



Study on judges' training needs in the field of European competition law

Executive summary

European Commission

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Final report

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Executive Summary

1. Scope

This study presents:

- a mapping of national jurisdictions for the application of EU competition law, including an analysis of judges' needs in terms of training and networking;
- an evaluation of DG Competition's "Training of National Judges" programme.

The subject is "European competition law" as defined by Articles 101-109 TFEU, including classic antitrust law (Art. 101-102 TFEU) and the rules on State aid (Art. 107-109 TFEU) but excluding national competition law.

2. Methodology

The research team divided the work into three Research Areas. It was aided by an expert panel composed of senior judges and training specialists. It was also supported by members of EJTN, the Association of European Competition Law Judges (AECLJ), the Association of European Administrative Judges (AEAJ), the European Union of Judges in Commercial Matters and others.

Research Area 1 (Mapping individual jurisdictions): Following **desk research**, the research team made **targeted enquiries** to individual judges and courts and to the institutions responsible for judicial training in the Member States. It then prepared **country profiles** detailing the competent courts and describing the training of judges in EU competition law.

Research Area 2 (Training needs analysis): Judges from all Member States responded to an **online survey** about their training needs in the field. Three off-the-record face-to-face **focus groups** involving judges, judicial trainers and other key actors were held. National competition authorities (NCAs) and lawyers in private practice also participated in a **stakeholder consultation**.

Research Area 3 (Evaluation of "Training of National Judges" programme): **Scoping interviews** at EU level was accompanied by refinement of the **evaluation matrix** and selection of a sample of relevant projects to analyse. A **survey of former participants** in projects funded by the programme was conducted and **interviews** held with training providers at national level. The **monitoring system** and **performance indicators** were compared with benchmarks for grant management, reporting, data collection, transparency and accountability.

3. Mapping and training needs analysis of national jurisdictions

Few judges deal with all aspects of EU competition law. In very few Member States are the same courts competent at first instance for both public enforcement and private actions. While there may be an overlap in terms of the courts dealing with antitrust and State aid, there are no specialised courts for the latter and judges are rarely faced with a case. The survey revealed that most judges with experience of EU competition law had dealt with only one type of enforcement action. The country profiles provide separate details of the competent courts for public enforcement, private enforcement

and State aid. The research team also proposes six distinct profiles in terms of judges' training needs.

Table 1.1: Number of judges in the competent courts (EU total)

Source: ERA		First instance	Intermediate instance (if app)	Final instance
Public enforcement: (a) judicial review	A ¹	330	90	471
	B ²	305	26	104
Public enforcement: (b) criminal sanctions	A	3 335	1 045	378
	B	0	0	0
Private enforcement	A	14 563	4 777	697
	B	459	270	56
Enforcement of EU State aid rules	A	16 192	5 058	1 258
	B	71	251	68

Public enforcement: (a) Judicial review of NCA decisions

In most Member States, a specific court is responsible at first instance for the judicial review of national competition authority (NCA) decisions and/or handling applications from the NCA. The basis for this may be the attribution by law of specific thematic competences or simply geographic location. There is often a reduced number of instances of appeal. The combined effect is to make the number of judges concerned relatively small. They deal more frequently with competition cases than their counterparts and the level of knowledge required of them is high. Due to this concentration and specialisation, advanced-level training programmes can be targeted efficiently at the right judges, and English-language cross-border projects are likely to be more popular than among other target groups. Demand for training among higher-instance judges may be lower as they will have to deal with the full range of civil or administrative appeals and be less likely to be specialised in competition law.

Training profile 1:
First-instance judges dealing with judicial review of NCA decisions

Training profile 2:
Higher-instance judges dealing with judicial review of NCA decisions

Public enforcement: (b) Criminal sanctions for breaches of competition law

In seven Member States³, certain breaches of competition law attract criminal liability. Cases are nevertheless rare and the judges concerned are not specialised. It is therefore difficult to target training efficiently. Criminal judges might be better served by ensuring the availability of on-demand training resources in local languages.

Training profile 3:
Judges dealing with criminal sanctions for antitrust infringements

¹ Number of judges who may potentially have to deal with a competition law case

² Number of judges specifically allocated to deal with competition cases.

