EUROPEAN PARLIAMENT

The sense of sharing knowledge, judgecraft and autonomy

A Dutch narrative on how to optimally equip judges for their specific role in the EU's judicial system

NOTE
PREPARED FOR THE WORKSHOP ON JUDICIAL TRAINING
"The training of legal practitioners: teaching EU law and judgecraft"

Abstract
This paper provides a short overview of some of the main Dutch experiences in improving accessibility and handleability of EU law for judges over the past decades. It demonstrates the necessity of a multidimensional approach for the major actors involved and the need to share knowledge, judgecraft and awareness of the autonomy of national courts in the EU's judicial system. With the reinforcement of the ambitious EU Justice programme, the European institutions, most notably the European Commission and European Parliament, are recommended to reap the fruits of these experiences.

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LIST OF ABBREVIATIONS

CJEU	The Court of Justice of the European Union
ECLI	European Case Law Identifier
EJTN	European Judicial Training Network
EU	European Union
Eurinfra	The Eurinfra-project of the Dutch Council for the Judiciary
SSR	The Dutch Training and Study Centre for the Judiciary

1. INTRODUCTION

A context of Europeanisation

Justice matters in the European Union. Particularly, since the Treaty of Lisbon entered into force, justice belongs to the key areas of intensified European integration. A clear example thereof is provided by the newly gained EU competence on judicial training in the context of judicial cooperation in civil and criminal matters. In September 2011, the European Commission presented its ambitious plan and objectives for judicial training in the European Union towards 2020 by publishing *Building trust in EU-wide justice: A new dimension to European Judicial Training*.[1] In essence, this plan was adopted by the Council in October 2011. It leaves less for the imagination: further enhancement of a European judicial culture is serious EU-business. Indeed, it covers and entails a lot more than just the reaffirmation of the role of the national courts as a 'keystone of the European Union judicial system', as the European Parliament eloquently observed in 2008.[2]

One may get a similar impression when visiting the European e-Justice Portal on the internet. The mission statement has a prominent place on the front page:

> 'The European e-Justice Portal is conceived as a future electronic one-stop-shop in the area of justice'[3]

The development and implementation of the *European Case Law Identifier* (ECLI), on the basis of EU soft law,[4] implicitly illustrates that (published) judgments in the European Union now always have a European dimension: their citation. The ECLI aims to facilitate the correct and unequivocal citation of judgments from European and national courts related to EU law, setting up a uniform identifier to cite such judgments.[5] In the Netherlands, the Council for the Judiciary completed the process of changing to the ECLI-citation on 28 June 2013. More than one and a half million judgments of Dutch courts have been ascribed an ECLI-citation now, and can be traced on the ECLI-register at http://uitspraken.rechtspraak.nl. In the near future, this register will be directly linked to the European e-Justice Portal. Other Member States are in the process of implementation of the ECLI-citation. This project evidently has an impact on the day-to-day practice of Courts within the Member States, at least the ones that are introducing the ECLI.

Without doubt, the European e-Justice Portal and the ECLI will enhance the accessibility of national (European) case law within the EU, although the nature of introducing the ECLI as such is largely symbolic. Obviously, it does not change nor influence the substance of judgments; only their appearance and traceability. However, it is an instrument to further strengthen the body of knowledge in particular fields of law in Europe and to connect case law of Member State Courts with each other. The developments clearly show that the European legal order is a shared legal order with shared authority over European law. This is especially important in a climate in which the role of national courts in the EU's judicial system becomes more important and transnational interaction between them is continually growing.

Aim of this note

[1] COM(2011) 551 final.
[2] European Parliament resolution of 9 July 2008 on the role of the national judge in the European judicial system (2009/C 294 E/06).
[3] See: https://e-justice.europa.eu/home.do?action=home&plang=en&init=true.
[4] Council Conclusions inviting the introduction of the European Case Law Identifier (ECLI) and a minimum set of uniform metadata for case law OJ C 127, 29-04-2011, p. 1–7.
[5] See the description at: https://e-justice.europa.eu/content_european_case_law_identifier_ecli-175-en.do.

For some of the Member States, improvement of the courts' European tool box is not a new awakening. Several Member States have rich experiences in improving the accessibility and handleability of European law. Involvement of the key stakeholders at national level, i.e. the judiciaries and judicial training institutes of the Member States, in developing the European justice policy is crucial. They are the *conditio sine qua non* for enhancement of the European judicial culture. In this regard, the initiative and organisation of the European Parliament workshop on judicial training of 28 November 2013 is to be praised and should be followed up. It provides an excellent opportunity to share knowledge and experiences. In our view, the right involvement of these key stakeholders can contribute to the efficient materialisation of the European judicial area.

This note tells a Dutch narrative of attaining European awareness among the members of the judiciary. The aim of the note is to show the main Dutch experiences in improving accessibility and handleability of EU law for judges over the past decades. It demonstrates the necessity of a multidimensional approach for the major actors involved: sharing knowledge, judgecraft and awareness of the autonomy of national courts in the EU's judicial system.

Structure
First of all, this note will present some of the early experiences with European law by the judiciary in the Netherlands and initiatives to make European law more accessible in the practice of Courts (§ 2). Secondly, the development of European law as 'law of the land' in the Netherlands will be touched upon. Mid nineties, the assumption of 'European law taking over national law' was not regarded as being very interesting as such. The emphasis of the debate laid on the meaningful contribution that national courts could give to the judicial protection and development of European law: the main issue was, what European ambitions do the national judiciaries have? (§ 3). This eventually led to a large scale project at the beginning of this century. The *Eurinfra*-project aimed at integrating (awareness for) European law in day-to-day court practice, as will be explained in the subsequent section (§ 4). Thereafter, this note will give a short overview of the current Dutch debate on European judicial training and the role of national courts in the EU's judicial system (§ 5). Several societal trends will impact the future of judicial training and foster reflection on the role of judicial training institutes. Perhaps these trends ask for a new culture of learning (§ 6). The note ends with some concluding remarks and recommendations to optimally reap the fruits of these experiences (§ 7).

