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Judicial Training in European Private International Law in Family and Succession Matters

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Abstract The reality of the administration of justice has changed over the last few decades through massive intervention of international and supranational actors within national judicial systems. Though state-centrism has progressively been eroded, the national State remains the "master of the game" in adjudication. A proper application of European private international law is the cornerstone of civil justice. It goes without saying that judicial training (in a wider sense, including the training of judges, practitioners, and other stakeholders) is important in order to achieve an adequate and unified application of European private international family and succession law. The EUFams II findings further highlight that education and training of professionals in this area of law are of paramount importance when it comes to fostering predictability and legal certainty.

This contribution commences by explaining EU policy on judicial training and presenting the main training facilities and their features. The contribution then turns to methodological aspects of the transfer of knowledge in legal discourse. The second part of the contribution presents the EUFams II project results relevant to judicial training. It seeks to establish a direct link with EU justice policy objectives, methodologies, performance of judicial training at European training centers and national training academies that serve the system of justice in European family and succession law. Quantitative and qualitative analyses lead to conclusions and proposals in respect of future training policy and its desired performance in cross-border family and succession matters. Several methodological approaches are combined and presented in the contribution. The attempt to conceptualize *pro futuro* the judicial and legal professionals' training in European family and succession law relies on all case law and legal instruments researched within the EUFams II Project, different questionnaires, published studies, evaluations and communications, and various scholarly contributions primarily in the fields of law and education. It has yielded the following ten practice-oriented and hands-on recommendations (rather than commandments) addressed to the EU and Member States alike.

Summary of theses: **1.** Training needs to continue being guided at the EU level. **2.** Judicial training should be made a priority. **3.** A study of training needs should be conducted in general, for each Member State, and for each legal instrument. **4.** A model curriculum should be adopted at the EU level. **5.** The training curriculum should be designed on several levels and ranked based on EU criteria. **6.** Training should be based on modern teaching methodology. **7.** EU funded material should follow an open access policy and remain available on a single webpage administered by the EU, even after the expiry of the respective project. **8.** Training should be delivered to specific

target groups. **9.** Access to high quality training should be made available to all eligible judges. **10.** International and national training should be kept in balance.

Keywords judicial training, European family and succession law, EJTN, ERA, EIPA, IHNJ.

I. Introduction

Transnationalization of life leads to an ever increasing transnationalization of law-making and law enforcement. Mobility of individuals and families within the EU has comparable effects; intensive Europeanization of life leads to Europeanization of law. European family and succession law have developed at a considerable pace and its complexity is constantly increasing.[1] Normative pluralism is expanding as the creation, implementation, application, and monitoring of laws are no longer confined to territorial and functional boundaries. These trends are accordingly reflected in European family and succession law. A mosaic of interconnected legal sources deriving from different origins results in a multi-layered and fragmented framework.[2] The reality of the administration of justice has changed over the last few decades through massive intervention of international and supranational actors within national judicial systems.[3] The interpretation and application of this legal corpus equally gets lifted to a higher level, with the uniform interpretation of law placed at the forefront. A proper application of European private international law is the cornerstone of civil justice. Though state-centrism has progressively been eroded, the national State remains the "master of the game" in adjudication.[4]

The EUFams II project combines different methodological approaches to address the issues of application and interpretation of European and international instruments on family and succession matters before national courts of various Member States. Against that background, a number of project

1 *van Calster,* European Private International Law, p. 3 et seq.; *Corneloup et al.,* Children on the Move, p. 9; *Rass-Masson,* YPIL 20 (2018/2019), p. 521–536; *Franzina/Viarengo,* in: Viarengo/Franzina, The EU Regulations on the Property Regimes of International Couples, p. 1–13; *Mansel/Thorn/Wagner,* IPRax 2020, 97–126.

2 *Župan,* in: Honorati, Jurisdiction in matrimonial matters, p. 1 (5).

3 *Piana,* Judicial Accountabilities in New Europe, p. 1.

4 *Arroyo,* YPIL 20 (2018/2019), p. 31–46.

activities were implemented: Relevant national case law was collected, elaborated and uploaded to the EUFams II database;[5] national reports were delivered highlighting specific aspects of the application of EUFams II subject matter regulations and Hague conventions in the project partners' Member States (Croatia, Germany, Italy, Spain, and Sweden). The thematic EUFams II consortium reports were drafted to provide an account of national implementation legislation,[6] as well as specific aspects relating to third country nationals.[7]

Data collected by the EUFams II consortium as part of the project allows for several important conclusions. When comparing case law of different Member States, the research revealed a lack of uniformity and consistency in the interpretation and application of the relevant *acquis.* When case law related to a specific legal instrument is compared horizontally throughout the EU, project findings show that the scrutinized regulations and conventions have been correctly applied only to a limited extent. As a consequence, there is a risk that citizens in the EU may be deprived of the full enjoyment of the benefits within the EU judicial area. The purpose of this contribution is to use these analyses and results as a basis for designing feasible pathways for system improvements with a focus on judicial training.

It goes without saying that judicial training is important in order to achieve an adequate and unified application of European family and succession law. The EUFams II findings further highlight the fact that the education and training of professionals in this area of law are of paramount importance when it comes to fostering predictability and legal certainty. Judicial training does not only include the judiciary, but also other authorities that serve the system of justice in respect of these matters in Member States, in particular notaries. In a wider sense, it encompasses the training of practitioners and other stakeholders involved in the system.

This contribution commences by explaining EU policy on judicial training and presenting the main training facilities and their features. It then turns to methodological aspects of the transfer of knowledge in legal discourse. The second part of the contribution presents the EUFams II project results relevant to judicial training. It seeks to establish a direct link with EU justice policy objectives, methodologies, performance of judicial training at European training centers and national training academies that serve the

5 See http://www2.ipr.uni-heidelberg.de/eufams/index.php?site=entscheidungsdatenbank (last consulted 16. 10. 2020).

6 See http://www2.ipr.uni-heidelberg.de/eufams/index.php?site=projektberichte (last consulted 16. 10. 2020).

7 See *Brosch/Mariottini* and *Zühlsdorff*, in this volume.

system of justice in European family and succession law. Quantitative and qualitative analyses lead to conclusions and proposals in respect of future training policy and its desired performance in cross-border family and succession matters.

Several methodological approaches are combined and presented in the contribution. The authors opted for desk research on relevant writings and analyses of reports, journals, and other legal publications, as well as policy papers available online. Additionally, the authors took advantage of the previous assessment conducted within the EUFams II Project. In addition to the online judicial training survey conducted among training participants (hereinafter: the online judicial training survey),[8] training networks and academies have been addressed with an additional questionnaire (hereinafter: the online questionnaire).[9] The survey and the questionnaire have allowed for a content analysis as well as a quantitative analysis of the data collected.

II. European judicial training – policy considerations

1. Development of the European judicial training strategy

The year 2020 marks the end of the first period of strategic training of legal practitioners on European law. A systematic training policy was introduced in the "2011–2020 European judicial training strategy", titled "Building Trust in EU-wide Justice – A new dimension to European judicial training"[10] (hereinafter: the 2011–2020 European judicial strategy), which set very specific objectives for the training of justice professionals. However, the first steps towards creating training policy at the European level were actually taken as early as 2006.

8 The online judicial training survey addressed experts in cross-border family and succession matters. It targeted the EUFams Network of practitioners and was accessible via a link to an anonymous Google survey. In total, 129 responses were recorded, mainly from lawyers (39.5%), judges (25.6%), state officers (11.6%), public notaries (7.8%), and others actively working with the relevant regulations and conventions from 17 Member States and 4 other countries.

9 Responses to the online judicial training survey questionnaire were delivered by ERA, EIPA, and the German, Swedish and Croatian judicial academies.

10 Communication from the Commission to the European Parliament, the council, the European Economic and Social Committee and the Committee of the Regions – Building Trust in EU-Wide Justice – A New Dimension to European Judicial Training, COM (2011) 551 final.

In 2006, in its "Communication from the Commission to the European Parliament and the Council on judicial training in the European Union"[11] (hereinafter: the EC Communication on judicial training in the EU 2006), the European Commission identified judicial training as a major issue in the light of two developments: First, the adoption of a corpus of legislation that has become substantial and must be implemented by justice practitioners in the Member States; and second, the development of the mutual recognition principle which rests primarily on a high degree of mutual confidence between the Member States' judicial systems.[12] At that point, the operation of legal training in Member States was only considered in the context of the training of judges and prosecutors.[13] However, the training of lawyers who are not part of the respective Member States' judiciaries was also included in the analysis provided in the document.[14]

The EC Communication on judicial training in the EU 2006 revealed that the duration of the training varied in the Member States. Furthermore, it exposed major inequalities among judges, prosecutors and lawyers in terms of access to training. In budgetary terms, the training of judges and prosecutors is usually publicly financed, whereas the training of lawyers is financed by professional organizations. Interestingly, in 2006, the European Commission seems to have been inclined towards a centralized approach to judicial training by devoting an important part of its resources to finance a fully-fledged "European" offer of training for judges and prosecutors.[15] According to the EC Communication on judicial training in the EU 2006, there are three key areas for improvement in the judicial profession: language skills, familiarity with EU law, and familiarity with law in other Member States.[16] These findings were supported by additional evaluation reports, and they encouraged the introduction of further measures by way of the "Resolution of the Council and of the Representatives of the Governments of the Member

11 Communication from the Commission to the European Parliament and the Council, COM (2006) 356 final.

12 COM (2006) 356 final, note 2.

13 As regards judges and prosecutors, depending on the Member State, judicial training is organized by the Ministry of Justice, the Higher Council of the Judiciary or Justice, or, where appropriate, by the Prosecutor-General (where there is strict separation between judges and prosecutors), or by specialized establishments. In several Member States, a single institution is responsible for the training of judges and prosecutors. See COM (2006) 356 final, note 8.

14 Training of lawyers is often organized by bar associations, in many cases in cooperation with universities. See COM (2006) 356 final, note 8.

15 *Piana,* Journal of Law and Conflict Resolution 1 (2009), 30 (39).

16 COM (2006) 356 final, note 24–27.

States meeting within the Council on the training of judges, prosecutors and judicial staff in the European Union".[17] However, the training of lawyers was not within the scope of the said document because in the majority of Member States, these professions are responsible themselves for organizing their training.[18]

With the measures aimed at organizing the training of judges, prosecutors and judicial staff at the national level, Member States were to a certain extent prepared for the developments which followed the entry into force of the Lisbon Treaty in 2009, and provided a legal basis for an EU competence to create a European strategy for judicial training.[19] In line with the Stockholm Programme,[20] European judicial training is both a priority in terms of enhancing judicial cooperation in civil and commercial matters, as well as a prerequisite for improving the operation of the internal market[21] and making it easier for citizens to exercise their rights. A pursuit towards a joint European judicial culture[22] was reflected in the aforementioned 2011–2020 European judicial training strategy, which emphasized the importance of training for all legal practitioners, primarily judges and prosecutors, but also for court staff. The inclusion of legal practitioners in private professions, such as lawyers, was also considered important in order to provide legal certainty as well as legal assistance, service, and expert knowledge in European law to EU citizens taking advantage of the right to free movement. In order to reach the designated goals, several recommendations were made based on research findings and stakeholder consultations.[23] The start-

17 Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council on the training of judges, prosecutors and judicial staff in the European Union (2008/C 299/01), OJ C 299, 22.11.2008.

18 Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council on the training of judges, prosecutors and judicial staff in the European Union (2008/C 299/01), OJ C 299, 22.11.2008, recital 18.

19 Evaluation of the 2011–2020 European judicial training strategy, SWD (2019) 380 final, https://ec.europa.eu/info/sites/info/files/5_en_document_travail_service_part1_v2.pdf (last consulted 27.10.2020), para 2.

20 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Delivering an area of freedom, security and justice for Europe's citizens – Action Plan Implementing the Stockholm Programme, COM (2010) 171 final.

21 See *Monti,* A new strategy for the Single Market.

22 COM (2011) 551 final, para 1: "The creation of a European judicial culture that fully respects subsidiarity and judicial independence is central to the efficient functioning of a European judicial area. Judicial training is a crucial element of this process as it enhances mutual confidence between Member States, practitioners and citizens.".

23 Preliminary statistical data; European Parliament study "Judicial training in the EU Member States", COM (2011) 551 final, p. 4.

ing point was to support both initial as well as continuous training in environmental law, civil, contract, family and commercial law, competition law, intellectual property rights, fundamental rights, and data protection. Short-term exchanges should be available for judges and prosecutors, especially newly appointed ones during the initial training.[24]

Since European judicial training is a shared competence that requires action by justice professionals, Member States and the EU,[25] reaching the 2011–2020 European judicial training strategy goals is not going to be an easy task. The goals set were to be accomplished by focusing on the following objectives: a) legal practitioners should have a good knowledge of EU law, of EU judicial cooperation instruments and of the laws of other Member States; b) legal practitioners should trust each other in cross-border judicial proceedings; and c) citizens and businesses across the EU should benefit from their rights deriving from EU law.[26]

In quantitative terms, these objectives would translate to the following goals: a) half of all EU legal practitioners should have taken part in training on EU law; b) EU financing should support training on EU law for at least 20,000 legal practitioners annually; c) the EJTN should organize no less than 1,200 exchanges for (experienced) judges and prosecutors; d) all new judges and prosecutors should have taken part in an exchange program; and e) all legal practitioners should have had at least one week of training on EU law during their career.[27]

The implementation of the pilot project on European judicial training[28] in 2012 revealed a change in the European Parliament's approach towards European judicial training and a sharp turn towards more respect for the principle of subsidiarity and judicial independence within the Member States.[29] The aims of the project were: a) to identify best practices in the training of judges, prosecutors and justice professionals on national legal systems and traditions as well as on European law; b) to identify the most effective ways of delivering training in EU law and national legal systems to

24 COM (2011) 551 final, p. 5.

25 Evaluation of the 2011 European Judicial Training Strategy and preparation of the future strategy Analysis of the responses received to the targeted consultation, 2018, https://ec.europa.eu/info/sites/info/files/2018_targeted_consultation-european_judicial_training-analysis_of_replies.pdf (last consulted 07. 08. 2020), p. 3.