³ Denmark, Estonia, France, Greece, Ireland, Romania and the UK.

Private enforcement

Enforcement of EU competition law through private actions is more common in some Member States than others. The new Damages Directive is expected to result in more such actions. Targeting training activities at judges who may be faced with a private action is much more difficult than at judges dealing with public enforcement, however, because in most Member States such actions are treated in the same way as other commercial disputes. There are, however, a number of important exceptions in jurisdictions where selected courts are specialised in competition-related disputes.

Training profile 4:
Specialised judges
dealing with private
enforcement

Training profile 5:
Non-specialised judges
dealing with private
enforcement

In these Member States, it is possible to target training actions at the right judges. It may also make sense to provide training locally, in local languages, and with a clear connection to national procedural law. In the rest, while the number of judges potentially dealing with private actions is relatively high, the likelihood of these judges having actually to do so is conversely low. Reaching this target group is therefore a major challenge and these judges may be better served by ensuring the availability of on-demand training resources.

Enforcement of the EU rules on State aid

Issues related to State aid may arise in a wide variety of cases (administrative decisions, public procurement, subsidies, tax etc.) and the handling of them is rarely if ever channelled to specific courts. While the number of judges who could potentially deal with State aid is large, the lack of cases means that the number who have actually done so is very small. It is therefore virtually impossible to target training on this subject efficiently.

Training profile 6:
Judges dealing with State
aid-related cases

In Member States in which the administrative courts have clearly defined competence for cases involving State bodies, it might be possible to design a training programme aiming to provide a common standard level of knowledge. It might also make sense to focus resources on appeal and supreme courts, where the judges concerned can be more easily identified. Otherwise judges should at least have access to on-demand training resources.

Specialisation of courts: key to training needs

In most Member States, the courts competent for public enforcement of EU competition law at first instance are specialised to some degree. In some but by no means all Member States, competence for private actions is also concentrated on a limited number of courts. As appeals will usually be heard by a specific court, there is also *de facto* specialisation at higher instances. For cases involving State aid or criminal sanctions, there are no such specialised courts. This results in a very wide spectrum in terms of the numbers of judges who need training in EU competition law, the level of their knowledge, the frequency with which they will hear competition-related cases and the type of training they need. The specialisation of courts can be considered a major factor in determining the quality and efficiency of training in EU competition law.

Language skills

The study found that while English is appropriate as a *lingua franca* for judges participating in cross-border exchanges or advanced training, many judges prefer to be able to access training resources in their native language – in which they will also have to write their judgments – and a significant number, especially among those

requiring basic or on-demand training, lack the skills to be able to participate in English-language programmes.

Training opportunities and preferences

Some two-fifths of survey respondents had participated in a judicial training programme on EU competition law. European-level training institutes, national judicial training providers and universities, which have been frequent beneficiaries of the funding programme, all played an important role. The European Commission and NCAs are also important for specialised judges. There appear to be few other providers of training for judges in this field. In many Member States, the only training opportunities were provided with financial support from the Commission.

While demand for more training was high among survey participants, the number of judges concerned is generally low, so many national training institutions prefer to make use of places on programmes by other providers than to organise their own. Trainers noted the potential inefficiencies of the current Programme in that proposals were not scrutinised on how they could build upon previous programmes and may duplicate previous courses in terms of the content and level of training.

Demand for training on economic aspects is not high but it is important to distinguish the specific needs of different target groups. Both judges and trainers value cross-border training. Many judges are keen to participate in joint training with other legal professions as long as confidentiality is respected. Less than a third of survey respondents had used distance-learning but over half expressed interest in doing so.

Networking, databases and cross-border activities

There are few opportunities for judges to meet judges from other Member States who deal with competition law. Awareness of AECLJ could be raised considerably given its unique role as a forum for judges in this field. The competition-focused exchange programme launched by EJTN and AECLJ in 2015 is a positive development. It is important to improve access to databases of EU and national case law by providing translations – at least of summaries or key passages – into more languages than only English.