2. A PROACTIVE JUDICIARY: DEVELOPING AN EUROPEAN ATTITUDE, CASE BY CASE

Since the first ever preliminary reference to the Court of Justice, coming from the Hague Court of Appeal in the *Bosch* case, the Dutch judiciary has played a proactive role in the development of the European legal order.[6] How can that be explained? One thing is for sure: improving awareness of the role of national courts in the judicial protection of European law and European legal order has been a continuous effort of the Dutch judiciary, legal doctrine and legal practice over the past decades.

[6] Case 13/61, Bosch [1962], ECR, p. 45. By consulting the litigation statistics published by the Court of Justice one can see that the Dutch courts are amongst the most 'active' in the EU when it comes to making references to the Court (see the statistics available at: http://curia.europa.eu/jcms/jcms/Jo2_7032/).

A proactive, case-driven climate

In the early decades, the Europeanisation of the Dutch judiciary has been largely case-driven: citizens and companies, and their legal advisors, tried to invoke European law in concrete disputes before the Dutch courts, and the courts were willing to take European law seriously. Against this background it might not be surprising that the famous *Van Gend & Loos* judgment of the Court of Justice, whose 50th anniversary will be this year, has Dutch origins.[7] One has to realise that the Dutch constitution traditionally advocates loyalty towards the European and international legal order.[8] Moreover, the entire legal context contributes to the courts' awareness of the European dimension of their cases. A short sketch:

In 1956 the Dutch Training and Study Centre for the Judiciary (SSR) was established.[9] The Netherlands has a long tradition of training judges and public prosecutors. This includes initial training programmes (prior to becoming a judge or public prosecutor) as well as continuous education for members of the judiciary and the public prosecutors office. SSR has traditionally organised basic and advanced courses on various aspects of European law and on human rights as well as conferences and seminars on particular issues that relate to the European dimension of the judiciary.

Mid fifties, the Dutch and Belgian European legal journal *Sociaal Economische Wetgeving* (now: *SEW Tijdschrift voor Europees en economisch recht*) was first published.[10] In 1960, the Dutch European Law Society was founded, with members from various legal professions.[11] Several universities set up Europa Institutes (such as Amsterdam, Leiden and Utrecht) and instituted chairs and lecturers of European law. The first edition of the authoritative *Common Market Law Review* was published in 1963. In 1965, the interuniversity T.M.C. Asser Institute for international and European law was founded.[12] Commentaries, study books and handbooks on European law were published during the sixties and seventies, most notably the 'Introduction' by Kapteyn and VerLoren van Themaat – later translated into the English language. Series of European monographs started to shed light on the consequences of European law within the national legal order and the development of the European legal order. While the quantitative and qualitative influence of European law on national law and legislation was increasing and became of ever-greater practical importance, the Dutch context, altogether, created a climate in which European awareness of the judiciary seemed only logical.

Ideas on the contribution of national case law to the European legal order

From the outset, the role of national courts in the Netherlands has been understood as very important for the development of the European legal order, also from a pragmatic and practical point of view: due to the interconnectedness of European law and the legal systems of the Member States, the national courts were expected to carry out the bulk of

[7] Case 26/62, NV Algemene Transport- en Expeditie Onderneming Van Gend en Loos v Nederlandse Administratie der Belastingen [1963] ECR, p. 1.

[8] Currently embodied in the Dutch Constitution in e.g. article 90 ('The Government shall promote the development of the international legal order'); article 92 ('Legislative, executive and judicial powers may be conferred on international institutions by or pursuant to a treaty, subject, where necessary, to the provisions of Article 91 paragraph 3.') and article 94 ('Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties or of resolutions by international institutions that are binding on all persons.'). The English translation of the Dutch Constitution is available at: http://www.government.nl/issues/constitution-and-democracy/documents-and-publications/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008.html.

[9] See: http://www.ssr.nl.

[10] See: http://www.uitgeverijparis.nl/tijdschriften/tijdschrift/13/SEW-Tijdschrift-voor-Europees-en-economisch-recht.

[11] See: http://www.nver.nl.

[12] See: http://www.asser.nl.

the judicial work related to European law.[13] This view is still present in today's Dutch European legal literature.[14]

Two examples from the early decades provide a useful illustration. In 1963, in one of the first case notes on the *Van Gend & Loos* judgment, the author, Mr Samkalden, noted the importance of national European case law for the interpretation and development of European law:[15] the Italian Council of State had already decided on the direct effect of an EEC-Treaty article in 1961, which was very useful to understand the *Van Gend & Loos* judgment. Therefore, according to Samkalden, a Community register of European law judgments of national courts would be necessary and would respond to the needs of European lawyers. Samkalden mentions that such an initiative was taken, but that the Council of Ministers decided to drop it from the draft budget of the European Commission. According to Samkalden, in 1963, that decision is

> 'sad evidence of lack of insight in the way in which knowledge and interest for European law could be effectively promoted for the sake of interested parties.'

What would the life of European law have looked like if such a public register had been available since the sixties? In addition to the success of the preliminary reference procedure and cooperation between the Court of Justice and national courts, it is reasonable to suggest that such a register would have strengthened the meaning and significance of national European case law for the European legal order. Nearly fifty years later, with the European e-Justice Portal, such a register is within reach and closer than ever. It even seems to become a reality. In other words, Samkalden would certainly have supported the idea of the European e-Justice Portal and the *ECLI*.

Secondly, since its establishment, the T.M.C. Asser Institute has tried to maintain a collection of national court judgments in which European law plays a role. With Mr Tromm as the editor, the Asser Institute published a collection of such Dutch judgments adopted between 1 January 1958 and 31 December 1972, *De Nederlandse Rechtspraak en het Recht der Europese Gemeenschappen* in 1974.[16] The introduction to this book from the pre-computer era mentions the difficult handleability and quickly growing volume of case law as important problems and pitfalls. To our knowledge, a second edition of the significant ground work was never published.[17] It took quite some years before an effort of similar character was developed again, mainly in the context of the *Eurinfra*-project of the Dutch judiciary (see hereafter § 4). It is generally believed that the really important Dutch cases in which European law has been applied and interpreted were signalled in Dutch legal journals and case law periodicals, but a special register did not exist.

