



The European Judicial Training Network And Its Role In The Strategy For The Europeanization Of National Judges

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Abstract:

This article addresses the building of a framework of European Judicial Training (EJT), notably the establishment, organization and functioning of the European Judicial Training Network (EJTN). After describing the EJTN and retracing its distinctive features – co-operation, decentralization, complementarity, targeting –, the article underlines its peculiar function within EJT, which reflects the role of EJT itself in the strategy for Europeanization of national judges. It concludes by discussing other strategic areas where important synergies with EJT can be improved for the purpose of judicial Europeanization, notably the enhancement of transnational judicial associations and the introduction of knowledge management tools in national systems. The article is based on the analysis of documents and scientific literature as well as on empirical research and semi-structured interviews conducted by the author in 2013 and 2014.

Keywords: judicial training, europeanization, judicialization

1. Introduction

In the last ten years, we have witnessed the growth of judicial training as a new policy field aimed at the completion of the European Area of Justice. In 2004, the Hague Program called for “the progressive creation of a European judicial culture [...] based on training and networking”. Sure enough, attention to training of national judges dates back to the 90s² and then increasingly within the framework of the rule of law, conditionality set on the occasion of the 2004-2007 round of enlargement (notably, the creation of independent judicial academies³). Nonetheless, especially during the last decade, European institutions became fully committed to shaping a framework of European judicial training (EJT), meaning a *training framework aimed at developing common training tools and bringing together judges from different Member States*. Between 2004 and 2014 the Council, the Commission, the European Parliament together with transnational actors, converged in considering EJT as a strategic mean for achieving a working judicial space, as originally outlined by the Amsterdam Treaty and the Tampere Council. As the most apparent measure, articles 81 and 82 of the Lisbon Treaty provided a legal basis for activities relating to EJT. This trend has been further enhanced by the 2011 Communication on “Building trust in EU-wide justice: a new dimension to European judicial training”, in which the Commission outlined a massive project in relation to training: i.e. providing training to half of the legal practitioners of the European Union by 2020, for a total of 700,000 practitioners (around 80,000 magistrates).

In this framework, the European Judicial Training Network (EJTN) – an institution created between 2000 and 2004 which gathers together national judicial schools from the Member States – has been given a crucial role as a “hub” for the implementation of policy with regard to the judicial profession, connecting national and European institutions to define the training policies and standards and to coordinate national judicial academies. The EJTN, whose tasks were originally

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² The European Parliament adopted on 10 September 1991 a *Resolution on the establishment of a European Law Academy*, calling for the creation of the Academy and requesting the European Commission, the Council of the European Union, and the Court of Justice to support it. The original idea addressed training to judges and prosecutors, while the Resolution ended up covering all legal professions in public and private sectors.

³ D. Kochenov, *EU Enlargement and the Failure of Conditionality*, Kluwer Law International, The Hague, 2008, p. 282 s. Most part of twinning projects between funded between 1997 and 2006 addressed judicial training, D. Piana, “New Legal Instruments in a Changing World: Legal, Political and Cultural Developments in EU Judicial Cooperation”, in *The International Spectator: Italian Journal of International Affairs*, 2012, 1, p. 57. See also G. Oberoi, “Globalisation of the judicial education discourse”, in *Commonwealth Law Bulletin*, 2012, 3, p. 415.

framed within the broader enlargement policies,⁴ defines itself as the “the principal platform and promoter for the training and exchange of knowledge of the European judiciary”. Its establishment is connected to the objectives of spreading a shared European judicial culture and better coordination in judicial training in the EU. In the eyes of its founders, its task was to act as a *forum* for the exchange of experiences and as a European provider of training in the EU *complementing* the training provided by national institutions.

In this regard, it is useful at the outset to distinguish three levels of EJT policies. The first level is the very definition of judicial training as a relevant policy field and the selection of the main training priorities. The second level is the definition of training needs and standards within the prioritized areas and the coordination of training activities and the third, is the implementation, i.e. the organization and provision of training activities. Very briefly, EJTN centrality lies first at the level of the definition of training standards, although its activities also touch upon the first and third levels. Besides the EJTN, a number of institutional actors shape quite a complex, if not confused, institutional framework for EJT policies at these three different levels.

The political focus and financial pressures resulted in discussion of the extent of EU competence and the ability of the EJTN to coordinate an efficient framework for achieving the Europeanization objectives set by the Commission.⁵ It is therefore essential to bring into focus the functioning of the EJTN, which receives the greatest share of EJT funding, as confirmed by the implementation of the 2014-2020 Justice Program. Up to now, the efforts of EU institutions in relation to the EJT and EJTN have not been matched by equal attention on the part of scholars, although there have been important studies on other aspects of judicial training in the European area.⁶ This article aims to present the origins of the EJTN, its organization and its peculiar role in the EJT field (parts 2-4), as well as outlining its distinctive features (part 5). In conclusion, I discuss the two areas in need of improvement outside the EJT framework *stricto sensu*, which I consider essential in order to achieve the Europeanization objectives: networking and knowledge management (part 6).