26 Evaluation of the 2011 European Judicial Training Strategy, p. 5.

27 Evaluation of the 2011 European Judicial Training Strategy, p. 7.

28 European Parliament resolution on judicial training, 14. 03. 2012, 2012/2575(RSP), https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2012-0079+0+DOC+PDF+V0//EN (last consulted 22. 10. 2020).

29 *Benvenuti,* International Journal for Court Administration 7 (2015), 59–67.

judges, prosecutors and justice professionals at the local level, and to promote dialogue and coordination between European judges and prosecutors; c) to encourage EU judicial training providers to share ideas on best practice and disseminate them across the EU; and d) to improve cooperation between the EJTN and national judicial training institutions.[30]

The final important development in the period was the adoption of nine judicial training principles of the EJTN. They serve as a foundation for the judiciary to manage their training needs and as a framework for the training providers to plan and deliver training to judges and prosecutors. The principles address issues such as a right to judicial training during working time, a responsibility to provide the necessary resources, compulsory initial training at the beginning of one's career, the use of modern training methods and techniques, and non-legal issues among the training topics.[31]

2. Evaluation of the European judicial strategy

As part of the commitment to support the training of legal practitioners in EU law, each year (2011–2018), the European Commission reports on the participation of legal practitioners in training on European law in the EU.[32] In addition, in 2013–2014, the "Implementation of the Pilot Project – European Judicial Training – Lot 1 – Study on Best Practices in training of judges and prosecutors", was undertaken, which helped to identify best practices in training legal practitioners in EU law.[33]

The implementation of the judicial training strategy has recently been assessed and the results were published in the Evaluation of the 2011–2020 European judicial training strategy, which covers the period from 2011 to 2017. The overall impression in the Evaluation of 2011–2020 is that the European judicial training strategy was successful in reaching its goals. The

30 The European judicial training policy: Working together to improve European judicial training, available at the European e-Justice Portal: https://e-justice.europa.eu/content_the_european_judicial_training_policy-121-en.do (last consulted: 21. 10. 2020).

31 https://e-justice.europa.eu/content_the_european_judicial_training_policy-121-en.do (last consulted: 21. 10. 2020).

32 See the reports on European judicial training (2011–2018), available at https://e-justice.europa.eu/content_the_european_judicial_training_policy-121-en.do (last consulted: 21. 10. 2020).

33 European Commission, Tender JUST/2012/JUTR/PR/0064/A4 – Implementation of the Pilot Project – European Judicial Training, Lot 1: "Study on Best Practices in training of judges and prosecutors", Final report, 2014, https://op.europa.eu/en/publication-detail/-/publication/37e40065-e0bc-4f53-9ea2-983fc1a17f8e (last consulted 22. 10. 2020).

contribution of the EU to increasing the commitment of both the EU as well as national bodies, by providing necessary financial support and creating a policy framework was deemed crucial to its success.

The target of training half of all legal practitioners on EU law, i.e. 1,200 judicial exchanges per year, and almost doubling the total funds made available to train legal practitioners through EU programs and improve the capacity of networks, was reached ahead of time.[34] In contrast, the targets of improving the national regulatory frameworks and increasing support for training on legal terminology in foreign languages were only partly reached.[35] Several aspects of these programs will need to be addressed better in the future. One area identified as in need of improvement was the training section of the European e-Justice Portal. In addition, it was noted that training legal practitioners, such as lawyers and court staff as well as bailiffs, should be given more attention. Increased training of staff at the end of the judicial chain, i.e. prison and probation officers, on EU-specific issues such as anti-radicalization and the EU Charter should be included in the future working plans.[36] Even prior to the coronavirus-related crisis, the European Commission noticed the underused potential of e-learning and the limited awareness of the European e-Justice Portal.[37] During the period of specific circumstances caused by the pandemic, these needs became even more apparent, inducing the appreciation of e-learning.

In the period from 2011 to 2017, the 2011–2020 European judicial training strategy enabled the EJTN to establish itself as a leading provider of high-quality, cross-border training offered to judges and prosecutors in the EU. The EJTN's nine "judicial training principles" became a reference point in the judicial world for creating a joint European judicial training culture. Important work of other EU-level training providers (e.g. ERA, EIPA-Luxembourg) and networks, such as the CNUE (notaries public) and the CCBE (lawyers), was also acknowledged.[38]

34 SWD (2019) 380 final, p. 73.
35 SWD (2019) 380 final, p. 73.
36 SWD (2019) 380 final, p. 73.
37 SWD (2019) 380 final, p. 73.
38 SWD (2019) 380 final, p. 73.

III. Judicial training networks and institutions in the EU

Around the globe, continuous judicial education emerged in the early 1960s.[39] Since the early 1990s there has been a growing appreciation of the value of judicial education in both developed and developing countries.[40] However, judicial training has been perceived for a long time as a matter for the national judiciary.[41] Reshaping the balance of powers between international, EU and national competences has enhanced a new path for judicial training aims, methods and practices. Europeanisation of law fosters cross-border judicial cooperation. As a cornerstone of the area of freedom, security and justice, the free movement of judgments relies to a high degree on mutual trust among authorities of the Member States.[42] The fact that the EU lacks hard power in the field of judicial policies was addressed earlier. Due to this limitation, the EU has adopted soft leverage methods, exerting influence based on socialization and training. Judicial and practitioners' networks have become "a sustainable operational tool"[43] whose function is to "ensure better coordination beyond and besides harmonization".[44]

"Judicial networks can be described as groups, conferences, commissions or organizations of legal experts, judges and academics (coming from different countries) established at transnational level in an autonomous way or under the wing of international organizations".[45] Judicial networks support the diffusion of best practices in the administration of justice in an advanced democracy. Socialization by transnational networks triggers a cultural change in judicial behavior. Networking contributes to mobility and social learning in the international arena, leading to self-awareness of a judge in becoming a multinational judge.[46] In the end, although formal rules that govern the judiciary remain untouched, institutional change occurs.

Networks are established in global and European legal milieus by means of several pathways. They may be founded merely by EU rules, the most prominent example being the supranational EJN in civil and commercial matters, which aims to ensure the functioning of the judicial system created

39 *Armytage,* Educating Judges, p. 1.
40 *Goodman/Louw-Potgieter,* African Journal of Legal Studies 5 (2012), 181 (182).
41 For a global overview, see *Armytage,* Educating Judges, p. XVI et seq.
42 See further *Lenaerts,* International & Comparative Law Quarterly 59 (2010), 255.
43 *Toniatti/Magrassi,* Magistratura, giurisdizione ed equilibri istituzionali, p. 10.
44 *Cafaggi/Muir Watt,* Making European Private Law, p. 338.
45 *Dallara/Piana,* Networking the Rule of Law, p. 41.
46 *Dallara/Piana,* Networking the Rule of Law, p. 110.

by EU rules.[47] Another pathway is the creation of a network at the initiative of national institutions or judicial authorities, aimed at increasing horizontal collaboration with their counterparts in other Member States. Membership in such "bottom-up networks" is nationally based.[48] In respect of the latter, the EJTN is of particular importance for networking and training in regulations and conventions in cross-border family and succession matters. At the global level, the International Hague Network of Judges (IHNJ) is equally relevant to the EUFams II Project's subject matter. Created by the HCCH, it brings together nominated judges specialized in cross-border child protection.[49] A dialogue between the EU and the IHNJ is developing as the cross-border family rules are consolidated,[50] though not fully employed in practice.[51]

IV. EU and national training facilities

Continuous education of professionals is set as a policy at the European and national level alike. Judicial training in the EU follows several pathways. It is by default performed by specialized training institutions, i.e. major European judicial schools and national training centers (for judges, notaries public, and attorneys). In addition, training is also organized by various initiatives funded by the EU. Most frequently, these are consortiums of law faculties, law institutes, and/or NGOs.

The EJTN is a bottom-up network established by the 2000 Bordeaux Charter.[52] This non-profit international association was set up to promote "a training programme with a genuine European dimension for members of the European judiciary". The EJTN's participating institutions are 40 national judicial training bodies, with the European Commission as a partner. The main activities of the EJTN are coordinating actions among network members, sharing best practices, and developing common curricula and training sessions. There are several EJTN working groups as well as a "Programs"

47 Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (2001/470/EC), OJ L 174, 27. 06. 2001, p. 25–31.

48 *Dallara/Piana,* Networking the Rule of Law, p. 47.

49 See https://assets.hcch.net/docs/665b2d56-6236-4125-9352-c22bb65bc375.pdf (last consulted 21. 10. 2020).

50 *Scherpe,* European Family Law, p. 158–160.

51 *Viarengo/Marchetti,* in: Viarengo/Villata, Planning the Future of Cross Border Families, p. 799 (810).

52 *Benvenuti,* International Journal for Court Administration 7 (2015), 59 (60).

working group, which deals with all training activities in addition to exchange.[53] It includes five sub-working groups of experts and trainers from different Member States, focusing on civil, criminal, and administrative law, the training of trainers and linguistics. The "Catalogue+ programme" entails courses organized autonomously by network members, which are open to foreign magistrates, and additional training activities, such as the training of trainers, THEMIS competitions, e-learning programs, elaboration of training curricula and modules, and the selection of best practices for training institutions. The AIAKOS Exchange Programme for judges and magistrates has been in operation since 2014.[54] The central role or, so to speak, the "monopoly position" of the EJTN in judicial training was confirmed by the 2013 operational grant for the period from 2014 to 2020.[55] As one of the most relevant training institution in EU law, the EJTN does not generally focus solely on family and successions matters, although its training sessions are regularly dedicated to these topics as well. Out of all the events hosted by the EJTN in 2015,[56] five were devoted to these topics. In 2016,[57] 2017[58] and 2018,[59] there were seven events each year, while in 2019,[60] the number of training sessions related to European family and succession law reached 13. In comparison with the total number of events organized by the EJTN, European family and succession law related training has been on the rise. Within the Linguistics Programme and Civil Law Seminars, the proportion of these training events has increased from approximately a fifth in the period from 2015 to 2018 to a third in 2019.

The ERA was established in 1992, following the 1990 recommendation from the European Parliament to the Commission to invest in a center dedicated to training lawyers. The foundation is headquartered in Trier, Germany, with a transparent governing body structure consisting of representatives of each Member State, the CJEU, and the European Parliament.[61] Regulations and conventions on family and succession law are regularly put on the agenda of ERA events. In 2015, 2016, 2018 and 2019, the instruments

53 See http://www.ejtn.eu/ (last consulted 21. 10. 2020).

54 *Benvenuti,* International Journal for Court Administration 7 (2015), 59 (62 et seq.).

55 Regulation (EU) No 1382/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Justice Programme for the period 2014 to 2020, OJ L 354, 28. 12. 2013, p. 73–83.

56 *EJTN,* Annual Report 2015.

57 *EJTN,* Annual Report 2016.

58 *EJTN,* Annual Report 2017.

59 *EJTN,* Annual Report 2018.

60 *EJTN,* Annual Report 2019.

61 See https://www.era.int (last consulted 21. 10. 2020).

covered by the EUFams II project were addressed in at least one ERA event per year, with the exception of the Brussels II bis Regulation, which was taught on average four times each year.[62] A significantly higher number was registered in 2017, when the relevant regulations (Brussels II bis Regulation, Maintenance Regulation, Succession Regulation and Rome III Regulation) were taught on average 13.5 times. Among the Hague conventions, the 1980 and the 1996 conventions were taught on average 3 times annually in 2015, 2016, 2018 and 2019, while the 2007 Maintenance Convention and the Protocol were covered only once in 2018. An exception is again the training practice of 2017, when each of the conventions (1980, 1996, 2007) and the 2007 Protocol was presented 15 times.