If Mr Tromm were still working today, he would undoubtedly be enthusiastic about the rich possibilities to use modern technology and collect European case law of national courts and connect them in the European e-Justice Portal. However, his problems and pitfalls remain essentially the same: in the process of digitalisation and connection of the *ECLI*-registers,

[13] See, e.g., A.M. Donner, 'Les rapports entre la compétence de la Cour de justice des Communautés européennes et les tribunaux internes', in: Recueil des Cours (Académie de droit international) 115, 1965, p. 1-61 at p. 22-24.
[14] See S. Prechal, R.H. van Ooik, J.H. Jans, K.J.M. Mortelmans, 'Europeanisation' of the law: consequences for the Dutch judiciary, The Hague: Raad voor de Rechtspraak [Council for the Administration of Justice]) 2005, p. 8. See also Prechal 2006, p. 432, H.J. van Harten, Autonomie van de nationale rechter in het Europees recht, The Hague: Boom Juridische Uitgevers 2011, p. 12.
[15] Samkalden, *Sociaal Economische Wetgeving* 1963, p. 111-112.
[16] J.M.M. Tromm, De Nederlandse Rechtspraak en het Recht der Europese Gemeenschappen, Groningen: H.D. Tjeenk Willink 1974.
[17] However, Tromm published an article on Dutch European case law in the period 1973-1977 in SEW in 1981: J.M.M. Tromm, 'De Nederlandse Jurisprudentie inzake het recht der Europese Gemeenschappen, overzicht van de periode 1973-1977', in: *SEW* 1981, p. 435-483.

the end-users – such as judges – are confronted with a growing amount of available information. How to cope with that and how to select what's relevant and what not? From the experiences of SSR in the field of e-learning and judicial training courses, we know the importance of the quality and handleability of the digital knowledge infrastructure: it *de facto* determines the quality of learning.

These are early illustrations that can be taken into account in the context of the current European ambitions of judicial training and the e-Justice project. Good access to knowledge and understanding of European law is essential. The knowledge infrastructure certainly contributes to this, but information overload is a potential weakness even for the European e-Justice Portal.

From case to case towards self-invented European judicial training

One must bear in mind that the process of Europeanisation of courts mainly took place on a case by case basis at first. This is the picture that describes the first decades of Europeanisation of the Dutch judiciary. The bigger part of the Dutch training system did not fundamentally change, because the real work of the judge was, and currently still is, giving fair solutions and legally sound decisions. In a way, the work of judges is stable and constant, while the European Union and the world around them are ever changing. Certainly, the courts had to adapt to the new context(s). Admittedly, the growing significance of European law was at times difficult to keep pace with for judges in everyday legal practice. For this reason, SSR made efforts to innovate its judicial training programmes and to find solutions aimed at supporting judges in a practical way. Early nineties, SSR started a programme to reinforce and deepen the knowledge of European law among the members of the judiciary. Mid nineties, this cumulated in a large-scale conference emphasising the meaningful contribution of the national courts to the judicial protection and development of European law and analysing the European ambitions of the national judiciaries. Meanwhile, the so-called Eurogroup (Eurogroep) was established in 1995 under the auspices of the Nederlandse Vereniging voor Rechtspraak (Dutch Association for Judges and Public Prosecutors). This Eurogroup is a network of judges whose main purpose is studying and discussing issues of (Dutch) European case law which might occur in everyday court practice.[18]

3. EU LAW AS 'LAW OF THE LAND': AMBITIONS OF THE NATIONAL JUDICIARY

To celebrate the 40th anniversary of SSR, the conference 'European Ambitions of the National Judiciary' was organized in October 1996. During the conference, highly esteemed speakers introduced several themes relating to the application and interpretation of European law by members of the judiciary in everyday court practice.[19] The conference focused on the role of national courts in the EU's judicial system and the future conception of judicial responsibilities. The discussions centered on the expectation of 'Europe' towards the Member States' judiciary. Speakers from various countries of the European Union responded to the main subject of the debate from their own national court experiences. An important aim of the conference was to promote an increase in knowledge of European law among members of the judiciary and, in particular, to heighten their consciousness of the

[18] See: S. Prechal, R.H. van Ooik, J.H. Jans, K.J.M. Mortelmans, 'Europeanisation' of the law: consequences for the Dutch judiciary, The Hague: Council for the Judiciary 2005, p. 5.

[19] The conference proceedings are published in an edited volume: Rosa H.M. Jansen, Dagmar A.C. Koster and Reinier F.B. van Zutphen, European Ambitions of the National Judiciary (Deventer: Kluwer Law International 1997).

parts of European law which are of immediate importance for the administration of justice in a Europeanised context. The conference was used as a springboard towards further development of European judicial training.

From fear for *terra incognita*…

The various contributions to the abovementioned conference clearly showed an awareness of the European role that the national judiciary plays. For instance, Judge Verburg, then principal of SSR, remarked:

> 'The national judge being more and more the European judge requires them, besides the above mentioned good and profound knowledge of both institutional and substantive Community law, to be aware of this position. This asks not only for a change of mentality of the national judge in this respect. Furthermore, this new position demands for a better acquaintance with and knowledge of the judicial system and law of the other member states.'[20]

These words are still valid today. However, Judge Verburg also admitted that – even in the proactive European judiciary of the Netherlands:

> '[…] both the Brussels regulations and the Luxembourg jurisdiction are *terra incognita* for the vast majority of members of the national judiciary; unfamiliar and thus unpopular. Only in those rare cases where Community law is explicitly invoked by the litigating parties, the judge is obliged to at least consider the options. In all other cases Community law is probably left unspoken, sometimes deliberately, but mostly unconsciously.'[21]

Before the conference, a poll was held among Dutch judges and public prosecutors.[22] The poll showed that a large majority of the respondents defined their knowledge of European law as mediocre or insufficient. The substantial majority also indicated a need for further training and education, while almost fifty percent of the respondents stressed the necessity of improving the sources of information and quick access to case law of the European Court of Justice and the European Court of First Instance. This presented an obvious impetus for the stimulation of European judicial training and improvement of the accessibility of European law for the members of the judiciary.