2. The Establishment of EJTN

The origins of the EJTN date back to the adoption of the Bordeaux Charter in October 2000, providing for the creation of an informal network of national judicial training institutions (the *Réseau de Bordeaux* – Bordeaux Network – operative since the 1st January 2001). This was followed by the presentation, on the initiative of the French Government,⁷ of a proposal for the establishment of a European Judicial Training Network.⁸ The legal basis for the French proposal rested in articles 31 and 34(2) of the EU Treaty; this framed the EJTN in the context of judicial cooperation in criminal matters, explaining why the 2000 Bordeaux meeting involved only criminal law judges and prosecutors. While the European Parliament tried to broaden the scope of the Network to cooperation in civil and commercial matters (article 65 of the Treaty), the Council decided not to follow up the French initiative. It nevertheless encouraged the Association – created in 2004 under Belgian law – to establish close links with European institutions, and encouraged the Member States to support it.⁹

⁴ At the very beginning, a stream of activities was devoted to helping national institutions of newcomers to assess and improve their training capacity, interview with Luis S. Pereira, EJTN’s Secretary-General, 22nd May 2013. This was made clear in the original French proposal on the establishment of the EJTN (*infra* par. 2), and further in the EJTN Charter.

⁵ On the criticism of the Commission policy-oriented approach, see H. van Harten, *Who’s Afraid of a True European Judicial Culture. On Judicial Training, Pluralism and National Autonomy*, Working Paper presented at the Second REALaw Research Forum: Pluralism in European Administrative Law, Groningen, 3rd February 2012, pp. 1-19, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2117842

⁶ Sure enough, studies devoted to the institutionalization of the European Area of Justice hinted at the development of European judicial training policies and the role of the EJTN: one for all, H. E. Hartnell, “EUstitia: Institutionalizing Justice in the European Union”, *Northwestern Journal of International Law & Business*, 2002, 1, pp. 113-117. With regard to other aspects of judicial training, one should first mention here those empirical studies investigating the impact on judicial knowledge: see for example T. Nowak et al., *National Judges as European Union Judges: Knowledge, Experience and Attitudes of Lower Court Judges in Germany and The Netherlands*, Hiil, The Hague, 2011; U. Jaremba - T. Nowak, “The role of EU law education and training in the functioning of national courts as decentralized EU courts. An empirical investigation into the Polish and German civil judiciary”, in V. Cattelan (Ed.), *Integration through Legal Education. The role of EU Legal Studies in Shaping the EU*, Bologna, Il Mulino, 2012, pp. 109-146; J. A. Mayoral - U. Jaremba - T. Nowak, “Creating EU law judges: the role of generational differences, legal education and judicial career paths in national judges’ assessment regarding EU law knowledge”, *Journal of European Public Policy*, 2014, 8, 1120-1141. It is also necessary to recall the Menu for Justice Project – funded by the European Commission – realizing a critical review of legal and judicial training in the European Area.

⁷ D. Piana, “Unpacking Policy Transfer, Discovering Actors: The French Model of Judicial Education Between Enlargement and Judicial Cooperation in the EU”, in *French Politics*, 2007, 5, p. 43 ss.

⁸ *Initiative of the French Republic with a view to adopting a Council Decision setting up a European judicial training network* (2001/C 18/03). The Bordeaux Charter was adopted on occasion of a meeting organized by the French *Ecole Nationale de la Magistrature* (*Vers un espace européen de formation judiciaire*, Bordeaux, 12 octobre 2000) involving criminal law judges and prosecutors.

⁹ E. Storskrubb (2008), *Civil Procedure and EU Law. A Policy Area Uncovered*, Oxford, Oxford University Press, p. 247. One interviewed judge, who was, at the time of the creation of the EJTN, seconded at the Slovenian Supreme Court (institution responsible

According to the EJTN's former Secretary General, the Network is a very interesting example of a private association of public bodies. Its establishment is symbolic of the interpenetration between a bottom-up initiative and a top-down attempt by the European Parliament to institutionalize a training structure within the EU institutional framework. This attempt was not fully backed by the Council of the EU or by the rapporteur at the European Parliament, whose "restraint" was grounded in legal considerations (the absence of a clear legal basis in the Treaty). Sure enough, the refusal of the French initiative was not only due to legal considerations, but also to the opposition by some delegations, unwilling to legitimize a further nibbling of competences by EU institutions in a sensitive area for national legal identities. It was also stressed that the new institution could impair in some way the competencies of the previously established judicial networks for criminal matters and for civil and commercial matters.¹⁰ Although the result was the establishment of a private law association, the approach of the European Parliament demonstrated the growing attention to this policy area, revealing current problems in relation to the balance between the European and the national levels with respect to judicial training policies.

Since its establishment, the EJTN has been progressively "incorporated" into European governance. In 2005 it established a permanent Secretariat in Brussels; in 2006 the Commission granted it a monopoly in the coordination of judicial exchanges; in 2007 it was recognized as pursuing an aim of genuine European interest in the field of training (Council decision 2007/126/JHA, article 4); in 2009 it was recognized as a key stakeholder in furthering the EU e-Justice strategy; in 2014 it was given an operating grant to finance its functioning and its annual portfolio of training activities for the entire period of the 2014-2020 Justice Program.

3. Organization and Functioning of EJTN

At present, institutions in charge of judicial training in Member States along with the European Law Academy of Trier (ERA) are members of the EJTN. In addition, EJTN has "observers" representing candidate countries and EU institutions.¹¹ The Network is based on the principle of horizontal dialogue and equality of members within the General Assembly. Nonetheless, as in any network, "leading" and more active institutions emerge, be it for prestige or just for financial or other practical reasons. From a financial perspective, Member States' contributions are a drop in the ocean. As an example, article 4 (d) of the Council Decision 2007/126/JHA establishing the Program "Criminal Justice" for the period 2007 to 2013, introduced an operating grant to co-finance expenditure related to the permanent work program of the EJTN. In 2011, the grant covered 95% of the Network's budget, while Member States contributed to the remaining 5% according to five different funding bands - the main contributors being UK, Germany, Italy and France. The total budget (including membership fees) was around € 6,000,000.¹² This ratio, as well as the total sum of the operating grant, changed substantially over time. In 2009, the total budget was around € 1,000,000, of which 70% was covered by the EU operating grant and 30% by membership subscriptions. In 2010 it was raised to around € 3,500,000, of which 90% was covered by the EU operating grant and 10% by membership subscriptions.¹³ Between 2007 and 2011, the EJTN received around € 7,152,071.31 out of a planned annual budget of up to €9.5 million, i.e. 75% of the funds allocated. With the implementation of the new Justice Program, funding was raised substantially. The EJTN has been assigned an operating grant of € 7,880,000 for the year 2015¹⁴.