The European Institute of Public Administration (EIPA) was founded in 1981 on the occasion of the first European Council held in Maastricht. Its main objective is to serve officials in national and regional public administrations in Member States, in the European Commission itself, and in other EU institutions.[63] Hence, in addition to judges, EIPA focuses on the training of other professionals in European private international law. The relevant instruments in European family and succession law were taught systematically in the period from 2015 to 2019. The Brussels II bis Regulation, Maintenance Regulation, Rome III Regulation, and Succession Regulation were annually taught on average 8, 7, 4, and 2 times, respectively. Matrimonial property instruments were taught only twice a year in 2018 and 2019. Other regulations and conventions were not covered at all.[64]

Due to a national specific division of tasks within each respective judicial system, European family and succession law is in some Member States adjudicated by a notary public. In that respect, as an official body representing the notarial profession in dealings with the European institutions, the Council of the Notariats of the European Union (CNUE) may also be relevant when it comes to supporting training activities.[65]

At the national level, training sessions are offered by national training schools. Available data for judicial training indicates differences in performance among national judicial academies. For the purpose of comparison, in the period from 2015 to 2019, the Brussels II bis, Rome III and Succession Regulation were taught at the Croatian Judicial Academy 5, 3, and 2 times a year, respectively. The Property Regimes Regulations were covered only in 2019

62 Responses to the online judicial training questionnaire by the ERA.
63 See https://www.eipa.eu/ (last consulted 21. 10. 2020).
64 Responses to the online judicial training questionnaire by the EIPA.
65 See http://www.notaries-of-europe.eu/ (last consulted 21. 10. 2020).

on 5 occasions. When it comes to the relevant Hague conventions, the 1980 Child Abduction Convention was taught on average 3 times a year, while the 1996 Child Protection Convention was taught only in 2018 and 2019, on average 4 times each year. The 2007 Maintenance Convention and the 2007 Protocol were not covered at all. The Swedish Judicial Academy organized training on private international law on family and succession matters once a year in the period from 2015 to 2017. In 2018 and 2019, no event related to the pertinent instruments was hosted.

Since in the legal orders of some Member States certain judicial functions are *ex lege* performed by a notary public or a lawyer, training is equally performed by a notary public academy or a bar association/chamber academy. National academies give their contribution to judicial training either by organizing training on the basis of an annual plan, or by working in collaboration with other actors such as large training schools and universities. Without a doubt, academia plays a significant role in the organization and performance of judicial training.[66]

V. Importance of training in European family and succession matters

Judicial training is inseparably connected with the rise of professionalism and rule of law promotion through education, exchange of good practice, and skill development. In general terms, it assumes different qualities and skills besides intellectual capacity to become a judge.[67] The quality of justice is assured by universally valued principles, such as fair trial and impartiality. An institutional mechanism has to be set to assure competence and the accountability of judges to a legal norm, entailing high standards of effectiveness and efficiency in management of courts and judicial procedures.[68]

A well-functioning judicial system in the EU entails justice based on professionals capable of performing sophisticated tasks, court management ensuring the high quality of appointed judges, lifelong learning, and advanced judicial training schemes.[69] Judicial training in the European judicial arena

66 Within the framework of projects developed under the DG Justice Grants, some are specialized in family matters, see e.g. http://www.brussels2family.eu/the-project/ (last consulted 21. 10. 2020); https://sites.les.univr.it/class4eu/ (last consulted 21. 10. 2020).

67 *Turenne,* in: Schauer/Verschraegen, General Reports of the XIXth Congress of the International Academy of Comparative Law, p. 1 (7).

68 *Piana,* Judicial Accountabilities in New Europe, p. 5.

69 *Corkin,* Europeanization of Judicial Review, p. 175 et seq.

plays a particularly important role and has added value in terms of enhanced effectiveness and legal certainty. Training aims at advancing legal expertise beyond mere application of law. Absorption, implementation and interpretation of supranational EU principles and fundamental rights, as well as uniform interpretation and conformity with developed supranational courts jurisprudence, are targeted.[70] Hence, the procedure-oriented legitimacy of a judicial decision is superseded by its performance-oriented legitimacy. This entails judicial decisions having legitimacy if they comply with standards of efficiency and effectiveness. The founder of performative theory, *John Langshaw Austin,* advocates that a verbal act is transformed into reality with substantial consequences. Speech, performance, and deliverables (here meaning a judgement, and its reasoning also containing the interpretation) define the world instead of merely reflecting it.[71] In a performative approach, setting judicial training gives legitimacy to a judicial decision.[72]

High demands for serving the system of justice in European private international law have to be looked at in the context of competences of the EU in terms of judicial policy. However, management of the judiciary remains a national competence. It has no bearing that the system of justice in European family and succession law is performed at the national level by the same national authorities that adjudicate domestic cases. Consequently, every national judge is equally a European judge. In most Member States, jurisdiction is neither concentrated, nor are the judges specialized.[73] On the practical side, cross-border cases do not occur equally often in each jurisdiction and they are unequally distributed within certain jurisdictions (concentrated in urban areas, with significantly less number of such cases in rural areas).

Management of the judiciary and specialization or concentration of jurisdiction, are not part of an EU-driven policy, nor is the nomination of national judges and other authorities. This remains a competence of the Member States. Criteria for appointing a judge reflect what society expects them to do, with a number of models employed.[74] A variety of criteria in the EU may explain a variety of approaches and the application of European private international law by different judicial systems of Member States.[75] In many Member States the judge is still perceived as a *bouche de la loi,* hence their

70 *Dallara/Piana,* Networking the Rule of Law, p. 87.
71 *Peternai,* Učinci književnosti, p. 17.
72 *Dallara/Piana,* Networking the Rule of Law, p. 4.
73 *Župan/Poretti,* in: Duić/Petrašević, EU and Member States – Legal and Economic Issues, p. 297–323.
74 *Armytage,* Educating Judges, p. 60.
75 *Turenne,* in: Turenne, Fair Reflection of Society in Judicial Systems, p. 1 (14).

independence is not sufficiently promoted.[76] In many Central and Eastern European Member States, judicial appointment was traditionally based on "the myth that deciding and judging cases is a clear-cut analytical exercise of mechanical matching of facts with the applicable law".[77] Consequently, the recruitment of quality judges, the promotion of standards for higher judicial instances, and the models of teaching professional and generic skills in primary and lifelong education are determining factors when it comes to serving the system of justice in the cross-border arena.[78]

Judicial activity has been changing under the pressure of an increasing number of cases with a cross-border element. Established case law, practice and interpretation represent a departure from the traditional service of justice.[79] This is even more apparent in Members States of the major 2004 and subsequent 2008 and 2013 enlargements. Judges may face constraints pertaining to the legal culture in which they were brought up. In Member States which joined the EU more recently, a majority of acting judges have gained their legal education before the general course in EU law was taught as a part of a mandatory curriculum,[80] let alone specific courses on European private international law. This is especially true for senior judges, even though with the passing of time, the ratio between judges who had and those who did not have university training in European private international law gradually changes in favor of those who had. This is important because European private international law is characterized by a high level of flexibility for the national judge and thus requires profound understanding of its concepts, techniques, and background in European law in general. In comparison to dealing with descriptive legal rules and their mechanical application in pre-accession regimes, this entails different approaches to teaching law.[81] Just as the lack of knowledge and experience of national judges may impact the access to remedies of those involved, lawyers experienced in EU law may instigate different concerns due to their ability to employ litigation tactics to circumvent undesired results and turn legal nuances into advantages for their clients.[82]

These developments are reflected in an EU long-term policy towards judicial training in general, and more specifically, its significance in institutional

76 *Bell,* Judiciaries within Europe, p. 13 et seq.
77 *Bobek,* in: Turenne, Fair Reflection of Society in Judicial Systems, p. 121 (122).
78 See *Posner,* Economic Analysis of Law, p. 709.
79 *Dallara/Piana,* Networking the Rule of Law, p. 40.
80 *Župan et al.,* Report on the Croatian Exchange Seminar, p. 6.
81 See section VII.
82 *Danov,* in: Beaumont et al., Cross-Border Litigation in Europe, p. 475 (489).

and legal adaptation of candidate countries for full EU membership. The European Commission's pre-accession judicial training strategy was established in 1997, initially for the re-socialization of the Eastern enlargement. EU enlargement policy retains this focus on candidate countries, as may be confirmed, inter alia by a study on judicial training in the Western Balkans[83], as well as recent open calls for judicial training, where funding is open for partnerships with Montenegro or Albania.

A European judicial culture is not yet fully embedded in new Member States and may have to be strengthened and enhanced if it has been forgotten in old Member States.[84] References for preliminary rulings reveal that judges may struggle when called upon to interpret basic notions and rules of European family and succession law.[85] While the questions mostly point to details and sophisticated issues, they also concern issues already dealt with in CJEU rulings, and straightforward issues or issues of a technical nature. The CJEU rather often renders an "order" upon preliminary questions of the Member States. Pursuant to Art. 99 of the Rules of Procedure of the CJEU, a question referred to the court for a preliminary ruling may be answered in a simplified procedure in the following three cases: a) if the reply to such question may be clearly deduced from existing case-law; b) where a question is identical to a question on which the court has already ruled; and c) where the answer to the question admits no reasonable doubt.[86] Several CJEU cases are illustrative. Although law in the books is straightforward when it comes to the interpretation of habitual residence in child abduction cases, it does not seem to be transferred into "law in action" before many national courts of Member States.[87] It is notable that though foreign law is applied *ex officio* in Romania, its courts doubted if Italian rules on legal separation are applicable to a divorce of two Romanian nationals living in Italy, in particular since the law of the forum does not lay down any procedural rules in relation to legal separation. The CJEU clearly indicates that despite the inconsistency between foreign substantive law and procedural law of the forum, the Romanian court has to find a way to fully obey the Rome III Regulation.[88]

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83 *Regional Cooperation Council* (*RCC*), Study on the existing systems of judicial training in the Western Balkans, 2017, http://www.rcc.int/ (last consulted 22. 10. 2020).

84 *Dallara/Piana,* Networking the Rule of Law, p. 87–89.

85 See e.g. CJEU, 03. 10. 2019, C-759/18 (*OF/PG*); CJEU, 16. 01. 2018, C-604/17 (*PM/AH*); CJEU, 14. 06. 2017, C-67/17 (*Iliev/Ilieva*).

86 *Petrašević,* Prethodni postupak pred Sudom EU, p. 40 et seq.

87 *Viarengo/Villata,* Planning the Future of Cross Border Families: A Path Through Coordination, Final Study, p. 82, 85 et seq.; CJEU, 10. 04. 2018, C-85/18 PPU (*CV/DU*).

88 See CJEU, 16. 07. 2020, C-249/19 (*JE/KF*).

The above analysis confirms that legal professionals in cross-border family and succession matters are under constant pressure to remain up to date. Against this background, European judicial training in family and succession matters requires further attention and a planned and detailed approach.

VI. Servicing the system of justice in EU cross-border family and succession matters – what training is needed?

Potential obstacles to an adequate completion of adjudication tasks in the EU cross-border arena in general, and in family and succession matters in particular, are frequently noted in scholarly writings.[89] Many such issues are addressed, identified and confirmed by the EUFams I and its successor, the EUFams II project. The EUFams II project started with the hypothesis that there is a lack of familiarity with private international law in general, and with many EU regulations in the field of family and succession law in particular. This may often result in no, false or improper application of the legal regime and/or a non-unified interpretation throughout Member States.

Familiarity with the European family and succession law has been made part of the major EUFams II 2019 survey. Although the questionnaire was distributed to professionals active in the field of family and succession law, the *Lobach/Rapp*-report found a fairly poor overall familiarity with the pertinent instruments.[90] A striking disparity in the understanding of relevant regulations has also been established by the *Lobach/Rapp*-report.[91] Case law collected within the EUFams II database shows this uneven familiarity with, and understanding of, the relevant regulations, but also identifies concrete misapplications. EUFams II database cases from different jurisdictions illustrate effectively the magnitude of the problem.

89 *Viarengo/Villata,* Planning the Future of Cross Border Families; *Beaumont et al.,* Cross-Border Litigation in Europe.

90 The report was based on a survey conducted among 1394 respondents (699 of whom completed the questionnaire), who are professionals in EU family and succession matters. See *Lobach/Rapp*-report, p. 33.

91 Respondents themselves indicated the field(s) of their professional activities. Hence, they only answered questions on their familiarity with the pertinent regulation(s). Notably, on a four-increment scale, the first two answer options (i.e. not acquainted and basic understanding) are indicative of non-existing or merely rudimentary familiarity, *Lobach/Rapp*-report, p. 6.

The relationship between the CJEU and national courts as well as national judges and EU law "is not per se smooth and bright".[92] It appears that national courts have difficulties to keep up to date, in particular with the development of the CJEU practice.[93] The principle of continuous interpretation of the regime becomes particularly relevant with changes brought by the Brussels II ter Regulation in comparison to its predecessor, the Brussels II bis Regulation.

The "evolutive" or "dynamic" interpretation applied by the ECtHR may become relevant for reading European private international law instruments.[94] The practice of the ECtHR may equally cause hardship as, by subject matter, European private international law in family and succession matters intersects with the protection of fundamental rights, most directly with gender issues. A combined interpretation of these legal sources is not an easy task, as the EUFams II database may well confirm.[95] Hence, the intersection of these topics has to be made a regular part of the training,[96] as has been recently acknowledged by the Council of Europe[97] and the EJTN[98].

Further difficulty with the application of European private international law in family and succession matters is attributed to the fact that they are inseparably linked to national substantive and procedural law.[99] EUFams I findings show that a national concept of examining jurisdiction may affect

92 *Jaremba,* in: Goudappel/Hirsch Ballin, Democracy and Rule of Law in the European Union, p. 49 (58 et seq.).