…to 'law of the land' and European judgecraft

The closing contribution to the 1996 conference, delivered by Judge Kapteyn, at the time Judge at the Court of Justice, is pervaded by the consideration of European law as law of the land. The Court of Justice and the national courts share a common responsibility in upholding the rule of law in the European legal order. Kapteyn presents five basic principles that, even nowadays, summarize the European judgecraft for national courts, and are therefore worth paying attention to:

> '1. Community law is national law common to the member states. National courts should therefore apply Community law as their own law, and not as foreign law to be dealt with as a matter of facts.
> 2. In the Community judiciary system the enforcement of Community law is first and foremost a matter of national courts. They are part of the Community judiciary and might be considered the Community's *juges de droit commun*. They should be aware of the fact that by applying Community law they are ensuring the proper functioning

[20] Joep J.I. Verburg, ' Introduction' in: Rosa H.M. Jansen, Dagmar A.C. Koster and Reinier F.B. van Zutphen (eds.), European Ambitions of the National Judiciary (Deventer: Kluwer Law International 1997), p. 23-28 at p. 24.
[21] Verburg (1997), at p. 24-25.
[22] See: Verburg (1997), at p. 26-28.

> of the internal market, protecting the rights Community law grants to individuals and corporations, and maintaining in general the rule of law in the Community.
> 3. In implementing Community law, national courts must, in principle, work within the framework of the procedures and legal remedies provided by their national legal orders. This principle finds its limit, however, in the national courts' duty to ensure the full effectiveness of Community law.
> 4. When applying Community law, national courts should keep in mind that, being a law common to the member states, it has to be applied in a uniform way in all the member states.
> 5. National courts should use the preliminary reference procedure […] as a means of co-operation with the Court of Justice with the aim of ensuring the full effectiveness as well as the uniform application of Community law.'[23]

Further implications of these basic principles can be found in Judge Kapteyn's inspiring contribution to the conference proceedings. The principles illustrate that European judgecraft can be formulated quite concisely: In fact, it entails just a set of basic principles. These have to be combined with awareness of the general well-established case law of the Court of Justice. Furthermore, access to the latest legal developments with regard to solving topical interpretation issues of European law is needed. Indeed, European law is first and foremost a matter of national courts themselves. In other words: judges need smart European judgecraft and a well-functioning knowledge infrastructure to share experiences and solutions for legal disputes.

Using the momentum

The 1996 conference created momentum for a more prominent position of European judicial training within the curriculum of SSR. From the beginning of this century, a general course on the basic principles of European law is an obligatory element of the initial training for all new members of the Dutch judiciary. Furthermore, SSR has renewed its advanced courses on various aspects of European law (e.g. how to make use of the preliminary reference procedure; European administrative law; European competition law; European employment law; European migration law) for judges, public prosecutors, trainee judges and court clerks. Representatives of other judicial training institutes and the European institutions were present at this conference, which led to ideas for further cooperation between national judicial training institutes in Europe. In fact, it was the start of a network which would result in the creation of a European Judicial Training Network (EJTN) a few years later.

In 1999, a small group of judicial training institutes, including SSR and the Academy of European Law, decided to set up a drafting committee to prepare the founding document of a network of European judicial training providers. On 13 October 2000, this group presented the first 'Charter of the European Judicial Training Network' at a conference organised by the French Presidency of the Council in Bordeaux. The charter was then open for ratification by the founding Members. The Network's mission was defined: promoting 'a training programme with a genuine European dimension for Members of the European judiciary.' The European Judicial Training Network is of considerable importance to connect the national judicial training institutes in the EU.[24] Now, in 2013, SSR cooperates within this

[23] Paul J.G. Kapteyn, 'Europe's expectations of its judges' in: Rosa H.M. Jansen, Dagmar A.C. Koster and Reinier F.B. van Zutphen (eds.), European Ambitions of the National Judiciary (Deventer: Kluwer Law International 1997), p. 181-189 at p. 24

[24] See: www.ejtn.net.

Network in the field of 'train the trainer' programmes, exchange programmes, the European THEMIS Competition,[25] and joint programmes in various areas of law.

Also in 1999, the Nederlandse Juristenvereniging (the Dutch Jurists Society) centred its annual meeting, in which traditionally preliminary reports are discussed, on international case law in the Dutch legal order. Dr. Lawson wrote a report on the reception of case law of the International Court of Justice and the European Court of Human Rights, and Judge Meij, at the time Judge at the Court of First Instance, wrote on case law of the Court of Justice in the court practice of the Dutch judiciary.[26] Judge Meij gave his honest impressions as a Judge in the Trade and Appeals Tribunal and Supreme Court as well as some of his experiences in Luxembourg. In the aftermath of the annual meeting, he spoke to a journalist and voiced his concerns about the Dutch judiciary's limited knowledge of European law. As a result, parliamentary questions were addressed to the Minister of Justice in the Dutch Lower House. In reply, the Minister subsequently formulated a programme and ensured the availability of resources which ultimately led to the launch of the *Eurinfra*-project in late 2000.

4. THE EURINFRA-PROJECT: A MULTIDIMENSIONAL APPROACH TO AWARENESS

The Eurinfra-project, that took place between 2000 and 2004, will be shortly elaborated upon in the next section.[27]

Three angles of approach

Essentially, the Eurinfra-project consisted of a multidimensional approach to improve awareness of the European law dimension for the Dutch judiciary. The improvement of awareness was specified in three different, but related objectives:

1 improving the accessibility of European law information resources by using web technology;
2 improving the knowledge of European law amongst the Dutch judiciary;
3 setting up and maintaining a network of court co-ordinators for European law.

