by the Commission concerning Article 2 of Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights (2005/295/EC), OJ L 94 of 13 April 2005, p. 37-37

- Commission Regulation (EC) No 1891/2004 of 21 October 2004 laying down provisions for the implementation of Council Regulation (EC) No 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights, OJ L 328 of 30 October 2004, p. 16-49

- 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 195 of 2 June 2004, p. 45-86

- Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights, OJ L 196 of 2 August 2003, p. 7-14

(e) Drafts underway at Community level on criminal sanctions

- Amended proposal for a Directive of the European Parliament and of the Council on criminal measures aimed at ensuring the enforcement of intellectual property rights COM(2006) 168 final of 26 April 2006, not published in the Official Journal, Codecision Procedure COD 2005/0127

- Proposal for a Directive of the European Parliament and of the Council of 12 July 2005 on criminal measures aimed at ensuring the enforcement of intellectual property rights (COM (2005) 0276 final – not published in the Official Journal, Codecision Procedure COD/2005/0127

(f) Relevant rulings



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- C-539/03, 13 July 2006, Roche Nederland BV a.o. v Frederick Primus, Milton Goldenberg, Rec.2006,p.I-6535
Brussels Convention – Article 6, point 1 – More than one defendant – Jurisdiction of the courts for the place where one of the co-defendants is domiciled – Action for infringement of a European patent – Defendants established in different Contracting States – Infringements committed in a number of Contracting States.
- C-4/03, 13 April 2006, Gesellschaft für Antriebstechnik mbH & Co.KG (GAT) v Lamellen und Kupplungsbau Beteiligungs KG (LuK)
Jurisdiction – intellectual property - validity - exception of invalidity - counterclaim
- C-245/02, 16 November 2004, Anheuser-Busch Inc. v Budějovický Budvar, národní podnik, Rec.2004, p.I-10989
Agreement establishing the World Trade Organisation – Articles 2, paragraph 1, 16, paragraph 1, and 70 of the TRIPS agreement – Trade marks – Scope of the proprietor's exclusive right to the trade mark – Alleged use of the sign as a trade name.
- C-4/03, 13 July 2003, Gesellschaft für Antriebstechnik mbH & Co.KG (GAT) v Lamellen und Kupplungsbau Beteiligungs KG (LuK), Rec.2006, p.I-6509
Brussels Conventions – Article 16, point 4 – Disputes in proceedings concerned with the registration or validity of patents – Exclusive jurisdiction of the court of the place of deposit or registration – Declaratory action to establish no infringement – Question of the patent's validity raised indirectly.
- C- 53/96, 16 June 1998, Hermès International v FHT Marketing Choice, Rec.1998, p.I-3603.
Agreement establishing the World Trade Organisation – TRIPS Agreement – Article 177 of the treaty – Jurisdiction of the Court – Article 50 of the TRIPS agreement – Provisional measures.
- C-68/93, Judgement of 07 March 1995, Shevill a.o. v Presse Alliance, Rec.1995, p.I-415
Brussels Convention – Article 5, point 3 – Place where the harmful event occurred – Libel by a newspaper article.
- C-288/82. Judgement of 15 November 1983, Ferdinand M.J.J. Duijnste v Lodewijk Goderbauer, Rec. P.I-3663

Brussels Convention – Patent.

Trainers

International experts (A), EU experts (B), national practitioners (C), academics (D)

Trainees



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Junior and future judges (A, B, E)

Methodology

Training on intellectual and industrial property law in its international and Community context is imperative for grasping the key concepts (C1). This includes analysis of the hierarchy of norms between international, Community and national instruments. It also aims to underline the admissibility of legal actions enlisted before national courts in an international or Community context. The “Brussels I” Regulation holds that the courts in the State in which an industrial property right is requested or granted have sole jurisdiction regarding “the registration and validity of patents” of this law (article 22.4). On the other hand, it leaves the defendant of infringement proceedings with the possibility to choose, to a certain extent, the country in which they will sue: the country where the right is protected or where the infringement has been committed (article 5.3), the defendant’s country of domicile (article 2), indeed even the place of domicile of a co-defendant if the proceedings are linked (article 6.1). It is commonplace for the defendant in infringement proceedings to contest the law said to have been contravened. The crossing of those ordinarily having jurisdiction for the infringement and the exclusive competence, for the validity, gives rise to the following question: when infringement proceedings have been submitted to a judge who does not belong to the State in which the right has been granted can the validity of the right also be recognised?