93 *EUFams II Consortium,* Comparative Report on National Case Law, p. 48.

94 *Brosch/Mariottini,* Report on the International Exchange Seminar, p. 9.

95 The Constitutional Court (Ustavni sud Republike Hrvatske, 29. 03. 2018, U-III-5232/2017, HRC20180329) took into consideration relevant practice of the ECtHR considering the notion of the best interest of the child (ECtHR, 26. 11. 2013, no. 27853/09 (*X/Latvia*); ECtHR, 06. 12. 2007, no. 39388/05 (*Maumousseau and Washington/France*)), but in the explanation of the decision it did not refer to the Brussels II bis Regulation, which was applied in lower instance proceedings.

96 *Schultz,* in: Schultz/Dawson/Shaw, Gender and Judicial Education, p. 91 (102).

97 Kyiv Recommendations on the Content and Methodology of Judicial Training on the Implementation of the European Convention on Human Rights, case-law and execution of judgments of the European Court of Human Rights have been informally adopted on international conference: Protection of human rights through Judicial education: best practices and improvement of standards, 9–10 December 2019 Kyiv.

98 EJTN-ECtHR Training on Human Rights for EU Judicial Trainers (HFR/2019/05), http://www.ejtn.eu/Catalogue/EJTN-funded-activities-2019/EJTN-ECtHR-Training-on-Human-Rights-for-EU-Judicial-Trainers-HFR201905/ (last consulted 22. 10. 2020).

99 *Hess/Kramer,* From common rules to best practices in European Civil Procedure; *Poretti,* LeXonomica, 8 (2016), 13–28; *Fitchen,* in: Beaumont et al., Cross-Border Litigation in Europe, p. 55–75.

the perception of the *lis pendens* rule of the regulations.[100] A legal framework of Member States contains procedural obstacles that may impede proper application of EU law.[101]

The legal environment, in which operations management is constantly struggling with an overflow of cases, forces national judges to work on a daily basis with mainly national cases. Hence, the homeward trend appears to be the most convenient way to deal with work overload.[102] Judges do not have enough time to examine and apply all the fine elements of European private international law properly. While the CJEU is pushing for a uniform interpretation that departs from national legal cultures, judges are not always keen on interpreting law proactively.

The major problem is that judges may not be fully aware of the implications of improper application of European private international law in family and succession matters,[103] as can also be deduced from CJEU case law.[104] Free circulation of judgements is at the forefront of EU civil justice. Hence, if a judge wrongfully assumed jurisdiction and rendered an order, that order would be very likely inspected by a judge of a Member State that actually had jurisdiction. Although such a ruling would in principle retain every effect, it raises concern and hinders mutual trust.[105] As has been wisely pointed out, the mutual trust is not a blind trust.[106] To make and keep the fragile fabric of mutual trust, a lot of effort has to be invested in improving professional competences of national judges and building a true European judicial culture.

The need for the networking and training of professionals was stressed in EUFams II deliverables as well. National reports address the issues of building the capacities of professionals, particularly the ones from Spain[107] and Croatia[108]. The German report highlights that functioning of the system should be fostered further by judicial networks, whereas work and the

100 *Župan/Drventić,* in: Viarengo/Villata, Planning the Future of Cross Border Families, p. 203 (210–216).

101 *Hess et al.,* An evaluation study of national procedural laws and practices in terms of their impact on the free circulation of judgments and on the equivalence and effectiveness of the procedural protection of consumers under EU consumer law.

102 The homeward trend has been highlighted by academics and confirmed by data. See *Lobach/Rapp*-report, p. 19.

103 *Beaumont et al.,* in: Beaumont et al., Cross-Border Litigation in Europe, p. 819 (826).

104 CJEU, 06. 10. 2015, C-489/14 (*A/B*); CJEU, 15. 02. 2017, C-499/15 (*W and V/X*).

105 Re S (A Child) [2014] EWHC 4643 (Fam); CJEU, 19. 11. 2015, C 455/15 PPU (*P/Q*).

106 *Prechal,* European Papers 2 (2017), 75 (85).

107 *Espinosa Calabuig/Quinzá Redondo,* Report on the Spanish Exchange Seminar, p. 4.

108 *Župan et al.,* Report on the Croatian Exchange Seminar, p. 23.

position of *liaison* judges must be elaborated upon.[109] EUFams II deliverables advocate that in parallel to the training of professionals, information campaigns should address general public awareness, to enable citizens to make informed decisions in a timely manner and with respect to their property regimes.[110]

The EUFams findings expose the complexity of adjudication in cross-border family and succession matters, highlight the most problematic areas, and confirm the need for judicial training. Thus, the judicial training on Europe private international law has to be tailored, both to the recipients (judges and other legal professionals), and to the specific nature of the legal instruments at stake. To do so, it is necessary to evaluate an appropriate methodology for lifelong legal education.

VII. Lifelong legal education

1. Legal education in the EU

After gaining insight into EU policy considerations regarding legal training in European private international law, especially in the field of family and succession law, in the area of cooperation in civil matters, this section focuses on some of the essential traits of legal education in the EU. As post-academic legal training has to build efficiently on the previously obtained law degrees, it is important to consider to what extent legal education has prepared judges for lifelong learning. Understanding which knowledge, skills and competences have been transferred to law students is a prerequisite for designing appropriate and useful training programs.

a. Contemporary legal education put into context

Legal education today is inextricably linked to universities. This is true not only for Europe, but also for most parts of the world. Appearing originally at the end of the High Medieval Period, universities were certainly not the first format in which law was thought of. Various forms of higher education which left their imprint on today's legal teaching and research owed much

109 *Zühlsdorff,* Report on the German Exchange Seminar, p. 2, 22.

110 *Espinosa Calabuig/Quinzá Redondo:* Report on the Spanish Exchange Seminar, p. 14; *Brosch/Mariottini,* Report on the International Exchange Seminar, p. 36.

to the intellectual momentum of ancient civilizations. Important milestones in the development of the universities were the rise of the French Napoleonic model and the German Humboldtian model[111] in the 19th century, the latter lying at the heart of the development of modern European universities.

The essential properties of the Humboldtian model, i.e. the unity of research and teaching, academic freedoms to learn and teach (*Lernfreiheit* and *Lehrfreiheit*), education (*Bildung*) rather than training, the community of students and academic staff (*universitas magistrorum et scholarium*)[112], still pertain to the universities of today. However, their philosophies and structures have become permeable to ideas from other higher education traditions. One such idea is that the educational function of a university is primarily aimed at responding to the needs of the ever-specializing labor market, not merely by taking account of the economic development and demand for certain professions, but also by tailoring its curriculum to transform students into trained professionals. Using commercial language,[113] the universities are to manufacture educational products which are ready-to-use by the employers from the moment students enter the labor market onwards. While "[t]he Industrial era thus built a massive education super highway",[114] the Information Age is tending to take us even further.

On a more general level, under the pressure of the global competition phenomenon, the architecture of higher education is currently being redesigned.[115] In a rapidly changing world, the universities are competing globally to take their place in the "audit society"[116] based on university rankings, quantitative bibliometric and bibliographic indicators, funds generated from public-funded projects or business partnerships, quantitative measuring of internationalization, etc. Many of these indicators have been advanced and depend on the criteria set by autonomous globally operating entities, often with an economic interest in its furtherance. Against this quantitative background, the quality of genuine (Humboldtian) freedoms and independence of academic activities should be questioned. While *Rüegg* astutely observed that "[n]o other European institution has spread over the entire world

111 The Humboldtian model owes a lot to developments both before and after the period of *Humboldt's* influence. For more details see *Anderson,* European Universities from the Enlightenment to 1914.

112 *Östling,* Humboldt and the Modern German University, p. xiii.

113 The use of such metaphorical expressions is common among critics of the market model universities. See *Liessmann,* Theorie der Unbildung, p. 42 et seq.

114 *Waks,* The Evolution and Evaluation of Massive Open Online Courses, p. 17.

115 *Rust/Kim,* WSE 13 (2012), 5 et seq.

116 For more details on the concept see *Power,* The Audit Society.

in the way in which the traditional form of the European university has done",[117] *Liessmann* has professed that the true European idea of the university has been forsaken for economic efficiency.[118] Whereas detailed aspects of the tension between the Humboldtian model and the market model are beyond the scope of this paper, the above observations have sufficiently contextualised further investigation into the basic elements of contemporary legal education.

b. Legal education today

Since the inception of universities at the end of the eleventh century, law has been one of the fundamental areas of study.[119] Thus, the history of legal education may indeed be our *magistra vitae academicae.* It has provided us with many useful methods and tools which we still employ today, for instance, the rules of logic and argumentation, the Socratic method, and rhetoric skills.

Different methodologies and approaches are used nowadays at different levels of legal education. The core legal education is the one which results in a degree that qualifies a person for a legal profession, such as the one of judge, attorney, public prosecutor, and notary, usually with a further requirement of a general and/or specialized professional exam. Under the Bologna system, a Bachelor of Laws (LL.B.) degree usually takes three to four years to earn, while another one or two years are necessary for a Master of Laws (LL.M.) degree. A postgraduate doctoral degree (Ph.D. or S.J.D.) requires another three or four years of mentored individual research. One academic year typically carries 60 ECTS credits, which corresponds to 1,500 to 1,800 hours of study. Although all EU Member States are signatories to the 1999 Bologna Declaration[120], the implementation varies among them because it envisages voluntary rather than mandatory harmonization.

Law curricula may also differ among universities, yet given the highly regulated character of legal professions, they tend to be generally aligned at least within a particular Member State. Law curricula in different Member States are comparable when it comes to core courses with an international

117 *Rüegg*, in: Rüegg/de Ridder-Symoens, A History of the University in Europe, p. xix.

118 *Liessmann,* Theorie der Unbildung, p. 104.

119 This does not mean that legal professionals have always necessarily earned legal qualifications. See e.g. *Gower,* MLR 13 (1950), 137 (139 et seq.).

120 Joint Declaration of the European Ministers of Education convened in Bologna on 19 June 1999, http://www.ehea.info/media.ehea.info/file/Ministerial_conferences/02/8/1999_Bologna_Declaration_English_553028.pdf (last consulted 27. 10. 2020).

and a European content. However, they may vary considerably in their national contents. This being said, they expose a common trait in the growing share of the curricula dedicated to practical training in addition to classical teaching.[121] The integration of the training component into the curricula takes both vertical as well as horizontal routes. It is manifested not only in the insertion of practice-oriented formats of education as new courses, such as moot courts and legal clinics,[122] but also in adding a stronger methodological reliance on hypothetical or real-life case studies and project-solving assignments in traditionally organized courses. Regardless of this tendency, legal education in EU Member States is still focused to a lesser degree on training and more on a classical idea of learning theoretical aspects of law. This being said, the educational culture of Member States are also different and they leave an imprint on students affecting their openness towards interactive and engaged training later in their lives. These are sources of additional challenges when conceiving learner-centered training for judges.

2. Lifelong learning for judges

Nearly in parallel with an increase in the training-based courses which are part of the core legal education, lifelong learning programs have developed to support legal practitioners in updating their knowledge. Initial national attempts to introduce continuous legal training for judges were rejected with the argument that it might undermine judicial independence. This argument is nonetheless easily discarded if judicial training is regarded as part of their function of providing a public service and is seen as a means of receiving instructions on the methods of reaching decisions, without interfering with their decision-making in concreto.[123] Moreover, judges may be reassured as to the independence of their function by being involved in the system of continuous training as (co-)creators of the training plans, or as (co-)trainers.[124]

121 See e.g. *Wilson,* in: Halvorsen Rønning/Hammerslev, Outsourcing Legal Aid in the Nordic Welfare States, p. 263 (275 et seq.).

122 See e.g. *Bartoli,* Legal clinics in Europe; *Blengino/Gascón-Cuenca,* Epistemic Communities at the Boundaries of Law.

123 *Malleson,* MLR 60 (1997), 655 (657, 667).

124 This is occasionally the rule employed by the Croatian Judicial Academy, for instance, in the case of the 2019 training on the Property Regimes Regulations, the training material prepared by a judge and two academics: *Kokić/Kunda/Župan,* Prekogranična pitanja bračnoimovinskih režima i režima imovine registriranih partnera, where the training was conducted in the two-member teams, each consisting of one judge and one academic. The

Additional benefits of such involvement are focused on the actual problems experienced by judges and the easing of communication with trainees.

At the EU level, there are currently several initiatives related to continuous training in European private international law, the most prominent ones being the pan-European programs under the umbrella of the EJTN discussed above in more detail.[125] Other lines of financing include different training formats, such as the EU Justice Programme. Large funds are allocated for these purposes,[126] given that attaining freedom, security and justice is highly dependent on mutual trust among Member States and their judiciaries in the proper application of EU law.[127] The national judges standing at the forefront in terms of applying EU law are capable of assuring its correct application, provided they have a good understanding of its concepts and underlying policies, as well as any interaction with other legal sources. They also have to be able to identify and find relevant resources, in particular, legal instruments and CJEU and national courts' case law, which may guide them in applying European private international law. The European Commission is, however, confident that its strategies have been effective and that mutual trust has in fact increased partially due to intensive training with cross-border implications, consequent knowledge increase, networking, and the sharing of experience and best practice.[128] As much as this might in fact be true, there is still room for improvement, as is apparent from the abovementioned recent examples of a lack of application or misapplication of the pertinent instruments.[129]

Besides knowledge of European private international law, the emphasis in these training events has also been recently placed on building the legal vocabulary and knowledge of the English language in general.[130] This is done "with a view to fostering a common legal and judicial culture",[131] fostering the understanding of foreign law, legal reasoning and arguments,[132] and be-

evaluations from the attendees were excellent, which may also be attributed to the combined judge-academic approach.