In relation to members' activism, a reliable criterion to gauge the most active members is the level of participation of national institutes in the Network's activities, i.e. how many magistrates they "send". Indeed, it is the training institutions' task to bring participants in, while the Network provides training. Participation of members' representatives in the sub-working group of the WG Program is also a useful indicator. Besides those already mentioned, active members are the Spanish, Dutch and Romanian academies, and the Academy of European Law in Trier.¹⁵

at the time of judicial training, and therefore EJTN observer), thus describes the process of creation of the Network: «It was an interesting process, I was amazed to see that it was at least to a certain degree influenced by politics, but in the end I think that the result was extremely good», interview with Andrej Kmecl, Administrative court of Ljubljana, 6th June 2013.

¹⁰ G. Oberto, *Schema ipertestuale di una relazione sul tema: la cooperazione giudiziaria in materia civile nell'ambito dei Paesi dell'Unione Europea. La Rete europea di formazione giudiziaria*, available at:

<http://giacomoberto.com/csm/uditori/cooperazione civile.htm>, last accessed on 19 June 2013. Article 3.2(f) of the French proposal contained notably a reference to the European Judicial Network in criminal matters. In addition, the Council pushed the EJTN to "foster the consistency and efficiency of its members' training activities," and to "reinforce its autonomy and independence and increase its capacity to finance its activities", H. E. Hartnell, "EUstitia: Institutionalizing Justice", cit., p. 115

¹¹ At present, EJTN has eleven observers; among them, one from the Council of Europe (The Lisbon Network) and one from the European Commission (DG Justice).

¹² Interview of the author with Monique van der Goes, Director of EJTN's permanent office in Brussels, 23rd May 2013.

¹³ See J. Coughlan – J. Opravil – W. Heusel (2011), *Judicial Training in the EU Member States. Study for the European Parliament*, Trier, ERA, p. 71.

¹⁴ *Annex to the Commission Implementing Decision concerning the adoption of the work program for 2014 and the financing for the implementation of the Justice Programme*.

¹⁵ The French *École nationale de la magistrature* organized in October 2000 the international conference that brought to the establishment of the network. Furthermore, after the rejection of the French initiative by the European Parliament in December 2000,

The EJTN has three Working Groups. The Group “programs” is devoted to all training activities – courses, seminars, workshops – except exchanges. This Group includes five sub-working groups composed of experts and trainers coming from different Member States (7/8 members per sub-group). The working groups focus on the jurisdictions of civil, criminal and administrative law (the latter dealing with different areas of law such as environmental and tax law, and not only administrative law in the traditional sense), on training of trainers, and linguistics. It is up to sub-groups to identify training needs and propose concrete training activities to the Secretariat, which allocates a budget for the activity in question. The budgeted activities are then submitted to the Commission in order to check the availability of funds within the framework of the operating grant; the European Commission usually does not object to the proposed activities.¹⁶ In order to define training needs, the sub-working groups get input from Network members that assess needs in different ways (contacts with the councils for the judiciary and trainers, feedback from appeal courts, reports on legal implementation, etc.). Training needs are nothing more than the sum of the most common training needs of training institutions whose realization is considered to have an *added value* if realized within the European platform, i.e. bringing people together from Member States. The EJTN has therefore a *decentralized approach* in the planning phase. Decentralization is a key-concept that also applies when it comes to the execution phase. Once the list of training activities in the budget is approved, EJTN looks for “volunteers” among its members; it is up to the member ‘volunteers’ to organize the planned activities, and not the task of EJTN to allocate them. Finally, the EJTN funds magistrates’ attendance at the training activities; magistrates coming from observer institutions may also attend the activities, but their participation is not – and cannot be – supported by the EJTN.¹⁷

While the Catalogue Program includes courses organized *autonomously* by Network members that are open to foreign magistrates (some of them being co-financed by the EU), all other activities listed on the website are managed by the Network.¹⁸ EJTN activities cover two main sectors. One concerns *training activities*: besides the exchange program started in 2006, the EJTN provides a platform for the promotion and coordination of a different set of training seminars (also for trainers), Themis competitions, and e-learning programs. The other pillar concerns the *elaboration of training curricula and modules, and the selection of best practices for the use of training institutions*.¹⁹

In 2012, the EJTN organized training activities for 2425 magistrates, rising to 2756 in 2013.²⁰ Between 2005 and 2013, 9239 magistrates participated in training initiatives (apart from the Catalogue Program). As it is not difficult to find a sufficient number of magistrates matching the identified training needs, considering that altogether Member States have around 160,000 magistrates, the large majority of national magistrates and related training needs is not targeted. Therefore, it is not a massive program. The EJTN is indeed based on the idea of “testing” training actions to be developed at a later stage at the national level, or to undertake initiatives that cannot be organized solely at a national level.²¹ As the EJTN’s former Secretary-General put it, “...training [...] developed at the EU level [...] is targeted to a reduced number of people, should be seen as a complement of the training provided nationally, and should only be executed when there is an *added value* resulting from the exchange of experience of the practice of EU law among the magistrates coming from different members”.²²

4. Expanding EJTN Activities: The Aiakos Program and the Pilot Project on European Judicial Training

The EJTN’s portfolio of activities has increased substantially since the Network was established. The most recent advance was the implementation of the *Aiakos Exchange Program* and of lot 1 of the *Pilot project on European judicial training* (“Study on best practices in training of judges and prosecutors”).

the steering committee of the then informal Bordeuax Network delegated ERA, the *École Nationale de la Magistrature* and the Spanish *Escuela Judicial* to approach the European Parliament, the Council and the European Commission to submit observations. Until 2005, the Academy of European Law provided for the secretariat of the Network.