This area of training which encompasses questions of admissibility in judicial proceedings and the law applicable is therefore recommended as basic training (A1) and can very well be complemented by an e-learning module (B1). The use of working groups (case studies) may be useful, particularly for topics relating to jurisdiction and the recognition and enforcement of judgements (B3). In order to develop better understanding of the role of national courts as opposed to European and Community courts, training could be organised at national level (D3). In the event of several national courts having the same legal dispute submitted to them on intellectual property, training could also be envisaged at transnational level (D4).

II. – Patent law in Europe

Training content

Training could focus on the following points:

- the different possibilities for registering a patent at national and European level
- the content of the European Convention on patents
- significant jurisprudence of the EPO in certain critical areas (biotechnological inventions, software, GMO, etc)
- the link between the EPC, the PCT and the national laws of the EPC’s Member States
- the link between the EPC and the European Union
- application of European patents by national courts



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- conflict of jurisdictions between national courts having been presented with the same appeal (annulment, infringement)
- conflict of jurisdictions between the opposition division of the EPC and national courts
- amendment faculties by national courts of a patent granted by the EPO

Instruments

(a) The link between the Patent Cooperation Treaty (PCT), the European Patent Convention (EPC) and national laws

- the Convention on the Grant of European Patents of 5 October 1973 (consolidated version), see: <http://www.epo.org/patents/law/legal-texts/html/epc/1973/e/ma1.html>

- the implementing regulations of the Convention on the Grant of European Patents of 5 October 1973 (consolidated version), see: <http://www.epo.org/patents/law/legal-texts/html/epc/1973/e/ma1.html>

- Protocol on Jurisdiction and the Recognition of Decisions in Respect of the Right to the Grant of a European Patent of 5 October 1973. See: <http://www.epo.org/patents/law/legal-texts/html/epc/1973/e/ma4.html>

- Patent Cooperation Treaty (PCT), done at Washington on 19 June 1970, see: http://www.wipo.int/clea/docs_new/en/wo/wo043en.html

(b) Drafts undergoing discussion concerning an integrated jurisdictional system at Community level (EPLA and follow-ups)

- Report from the Council of the European Union of 15 June 2007 on the state of play: improving the patent system in Europe. Not published in the O.J.

- Communication from the Commission to the European Parliament and the Council, 3 April 2007, entitled “Enhancing the Patent System in Europe” – COM(2007) 165 final – Not published in the Official Journal

- Evaluation by the EPO acting in the capacity of secretary of the Working Party on Litigation in February 2006, on the impact of the European Patent Litigation Agreement on litigation surrounding European patents (European Patent Litigation Agreement – EPLA), see the EPO’s website: <http://www.epo.org/patents/law/legislative-initiatives/community-patent.html>

- Draft agreement (EPLA) from December 2005, establishing a European Patent Litigation System from the EPO’s Working Party on Litigation, <http://www.epo.org/patents/law/legislative-initiatives/epla/latestdrafts.html>



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- Draft statutes from the European Patent Court on 20 February 2004 of the EPO's Working Party on Litigation. See the EPO's website: <http://www.epo.org/patents/law/legislative-initiatives/community-patent.html>

(c) Drafts on the Community patent

- Directive 98/44/EC from the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions, OJ L 213 of 30 July 1998, p. 13-21

- Proposal for a Council Regulation on the Community patent of 8 March 2004, document 7119/04, not published in the OJ

- Proposal for a Council Decision establishing the Community Patent Court and concerning appeals before the Court of First Instance, COM(2003) 828 final, 23 December 2003, not published in the OJ

- Proposal for a Council Decision conferring jurisdiction on the Court of Justice in disputes relating to the Community patent, COM(2003) 827 final, 23 December 2003, not published in the OJ

(d) Relevant rulings

- T-276/99, Philips/Publication of patent specification, 2004, O.E.B 3: Lack of competence from the EPO to carry out a preliminary ruling before the CJEC.

- G-2/03 Astrazeneca/Priorities from India (2004) O.E.B.R: 39.