These objectives are all clearly connected: improved access to European legal resources can be better utilised if the level of knowledge is deepened. A knowledge infrastructure using web technology is in itself an empty cartridge; proper involvement of the people who use the knowledge, share it and add to the body of knowledge is crucial. Awareness of this led to the idea that an organisational basis within the courts was absolutely necessary for the success of the *Eurinfra*-project. As a result, a network of court co-ordinators for European law was designed to strengthen the knowledge of European law within the courts. This network is still in function to date.[28] As ambassadors for European law, the court co-

[25] See: http://www.ejtn.net/en/About/THEMIS11/.
[26] A.W.H. Meij, Europese rechtspraak in de Nederlandse rechtspleging: impressies uit Den Haag en Luxemburg. Preadvies Nederlandse Juristenvereniging over het onderwerp Internationale rechtspraak in de Nederlandse rechtsorde, Deventer: W.E.J. Tjeenk Willink 1999
[27] Additional information on the Eurinfra project is available at http://www.rechtspraak.nl/English/Publications/Documents/Eurinfra_EN_FR.pdf.
[28] At present, the court boards have appointed a network of approximately 36 court co-ordinators for European law, with the Dutch Supreme Court and the Administrative Jurisdiction Division of the Council of State also participating. The president of the Trade and Industry Appeals Tribunal acts as chair, and that Tribunal also hosts the network's secretariat. The court co-ordinators meet once a year, not only to attend presentations on new European law themes, but also to discuss the functioning of the network itself.

ordinators have been given the task of improving the information and internal coordination within their own courts, and maintaining contacts with other courts on the subject of European law.

As stated above, the Ministry of Justice launched the project late 2000. In 2002, the Council for the Judiciary became principal and realised the project in close collaboration with the Dutch Trade and Industry Appeal Tribunal, which has extensive experience with the application of European law, the Dutch judiciary's bureau for internet systems and applications (known as Bistro/Spir-IT) and SSR. A Eurinfra Advisory Council was set up to advise on the structure and progress, and provide specific advice.

The *Eurinfra*-project was part of a larger attempt to broaden digital accessibility for members of the judiciary, as well as the public database of judgments for the general public. The Porta Iuris portal provides a judiciary-wide intranet system with a special European law section which has been created to serve as a platform for professional and organisational information (such as the names of the court co-ordinators and their European law specializations) and knowledge hotspot:

- Eurlex (formerly CELEX) was made accessible via Porta Iuris, but also
- a separate databank for Dutch European case law, and
- a databank for all the cases referred to the Court of Justice for a preliminary ruling since 2002.

As a result, a Dutch court can easily check if the Court of Justice has ruled on any specific matter, if another Dutch court has decided on a case with a similar European law angle and/or if a particular question of European law is already pending at the Court of Justice. In addition, efforts were made to create a search system that integrates case law of the Court of Justice in conjunction with national case law.

A digital newsletter on European law, published four times a year, provides new insights and topical developments. Furthermore, access to legal journals on European law is provided through the Porta Iuris portal. Undoubtedly, the digital knowledge infrastructure on European law has been considerably reinforced; thus, access to the body of knowledge on the application and interpretation of European law by Dutch courts was certainly improved. An introduction to the use of the European law section of the Porta Iuris portal is integrated in the basic course on European law organised by SSR as an individual learning module.

In the context of the *Eurinfra*-project, SSR has thoroughly reviewed the European law dimension of its courses. This concerned introductory meetings, the basic course on European law, and the development, organisation and revision of advanced European law courses. In addition, SSR reviewed and adapted the European law content of the (approximately 60) existing Dutch law-oriented courses: appropriate attention is now devoted to European law aspects. SSR committed itself to organise meetings and seminars with experts on European law to share their most updated knowledge. The screening and adaptation of courses for European law aspects is an ongoing process.

The *Eurinfra*-project was formally completed in 2004, but its activities continued. The three pillars of the project have achieved a permanent status and have been reinforced with new activities.

Europeanisation of the law: what consequences for the judiciary?
During 2004-2005, the Council for the Judiciary asked four highly esteemed European law academics (Prechal, Van Ooik, Jans and Mortelmans) to research the (organisational)

consequences of the 'Europeanisation' of the law for the Dutch Judiciary. Their final report[29] was published in 2005 and provides several recommendations which are also relevant for the awareness of the European role of national courts. As a result of the recommendations of this report and the subsequent expert meeting, the *Eurinfra*-project was expanded with two new activities in 2006: 1) opening up the judicial networks and 2) setting up European exchange programmes. The Council for the Judiciary assisted a number of courts in setting up an exchange programme, making contact with foreign courts and encouraging the court staff to participate in such a programme.

Evaluating and integrating

The network of court co-ordinators was evaluated in 2006. In general, the coordinators were increasingly approached by court staff and functioned as a point of contact and reflection. The concept worked and had added value, but the court co-ordinators felt a need to allocate more time to their duties and to 'imbed' these activities more securely within the courts' organisation. The Council for the Judiciary decided that it was essential to continue to reinforce the network of court coordinators for European law and that they meet once or twice a year.

In Wiki Juridica – the Dutch judicial variant of Wikipedia developed in recent years – an overview of the Knowledge Portal for European law has been introduced.[30] This Portal holds a collection of new developments in law, national and international case law, a selection of news from legal journals and literature, web links and training activities. It also functions as a platform where experiences can be shared.

The ECLI-citation was integrated in the Porta Iuris knowledge infrastructure between 2010 and 2013; the meta codes enhanced the efficient use of the search engines.

The proactive approach and efforts of sharing knowledge on European law of the Council of Europe resulted in the SSR being awarded the *Pro Merito Medal* in Strasbourg, mainly for their innovative contribution to the visibility of the Council of Europe and the European Court of Human Rights among judges and prosecutors from the Netherlands and in other national judiciaries through the transnational training activities organised by SSR.[31]

The lessons from the *Eurinfra*-project (an integrated digital knowledge infrastructure, strengthening European judicial training, combined with organisational basis through court coordinators for European law) can be considered as very relevant experiences for the establishment of the current European plans in the context of the European judicial area. The idea of an efficient digital knowledge infrastructure with well-functioning search engines and the concept of the court coordinators have been supported in two recent resolutions of the European Parliament[32] and, luckily, will also be discussed during the European Parliament workshop of 28 November 2013 on judgecraft and judicial training. It would be advisable to take into account the Dutch evaluations of their experience with building the digital knowledge structure, revamping the European judicial training in several courses and setting up the network of court coordinators for European law, while also guaranteeing the appropriate time and resources for the functioning of these European law ambassadors. Perhaps, a programme comparable to the Jean Monnet Chairs for academics

[29] Available at: http://www.rechtspraak.nl/English/Publications/Documents/europeanisation-of-the-law.pdf.
[30] See: http://wiki.rechtspraak.minjus.nl/wiki/Wikipagina%27s/Kennisportaal%20Europees%20recht.aspx. Only accessible through the secured network of the Dutch Judiciary.
[31] See: http://hub.coe.int/web/deputy-secretary-general/20110321-strasbourg.
[32] European Parliament resolution on judicial training – court coordinators (2012/2864(RSP)) B70053/2013.

should be designed for judges and European law court coordinators for a bottom-up development of the European judicial culture.