¹⁶ Interview with Luis S. Pereira, cit.

¹⁷ Costs, including travel (up to a certain amount) and per-diem (including accommodation, meals, local transportation costs) are therefore borne by the EJTN. Whether judges, when participating in EJTN activities, are considered within or rather without their working hours, is a matter to be defined at the domestic level.

¹⁸ By including the activities on the Catalogue, training institutions accept at the same time the registration of *any* magistrate coming from other countries.

¹⁹ On the efficacy of training modules, see M. Krivickaite, “European judicial training in the field of environmental law”, in *ERA Forum*, 2014, 15, pp. 431 ss.

²⁰ It would be interesting to analyze the number of trained magistrates among the different portfolios (for example, in 2012 250 magistrates have been trained within the Linguistics Program).

²¹ Interview with Amélie Leclercq, Seconded national expert at EIPA, 22nd May 2013.

²² Interview with Luis S. Pereira, cit.

Exchange is the original core of EJTN's activities, aimed at enhancing mutual trust and knowledge through socialization. When the EJTN commenced operations in 2005, this was indeed the only program to be implemented at that time, by two members of the Network, the French *école nationale de la magistrature* and the Italian *Consiglio superiore della magistratura*. In 2006, the EJTN was granted the *de facto* monopoly in the implementation of the Exchange Program by the European Commission. Between 2005 and 2013 EJTN coordinated 5595 exchanges, with a steady rate of growth in participation in the Program since 2010.²³

Aiakos is an exchange program for judicial trainees and young magistrates, inspired, subject to appropriate modifications, by the successful Erasmus Program.²⁴ The Program has its political basis in the 2011 Communication of the European Commission and in the Council conclusions on European judicial training of October 2011, which invited the European Commission 'to initiate a new exchange for newly appointed judges and prosecutors'. Different from the previously established training program, *Aiakos* is grounded on the reciprocity principle; it envisages one-week of training overseas and one at home, during which the visiting trainees take part in the same training session as their hosting counterpart.

In its pilot phase the Program is funded through an annual operating grant, until 2014. So far, 11 countries have participated in the exchange program on a voluntary basis that amounts to approximately 300 young magistrates per year but the idea is to substantially raise the number of trainees. The number of participant countries should also increase and the proposal of the Belgian institute to make participation mandatory by integrating it in the initial training programs of national institutions is under consideration. This raises – once again – the issue of the legal basis for European training activities, the present one not being considered sufficient to make participation mandatory. Further problems lie on the financial side (will co-funding be guaranteed in a period of harsh financial crisis?) and on the organizational side (do national training institutions have sufficient human resources to ensure effective exchanges?).

The Pilot project on European judicial training is a new tool implemented on the initiative of the European Parliament. It marks an essential change in the European Parliament's approach towards European judicial training, that is to say a move towards a more decentralized approach 'that fully respects the principle of subsidiarity and the judicial independence'.²⁵ The Pilot project includes four lots aimed at identifying and promoting best practice in training of justice professionals and promoting cooperation between existing stakeholders, including those associations recognized as judicial networks at the European level whose creation is notoriously characterized by a bottom-up approach. The European Commission assigned the EJTN the implementation of the first lot concerning the study and selection of best practice in the training of magistrates.²⁶

5. EJTN's distinctive features: a summary

From its inception, EJTN policies have undergone swift but non-linear evolution. This applies to the EJTN as well; whose identity took shape over the course of time. At the time of its establishment, it was not clear whether the Network should be characterized by a centralized or decentralized approach; whether it should act as a coordinating entity or a training provider (in the latter case directly challenging usual national and other transnational providers);²⁷ whether its creation

²³ Data are available in EJTN annual reports.

²⁴ Training methodologies include workshops, discussion, mock-trials, and institutional visits. The Erasmus Program is a student exchange program between EU Member States established by the European Commission in 1987. It is considered as one of the EU most successful initiatives based on a social constructivist approach.

²⁵ L. Berlinguer, *The EP Pilot Project on European Judicial Training*, speech at the Conference on "Stimulating European Judicial Training", Brussels, 10 April 2013, available at http://ec.europa.eu/justice/criminal/files/luigi_berlinguer_en.pdf, last accessed on 20th June 2013. First steps towards the institutionalization of EJTN were indeed characterized by a more centralized approach. After the adoption of the 2006 Communication on judicial training (COM(2006) 356), a member of the cabinet of the Commissioner for Justice and Home Affairs stressed that the EC was inclined to «devote an important part of its resources to finance a full-fledged "European" offer of training for judges and prosecutors», D. Piana, "Building capacities abroad to solve conflicts at home. Preliminary remarks on the European policy of legal education and judicial training in CEECs", in *Journal of Law and Conflict Resolution*, 2009, 2, p. 39.