- X ZR 57/96 REGENBECKEN/Rainwater reservoir (1999) O.J. EPO, 245

- J-15/80, ARENHOLD (1981), O.J. EPO 7 amended (1981) in the O.J. EPO 546

Trainers

International experts (A), EU experts (B), national practitioners (C), academics (D)

Trainees

Seniors (A)

Methodology

The European Patent Convention which harmonises, to a certain extent, laws in the States which are part of it, puts in place a centralised system for registering patents at European level



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and hinges on a certain number of international instruments applicable to patents, including the Paris Convention, the aforementioned TRIPS agreements and the Patent Cooperation Treaty, which allows for the international registration of a patent (system managed by the Member States and by the international agency WIPO in Geneva). The training aims to analyse these instruments and their various links in detail and this could be organised in the form of a specialist seminar (A2) with analysis of the jurisprudence and case studies (A3), potentially complemented by e-learning (B3). A visit to the EPO could also be considered (A4).

There is no specific jurisdiction under the EPC for the interpretation of its provisions, nor is there a centralised procedure for protecting patent rights, protection against an infringement protection remaining a matter of State competency (D3, D4 or D5). Once the EPO has issued a European patent which is protected in the designated States, it falls to the national courts to determine their validity and any actions of infringement. However, there are certain rules of procedure in Directive 2004/48 and the “Brussels I” Regulation; furthermore, discussions are underway at European level about establishing a centralised system of judicial competences (under the EPLA project). If these projects came to fruition, they would have far-reaching ramifications on the competence of internal jurisdictions, where there is a need for judicial authorities to be given training and be informed on the discussions underway (C3). The project on the Community patent remains wishful thinking for the moment; it will be difficult to achieve due to the political discord between Member States.

III. – Trade mark Law in the European Union

Training content

The following elements are the priorities for more in-depth study:

- the link between Community trade mark, national trade mark and trade mark registered at international level
- the content of the directive and Community regulation on the Community trade mark
- absolute and relative grounds for refusal of registration
- controlling the legality of administrative decisions
- the link between the Brussels Convention and the regulation on the Community trade mark
- Community trade mark courts
- converting a Community trade mark into a national trade mark
- preliminary ruling procedure for interpreting Regulation 40/94
- division of competence between national courts and national courts and the OHIM
- protection of a Community trade mark before national courts or tribunals
- unfair competition



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Instruments

(a) Registering a trade mark at Community and international levels

- International Classification of Goods and Services for the Purposes of the Registration of Marks under the Nice Agreement. See the website: <http://www.wipo.int/classifications/nice/en/index.html>

- Commission Regulation (EC) No 782/2004 of 26 April 2004 implementing Regulation (EC) No 2868/95 the accession of the European Community to the Madrid Protocol

- Council Decision 2003/793/EC of 27 October 2003 approving the accession of the European Community to the Protocol relating to the Madrid Agreement concerning the international registration of marks, adopted at Madrid on 27 June 1989, OJ L 296 of 14 November 2003, p. 20-21

- Council Regulation (EC) No 1992/2003 of 27 October 2003 amending Regulation (EC) No 40/94 on the Community trade mark to give effect to the accession of the European Community to the Protocol relating to the Madrid Agreement concerning the international registration of marks adopted at Madrid on 27 June 1989, OJ L 296 of 14 November 2003, p. 1-5

(b) Protection of rights and appeals

- Council Regulation (EC) No 422/2004 of 19 February 2004 amending Regulation (EC) No 40/94 on the Community trade mark, OJ L 70 of 9 March 2004, p. 1-7

- Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark (amended) of 13 December 1995, OJ L 303 of 15 December 1995, p. 1-32

- Council Regulation (EC) No 40/94, of 20 December 1993, on the Community trade mark, OJ L 11 of 14 January 1994, p. 1-36

- First Directive 89/104/EEC of the Council, of 21 December 1988 to Approximate the Laws of the Member States Relating to Trade marks, OJ L 40 of 11 February 1989, p. 1-7

(c) Relevant rulings

- C-321/03, 25 January 2007, Dyson Ltd v Registrar of Trade Marks, Rec.2007, p.I-687.