125 See section IV.

126 SWD (2019) 380 final, p. 42.

127 CJEU, 18. 12. 2014, Opinion 2/13, note 168, 191.

128 SWD (2019) 380 final, p. 38 et seq.

129 See section VI.

130 See *Holmsten,* ERA Forum 17 (2016), 141 (142).

131 Annex to Regulation (EU) No 1382/2014 of the European Parliament and of the Council of 17 December 2013 establishing a Justice Programme for the period 2014 to 2020, OJ L 354, 28. 12. 2013, p. 83.

132 *Pretelli,* in: Schauer/Verschraegen, General Reports of the XIXth Congress of the International Academy of Comparative Law, p. 607 (609).

cause the efficient use of the English language is seen as a "precondition to effective contacts across Member States, which are in turn the cornerstone for judicial cooperation".[133] Such communication is envisaged by several legal instruments.[134]

The aforementioned notes lead to the following chain of connections that the European Commission is convinced connects the functioning of the internal market on the one hand and its strategy in terms of judicial training on the other: the first connection entails that the functioning of the EU internal market, and especially the creation of the area of freedom, security and justice, to a large extent depends on the existence of mutual trust among the Member States, including their judges; the second connection links mutual trust among the national judges from different Member States to their twofold capacity: the judges have to demonstrate that they are able to correctly apply EU law, including European private international law, and they have to possess the ability to directly communicate to each other in the spirit of close judicial cooperation; the third connection reveals that legal and language capacities of national judges are critically dependent on their continuous education aimed at strengthening and updating their knowledge and competences related to EU law and the English language.

3. Learning theories and teaching methods for European private international law

Irrespective of the type of training program, the question of the methodology to be used in teaching has many possible answers. Relying on educational psychology, prevalent modern pedagogy states that teaching methods are necessarily grounded in learning theories, because the latter explains the ways learners receive, process, and integrate knowledge and information intended to be transferred in the course of learning.[135] Among various learning theories, constructivism and developmental theory might be of special importance for the designers of judicial training programs. The former learning theory emphasizes previous knowledge and understanding as the basis for the future ability to learn, while the latter focuses on the way one's learning skills and abilities change as one gets older. In order to choose and apply the methods effectively, it is important to understand the principles behind

133 COM (2011) 551 final, p. 5 et seq.
134 See e.g. Art. 29 Brussels I bis Regulation; Recital 2 and 8 Taking of Evidence Regulation.
135 *Friedland,* Seattle U.L. Rev. 20 (1996), 1 (4).

those methods[136] as well as to have a clear idea of the overall goals and the intended learning outcomes that judicial training should achieve.

Furthermore, when contemplating a teaching methodology to be applied in judicial training, it is necessary to take account of the typical properties a judge has owing to his or her profession: They are adult persons, with a strong sense of professional independence, certain life and professional experience, a developed ability to make up their own mind, and a professional predisposition to take the role of authority in a given situation. For these reasons it seems particularly apposite to pay heed to adult learning theory, the foundations of which are as follows: Adults need to know the reasons why they learn something; they will be motivated to learn if there is an instant opportunity to use what is learnt;[137] they take the perspective of a real-life situation, so learning should be functionally organized to respond to the situation, not by the subject matter; they enter the learning process rich in experience which they need to analyze in the process; they are self-directed and accept collaborative two-way learning models much better than a trainer-to-trainee one; and they are motivated by internal rather than external incentives.[138] Due to these reasons, adult learners, such as judges, are not likely to benefit from conventional learning methods, such as an old-style textbook lecture. What learning methods should be used instead? Theories of learning, coupled with the basic principles of andragogy, ought to inform methodological choices as to judicial training of national judges in the EU. Some of the preferred learning methods include case studies, experimental methods, and discussions.

It is beyond doubt that the European Commission, which sets the stage for efficient training of national judges,[139] is interested in developing a deep understanding of EU law in order to assure its correct and uniform application throughout the EU.[140] However, when compared to the past and existing national codifications, the EU rules in the area of family and succession law with cross-border implications are much more extensive and complex. The complexity arises due to the variety of legal instruments in the field and

136 Art. 10 Declaration of Judicial Training Principles, International Organisation for Judicial Training, 08.11.2017, https://www.unodc.org/res/ji/import/international_standards/declaration_of_judicial_training_principles/declaration_of_judicial_training_principles.pdf (last consulted 22.10.2020).

137 This is confirmed by the above presented data on no inclination of judges to proactively take on lifelong learning. See section IV.

138 For more details, see *Knowles/Holton III/Swanson,* The Adult Learner.

139 See section VII.2.

140 SWD (2019) 380 final, p. 38 et seq.

absence of their synchronization.[141] As such, their understanding requires a certain level of awareness of the differences in the Member States' national laws, profound appreciation of the general structure and logic inherent in private international law, and a firm grasp of hierarchy and overall relations between international, European and national layers of legal instruments. In addition, when applying EU law, national judges need to be well versed in the discipline of fundamental rights, as it may be necessary to apply them directly to the case at hand.[142] Fundamental rights have to be constantly on the judges' mind, because they make up part of the European constitutional identity.[143] Only then may national judges be expected to swim well in the vast, deep, and wavy waters of European private international law. An effective way to achieve this is through case studies combined with comparative legal methodology, because "[o]nly through comparison do we become aware of certain features of whatever we are studying."[144] On the basis of a hypothetical or actual case, judges may be asked to compare the outcomes under their national law and EU law. If this process is structured as group learning in a transitional training program which is considered advantageous in the EU context,[145] the comparison could be made among several national laws and EU law. By doing so, judges can learn about different national laws of the Member States, notice both sharp contrasts as well as fine nuances between the compared laws, discern points of convergence, and, most importantly, get an insight into the rationale underlying different rules. This will help them realize which elements of their previously acquired legal knowledge and competences related to national law may be directly useful, and which elements should be set aside in terms of applying EU law.

With the understanding of law there comes the development of hands-on skills and competences employable in practice. This entails the ability of judges to grasp and recognize deeper patterns, even when they are concealed under different layers and surfaces. Such a transfer of learning explains how previous experience may help in resolving new problems, provided there is a deep understanding of the underlying pattern. The best way to gain these

141 *Hellner,* in: von Hein/Kieninger/Rühl, How European is European Private International Law?, p. 205 (208); *Župan,* in: Honorati, Jurisdiction in Matrimonial Matters, Parental Responsibility and International Abduction, p. 1 (5 et seq.).

142 *Frąckowiak-Adamska,* in: von Hein/Kieninger/Rühl, How European is European Private International Law?, p. 185 (195 et seq.).

143 This has been confirmed in the rebuttable presumption created by the ECtHR in *Bosphorus:* It is presumed that the application of EU law implies protection of fundamental rights, see ECtHR, 30. 06. 2005, no. 45036/98 (*Bosphorus Airways/Ireland*).

144 *Sacco,* AJCL 39 (1991), 1 (5).

145 Implementation of the Pilot Project, p. 116.

abilities is by actually doing something, rather than simply listening to it or watching others do it. Learning by doing thus helps to close the undesirable gaps between the law in the books and the law in action.[146] Methods that may support this aim are the case study method and experimental method. The case study method seems to be particularly apt to study EU law, given the authority of the interpretations by the CJEU. Its rulings are often phrased in terms of the actual facts of the case, where the applicability of the earlier decision may be confirmed or denied based on the presence or absence of distinguishing facts. Thus, stimulating and resourceful case studies may consist of the basic description and as many variations thereof as needed to demonstrate the elements which bring about different outcomes. Additionally, through simulation exercises, such as a small-scale moot court and a mock trial or interview, judges also learn by solving the problem, improving at the same time the argumentation skills of the opposing sides in the dispute, and improving their oral or written expression in their mother tongue or in another language. Experimental methodologies need not necessarily be simulation-based, but may also occasionally involve real-life cases and situations which judges may observe and train for. Because the physical presence of judges who are trainees in a given training event is not usually possible in such situations and cases due to various reasons, such as a hearing from which the public is excluded, or simply because the hearing is taking place during working hours when judges are dealing with their own cases, audio-video recording technology can be used to enable subsequent and repeated viewing, for instance by recording an actual interview or a court hearing. Problem-based learning is very beneficial in terms of, inter alia, retention of learned material, interest in the subject matter and building self-confidence.

Another important goal intended to be achieved by EU law training is critical thinking,[147] which comes on top of the abilities aimed at gaining a deep understanding and solving practical problems. In developing such thinking, judges have to feel confident in their knowledge and understanding of the subject matter as well as the underlying policies. On this premise, they will be able to act as socially conscious persons and engage in discussions by asking the right questions, commenting, agreeing with or criticizing not only the positions of others, but also certain legislation and court ruling or reasoning. To increase the level of trainees' engagement and position them as stakeholders in the learning process, trainers can use a Socratic dialogue and class or small group discussions. Discussions may be organized

146 *Perelman,* RIEJ 72 (2014), 133 (136).

147 See *Grimes,* in: *Strevens/Grimes/Phillips,* Legal education, p. 1 (3).

as an independent method or may be combined with some of the above, but judges who are trainees need to be kept in a safe environment where they can open up and speak freely without fear of being called out for the opinion they express.[148] Discussions often develop in the course of a case study. In such situations, judges may talk about their previous experience in handling similar cases, which opens up the opportunity for a trainer to integrate effectively these real-life cases into the discussion and provide feedback to the judges.

The methods of training should also accommodate the need of judges to obtain competences other than in law. For the national judges in EU Member States, this is primarily a command of the English language, which serves multiple purposes, including direct communication with judges in other Member States and keeping up-to-date with legal developments in legislation, case law and the literature.[149] Furthermore, judges need to be fully appreciative of the contemporary social environment, thus training should also involve non-legal knowledge, skills, the social and economic context, and values and ethics in today's society.[150]

Regardless of the method used, the learning process of an adult trainee will benefit him or her by being an active participant rather than a passive recipient.[151] Nevertheless, it is not always easy or possible to achieve active participation, because the educational culture in different Member States may range from open, student-centered and intensely engaging, to conservative one-way, teacher-to-student learning. The educational pattern learnt as a law student is transmitted to later stages of life and may hinder judges from taking a more active role in judicial training and the judicial profession in general. Furthermore, psychological pressure caused by the fear of making a mistake may work towards the same end and is likely to increase with age. Hence, geographically and generationally based asymmetries are realities and might require adjustments to the methodologies depending on the profile of trainees. As much as this is true regarding the teaching methods, it is also true with respect to the use of technology.

148 See Art. 10 Declaration of Judicial Training Principles.

149 The scarcity of legal literature on EU private international law in official languages of some Member States has been noted by *Hellner*, in: von Hein/Kieninger/Rühl, How European is European Private International Law?, p. 205 (206).

150 Art. 8 Declaration of Judicial Training Principles; Implementation of the Pilot Project, p. 112 et seq.

151 Implementation of the Pilot Project, p. 5.

4. Use of new technologies

Considerable challenges in designing judicial training may be overcome by an informed and tailored use of available methodologies and training formats, while electronic tools and new technologies may provide additional support in attaining efficiency and/or accessibility of training. Stakeholders have declared that judicial training should make optimal use of new technologies, distance/online learning (complementary when appropriate), and electronic media.[152] What are these technologies and how to assess what constitutes their optimal use?

The technologies used for this purpose are primarily information and communication technologies (ICT), which are characterized by integration of telecommunications, computing, and audio-visual systems that enable information processing, such as access, storage or transmission. The use of state-of-the-art ICT is not always possible, but over time it has become more available, affordable and known to a wider audience. Ever since the internet and ICT in general entered our private and professional spheres in the 1990s, and the Web 2.0 made its appearance in 2004, technological options have been expanding. There now exist various distance training formats, such as online training or e-learning (extranet or open), in the form of video conferencing, "live case" online teaching, online podcasting, online texts, exercises and materials, discussion forums, social networks, etc., and any combinations thereof.[153]

ICT-supported training is attractive from the perspective of all parties involved, i.e. funding institutions, organizing entities, trainers and trainees, since it is time-saving and cost-effective, flexible, and allows for expanded participation. Those are the reasons for its intensified use in a certain number of Member States,[154] while others are catching up at a slower pace, often owing to the lack of skills on the part of either trainees or trainers or both. The use of technology does not necessarily involve communication at a dis-

152 Art. 10 Declaration of Judicial Training Principles; Implementation of the Pilot Project, 114. At the same time, the EU legal instruments provide for the use of ICT in particular circumstances, such as in direct communication between judges (see VII.3.), service of documents or taking of evidence. See 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 (service of documents), and repealing Council Regulation (EC) No 1348/2000, OJ L 324, 10.12.2007, p. 79–120; Taking of Evidence Regulation.