²⁶ J. Cooper, "Best Practices in Judges and Prosecutors Training", in European Parliament, *The Training of Legal Practitioners: Teaching EU Law and Judgecraft. Session Learning and Accessing EU Law: Some Best Practices*, Brussels, 2013, pp. 147-170.

²⁷ In this regard, the issue of who should hold the responsibility in the field of European Judicial Training also concerned some problematic relations between the EJTN and the European Network of Councils for the Judiciary. Competition dynamics involved indeed such relations; the latter seeing itself as the one bearing the main role in judicial issues, interview with Monique van der Goes, Director of ENCJ permanent office in Brussels, 23rd May 2013. Normally, at the national level judicial schools do not act autonomously but in connection to the councils for the judiciary (at least in some States), while at the European level the network representing national judicial schools operates "in solitude". This situation has its historical and practical reasons. On the one hand, the EJTN was created before the ENCJ, and more or less formal cooperation activities among training institutions existed long before cooperation among the councils. On the other hand, an institutional flaw characterizes the ENCJ, affecting its representativeness: only those institutions that

should be framed within a provisional enlargement policy or a more systematic strategy for the achievement of the European Area of Justice. Subsequent evolution clarified these aspects. By now, EJTN (and by implication the overall EJT system), is characterized by four key-concepts: co-operation, decentralization, complementarity, targeting.

Implementation of judicial training – definition of priorities, standards and needs – is the result of *co-operation* between the EJTN, its members and the European Commission as the funding entity, as well as “European-level professional organizations”. The EJTN not only *is* a network; it also *operates* as a network. Similarly, EJT is a highly fragmented field where cooperation among stakeholders is well developed and the EJTN plays, together with the Commission, a coordinating role. The above-described Pilot project is illustrative of this co-operative trend involving a wide array of stakeholders within, what still is, a highly competitive and fragmentary landscape.

The scope of judicial training objectives set by the Commission highlights the inability of the Commission itself to have an overwhelming influence, leaving a margin of action to the EJTN. In spite of its progressive “incorporation” into the system of European governance, the Network functions in a *decentralized* manner both in the implementation of training policy and the provision of training services. Thus, the EJTN coordinating role does not equal centralization. There is a decentralizing trend in the overall EJT system, in spite of the apparently centralizing approach of the Commission and some of its agencies (think, for example, to the European Asylum Support Office with regard to training in asylum law).²⁸ The idea that EJT should be provided at the European level is indeed regressing. Member States have the main responsibility for judicial training especially from a European perspective. This trend is apparent in the attention to national best practice in the Pilot project and in the funding of national programs for judicial Europeanization (such as European Gaius in Italy, increasing the number of courses on European law). The centralist approach exemplified by the creation of the Academy of European Law in Trier (and partly also of the Centre for Judges and Lawyers at the European Institute of Public Administration in Maastricht) prevailed for some time. The conflict between the two approaches was apparent during the establishment of the EJTN. More recently, the establishment of a centralized body for EJT was the subject of little discussion. In the European Parliament *Resolution on the role of national judge in the EU* of July 2008, reference was made to a “European Judicial Academy” composed of the EJTN and the Academy of European Law, building on the experience of the European Police College.²⁹ The proposal by the European Parliament was quickly dropped. There is no longer any question of the creation of a more centralized European Judicial Academy – and if a problem of centralization exists, this is more the consequence of a lack of interest and of Member States’ inclination to delegate responsibility.

Decentralization introduces the third key concept, i.e. the *complementary* nature of EJTN activities – and in general of EJT as such. EJT and the EJTN should not replace the responsibility of Member States to train magistrates in European law; European law has indeed to be considered an integral part of the national legal systems.³⁰ Training provided by the EJTN is not – and cannot be – large scale. Keeping in mind that from 2005 to 2013 the EJTN organized exchange and training activities for around 14,834 magistrates, training objectives set by the Commission are unlikely to be attained.³¹ Sure enough, these figures do not take into account those activities organized by national training institutes through regional

are independent and autonomous from the Government and the Parliament can be indeed members of the Network. Member States that do not have a council or have a non-independent body are therefore merely observers.

²⁸ The European Asylum Support Office (EASO) is an “independent” executive body whose managing board is constituted by the representatives of the national Governments and of the Commission. According to article 6 of the Regulation establishing EASO, the Office has been being granted a responsibility to train judges. This was seen as a problem, as EASO would have an “executive” approach and may carry out policies influenced by the European Commission. In addition, EASO competence in training exceeded also the boundaries set by the Lisbon Treaty, given that training concerned an area – administrative law – not mentioned by the Treaty. After its establishment, representatives of the European section of the International Association of the Refugee Law Judges (IARLJ), which had been invited to informally join the structure, raised the problem of independence, asserting that EASO could not train judges because it was part of the “executive” branch of the EU structure. Finally, EASO fully accepted this view – acknowledging the decisive role of judges in the determination of the agenda and the speakers. Interview with Boštjan Zalar, Judge at the Administrative court of Ljubljana, 3rd June 2013. S. Benvenuti, *Who defines judicial training standards in the EU, and for whom? The case of the European Judicial Training Network (EJTN)*, Paper presented at the RC12 2013 International Conference on “Sociology of Law and Political Action”, Toulouse, France, September 3-6, 2013.