5. EUROPEANISATION OF THE ORGANISATION OF JUSTICE: WHICH AUTONOMY FOR NATIONAL COURTS IN THE EU'S JUDICIAL SYSTEM?

In the 2005 research report on the consequences of the Europeanisation of the law for the Dutch Judiciary, the authors rightly note:

> 'For a long time it was assumed - and to an important extent this still holds true - that EU law interferes neither with the national organisation of the judiciary nor with national judicial procedures. Enforcement of EU law has to fit into the existing structures and procedures of the Member States.'[33]

Europeanisation of the organisation of justice

Such an impression seems to be outdated today. In recent years, the approach and influence of the EU on the organisation of justice in the Member States has rapidly changed, partly because of the changes brought on by the Treaty of Lisbon. The Treaty of Lisbon does codify the duty of Member States to ensure an effective system for legal protection. Article 19(1), second paragraph TEU imposes this duty in clear terms:

> 'Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.'

This codification, addressed to the Member States, must be of some significance; in the years ahead, this Treaty law concept will have to get proper form and substance. Apart from the new codification in Article 19 TEU, the Treaty of Lisbon barely refers to the role of national judiciaries.[34] However, for the purpose of intensified European integration (the development of the area of freedom, security and justice), the national judiciaries are essential stakeholders. In this context, the EU has gained specific competence in Articles 81 (2)(h) and 82 (1)(c) TFEU for the support of training of the judiciary and judicial staff in civil and criminal matters. European judicial training will be used as an instrument to build the European area of justice. The Commission's Action Plan of September 2011 is very ambitious, with its main objective to:

> 'enable half of the legal practitioners in the European Union to participate in European judicial training activities by 2020 through the use of all available resources at local, national and European level, in line with the objectives of the Stockholm Programme.'[35]

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[33] Prechal et al. (2005), p. 9.

[34] That is remarkable, considering for instance that since the Treaty of Lisbon, the national parliaments have been allocated their own position in the Treaty (Article 12 TEU). In the preparations for the intergovernmental conference on the European Constitution, the Due Report advocated that the role of the national courts be set out explicitly in the context of the Treaty. See O. Due et al., Report by the Working Party on the Future of the European Communities' Court System, January 2000, available at: http://ec.europa.eu/dgs/legal_service/pdf/due_en.pdf. Meij was also in favour of codifying the important role of the national courts within the European justice administration system, see A.W.H. Meij, 'Constitutionalizing Effective Remedies: Too Much on EU Courts, Too Little on National Courts', in: D. Curtin, A.E. Kellermann, S. Blockmans (eds), The EU Constitution: The Best Way Forward?, The Hague: T.M.C. Asser Instituut 2005. However, he had previously argued that recognising the responsibilities of the national courts in a Treaty 'would change nothing but appearances – even if, by the way, this itself could be of some use.' See A.W.H. Meij, 'Guest editorial: architects or judges? Some comments in relation to the current debate', in: CMLR 37 2000, p. 1039-1045.

[35] COM(2011) 551 final, p. 2.

Although the Commission stresses that the creation of a European judicial culture should fully respect subsidiarity and judicial independence,[36] the fully fleshed approach of the Action Plan and the new dimension to European judicial training seems to suggest between the lines that the Commission will get a (further) grip on the Europeanisation of national judiciaries and their organisation, step by step.[37] It is important to question the way in which, in the words of the Commission, the *creation* of a European judicial culture takes place through the published plans.[38]

The best people to provide judicial studies are judges themselves

One question is fundamental in this respect: how do judges best learn EU law? In fact, this same question goes for all the 700.000 legal professionals who will be trained. How will they learn European law? Top-down? Bottom-up? Combined? Through the glass of the *Simmenthal* or *Rewe* doctrines?[39] This is relevant for various fields or elements of EU law. To give two examples, we could firstly think of the question how to interpret the 'obligation to refer' for courts of last instance in the preliminary reference procedure: following the wordings and strict lines of the *Cilfit* case[40] or with a more common-sense approach? The different approach to the objectives of EU competition law between the European Court of Justice and the Commission also provides an example.[41] It all boils down to the question of how much influence the Commission will have on the substance of the judicial training programmes and the establishment of a 'true European judicial culture'.

Against this background, the European Parliament's resolutions on judicial training of March 2012 and February 2013 are to be welcomed.[42] In both resolutions, the approach of the European Parliament is more oriented on the perspective of the (national) judiciaries and the national judicial training institutes. The observation in the resolution of March 2012 is typical: 'The best people to provide judicial studies are judges themselves'. In addition, the resolution stresses the need to take advantage of the existing experiences, particularly those of the national judicial training institutes and European law coordinators within national court structures.

Training of national judges is not just another policy field. National judges are not executive 'parts' of European governance. They do, or at least they should, operate in a far more independent and autonomous way. This absolutely needs to be taken into account by the EU's executive in formulating the justice policy in years to come. We need to further develop ideas on how to maintain judicial independence and autonomy as well as on the future role of national courts in the EU's judicial system, the proper ways to strengthen the European judicial culture and build the European area of justice.