Trade marks - Approximation of laws – Directive 89/104/EEC – Article 2 – Concept of a sign of which a trade mark may consist - Transparent bin or collection chamber forming part of the external surface of a vacuum cleaner.



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- C-316/05, 14 December 2006, Nokia Corp v Joacim Wärdell, Rec.2006, p.I-12083.

Community trade mark – Article 98, paragraph 1, of Regulation (EC) No 40/94 – Infringement or threatened infringement – Obligation of a Community trade mark court to issue an order prohibiting a third party from proceeding with such acts – Definition of ‘special reasons’ for not issuing such a prohibition – Obligation of a Community trade mark court to take such measures as are aimed at ensuring that such a prohibition is complied with – National legislation laying down a general prohibition of infringement or threatened infringement coupled with penalties.

- T-140/02, 13 September 2005, Sportwetten GmbH Gera v Office for Harmonisation in the Internal Market (Trade marks and designs) (OHIM), Intertops Sportwetten GmbH, Rec.2005, p.II-3247.

Community trade mark – Application for a declaration of invalidity – Figurative Community trade mark including the word element INTERTOPS – Mark contrary to public policy or to accepted principles of morality – Article 7, paragraph 1, (f), and paragraph 2, and article 51 of the Regulation (EC) No 40/94.

- C-49/02, 24 June 2004, Heidelberger Bauchemie GmbH, Rec.2004, p.I-6129.

Trade marks - Approximation of laws – Directive 89/104/EEC – Signs capable of constituting a trade mark – Combinations of colours - Colours blue and yellow for certain products used in the building trade.

- C-283/01, 27 November 2003, Shield Mark BV v Joost Kist h.o.d.n. Memex, Rec.2003, p.I-14313.

Trade marks – Approximation of laws – Directive 89/104/EEC – Article 2 – Signs capable of constituting a trade mark – Signs capable of being represented graphically - Sound signs - Musical notation - Written description - Onomatopoeia.

- C-408/01, 23 October 2003, Adidas-Salomon AG, Adidas Benelux BV v Fitnessworld Trading Ltd Rec.2003, p.I-12537.

Directive 89/104/EEC – Article 5, paragraph 2 – Trade marks with a reputation - Protection against use of a sign in relation to identical or similar goods or services - Sign viewed as an embellishment.

- C-104/01, 6 May 2003, Libertel Groep BV v Benelux Merkenbureau, Rec.2003, p.I-3793.

Trade marks – Approximation of laws – Directive 89/104/EEC – Signs capable of constituting a trade mark – Distinctive character - Colour per se - Orange

- C-273/00, 12 December 2002, Ralf Sieckmann, Rec.2002, p.I-11737.

Trade marks – Approximation of laws – Directive 89/104/EEC – Article 2 – Signs capable of constituting a trade mark – Signs capable of being represented graphically – Olfactory signs.



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- C-206/01, 12 November 2002, Arsenal Football Club plc v Matthew Reed, Rec. 2002, p.I-10273.

Approximation of laws – Trade marks – Directive 89/104/EEC – Article 5, paragraph 1, (a) – Scope of the proprietor's exclusive right to the trade mark.

- C-299/99, 18 June 2002, Koninklijke Philips Electronics NV v Remington Consumer Products Ltd, Rec.2002, p.I-5475.

Approximation of laws – Trade marks – Directive 89/104/EEC – Articles 3, paragraphs 1 and 3, 5, paragraph 1, and 6, paragraph 1, (b) – Signs capable of constituting a trade mark – Signs consisting exclusively of the shape of the product.

- C-251/95, 11 November 1997, SABEL BV v Puma AG, Rudolf Dassler Sport, Rec.1997, p.I-6191.

Approximation of laws – Trade marks – Directive 89/104 – Registration of a new trade mark – Existence of identical or similar goods bearing a similar trade mark – Likelihood of confusion with the earlier trade mark - Definition.

- C-427/93, 11 July 1996, Bristol-Myers Squibb v Paranova A/S(C-427/93) and C. H. Boehringer Sohn, Boehringer Ingelheim KG and Boehringer Ingelheim A/S v Paranova A/S (C-429/93) and Bayer Aktiengesellschaft and Bayer Danmark A/S v Paranova A/S (C-436/93). Rec.1996, p.I-03457.