²⁹ *European Parliament resolution of 9 July 2008 on the role of national judge in the European judicial system, 2007/2027(INI)*, paragraph 21. In the same year, EJTN’s Secretary General also referred to this option, G. Charbonnier “Nouveaux défis pour la justice en Europe: Développement d’une culture judiciaire européenne”, in W. Heusel, “The Future of Legal Europe: An emerging European judicial culture? Contributions to the panel discussion “The Future of Legal Europe: New Challenges for Justice in Europe”, in *ERA Forum*, 2008, 9, p. 116.

³⁰ J. Komárek, “In the Court(s) We Trust? On the Need for Hierarchy and Differentiation in the Preliminary Ruling Procedure”, *European Law Review*, 2007, 32, p. 476.

³¹ We can also keep in mind that from its creation in 1992 up to 2013, the Academy of European Law (ERA) provided European law training for around 100.000 among judges, prosecutors and other legal professionals; since 2000, around 11.000 magistrates participated in ERA’s training activities, W. Heusel, “The Academy of European Law (ERA) Experience with Judicial Training”, in European Parliament, *The Training of Legal Practitioners*, cit., p. 127.

cooperation, by the European Institute of Public Administration and other providers but, in any case, the number of judges participating in training activities would be far below 25,000. This somehow clashes with the ambitious (and unrealistic) large scale training program outlined by the Commission in 2011. The first two Commission Reports on EJT adopt a fairly flexible approach in monitoring the achievement of the self-defined ambitious (but I would rather call them “ambiguous”) objectives set in 2011. Criteria included training in EU law or Member State law organized at the national level. Of course, this is essential and this is why attention is now given to the incorporation of EU law and comparative law in national training catalogues – but this is not EJT strictly speaking, just training in EU law. The concept of EJT builds on methodological considerations rather than on positive law content. Incidentally, one can presume that the insistence by the Commission on large scale training of legal professionals and the confirmation of EJT as one of the priorities of the Justice Program, aims more at keeping the topic on the agenda than actually aiming at success in the attainment of the defined objectives.³² After all, practical limitations counter the large scale and centralized approach. They are not just of a financial nature (training is indeed very expensive and only a minority of magistrates would be able to participate in truly European training activities). Other problems concern time and workload, as well as language (many magistrates do not know foreign languages in the context of of judicial work) and the cultural constraints of the authorizing bodies. The 2014-2020 Justice Program partially addresses these problems.

Complementary character is acknowledged by the development of the concept of “European added value” (EAV). If judicial training in European law is primarily a national task, the transnational stage has to be involved only residually where there is EAV.³³ The Commission agrees that its role is to give incentives (financial in particular) for common training measures having EAV and not to compete with Member States in the organization of judicial training in EU law.³⁴ The concept of EAV, which was debated at the 2013 Conference on judicial training promoted by the European Commission,³⁵ is therefore at the core of considerations about who is going to do what. ERA’s Director stressed that training needs/priorities having EAV are a “moving target”: they cannot be determined once and for all and the EAV – i.e. the usefulness of bringing together magistrates from different countries – has to be assessed empirically, having regard to the available resources. In addition, the EAV of a topic may lack a general character, being instead limited to a purely national context. This would be the case in new accession countries where EU (basic) training is still weak. Just after the accession of Croatia, the Croatian judicial academy did not have sufficient expertise in EU law; the only competent trainers hired by the Academy came from the University and a group of internal experts only recently started to develop.³⁶ In brief, EAV is an open concept, with undefined boundaries.³⁷ Accordingly, the EJTN’s activities are becoming more and more *targeted* regarding both the beneficiaries and the type of activities. Efforts are, thus, being concentrated on the development of more effective activities, such as exchanges.

To sum up, the actual situation seems to be one of a smoothly functioning decentralized system for the purposes of defining training needs and standards and implementing training activities. The European Union’s rhetorical and unrealistic approach to large scale training may actually turn into an effective process of Europeanization of national judiciaries through EJT. As a Slovenian judge (and EU trainer) put it:

EJTN is «a good mirror of Europe with all the complications and all the misunderstanding and of course, at the end, the common goal. Because I think that, as far as I see, EJTN now functions quite smoothly, it is very efficient in its work and I am glad we have it».³⁸

At the same time the very features of EJT and EJTN, and especially its smaller scale character, indicate the need to put EJT and EJTN in context, without mixing up means (EJT and EJTN) and ends (Europeanization of national judiciaries). This is where I am going to conclude.

³² In this sense, R. H. M. Jansen - H. van Harten, “The Sense of Sharing Knowledge, Judgecraft and Autonomy: A Dutch Narrative”, in European Parliament, *The Training of Legal Practitioners*, cit., p. 22.

³³ This does not seem to be the view of G. Oberto, G. *How to Identify Judicial Training Needs? Suggestions and Experiences Drawn from National and International Training Programs*, Presentation submitted to the “Menu for Justice Project” Workshop, organized by IRSIG-CNR (*Istituto per la ricerca sui sistemi giudiziari del Consiglio Nazionale delle Ricerche*), held within the Department of Political Science of the University of Bologna, Bologna, 29-30 March 2012.

³⁴ Le Bail, F. *The European Added Value: the EU Role in Judicial Training*, opening speech at the Conference on “Stimulating European Judicial Training”, Brussels, 10 April 2013.

³⁵ *Stimulating European Judicial Training*, Brussels, 10th of April 2013.

³⁶ Interview with Nella Popović, Office of International Relations and Projects of the Croatian Judicial Academy, 4th June 2013..

³⁷ Generally speaking, teaching fundamentals of EU law (substantive law as well as EU judicial procedures) is a national priority, while updating in all specific areas of law as well as training on cross-border cooperation could be easily considered as having a European added value. Knowledge of Member States’ law is considered of little practical relevance although highly promoted. W. Heusel, *What to fund by the EU*, speech at the Conference on “Stimulating European Judicial Training”, Brussels, 10 April 2013.