153 Implementation of the Pilot Project, p. 67–68.

154 See the experience from Bulgaria, the Netherlands, Spain, Portugal and Romania, and the respective different tools. Implementation of the Pilot Project, p. 67–74.

tance, but also includes various ways in which information technology is employed in the context of face-to-face learning, particularly in designing the learning modules. A case in point is filming the performance of judges to provide feedback.[155] Showing textual and photographic material, playing audio and/or video material or engaging judges in interactive e-learning modules may also be useful tools in judicial training.

The second question relates to the test of "optimal use". It is argued here that the use of ICT and its potential and advantages should be considered in each training design when it comes to the achievement of set learning outcomes. If the learning outcomes may be achieved better, equally well or with only minor concessions by means of technology rather than by analogue means, the test is passed and technology may replace its alternative. If technology would compromise the attainment of the learning outcomes, for whatever reason, it should be avoided as non-optimal. In applying the "optimal use" test, factors that need to enter into the equation include in particular the learning outcomes deriving from the previous needs assessment, the potential of the chosen ICT tool to sufficiently contribute to the attainment of the learning outcomes, and a target group profile, especially in regard to their ability and willingness to use ICT tools.

In this assessment of likelihood to complete the learning outcomes, learning theories may be helpful, e.g. online learning seems to fit squarely the andragogy perspective because it supports individualized and self-directed learning, as trainees normally receive less supervision in an online environment. It is expected that over time, more and more situations will provide an optimal use of technology. Other circumstances may also play an important role in determining optimal use of ICT in a given situation, such as excessive funds which could be saved and the practical impossibility for the target group to physically attend an event. The latter became particularly evident in the outbreak of the COVID-19 pandemic, when, due to movement restrictions, it became impossible to travel and physically attend the scheduled training sessions. This resulted in the massive postponement or cancellation of the planned face-to-face training events. However, an uncertain duration of these restrictive measures may facilitate conversion of the planned face-to-face sessions into highly ICT-supported events, and rightly so under the optimal test.

To optimize the use of technology in particular circumstances, either for the purpose of compensating for the disadvantages of its use or availing oneself of the advantages of its use, the option of hybrid training may be an

155 Implementation of the Pilot Project, p. 113.

opportune choice. Such hybrid training models include distance learning and face-to-face learning in whatever combination. Although for the time being, face-to-face training remains the principal method of judicial training due to its general benefits or those related to particular situations (special or confidential expertise related to the right of the child to present its opinion, training-the-trainers events, networking effects, conversational language competences),[156] distant learning will, in view of its potential to save time and financial resources, increasingly become the sole or hybrid choice of various training institutions and will gradually be more welcomed by judges who are trainees.

Modalities of training in European private international law, and more specifically in European family and succession law, are further elaborated below to establish a clear link between practical needs and desirable practices *pro futuro.*

VIII. Training in European family and succession law – selected figures

1. Organization and types of training

Data collected by the questionnaire addressing the training networks and schools indicate that multiple actors cooperate in the organization of judicial training, confirming that networking is *en vogue* in European governance.[157] In the period from 2014 to 2020, approximately half of the training events have been organized by only one institution, while the other half have been organized in cooperation with multiple judicial centers, national academies, ministries or law schools.[158] Training types range from conferences and lectures to interactive workshops and seminars involving the solving of practical case studies. The EJTN strives to achieve training at all stages of professional activity, distinguishing between initial training (before or upon appointment) and continuous training in a subspecialized group.[159] The ERA has organized most training events by topic, offering additional high-level conferences on European family law on an annual basis. Within the

156 Implementation of the Pilot Project, p. 67.

157 *Visser/Claes,* in: Vauchez/De Witte, Lawyering Europe, p. 75.

158 ERA organized 40% of events by itself and 60% in cooperation with other institutions; at EIPA, this ratio is 50:50 (Responses to the online judicial training survey questionnaire).

159 *EJTN,* Annual Report 2015, 2016, 2017, 2018, 2019 http://www.ejtn.eu/Documents/About%20EJTN/EJTN%20Documentation/EJTN-Annual-Report2018_Web.pdf.

framework of this project, events are also offered at different levels (basic and advanced), thus targeting legal practitioners with different levels of knowledge/experience in the area of law at hand. Different levels of courses are fully justified and necessary, as cognitive psychology establishes that in education, prior level of knowledge would be determinative for the proper understanding of the given course.[160]

Although most training events were previously organized in the facilities of institutions, distance learning has also become a more established mode of judicial training. The most frequently employed online training methods are online courses taught in real time, lectures or seminars recorded in advance, interactive exercises on a platform, materials distributed on a platform, and others.[161]

A majority of 65% of online judicial training survey respondents find modern technology advantageous for training (interactive books, recorded lectures, learning tools requiring active participation and action, webinars, etc.). Although respondents advocate modern technologies and training institutions indicate they offer such programs, the majority of online judicial training survey respondents never took part in webinars. In comparison to US models, European training institutions do not fully practice synchronous (real-time) or asynchronous (on-demand) webinars or webcasts as a matter of routine. Modern technologies imply peer-based learning with "electronic white boards, virtual chat rooms, blended learning applications that integrate distance with in-person learning."[162]

The rise of distance training facilities may be attributed to the recent COVID-19 crisis. An inspection of offers available online indicates that, unfortunately, topics in the field of European family and succession law are currently scarcely represented.[163]

160 *Shuell,* Review of Educational Research 56 (1986), 411–436.

161 Regularly employed by EJTN and EIPA, as of 2020 by ERA, also used by Croatian, German and Swedish national judicial academies (Responses to the online judicial training survey questionnaire).

162 *Armytage,* Educating Judges, p. LIII.

163 http://www.ejtn.eu/Methodologies--Resources/; https://era-comm.eu/moodle/ (both last consulted 22. 10. 2020).

2. Methodology, curricula and teaching materials

Regardless of the type of training, participants most frequently approve of interactive learning methods and exchanges between practitioners.[164] Teamwork is supported by online judicial training survey participants and almost 80% actively participate in such a training. Other participants in teamwork exercises remain passive, either due to a language barrier or because they prefer individual over interactive work.

Training curricula are developed on the basis of individual assessment of each institution offering training. For example, at the ERA, lawyers or project teams are responsible for this, whereas at the EIPA, faculty members (in the case of internal projects), and scientific committees (in the case of collaborative training) are responsible. In joint projects funded by EU grants, curricula are obviously determined by the nature of the grant in question. Grants are most frequently awarded by DG Justice. In national judicial academies, curricula may be determined either exclusively by the judicial training academy, as is the case in Croatia and Sweden, or by the State and the federal government(s), as in Sweden. However, designing curricula is surely affected by the EU funding policy and topics targeted by such calls.

The vast majority of training events organized by institutions inspected here were purely law-oriented. Judicial training theory, however, emphasizes that besides building competence in law, training should improve the overall level of general knowledge and skills. The online judicial training survey respondents endorse this attitude, as 85% of them advocate specialized holistic education, in which training in law will be carried out in combination with other relevant social sciences and humanities. Psychology, ethics, sociology and social work are indicated by the respondents as fields to be included in legal training. Approximately 40% of the respondents find content-oriented

164 The European Commission launched a public consultation and a targeted consultation from 02. 02. 2018 to 26. 04. 2018 to re-examine the findings of the 2011 Study and set a future strategy. Responses to the European Commission's 2018 judicial training evaluation had to address the needs of justice professionals in EU law. These findings correspond to a large extent to the judicial training survey, where participants expressed the wish to take part in the design of future training topics. They want to be able to actively affect the chosen training topic indicating their wish to ensure that training meets their needs. This corresponds to the 2018 responses, where a large majority amounting to more than 70% of respondents considered that the objectives of the future European judicial training strategy should differentiate between judicial professions. Responses to the 2018 strategy indicated that the needs and capacities of different Member States should be differentiated. Other respondents suggested broadening the geographic scope e.g. by including relevant third countries.

training in law accompanied with training on ICT useful (e.g. e-tools for cross-border civil cooperation). The survey indicates that training participants have a preference for the approach which enables them to influence the future training curricula. Hence, they should be given a more active role in the process of designing future training curricula.

There are basically two models for the development of training materials. They are in most cases developed in training centers by the trainer of each course. More than 80% of the online judicial training survey participants indicate a preference for that model. The other model is to have renowned (legal) experts develop standardized training materials (case studies, language manuals), which will be used later by other trainers as well. Such a model is particularly common within the framework of projects.[165] The Croatian Judicial Academy tends to use this model by default.[166] Materials are in general distributed to participants electronically, in paperback, or as a combination of the two. Importantly, 80% of the online judicial training survey participants opted for an electronic copy.

Depending on the type of funding, materials are only distributed to the participants, in some instances also to the general public. At ERA, if training is conducted within the framework of a project, materials are uploaded to websites and made publicly available and downloadable for free. In some national training centers, materials are also downloadable without access restrictions.[167] Some national training academies make them available when requested by email. However, as many as 80% of the survey participants experienced materials reaching only participants in training events rather than other practitioners.

3. Trainers and participants

Trainers are, as a rule, academics, judges or practitioners. All three categories are rated very highly ("very good") by the training participants.[168] The online judicial training survey reveals that a judge is the preferred trainer in Sweden.

165 Responses to the judicial training questionnaire by ERA.

166 Responses to the judicial training questionnaire by the Croatian Judicial Academy.

167 Responses to the judicial training questionnaire by the Croatian Judicial Academy; the materials are available at https://www.pak.hr/clanak/obrazovni-materijali-41554.html (last consulted 22. 10. 2020).

168 Responses to the judicial training questionnaire by ERA, EIPA, and national judicial training schools.

Participants in judicial training activities receive information on the available training mainly from their superiors and to a lesser extent by following social networks or communicating with their colleagues.[169] Major training institutions use ICT to foster training promotion, i.e. websites, social media profiles (LinkedIn, Facebook, Twitter) or direct emails.[170] None of the major training centers employs a virtual assistant or testimonials to attract trainees.

The willingness of participants to take part in the training depends on various factors. Training is perceived as the most efficient way of knowledge transfer by the majority of the online judicial training survey participants. Some of the participants would rather read the relevant literature or would prefer to enroll in a specialist/master study program. The Evaluation of the 2011 European Judicial Training Strategy indicates that participation of justice professionals in training activities depends on the quality and relevance of the training offered. Particularly valued are practice-oriented training and the connection with the reality of the participants' professional focus. This entails not only training on EU law developments, but also on "the reality of the participants: interplay of legal orders".[171] Accessibility in terms of time and budget should be ensured, especially with respect to an uncomplicated and transparent mechanism for cost reimbursement. It is important to ensure that there is an EU added value, for example by ensuring that trainers and participants come from different Member States.[172]

Approximately 50% of the survey participants stated that there is a regulated obligation to take part in training, whereas for almost 30% of them it was relevant for their careers and potential promotions.

In respect of participation in national or international training, figures reveal different habits and needs of survey respondents. Most online judicial training survey participants (21 respondents) had attended ten national training events in the last five years. Turning to international training, most survey participants (25 respondents) had attended two international training events in the last five years.

Survey participants indicated that the benefits of training conducted in an international environment are excellent lecturers, learning from other Member States' practices and experiences, and networking with peers from other Member States. However, a high number of participants point out as

169 Online judicial training survey.

170 Responses to the judicial training questionnaire by ERA, EIPA, and national judicial training schools.

171 Evaluation of the 2011 European Judicial Training Strategy, p. 7.

172 Evaluation of the 2011 European Judicial Training Strategy, p. 8.

disadvantages of international training events that their content is too general, because either they are not tailor-made for their jurisdiction, or they are difficult to follow because participants' language proficiency is too poor, and that they are overly intensive. These findings correspond to responses received by training networks and national academies. In addition, ERA participants endorse the opportunity to meet colleagues from all over Europe, the exchange of experiences and knowledge, the high level of organization, trainer/speaker profiles, interactivity of events, and case studies. Shortcomings of training addressed by participants in training centers relate to limited time of training events (ERA/EIPA), and the venue which is difficult to reach (ERA, which apparently relates to Trier, Germany; being aware of that, the ERA tries to respond by offering project-funded training in other Member States in co-organization usually with national judicial academies).

Participation in training is to a certain extent dependent on the costs. Participants in national training events have no costs or organizational burden as they are entirely organized and funded by the national training institution. In the case of ERA, costs depend on the type of training. If an event is offered solely by ERA, the costs are usually borne by the participants. If an event is held within the framework of a fully or co-financed project, the costs are usually covered by various actors (European Commission, ERA or partners).

The EJTN generally carries out two types of training activities, i.e. EJTN-funded activities, where participating costs are borne by the Network, and the Catalogue of Members' Activities with varying funding arrangements.[173] The EJTN events are free of charge for the judges, but very often they have to organize their travel and accommodation and cover all these costs themselves which are later reimbursed. Participants in ERA- or EJTN-funded training are usually recruited through national judicial schools. In Germany and Sweden, there is no particular participation schedule for individual judges, as any judge can apply and participate irrespective of their previous training. The Croatian Judicial Academy keeps records of the participation of Croatian judges in international training activities, including the activities offered by ERA and the EJTN. When they apply for international training, the Academy checks the relevance of the training for the participants' work and prior participations. For instance, if a criminal law judge applies for a civil law seminar, he/she is not selected. Applicants with no or with a smaller number of international participations are given priority in the selection process. When

173 EJTN annual reports.

asked about their willingness to share training costs, more than 60% of the online judicial training survey respondents declined a cost-sharing system.