Directive 89/104/EEC to approximate the laws of the Member States relating to trade marks – Article 36 of the EC Treaty – Repackaging of trade-marked products.

- C-16/74, 13 October 1974, Centrafarm BV and Adriaan de Peijper v Winthrop BV, Rec.1974, p.11831.

Trade mark rights.

Trainers

International experts, especially from the WIPO and the WTO (A), EU experts (B) and especially from OHIM, the Court of Justice of the European Communities, the Court of First Instance, national practitioners (C), academics (D)

Trainees

Senior judges and particularly those from courts which specialise in trade mark law (See: <http://oami.europa.eu/pdf/mark/ctmcourts.pdf>). To the extent that questions on trade mark law may arise in several types of jurisdictions (commercial, civil, criminal), depending on the subject matter of the litigation in the country concerned, junior judges needing more in-depth knowledge on the subject may receive the appropriate training, as well as future judges (A, B, E).

Methodology



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A trade mark may be protected in different ways: at national level, at international level and at Community level. At national level, this consists of registering parallel trade marks in each State in the European Union. At international level it is possible to obtain a number of trade marks, of which the effects in each of the signatory countries of the Madrid Agreement or the Madrid Protocol assigned by the claimant are identical to a national registration. This requires a deposit with the WIPO in Geneva, from a trade mark which has been registered beforehand in a State acceding to this Agreement or Protocol. This route is only open to enterprises which have their headquarters or their real and effective establishment in one of these States. The Community trade mark provides uniform protection throughout all countries in the European Union, and this is upon completion of a single registration procedure with the WIPO. Since the European Union signed up to the Madrid Protocol in 2004, there has been a link between the Madrid Protocol system and the Community trade mark system, which is another way of obtaining a Community trade mark or of obtaining a national trade mark founded upon a Community trade mark. Before going into substantive law, it is therefore important to consider undertaking some basic training on the subject (A1).

With the Community directive aiming for a relatively advanced harmonisation of national trade mark laws and the regulation on trade marks being directly applicable in the Member States, it is important for judges to be familiar with both instruments and for them to have the possibility of obtaining some perspective on the jurisprudence of the Court of Justice and the Court of First Instance of the European Communities, particularly in the domain of absolute and relative grounds for refusal of registration for a national or Community trade mark (C2, A2). This analysis may be complemented by a study visit (including audience participation) to the Court of Justice and to the Court of First Instance (A4), as well as a working group on the preliminary question (A3). E-learning may help to prepare participants for the subject of substantive law, but also the preliminary ruling, so that more time can be spent on specific cases or on hypothetical cases to be resolved (B). With a large part of the training content focusing on national courts applying Community instruments, training may be contemplated at national level, or even transnational level (D2, D3, D4). There may also be some in-depth study at district level, or at the level of different national courts specialising in trade mark law (D1), or at transnational level (all specialist courts from several Member States having, for example, very different or very similar systems in place), or even European (all specialist courts at EU level).

IV. – The law relating to designs in the European Union

Training content

Training on the law relating to designs in the EU aims to analyse the following elements:

- The link between Community design, national design and model registered at international level
- The directive and Community regulation on the Community design
- Grounds for refusal of registration
- Registered and unregistered designs



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- Community design courts
- Legal appeals procedure for interpretation
- Division of competence between national courts and national courts and the OHIM
- Protection of a design before the national courts
- Protection by other legal means and cumulative protection

Instruments

(a) Registering a design at Community and national level

- Commission Regulation (EC) No 876/2007 amending Regulation (EC) No 2245/2002 implementing Council Regulation (EC) No 6/2002 on Community designs following the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs, of 24 July 2007, OJ L 193 of 25 July 2007, p. 13-15

- Council Regulation (EC) No 1891/2006 of 18 December 2006 amending Regulations (EC) No 6/2002 and (EC) No 40/94 to give effect to the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs, OJ L 386 of 29 December 2006, p. 14-16

- Council Decision of 18 December 2006 approving the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs, adopted in Geneva on 2 July 1999, OJ L 386 of 29 December 2006, p. 28-43

(b) The protection of rights and appeals

- Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs.

- Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, OJ L 3 of 5 January 2002, p. 1-24

- Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs

- Commission Regulation (EC) No 216/96 of 5 February 1996 laying down the rules of procedure of the Boards of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs)

Trainers



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International experts and particularly from the WIPO and the WTO (A), EU experts (B) and notably from the OHIM, the Court of Justice of the European Communities, the Court of First Instance, national practitioners (C), academics (D)

Trainees

Senior judges and especially those from courts specialising in design law (see: <http://oami.europa.eu/pdf/mark/ctmcourts.pdf>). Junior judges needing to further their knowledge on the subject may also receive such training, as well as future judges (A, B, E).

Methodology

A design may be registered at national, Community and international level. Since the beginning of 2008, it has been possible to appoint the European Community by virtue of the Hague Agreement, for the international registration of industrial design. The Hague system offers the holder of an industrial design the possibility of obtaining protection of their design in the countries of their contracting parties (currently totalling 25) by registering a single request with the international agency of the WIPO. Before moving onto substantive law, it is therefore important to consider undertaking some basic training on the subject (A1).

With the regulation on designs being directly applicable in the Member States, it is important for judges to be familiar with this instrument. Currently there is no jurisprudence from the Court of Justice and the Court of First Instance, but given that the decisions from the board of appeal at the WIPO are subject to appeal before the CFI and then before the CJEC, it is likely that it will be deemed necessary, in the near future, to plan some training on this subject too. E-learning may serve to prepare participants for substantive law (B). The applicable Community instruments do not harmonise applicable national law. Designs are protected in very different ways at national level by means of legislation on utility models, copyrights or unfair competition. There may also be an in-depth study at district level or at the level of the various design law specialist national courts (D1), or at transnational level (all specialist jurisdictions from several Member States having, for example, very different or very similar systems), or even at European level (all specialist jurisdictions at EU level). A comparative study of national laws may also be of interest (D4). Furthermore, Community instruments form the unregistered Community design. As a result, there may also be training provided at transnational or European Union level (D5).

V. – Copyright in the European Union

Training content

The training may encompass the following elements:

- sources of international law and Community law
- reproduction rights, communication to the public and distribution of rights
- exceptions to copyright and triple test
- sanctions and modes of appeal



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Instruments

(a) Applicable law

International conventions

- WIPO Copyright Treaty adopted at Geneva on 20 December 1996, WOO33FR. OJ EC No C 165 of 30 May 1998, p.9-13. Also see, compilation of laws accessible online on the [WIPO website: http://www.wipo.int/export/sites/www/treaties/en/ip/wct/pdf/trtdocs_wo033.pdf](http://www.wipo.int/export/sites/www/treaties/en/ip/wct/pdf/trtdocs_wo033.pdf)
- WIPO Performances and Phonograms Treaty adopted at Geneva on 20 December 1996, CNRD/DC/95. OJEC No C 165 of 30 May 1998, p.9-13. Also see WIPO website: http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=2463
- WIPO Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms of 29 October 1971. Source: International agency of the WIPO. See the following website: http://www.wipo.int/treaties/en/ip/phonograms/trtdocs_wo023.html#P20_283
- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, adopted at Rome on October 26, 1961. See the following website: <http://www.wipo.int/clea/en/fiche.jsp?uid=wo024>
- Berne Convention for the Protection of Literary and Artistic Works signed at Bern on 9 September 1886 and modified thereafter. Source: International agency WIPO. See the following website: http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html#P19_187

Community law

- Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version), OJ L 372 of 27 December 2006, p. 12-18
- Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (codified version), OJ L 376 of 27 December 2006, p. 28-35
- Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art, OJ L 272 of 13 October 2001, p. 32-36



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- Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ L 167 of 22 June 2001

- Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, OJ L 122 of 17 May 1991, p. 42-46

(b) The links between Directive 2001/29 on copyright and other European legal instruments

- Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, OJ L 105 of 13 April 2006, p. 54-63

- Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), OJ L 201 of 31 July 2002, p. 37-47

- Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce"), OJ L 178 of 17 July 2000, p. 1-16

- Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, OJ L 27 March 1996, p. 20-28

- Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281 of 23 November 1995, p. 31-50

(c) Relevant rulings

- C-275/06, Judgement of the Court of 29 January 2008, Promusicae, not reported in the ECR