³⁸ Interview with Andrej Kmecl, cit. Satisfaction for training proved by the EJTN, in particular exchanges, has been expressed also by the person in charge of the Office of International relations and projects of the Croatian Judicial Academy.

6. Conclusion: Synergies for Effective Judicial Europeanization

The complementary character of EJT brings the responsibility of Member States in providing a European education to their magistrates. Other aspects should be pointed out, laying down a strategy for achieving the objectives of EJT through synergy with measures to be adopted in areas related to – but outside the scope – of EJT *stricto sensu*. In this regard, it would be interesting to closely examine the allocation of funding in the 2014 Commission Implementing Decision of the Justice Program. This is not however the focus of these pages. In conclusion, I will pinpoint the relevance of two areas that should be enhanced: judicial networking and knowledge management.

Judicial networks – i.e. networks of judicial professionals – have received a good deal of attention in many research activities during the last few years.³⁹ Although there is a serious need for accurate empirical studies showing differences between networks and their actual impact, one can say that judicial networks are a *forum* in which informal discussion and exchange happens. The Commission included some of them as partners in the achievement of the Area of Justice, although mainly those representing supreme courts. Judicial networks contribute to EJT activities funded by the Commission, for example in the field of competition or environmental law, and are one of the sources from which EU law trainers are drawn. At least theoretically (research should be encouraged to investigate the actual impact), judicial networks play an important role as enhancers of convergence of national practices, linking the European and domestic level as well as the different national “compartments” at the domestic level. The Association of European Administrative Judges (AEAJ) works, for example, through specialized working groups where a limited number of judges discuss selected cases.⁴⁰ In many cases, such informal training covers areas neglected by EJT (analysis of European jurisprudence through the lenses of national case law, procedural differences at the national level etc.).⁴¹ The usefulness of networking has also been acknowledged in particular, in those areas where cases are few and the legal basis is extremely complex (environmental matters or, to a lesser extent, asylum cases).⁴² Much of the judicial knowledge is indeed built not through training, but rather through daily work (learning by doing). Therefore, in those areas where judges cannot gather relevant experience, there is a need to share knowledge with other colleagues from other countries who may have already dealt with the same legal issues. As one judge put it when interviewed, “...you need other ways to train, and there is nobody else who can tell you what goes on in such cases but your colleagues who went through it [...] That’s why networking is so extremely important”.⁴³ *In fine*, activities carried out by networks of judicial professionals have minor costs compared to professionalized training.⁴⁴

³⁹ The importance of this issue was first foreseen by N. O’Meara, *The Role of Judicial Networks: Evolving Judicial Dialogue and Developing EU Law?*, Paper presented at the European Union Studies Association Twelfth Biennial International Conference Boston, Massachusetts (USA), March 3-5, 2011, and M. Magrassi, *Reconsidering the principle of separation of powers: judicial networking and institutional balance in the process of European integration*, Paper presented at the European Union Studies Association Twelfth Biennial International Conference Boston, Massachusetts (USA), March 3-5, 2011, now in *Contemporary Readings in Law and Social Justice*, 2011, 2, pp. 159-180. A stream of research started then developing, notably M. Claes – M. de Visser, “Are you Networked Yet? On Dialogues in European Judicial Networks”, in *Utrecht Law Review*, 2012, 2, p. 100-114; C. Dallara, *The Definition of “Best Judicial Practices” by Judicial and Legal Expert Networks and Commissions*, in A. Vauchez (ed.), *The Fabric of International Jurisprudence. An Interdisciplinary Encounter*, EUI Working Papers, RSCAS 2012/51, Florence, EUI, 2012. On the different meanings of the judicial networks’ terminology, S. Benvenuti, *Building a Common Judicial Culture in the European Union through Judicial Networks*, Paper presented at the RC09 2013 Interim Meeting on “The Changing Nature of Judicial Power in Supranational, Federal, and Domestic systems”, Dublin, Ireland, July 22-24, 2013. See M. Magrassi, *Reconsidering the principle of separation of powers: judicial networking and institutional balance in the process of European integration*, Paper presented at the European Union Studies Association Twelfth Biennial International Conference Boston, Massachusetts (USA), March 3-5, 2011, now in *Contemporary Readings in Law and Social Justice*, 2011, 2, pp. 159-180; M. Claes – M. de Visser, *Are you Networked Yet? On Dialogues in European Judicial Networks*, *ULR*, 2012, 2, p. 100-114; C. Dallara, *The Definition of “Best Judicial Practices” by Judicial and Legal Expert Networks and Commissions*, in A. Vauchez (ed.), *The Fabric of International Jurisprudence. An Interdisciplinary Encounter*, EUI Working Papers, RSCAS 2012/51, Florence, EUI, 2012. On the different meanings of the judicial networks’ terminology, S. Benvenuti, *Building a Common Judicial Culture in the European Union through Judicial Networks*, Paper presented at the RC09 2013 Interim Meeting on “The Changing Nature of Judicial Power in Supranational, Federal, and Domestic systems”, Dublin, Ireland, July 22-24, 2013.

⁴⁰ Interview with Heinrich Zens, President of the Association of European Administrative Judges, Judge at the Austrian Administrative Tribunal 23rd April 2014.

⁴¹ As former EJTN Secretary General put it, while the jurisprudence of the EU courts is always present in EJTN’s training seminars, it would be of interest to know some national case law; however this is almost impossible in a polity of 28 Member States, interview, cit. Wolfgang Heusel also held that knowledge of Member State law is of little relevance for European judicial training (in the narrow sense), W. Heusel, *What to fund by the EU*, cit.