The selection of trainee candidates has also been addressed by the online judicial training survey. Approximately half of the survey participants indicate that no selection criteria were employed for participation in national training. Nonetheless, previous training on the same topic might put them low on the priority list. In addition, only candidates assigned to adjudicate on the training subject matter may be accepted. However, almost 35% of the respondents have experienced acceptance to the same training multiple times, though they might not have been a priority. In respect of the possible selection of participants on the basis of prior knowledge, half of the online judicial training survey participants said that prior knowledge was not mentioned as an application condition. Only 31% experienced that attendance at introductory level is a condition for advanced level training.

Focusing only on training of judges at the EJTN, 63% of the online judicial training survey participants experienced that some selection criteria were employed, relating to either professional occupation or previous participation in training on the same topic.

4. Language

The working language at training centers is primarily English, but French and German are also used. Simultaneous translation of training sessions is rarely provided. However, if the training partner is a national institution, they often use their national language for such an event. Researchers have already indicated that despite the fact that most judges speak foreign languages, only a small proportion would be keen to take part in a training in a foreign language.[174] This corresponds to our research findings, where a majority of 63% of the online judicial training survey participants prefer training to be conducted in their national language. Only 18% would prefer training to be conducted in a foreign language while 19% prefer both. Despite these personal preferences, training in a foreign language should be promoted for many professional reasons. Language skills facilitate direct contact with judicial authorities, create possibilities to learn about legal traditions and practice of other Member States, and enable participation in exchange programs abroad.

174 *Coughlan et al.*, Judicial training in the European Union Member States, p. 6.

5. Miscellaneous

The data collected reveal great overall satisfaction of the participants with training on European family and succession law.[175] There is generally positive feedback of participants in ERA events, where the highest grades are given to the content and selected training methodology, knowledge, and speaker profiles. Over 95% of the participants would recommend ERA events to their colleagues.

A large part of the 2018 EU survey on judicial training indicates that the appreciation for the training activity depends on the quality of speakers (79.3%), interaction with speakers (69%), interaction among participants (66.7%), the material distributed (58.6%), and the size of the group (50.6%). Training quality may additionally depend on the participation of peers from other Member States, the language, and the duration of the training.[176]

The motivation of participants to take part in training has already been addressed. General willingness to take part in training indicates that professionals are aware of the need to enhance their competences. Adults have goal-oriented reasons for learning, such as improving their track record, promotion, career change, or a change in employment. The "learning styles inventory" theory by *Kolb* emphasizes that learning is a lifestyle, a continuous process of developing experience rather than its outcome.[177]

As to the knowledge assessment of the training participants, training providers adopt different approaches.[178] The figures of the online judicial training survey indicate that professionals are not actually keen on knowledge assessment. As indicated by the survey, only a third of trainees prefer knowledge assessment at both the beginning as well as the end of the training. It is slightly worrying that less than a third of the participants sees the benefit of knowledge assessment at training events, while a fifth would completely abolish any knowledge assessment. This may indicate that the training participants are unwilling to reveal their potential lack of specific (or even general) knowledge. This probably correlates with the perception of their position as professionals (judges, notaries, attorneys, etc.) with a high level of competence and with their role and reputation in society. Nevertheless, they

175 Responses to the online judicial training questionnaire by ERA and EIPA.

176 Evaluation of the 2011 European Judicial Training Strategy, p. 6 et seq.

177 *Kolb*, Experiential Learning, p. 28.

178 Participants' knowledge is not assessed in the majority of ERA training events. For events organized by the EJTN, assessment is conducted both at the beginning and at the end of the training. EIPA assesses the participants' knowledge only at the beginning of the training.

need to be made aware of the value of self-assessment for purposeful and successful training. Besides, participants need to be aware of the objective level of their knowledge, so as to be able to apply for training programs at the corresponding level. Bearing in mind the cognitive theory that learning is cumulative and relies on prior knowledge, as well as the number of considerations warranting self-assessment,[179] the assessment should be done before each training. Training providers should attach equal importance to this aspect.

The competence of a judge is a highly debated notion. A humanistic concept of competence is globally accepted, as it promotes high-level values of judicial excellence that contribute to public trust and improve the quality of justice.[180] The accountability imperative is reflected in European family and succession law by the fact that a judge is concerned with the effective administration of justice. Socialization improves the judge's understanding of community needs, which is particularly relevant in sensitive family cases involving children.

IX. The way forward in judicial training in European family and succession law

1. EU judicial training policy 2020–2027 – Thoughts and remarks on future action

Going back to the initial stage of training policy development, which identified language skills, familiarity with EU law, and familiarity with the law in other Member States as areas in need of improvement in the judicial profession, makes it obvious that in their universality, these are areas still equally relevant today. The Roadmap to the European Judicial Training Strategy 2019–2025[181], that builds on the results of the Evaluation of the 2011–2020 European judicial training strategy, draws attention to the lack of knowledge of EU law and of EU judicial cooperation instruments, such as the European Arrest Warrant. It also stresses the need for improvement of mutual trust in cross-border proceedings. Legal foreign language proficiency, which is key

179 *Armytage,* Educating Judges, p. 28, 128.

180 *Armytage,* Educating Judges, p. 7–10.

181 The Roadmap to the European Judicial Training Strategy 2019–2025, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1176-European-Judicial-Training-Strategy-2019-2025 (last consulted 22. 10. 2020).

to participation in cross-border activities, and smooth cross-border judicial proceedings and cooperation are also emphasized.[182]

With this in mind, one has to wonder about the true impact and reach of the implemented 2011–2020 European judicial training strategy. Which results stand out? According to the Evaluation of the 2011–2020 European judicial training strategy, the strategy achieved its objectives efficiently and at reasonable cost. It complemented national policies in a relevant and coherent manner in full respect of the subsidiarity principle and added lasting value that Member States would not otherwise have been able to achieve.[183] This should be understood as a clear statement that the European judicial training policy is only a supplement to the national judicial training policies and it does not serve as its replacement. However, the EU is a crucial provider of support to training justice professionals on EU law. How realistic and accurate is this interpretation?

The discussion about the division of competences between the EU and Member States to provide judicial training is still topical in the legal literature. The European Commission refers to the Lisbon Treaty[184] as the legal basis for the EU's competence to "support the training of the judiciary and of judicial staff" in matters related to judicial cooperation in civil and criminal law. It also invokes the Europe 2020 Strategy[185], the Stockholm Programme Action Plan[186], and the EU citizenship report 2010[187]. Referring to these documents, the European Commission announced the creation of a strong and legitimate framework for training on the EU *acquis,* since there is a need for a step change in the way European judicial training is organized in the EU in terms of both concept and scale.[188] However, it seems that the action necessary to achieve these goals would require a far more engaged involvement of the European Commission. The announcement of a "strong framework" could be interpreted as a clear sign of the European Commission's growing influence, which could be expected to gradually result in uniformity of European judicial training. By what means is this uniformity to be attained? The chosen approach seems to be a top-down process, which is typical for the EU strategy of applying political pressure in order to achieve harmonious development in certain areas.

182 The Roadmap to the European Judicial Training Strategy 2019–2025, p. 1.
183 SWD (2019) 380 final, p. 72.
184 Art. 81 (2) (h) and 82 (1) (c) TFEU.
185 COM (2010) 2020 final.
186 COM (2010) 171 final.
187 COM (2010) 603 final.
188 The 2011–2020 European judicial training strategy, p. 3.

Since 2011, the EU has systematically planned, monitored, and directed the implementation of the European judicial training strategy at the EU level. At the same time, it has generously financed training providers of its own preference, which it helped to establish in the first place. As has been criticized in the legal literature, the establishment of the EJTN reflects a top-down attempt by the European Parliament to institutionalize a training structure within the EU institutional framework.[189] It is also argued that the European Commission uses EU judicial networks as tools for soft harmonization of judicial training in the EU.[190] The EU helps the EJTN formulate aims and goals for the training provided, which are not necessarily coordinated with those of particular Member States. This is obvious, since the views and positions on how the training policy on EU law should be developed differs between Member States, often reflecting the specific features of their own legal systems, traditions of judicial training, and understanding of EU law. Not all Member States have requirements for "initial" training. Even where training activities are foreseen, there are differences in their organization.[191]

Who will take the leading role in providing training? Although the relevant framework suggests this should continue to be the Member States, it is nevertheless uncertain to what extent Member States can remain independent. First, with the European Commission's funding and the main training providers operating on a large scale, is there still an incentive for Member States to organize and provide (any) additional training on EU law? The cost of training is significant. As experienced, due to a lack of national budget allocations for training activities, Member States were unable to provide certain training activities (especially transnational ones) without EU funding.[192] Moreover, in the past, additional national seminars on EU topics were organized mainly with the aid of EU financial assistance.[193]

189 *Benvenuti,* International Journal for Court Administration 7 (2015), 59 (61).

190 *van Harten,* Review of European Administrative Law 5 (2012), 131 (149).

191 SWD (2019) 380 final, p. 11.

192 Practical limitations refer to a 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 speak any foreign language in the context of judicial work) and cultural constraints of the authorizing bodies. The 2014–2020 Justice Programme partially addresses these problems, see *Benvenuti,* International Journal for Court Administration 7 (2015), 59 (65).

193 SWD (2019) 380 final, p. 26; Minutes of the Expert Group held on 18 December 2017, p. 3, http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=10448.

Supportive of the EU organized training is the equivalent level of training provided to judges and legal professionals. Under the present conditions, equal development of training in all Member States cannot be guaranteed, not only in terms of older and newer, bigger and smaller, more and less developed Member States, but also in terms of different national legal cultures and pre-existing training traditions.

In 2011, participation in EU law training activities by judges and prosecutors depended on the age of practitioners: younger practitioners attended more training activities on EU law than senior ones. The level of participation differed among Member States and newer Member States offered more training on EU law. However, training in other fields of law was generally more common than training on EU law.[194] These results need to be contextualized. Namely, institutionalized initial and continuous judicial training is traditionally offered in some Member States (France, Spain, and Germany). The tradition of new Central and Eastern European Member States regarding judicial independence and judicial education and training was different, but some authors suggest that a shift has become evident in the past years.[195] There is also the issue of systematic differences stemming from the organization of the judiciary and the relevance given to acquiring legal knowledge for legal practitioners in Member States. A potential for inequality in the level of participation also lies in the different types of motivation of judges for participating in the training, i.e. merely advancing their careers or actually improving their legal knowledge and skills.

Against this background, not all Member States approached the implementation of the EU judicial training strategy in the same way. In Belgium, France, and Germany, concrete action was taken to ensure that the national strategy was aligned with the European strategy (either top-down as an initiative from the government or a bottom-up initiative by stakeholders active in the field). The Netherlands and Sweden have carried out activities which have contributed to the implementation, but these were not necessarily arranged for that particular purpose. The UK and Ireland considered the existing level of training on EU law offered under national training to be sufficient and have not undertaken any additional action.[196]

Upon close examination, this overview reveals that, whether justified or not,[197] the European Commission's action is changing judicial training

194 SWD (2019) 380 final, p. 11 et seq.

195 *Knežević Bojović/Purić*, Strani pravni život 62/4 (2018), 73 (76).

196 SWD (2019) 380 final, p. 29 et seq.

197 With respect to all the noble efforts of the Commission in this field, the question arises as to whether a new specific competence in Art. 81 (2) (h) and 82 (1) (c) TFEU in support of

and legal education in Member States by using it as leverage to make legal cultures converge toward a common standard.[198] By offering a standardized model of legal training, the European Commission is suggesting what the required knowledge and skills of a preferred model of a legal practitioner should be.[199]

As to the substance of training, according to the roadmap document, European judicial training should promote the rule of law and the independence of the judiciary and ensure more respect for the basic principles that the EU is founded on.[200] Being intertwined with both international and national law, EU law is not simply supranational law. In relation to the national law of Members States, its nature should be seen as more integrative. The application of EU law does not consist in the mere interpretation of Europeanized national legal sources and EU documents which apply directly, but also in the interpretation of national law to the extent necessary for the effectiveness of EU law. It also requires compliance with the doctrines of primacy and direct effect of EU law, harmonious interpretation and effectiveness as well as ensuring access to justice according to the procedural standards of EU law.[201]

Some authors argue that a fully-fledged approach, a new dimension to European judicial training, suggests that the European Commission will exert (further) influence on the Europeanization of national judiciaries and their organization step by step.[202] Slow infiltration of specific (EJTN's) common principles into training practices in Member States[203] could be seen as a step in that direction.

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the training of the judiciary and judicial staff in civil and criminal matters provides a proper legal basis for such an objective. It is at least questionable. It seems that this newly gained EU competence is very broadly used. See *van Harten,* Review of European Administrative Law 5 (2012), 113 (143).

198 *Piana,* Judicial Accountabilities in New Europe, p. 176.

199 *Knežević Bojović/Purić*, Strani pravni život 62/4 (2018), 73 (74).