Information society - Obligations of providers of services - Retention and disclosure of certain traffic data - Obligation of disclosure - Limits - Protection of the confidentiality of electronic communications - Compatibility with the protection of copyright and related rights - Right to effective protection of intellectual property

- C-306/05, Judgement of the Court of 07 December 2006, SGAE Rec.2006, p.I-11519
Copyright and related rights in the information society - Directive 2001/29/EC - Article 3 - Concept of communication to the public - Works communicated by means of television sets installed in hotel rooms



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- C-479/04, Judgement of the Court of 12 September 2006, Laserdisken, Rec.2006,p.I-8089 – Directive 2001/29/EC - Harmonisation of certain aspects of copyright and related rights in the information society - Article 4 - Distribution rights - Rule of exhaustion - Legal basis - International agreements - Competition policy - Principle of proportionality - Freedom of expression - Principle of equal treatment - Articles 151 EC and 153 EC

Trainers

International experts (WIPO), Community experts (Commission EC, CJEC, etc.), national experts from one or several States (A, B, C)

Trainees

Junior, senior and future judges (A, B, E)

Methodology

Community legislation on copyright largely draws its inspiration from international conventions to which the Member States of the European Union have signed up, generally speaking. These conventions assert the principle of national treatment and, as a consequence, have a certain harmonising effect on law-making in the contracting States. However, the rules surrounding copyright protection are still a matter of national competence. This part of the training remains general and could well target senior as well as junior judges or even future judges (A1). Unlike trade mark law or design law, Community law does not aim for complete harmonisation in this domain and largely leaves it to the discretionary powers of the Member States, where the interest lies in analysing the Community instruments in a strictly national framework (D1, D2, D3), or contemplating a comparative analysis between very different forms of legislation. In this domain, it may be especially worthwhile considering some analysis between legislation stemming from *Common law* and others (D4) with the help of e-learning (B). Senior judges already possessing some basic training on the subject may be interested in more advanced training on the relationship between copyright law and other laws, such as that which applies to unregistered designs (A2). In fact, some States do not have specific legislation in place for copyrights, the latter being protected on the basis of the provisions applicable to designs, for example. Furthermore, there are links between the main directive on aspects of copyright (Directive 2001/29) and other instruments affecting data protection and electronic trade. A study on the links between these different instruments is recommended, for example in the form of working groups (A3). With copyright law being relevant in a large part of Member States' civil law, such training ranks highly on the list of priorities. (C2)



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VI.- Tabular overview

Subject	1. Introduction	2. Instruments and judgements	3. Trainers	4. Trainees	5. Methodo- logy
<p align="center">Intellectual and industrial property law in its international and Community context</p>	<ul style="list-style-type: none"> - Content and hierarchy of international and Community texts - the role and the articulation of competences between national, Community and European jurisdictions - Interpretation of texts by national courts - Legal competence and enforcement of judgements - Respecting intellectual property rights Compensation and evaluation of damages - Civil and criminal actions 	<ul style="list-style-type: none"> - Treaty on trade mark law - Marrakech Declaration - Annex 1C: TRIPS Agreement - Paris Convention - Bern Convention - Consolidated versions of the Treaty on the European Union - Council Decision of 22 December 1994 - Regulation 864/2007 - Regulation 44/2001 - Commission declaration regarding article 2 of Directive 2004/48/EC - Regulation 1891/2004 - Directive 2004/48/EC - Regulation 1383/2003 - Amended proposal for a directive of the European Parliament and of the Council on criminal measures aimed at ensuring the enforcement of intellectual property rights - Proposal for a directive of the European Parliament and of the Council on 12 July 2005 	<p align="center">A B C D</p>	<p align="center">A B E</p>	<p align="center">A1 B1 B3 C1 D3 D4</p>