[36] COM(2011) 551 final, p. 2.
[37] This can also be illustrated by the Commission development of the EU Justice Scoreboard and by the country-specific recommendations in the context of the European Semester which also include recommendations for certain Member States to take measures to improve their justice system.
[38] See particular on this issue: H.J. van Harten, 'Who's Afraid of a True European Judicial Culture?' in: REALaw 2012, p. 131-152.
[39] The reasoning of the CJEU in the Case 106/77 Simmenthal [1978] ECR 629 focused on the autonomous nature of Union law and clarified that, by definition, it takes precedence over any conflicting national rule. The reasoning of the CJEU in the Case 33/76 Rewe [1976] ECR 1989 is centered around the principle of procedural autonomy: national procedural rules apply, unless Community law provides otherwise and the requirements of the principle of equivalence and principle of effectiveness are fulfilled.
[40] Case 283/81 Cilfit [1982] ECR 3415.
[41] See for instance Joined Cases C-501/06P, C-513/06P, C-515/06P and C-519/06P GlaxoSmithKline Services Unlimited v Commission [2009] ECR I-9291. While the Commission claimed that consumer welfare is the central goal of competition law, the CJEU highlighted three different objectives of competition law: protection of economic freedom, protection of consumers and their welfare and European market integration.
[42] European Parliament resolution of 14 March 2012 on judicial training (2012/2575(RSP). See also: European Parliament, resolution of 4 February 2013 on judicial training – court coordinators (2012/2864(RSP)).

Autonomy of national courts in the EU's judicial system

In this respect, we should mention that the issue of the autonomy of national courts in the EU's judicial system in everyday court practice recently received renewed attention in the Netherlands.[43] In November 2012, SSR and the Knowledge Centres of the Judiciary organised a large conference on: 'What do the Dutch Courts do with European law?'[44] The conference was a great success, with fierce debate and interesting perspectives. It showed that the role of national courts and the authority of their national case law having a European dimension in the European legal order is still open for debate and of growing relevance for everyday court practice in the Member States at the same time.[45]

6. A NEW CULTURE OF LEARNING?

As was mentioned earlier, the Netherlands has a long tradition of pre- and in-service training of judges and prosecutors: it started in 1956, long before the information society. Today, the world is more and more demanding and in light of the modern context for courts it is important to find training solutions aimed at supporting judges in a practical way, also in the EU. Since education and training are essential drivers of change within organisations, judicial training institutions must be aware of the current and future developments in society because tomorrow's judges and prosecutors are recruited, selected and educated today. It is our strong belief that several societal trends will impact the future of judicial training and foster reflection on the role of judicial training institutes. Perhaps these trends ask for a new culture of learning.

The challenge of digitalisation and information load

Among the current challenges, digitalisation and the growing amount of available information are the most relevant and challenging. As mentioned above, the quality of the digital infrastructure for knowledge determines the quality of learning. Therefore, judicial training institutions must be involved in the design and implementation of the digital knowledge infrastructure. New generations of judges and prosecutors need to be trained by means of digital training methodologies. As to innovation, it is important to turn knowledge and training into a catalyst for change within the judicial sector. Judicial training institutions should be in a good position to support innovation within the judicial sector.

Developing cost-effective means of improving the training of judges and access to EU law is vital with regard to an EU- population of 1.500.000 legal practitioners and about 350.000 judges and prosecutors.

By their very nature, judicial organizations tend to be conservative. The judicial training institutions might be the focus of change for the judiciary and justice systems in their respective countries. Because change is difficult to achieve, it could and should be a joint effort, a shared effort. Judicial training institutes should collaborate in finding out what the trends are, in order to, very carefully, implement them in their various (national) settings.

Talking about contemporary trends, five are most relevant in our view:

[43] See in particular: H.J. van Harten, Autonomie van de nationale rechter in het Europees recht, The Hague: Boom Juridische Uitgevers 2011 and R. Stijnen, M. Jurgens (eds.), *Toepassing van Europees recht. Wat doet de Nederlandse rechter met het Europees recht?*, Deventer: Kluwer 2012.

[44] See: http://www.rechtspraak.nl/Actualiteiten/Nieuws/Pages/Nationale-rechter-niet-onderworpen-aan-Europa.aspx.

[45] See the published contributions of key note speakers: H.J. van Harten, 'Wat doet de Nederlandse rechter met het Europees recht ?' in: *Trema. Tijdschrift voor de Rechterlijke Macht* 2013, p. 121-127 and R. Barents 'Enkele kanttekeningen bij de autonomie van de nationale rechter in het Unierecht' in : *Trema. Tijdschrift voor de Rechterlijke Macht* 2013, p. 128-132.

Demography
In the Netherlands, we experience greying and greening of society. There will be less (active) legal professionals in the coming years and this may result in a loss of knowledge, including knowledge that must be retained. In such an environment, knowledge management becomes vital. Future generations do not necessarily work (life)long with the same employer. The coming generation must be trained fast – on the job -, because the current generation of judges will soon be leaving the judiciary. Recruitment of talented young people is required in order to maintain the quality of the judicial system. Is this issue generic enough to discuss it amongst the training institutions and at the European level? The challenge is to make the judicial professions attractive for these people, for instance by offering personal development plans and other "gadgets" that attract this young generation. Training institutions can contribute by offering attractive training programmes.

Economy, work and value
The experience determines the value of what is offered. New approaches to work emerge, such as flexible working hours and telework. Flexible labour arrangements and shorter contracts influence the way people need to be trained. For the young generation(s), their choice for the judiciary will (also) depend on the stance that is taken within the profession on this new approach to work. The same goes for judicial training. Training institutions must have a clear understanding of what constitutes 'the experience of learning': it may include more factors than one might think. These factors may be more important than, for instance, the actual course materials or the teacher/trainer.

Approaches to knowledge and learning
The information society has changed the knowledge landscape. Instead of gathering knowledge, people want to know how they can learn effectively. A shift is discernible from knowledge *to* learning *to* research. Research is needed to know what is going to happen, in order to prepare for the future. Innovations are created within networks. This is an interesting and important observation considering that judicial organisations often are of a "closed" nature. How will this be in the future? Judicial training institutions could be a catalyst for the necessary changes in the knowledge infrastructure within judiciaries and judicial organisations. The institutions should be pro-active and build open learning networks with partners, also from outside the judicial organisation.