200 The Roadmap to the European Judicial Training Strategy 2019–2025.

201 *Mišćenić,* in: Meškić, Balkan Yearbook of European and International Law, p. 129 (131 et seq.); *Knežević Bojović/Purić*, Strani pravni život 62/4 (2018), 73 (77).

202 *van Harten,* Review of European Administrative Law 5 (2012), 131 (148).

203 On 28. 06. 2016, the General Assembly of the European Judicial Training Network adopted nine principles of judicial training. The principles establish key statements relating to the nature of judicial training, the importance of initial training, the right to regular continuous training and the integral nature of training in daily work. The principles also address the scope of competences of national training institutions regarding the content and delivery of training, clarify who should deliver training and stress the need for modern training techniques. Moreover, the principles underscore the need for funding of judicial train-

As the Evaluation of the EU judicial training strategy shows, the number of Member States and types of legal professions participating in the training is changing in structure and volume over time. Whether this entails a coherent level of knowledge among legal practitioners about EU law is not clear. The Evaluation of the 2011–2020 European judicial training strategy considers only quantitative results on judicial training when evaluating its success. This is connected to the main goals set in the 2011–2020 European judicial strategy, which are also quantitative in nature (including to train half of all legal practitioners on EU law between 2011 and 2020; double the total funding; annual 5% target of trained practitioners per profession; the objective of 1,200 judicial exchanges per year, etc.). Such an approach, typical for the bureaucratic accountable structures subject to regular reviews, fails to consider the different needs of judicial training in Member States, lacks flexibility to offer training tailored according to specific characteristics of national legal systems and is unable to respond to the systematic gaps created in the course of its own implementation. Consequently, far more important than being fit for purpose is the question whether the chosen approach has the capacity to bring about substantial change, which will be decisive for the future of training policy at the EU level.

2. Recommendations for training in European family and succession law

The attempt to conceptualize *pro futuro* the judicial and legal professionals' training in European family and succession law relies on all abovementioned case law and legal instruments researched within the EUFams II Project, different questionnaires, published studies, evaluations and communications, and various scholarly contributions primarily in the fields of law and education.[204] It has yielded the following ten practice-oriented and hands-on recommendations (rather than commandments) addressed to the EU and Member States alike.

ing and support commitments from authorities. See *Knežević Bojović/Purić,* Strani pravni život 62/4 (2018), 73 (76).

204 This contribution and its conclusions and recommendations cannot address the possibly required reforms related to issues other than training, such as the organizational management of the judiciary and individual courts or the concentration of jurisdiction.

1. Training needs to continue being guided at the EU level.
The harmonized and uniform application of European family and succession law is a cornerstone of the free circulation of judgments. It is a continuous challenge to maintain a level of uniformity in the EU. The *Lobach/Rapp*-report identifies in particular a lack of familiarity with the legal framework of European family and succession law.[205] Insufficient primary legal education on the topics and/or inadequate lifelong learning are potentially some of the reasons for this situation.

A shift of powers to enact legal rules at the supranational level blurred the physical and cultural borders of legal systems, strengthened the rule of law, and emphasized the significance of uniform application throughout the EU. The promotion and development of specific methodological approaches and the overall advancement of judicial training quality are recognized among practitioners and academics in EU judicial policy to be of crucial importance for efficiency in the application of EU law. Europeanized judicial training has equally expanded, as expertise in judicial training has been consolidated within the EU in the last two decades.

Since the EU lacks hard power in the field of judicial policies, it has adopted soft leverage of influence based on socialization and training. It has complemented national training programs with supranational networks, aiming at standardized curricula, socialization and skills development. Policy instruments are used to improve judicial training, to Europeanize its content and encourage extensive programs of EU law lifelong learning. Judicial training enhances mutual trust, as it builds the capacity of judges to apply EU law[206] and together with networking overcomes cultural and institutional differences. Cooperation among professionals is indeed fostered by training. Nonetheless, other additional activities should be envisaged, such as publications by trainers who are judges. The Judges' Newsletter on International Child Protection of the HCCH[207] presents an excellent model of dissemination of best practice and promotion of mutual trust.

We are currently facing the emergence of various patterns of judicial cooperation among judicial schools. Figures referring to specific training needs of judges from recent Member States have been presented. A shift from "mechanical" application of law towards an open-concept, wide interpretation, and uniform application is advocated in Europeanized training. Training promotes competence development and a reform of the methodology

205 *Lobach/Rapp*-report, p. 38 et seq.
206 *Piana,* Judicial Accountabilities in New Europe, p. 176.
207 https://www.hcch.net/en/publications-and-studies/publications2/judges-newsletter (last consulted 22. 10. 2020).

of adjudicating cross-border family and succession disputes by "judge-led change".[208] All this can only be sufficiently taken into account and assured as an outcome if guided at the EU level.

2. Judicial training should be made a priority.
Judicial training in European family and succession law should be made a priority, as the number of cross-border cases is increasing and therefore involves most courts. This is further corroborated by the data collected for this contribution which indicate that the number of training events in the field of European family and succession law has been rising in recent years.[209] Despite the importance of training, judges addressed by the 2018 European Commission survey indicated that they did not have time to take part in training (65.8%) or that there were no substitutes for them when they took part in training (39.2%).[210] As long as the competence for court management is retained by Member States, specific tools have to be employed to target judicial training groups and achieve training results. One such specific tool may be mandatory training. As every national judge is equally a European judge, training has to empower each judge to deal with cross-border family and succession cases on an equal footing with his/her peers in other Member States.

3. A study of training needs should be conducted in general, for each Member State, and for each legal instrument.
Figures presented earlier indicate that professionals are not fully familiar with instruments, particularly ones that have only recently become applicable. They are likely neither to proactively prepare themselves for new instruments, nor do they receive the necessary support for training in advance. The EU should perform an overall study on training needs to develop a tailored approach to training in the field.[211] The study should follow both horizontal and vertical approaches to determine the training needs in each Member State and with respect to individual legal instruments. The results could be used to group the Member States in training categories, provided, that would provide necessary efficiency in the training performance. The re-

208 *Armytage,* Educating Judges, p. 10.
209 See section IV.
210 Evaluation of the 2011 European Judicial Training Strategy, p. 17.
211 It could be based on the model of the Study on judges' training needs in the field of European competition law by ERA – Academy of European Law/EJTN – European Judicial Training Network/Ecorys, 2016, http://www.ejtn.eu/PageFiles/15046/Study_Judges_Training_Needs_summary_EN.pdf (last consulted 22. 10. 2020).

sults should also indicate which topics could be dealt with for all Member States together, so that networking is also facilitated.

4. A model curriculum should be adopted at the EU level.
In order to attain uniformity throughout the EU, part of the guidance at the EU level could be manifested in a model curriculum for EU lifelong education in European family and succession law (and possibly for other areas of European private international law as well), which would be designed at the EU level. Drafters of the curriculum should be both judges as well as academics. While training is perceived much better by the trainees if they themselves (or their peers) have been involved in its design, academics may provide necessary emphasis on and understanding of particular ("technical") concepts. Such model curricula would also follow the soft law approach, but could be a useful tool in the hands of different training providers. Amendments and improvements to the basic structure thereof could be promoted and encouraged through additional funding provided to training institutions when organizing training.

5. The training curriculum should be designed on several levels and ranked based on EU criteria.
The level of knowledge among judges and legal practitioners may vary among and within Member States, among different legal professions, and between generations. For this purpose, the abovementioned model curricula and all other curricula developed by the training providers or other institutions should consist of several levels. The levels would depend on the results of the study on the training needs. For instance, the levels could be basic, intermediary, and advanced. Levels would be distinguished and recognized based on the accompanying list of learning outcomes. In addition, levels would be identified by some sort of letter and/or number scheme,[212] which should also be aligned with the ECTS in case the training provider is a higher education institution.

6. Training should be based on modern teaching methodology.
Conventional methods of teaching law and teaching without taking into account that trainees are self-directed adults, are both outdated and not beneficial. Teaching methods for lifelong education in European family and succession law should be based on the nature of the legal sources and legal

212 This could be modelled upon the very successful EU language classification scheme which ranges from A1 to C2.

issues concerned, and adult learning theories which explain the ways adult trainees receive, process, and integrate knowledge. The framework of European family and succession law is characterized by multi-layered, intertwined, complex, and extensive legislation accompanied by equally characterized CJEU and national case law, and sometimes also the case law of the ECtHR. Thus, the teaching methods should refocus from substance-based "hard topics" to skills, values, and "soft topics". The judge is not merely perceived as a professional, but also as a person with a need for a holistic lifelong learning approach.[213] Content-based methods of transferring legal theoretical and practical knowledge improve technical competence.[214] However, in the EU, professional excellence in cross-border dispute resolution process should equally be advanced by training. To be able to establish cross-border cooperation, a holistic approach to professional excellence should address ICT and language skills. Besides legal knowledge, a basic understanding of psychology and sociology should empower judges to better understand the cross-border lifestyles of society. Advanced knowledge of ethics should not be omitted either.[215]

On the other hand, adults need to know the reasons for learning something; they are motivated by the immediate chance to use what they have learnt; they learn better when the focus is on situations (real-life or hypothetical cases) rather than the subject matter (legal instruments), and when the focus is on collaborative two-way learning rather than the trainer-to-trainee model; their previous experience may also affect the learning process. Due to these reasons, adult learners are not likely to benefit from conventional learning methods, such as an old-style textbook lecture. Instead, training should be developed along the lines of case studies, experimental methods, discussions, and be designed on the problem-based learning model with optimal use of ICT.[216] Thus, it would encourage critical thinking and promote the active participation of trainees.

Despite an evident development of distance training tools, the instruments covered by the EUFams II project remain underrepresented. Training institutions could solve that by introducing special online modules dealing with European family and succession law. This could be supported by directing more funds towards the development of distance learning courses, interactive materials designed for adult learning, and tailor-made ICT tools.

213 *Armytage,* Educating Judges, p. XXXIV.

214 *Armytage,* Educating Judges, p. 230.

215 *Gromek-Broc,* in: Grimes, Re-thinking Legal Education under the Civil and Common Law, p. 245.

216 See more in section VII.3. and VII.4.

7. EU funded material should follow an open access policy and remain available on a single webpage administered by the EU even after the expiry of the respective project.
Instead of being limited to the selected course participants by restricting online access, as is often the case, EU funding policy should ensure that any tool or course developed with EU support should be openly accessible and usable free of charge. Due to the number of EU-funded projects which have created online learning tools, with few of these tools remaining available after the conclusion and assessment of the project (perhaps because the domain name for the project or the hosting of the project webpage are no longer funded), a lot of effort and funding is lost and cannot be used for educational purposes. There should be a common openly accessible repository for all project deliverables administered by the EU.[217]

8. Training should be delivered to specific target groups.
An important concern is whether the selection of training participants has been conducted carefully enough to reach the target group.[218] Online judicial training survey participants indicate that they could often apply for and attend training irrespective of their previous knowledge level. It is of the utmost importance to assure that the "right people" (who deal with the training subject matter in everyday practice) are trained at appropriate levels and use adequate methods at a few central training events that are organized annually. Trainees are more likely to accumulate knowledge in areas they deal with in practice on a regular basis. Training should thus respond to such needs and improve the understanding and awareness of European private international law for daily practice. Because training should be organized at different levels of competence, the knowledge of the participants should be self-evaluated by an anonymous method prior to training. The aims of targeted training could be attained by mandatory training for certain levels.

9. Access to high quality training should be made available to all eligible judges.
The online judicial training survey results indicate that judges and practitioners are generally aware of the need to be trained and accept it, though they may be driven by a wide range of motives. However, approximately half of the professionals dealing specifically with European family and succession

217 Some might be problematic if outdated or alike, while others might be subject to copyright or other rights.

218 Setting the target groups is crucial because the data reveal discrepancies in the level of trainees' competences. See section VII.

matters would be willing to contribute to the training costs only if they are sure that the best trainers are involved. This can be understood in different ways. First of all, it probably indicates that participants appreciate the difference between low- and high-level trainers and that in fact there is high- and low-quality training on offer. Therefore, training providers need to be encouraged to provide for higher levels of training, such as by exchanging data on the excellently rated trainers for specific topics or at least by making the future engagement of a trainer dependent on previous evaluations by training participants. There could also be an evaluation system for training institutions and/or recognition systems for the best individual trainers and the best training institutions. Furthermore, the unwillingness to participate in training may also point to the problems with self-funding for training, especially when it comes to the judiciary. In some Member States, judges believe that it is the duty of the State to provide for optimal training and cover all the costs. This may be connected to the judicial culture or the fact that earnings in some Member States are not high enough. Only to a minor extent could the unwillingness to attend training be understood as an indication of the low importance they attribute to professional training.[219]

10. International and national training should be kept in balance.
International training has all the benefits of networking and building mutual trust among peers, advancing language competence, and learning about foreign laws and practices. On the other hand, national training should also be linked to EU actions and further developed. The fact that the application of European family and succession law relies on national procedural law and consequently creates discrepancies, leads to the conclusion that national training should be combined with national substantive and procedural law. EU law does not operate in a vacuum, and hence it should also be taught based on a functional approach in combination with the national laws which complement or intersect with it.

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219 See discussion on knowledge assessment in section VIII.5.

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