⁴² Interview with Boštjan Zalar, Judge at the Administrative court of Ljubljana, 3rd June 2013.

⁴³ Interview with Andrej Kmecl, cit.

⁴⁴ Judicial networks generally organize low-budget initiatives whose main expenses are travel and accommodation, with the exclusion of heavy lecturing costs charged by professional institutes like ERA or EIPA.

For these reasons, judicial networks should be more vigorously supported. However no matter how important, mere support is not enough for improving the “descending” function of judicial networks.⁴⁵ The ability to harmonize judicial practices is undermined by the weak link between network members and their national judiciary of origin.⁴⁶ The impact of these activities may therefore be questioned in the following way: is knowledge shared *within* the network also able to be spread outside throughout national judiciaries? Strengthening the link is therefore essential. Here, knowledge management tools, and particularly the creation of groups of EU law experts as court coordinators, can make the difference.

As for other knowledge management tools (legal databases and e-justice), the establishment of EU law coordinators aims precisely at enhancing communication and the spread of knowledge among magistrates. The *Eurinfra* project, developed since 2000 by the Dutch Minister of Justice and Council for the Judiciary, is the forerunner in this regard, establishing a network of court coordinators specialized in European law.⁴⁷ One of these is the Italian *European Gaius project*, inspired by the *Dutch Eurinfra* project, whose second pillar involves the establishment of EU law expert judges. Similar initiatives have spread across Europe, showing how court coordinators can create synergies with transnational legal networks (and EJT activities). EU law court coordinators are usually involved in such activities, being selected for that purpose precisely because of such European involvement. One example is that of the Slovenian Administrative Court, whose judges are transnationally involved and where a contact judge for European matters (actively participating in networks) was established informally in 2005, on initiative of the Court president.⁴⁸ A similar initiative has been launched in Croatia at the level of the Supreme Court, where a judge has been appointed to establish an EU law service.⁴⁹ Another example is drawn from the Hungarian judicial system, where a new system of EU law coordinators in different fields of law has been established at the level of the National Judicial Council, institutionalizing the Association of EU law judges. Here too, judges involved in transnational activities coordinate this new entity.⁵⁰ Incidentally, the system was established on the initiative of the current head of the National Judicial Council, who has been active in the transnational labor court judges’ networks.⁵¹ Where the idea of court coordinators has not been introduced (and the need for such a professional figure is not felt), a similar function may be exercised by judicial associations, such as, in the case of Austria, the Association of Asylum Law Judges, now absorbed into the Association of Administrative Federal Tribunal Judges.

Sure enough, establishment of this kind of instruments as well as their actual functioning can encounter resistance, due to the institutional culture that filters the specific understanding of the principles of accountability and independence. Discussion among judges may only be acknowledged with difficulty in countries where independence is conceived in absolute or individualistic terms. This is, however, an area where highly effective measures can be undertaken, and support is emanating from European institutions. In particular, the Parliament took the first steps in encouraging similar instruments, calling on the Commission “to foster and sponsor national court coordinators of European law and the emergent interconnection of the national networks of court coordinators”.⁵²



⁴⁵ Judicial networks can be said to operate in two main directions, although sometimes not always distinguishable, which can be termed as “ascending” and “descending” dimensions. Firstly, networks are instruments of European governance, inasmuch they contribute to the definition of legal policies in the areas of their respective interest. An example is the ineffective Justice Forum established on April 2008, or the initiative on the reform of the preliminary reference procedure launched by networks of supreme court judges. From this perspective, judicial networks participate in the European policy-making process and (theoretically) influence outcomes at the upper - European - level. From a different perspective, networks act as filters between a complex and often contradictory EU legal system and its national judicial application (sometimes even acting as forums where the outcome of specific cases is “negotiated”), as well as standard-setters for judicial behavior. Here the activity of networks is directed at establishing legal meanings for the use of national judiciaries but also tools and know-how in general.

⁴⁶ S. Benvenuti, *The factors affecting the impact of judicial networks as devices for the Europeanization of national judiciaries*, Paper presented at the UACES 44th Annual Conference, 1-3 September 2014, Cork.

⁴⁷ S. Prechal et al., *‘Europeanisation’ of the law: consequences for the Dutch judiciary*, Groningen, 2005; R. van Zutphen, “The Eurinfra Project”, in European Parliament, *The Training of Legal Practitioners*, cit., pp. 6-10.

⁴⁸ Interview of the author with Jasna Šegan, President of the Administrative Court of Ljubljana, 3rd June 2013.

⁴⁹ Interview with Branko Hrvatin, President of the Croatian Supreme Court, 19th September 2014.

⁵⁰ Interview with Anna Csorba, Judge at the Labour Court of Miskolc, 27th October 2014. See also A. F. Tatham, “The Impact of Training and Language Competence on Judicial Application of EU Law in Hungary”, in *European Law Journal*, 2012, 4, p. 585 s., who also stresses the importance of complementary devices for judicial Europeanization, beyond training.

⁵¹ A recent study realized on request of the European Parliament highlighted also reports other examples, such as the Spanish network of experts in EU law, F. De Rosa Torner, “The Spanish Experience: Network of Experts on European Union Law (REDUE), in in European Parliament, *The Training of Legal Practitioners*, cit., pp. 36-58.

⁵² *Motion for resolution European Parliament resolution on judicial training – court coordinators* ([2012/2864\(RSP\)](#))