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		<ul style="list-style-type: none"> - C-539/03, - C-245/02 - C- 4/03, KG - C- 53/96. - C-68/93 - C- 288/82. 			
Patent law in Europe	<p>The various possibilities for registering a patent at national and European levels</p> <ul style="list-style-type: none"> - The content of the European Patent Convention - Significant jurisprudence of the EPO in certain critical areas (biotechnological inventions, software, GMO, etc). - the link between the EPC, the PCT and national laws from Member States of the EPC - The link between the EPC and the European Union - Application of the European patent by national courts - conflict of jurisdictions between national courts having been presented with the same appeal 	<ul style="list-style-type: none"> - Convention on the grant of European patents - Implementing regulations to the Convention on the grant of European patents - Protocol on jurisdiction and the recognition of decisions in respect of the right to the grant of a European patent - Patent Cooperation Treaty (PCT), - Report from the Council of the European Union of 15 June 2007 - Communication [COM(2007) 165 final. - Evaluation by the EPO from February 2006, - Draft agreement (EPLA) from December 2005, - Draft status from the European Court - Proposal for a Council Regulation on the Community patent - COM(2003) 828 final, - COM(2003) 827 final, 	<p>A B C D</p>	<p>A</p>	<p>A2 A4 B3 C3 D3 D4 D5</p>



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	<p>(annulment, infringement)</p> <ul style="list-style-type: none"> - conflict of jurisdictions between the opposition division of the EPC and national courts - amendment faculties by national courts of a patent granted by the EPO 	<ul style="list-style-type: none"> - Directive 98/44/EC - T-276/99 - G-2/03 - X ZR 57/96 - J-15/80 			
<p align="center">Trade mark law in the European Union</p>	<ul style="list-style-type: none"> - Link between Community trade mark, national trade mark and trade mark registered at international level - Content of the Directive and the Community regulation on the Community trade mark - absolute and relative grounds for refusal of registration - Controlling the legality of administrative decisions - Link between the Brussels Convention and the regulation on the Community trade mark - Community trade mark courts - Converting a Community trade mark into a national trade mark - preliminary ruling procedure for interpreting Regulation 40/94 	<ul style="list-style-type: none"> - Regulation 782/2004 - Regulation 1992/2003 - Regulation 2868/95 - Regulation 40/94 - First Directive 89/104/EEC - International Classification of Goods and Services for the Purposes of the Registration of Marks under the Nice Agreement Classification - C-321/03 - C-316/05 - T-140/02 - C-49/02 - C-283/01 - C-408/01 - C-206/01 - C-104/01 - C-273/00 - C-299/99 	<p align="center">A B C D</p>	<p align="center">A B E</p>	<p align="center">A1 A2 A4 B C2 D1 D2 D3 D4</p>



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	<ul style="list-style-type: none"> - division of competence between national courts and national courts and the OHIM - Protection of a Community trade mark before national courts - Unfair competition 	<ul style="list-style-type: none"> - C-251/95 - C-427/93 - C-16/74 - C-14/05 			
Design law in the European Union	<ul style="list-style-type: none"> - Link between Community design, national design and design registered at international level - Directive and Community regulation on the Community design - Grounds for refusing registration - Registered and unregistered designs - Community design courts Les - Legal appeals procedure for interpretation - division of competence between national courts and national courts and the OHIM - Protecting a design before the national courts - Protection by other legal means and cumulative protection 	<ul style="list-style-type: none"> - Regulation 876/2007 - Regulation 1891/2006 - Decision 2006/954/EC - Regulation 2245/2002 - Regulation 6/2002 - Directive 98/71/EC - Regulation 216/96 	<p align="center">A B C D</p>	<p align="center">A B E</p>	<p align="center">A1 B C2 D1 D4 D5</p>
	<ul style="list-style-type: none"> - Sources of international law and Community law - reproduction rights, 	<ul style="list-style-type: none"> - WIPO Copyright Treaty - WIPO Performances and Phonograms Treaty 			



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<p align="center">Copyright law in the European Union</p>	<p>communication to the public and distribution of rights</p> <p>- exceptions to copyright and triple test</p> <p>- sanctions and modes of appeal</p>	<ul style="list-style-type: none"> - Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms - International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations - Bern Convention - Directive 2006/116/EC - Directive 2006/115/EC - Directive 2001/84/EC - Directive 2001/29/EC - Directive 96/9/EC - Directive 91/250/EEC - Directive 2006/24/EC - Directive 2002/58/EC - Directive 2000/31/EC - Directive 95/46/EC 	<p align="center">A B C</p>	<p align="center">A B E</p>	<p align="center">A1 A2 A3 B C2 D1 D2 D3 D4</p>
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