Digitalisation
Information has expanded in an exponential way during the last decades. Connecting national case law together with the ECLI-citation and a search engine on the European e-Justice Portal will open up new, unforeseen possibilities for judges and lawyers, but how will the Courts deal with this? Who will store and analyse this information within the judicial sector? What is the effect of the online publication of judicial decisions? It is wise to involve the national judiciaries and their training institutes as architects of the digital knowledge infrastructure. Learning and knowledge are merging processes. E-learning is an example of how this already takes place. In any case, digitalisation is an important and urgent topic, because the new generation of magistrates needs to be trained now, and wants to be trained by means of digital training methodologies.

Need for innovation

Changes in the society force Courts to innovate. How can we turn knowledge and training into a catalyst for (modest) innovation and change within the judicial sector? Judicial training institutes are at the heart of the judicial sector: people who work in the sector pass through the classrooms of the judicial training institutes. This places them in a unique position to support or even initiate change and innovations within the judicial sector. Moreover, if you look at it from another angle: what would be the effect on the quality of the judiciary if the judicial training institutions failed to reflect on the required innovations and did not pose the right and necessary questions to the judicial sector?

7. REAP THE FRUITS: CONCLUDING REMARKS AND RECOMMENDATIONS?

This note has sought to provide a short overview of some of the Dutch experiences in improving accessibility and handleability of EU law for judges over the past decades. While courts in the past were mainly confronted with aspects of European law on a case-by-case basis, the relevance and impact of European law has grown enormously over the years. The Dutch judiciary and SSR as its principal judicial study and training institute have built up a long tradition of judicial training of European law in several ways. Experience shows that a multidimensional approach is necessary, and must include sharing knowledge, judgecraft and awareness of the autonomy of national courts in the EU's judicial system. The European institutions, most notably the European Commission and European Parliament, are recommended to reap the fruits of these experiences. Concluding this note, some of these fruits will be presented at a glance:

- In a way, the work of judges is stable and constant, while the European Union and the world around them is ever changing and becoming more and more demanding. It is of utmost importance to find solutions aimed at supporting judges in a practical way: keep it simple, functional and local!
    - The national judicial training institutes have to take care of basic and in-depth training on EU law in the pre– and in–service training.
    - European law must be made part of the training in substantive national law.
    - Offering ´action learning´ (an educational process in which people work and learn by tackling real issues and reflecting on their actions) or ´just in time learning´ in pending cases will improve the effectiveness and efficiency of learning.
    - Offering online blended learning is the future.
    - Combination of the working and learning environment by offering courses aimed at the transfer of knowledge only for trainees and newly appointed judges and prosecutors.
    - The increasing complexity and volume of (European) law may be tackled by a knowledge (digital) infrastructure and a network of specialized judges, such as court coordinators for European law who facilitate their colleagues in accessing sources of EU law.
    - The impact of the media is ever increasing and the growing media attention for the judiciary compels the judiciary to be transparent, also as regards the application and interpretation of European law.

- European law is nothing special: it is served in courts throughout the European Union, it is 'law of the land' of the European continent.
  - The development of the European attitude of courts is largely driven by companies and citizens who invoke European law before national courts. The European dimension of cases is continually growing. As a consequence, judges and prosecutors need new knowledge and competences to deal with these contexts.
  - Because judges and prosecutors are still afraid of applying European law, they can be facilitated by establishing circles of knowledge in their country and all over Europe, which exchange experiences, knowledge and interpretation of law with each other in a secured digital judges' campus.
  - Organization of European peer reflection groups ("intervision") of judges and of prosecutors to discuss issues they are confronted with when dealing with EU law in national cases. These meetings can take place online or through videoconferencing.
  - Because the available materials and knowledge about EU regulations are increasing enormously, judges and prosecutors must be trained in asking the right questions to find the appropriate answers. Standard questions can be developed for frequent pending issues.
  - An overall information searching system, covering all national judicial infrastructures, can make European law more accessible for all legal professionals in Europe.
  - Interconnecting national digital knowledge systems is preferable.

- European judgecraft includes the specific skills judges need to do their jobs, for instance in areas such as opinion writing, sentencing, dealing with court sessions, hearing witnesses, collecting evidence, reasoning, critical thinking. A craftsmanship that can be summarised quite concisely.
  - See the five Kapteyn principles mentioned above
  - Through exchange programmes, trainees and newly appointed judges can get acquainted with the interpretation and application of European law.
  - Through exchange programmes, very experienced judges can reflect on their work and in this way foster mutual understanding in order to strengthen mutual trust.
  - Exchanges for other groups of judges should be foreseen, if time and budget are available.
  - Peer reflection group meetings could serve as a platform to exchange experiences and practices, possibly through an e-learning infrastructure.

- The autonomy of national judges, as cornerstones in the EU's judicial system, must be fully respected.
  - Judges are professionals, leave room for manoeuvre: the best people to provide judicial studies are judges themselves.
  - Every national court is a court of EU law and should be trusted as such.
  - The EU's judicial system consists of 28 national judiciaries and the Court of Justice of the EU; together, they uphold the rule of law, develop and share the European legal order and share judicial authority within the EU.

- Empower national courts by reaffirming the explicit authority to apply but also interpret European law and by accepting national European case law as a source of law for the EU legal order.
- Article 67 TFEU, the basic provision on the area of freedom, security and justice, explicitly states that the different legal systems and traditions of the EU Member States should be respected. It is essential to foster a European judicial culture in which diversity is celebrated.
- When formulating the EU Justice policy, be aware of the sensitive relationship between the EU's executive and the autonomy of courts: the views might not be similar.

- Use public finance wisely, try to not reinvent the wheel.
  - There is a large body of knowledge and good practices of judicial training in the Member States. Do not research it again. Be practical and help the judges in court in their awareness of European law and national legal systems in a cost-effective way.
  - A programme comparable to the Jean Monnet Chairs for academics should be designed for judges and European law court coordinators for a bottom-up development of the European judicial culture.

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