4. Evaluation of the “Training of National Judges” programme

The evaluation criteria of effectiveness, efficiency, coherence, relevance and added-value at EU level were specified by the Commission in its call for tenders and were complemented by the analysis of complementarity and sustainability.

Relevance

The Training of National Judges Programme was launched in 2002 as a response to the new powers of the national judiciary in the application of EU competition law but was not accompanied by a systematic analysis of the training needs. The mapping carried out as part of this study represents the starting point to assess the relevance of the Programme and to allow the Commission to adopt the most efficient and effective approach for project generation. The availability of European funding is based on the assumption – confirmed by the mapping – that a need exists which is not covered at national level. All stakeholders agreed on the relevance of the Programme in absolute terms but also that training in this field will often be a lower priority in relative terms due to the scarcity of cases.

The Programme addresses exclusively judicial actors, meaning that other professions, such as lawyers, are not part of the target group. Most actors stressed that this is the “right” audience but that involving other parties could create a potentially fruitful exchange. It is suggested to allow for complementary open sessions.

Effectiveness

Analysis is complicated by a number of factors, for example most judges do not deal exclusively with competition cases so an objective measure of training and caseload is not possible. Even the number who have attended training funded by the Programme is unclear: the Commission reports that there have been 7,000 participants but this is based on a mix of exact numbers and estimates, and refers to individual participations and not to individual judges (who may – and do – participate more than once). Despite this lack of homogeneous quantitative data, the qualitative research suggests that the Programme has largely been effective in meeting its four key objectives⁴, though the study also makes recommendations for improvement in all of these areas.

Efficiency

The current budget for the Programme is sufficient from the beneficiaries’ perspective and the Commission uses the negotiation phase following the funding award to ensure value-for-money. A comparison of the Programme’s cost-efficiency with national training provision is difficult given that the international nature of projects (entailing extra costs such as travel and/or interpretation) is one of the Programme’s specific added values.

The Programme currently uses a system of calls for proposals for co-funded grants, which has become more and more prescriptive in terms of the projects it will support. In practice, however, the nature, scope and size of the activities is still quite heterogeneous. An alternative funding approach used by the Commission to support judicial training is procurement (e.g. DG ENV, DG JUST). This allows it to set specific objectives that training providers must fulfil and to develop a more coherent and sustainable training programme. Given that each approach has its advantages and disadvantages, the study recommends adopting a mixed approach combining the two. This would allow the Commission to maximise the efficiency and effectiveness of the available funding according to the typologies of training needs.

Coherence and complementarity

The Programme plays a key role in the dissemination of knowledge in this area of law at national level. It is the only funder of EU competition law training in a number of countries and is generally complementary to national programmes where they exist, as confirmed by the survey of former participants. Coordination with key players further contributes to boost coherence and complementarity.

In terms of horizontal complementarity with other EU funding programmes, some stakeholders question the separation between the DG COMP and DG JUST judicial training programmes. The study, however, finds this to be justified and appropriate due to the specific nature of competition law and suggests reinforcing it, e.g. through a separate budget line. This would help address the anomaly whereby EU competition law applies fully in Denmark and the UK but they are not eligible for funding due to non-participation in the Justice Programme.

⁴ 1. Improving judges’ knowledge, application and interpretation of EU competition law; 2. Supporting national judicial institutions in the field of competition law; 3. Networking; 4. Developing judges’ language and terminology skills.

EU added value

The organisation of the Programme at European level has an indisputable added value when compared to what could be achieved by Member States at a national or sub-national level. This is strongly connected to the need for a coherent application of EU competition law throughout the Member States, which is encouraged through common training programmes, cross-border exchanges and the pooling of resources.

Sustainability

Measuring the sustainability of actions funded by the Programme is difficult for several reasons. Most projects do not fit into a structured training programme continuing over time and, for many participants, the knowledge acquired is only of potential relevance because there is no guarantee that they will have a case. Former participants nevertheless reported that they mostly recalled the content of programmes in which they had participated, but made relatively little use of networks, tools or skills acquired.

The sustainability of projects is influenced by a number of factors beyond the Programme's control (e.g. technical access, turnover of judges) but these limitations need to be taken into account by the Programme managers. Scattered, one-stop initiatives have a lower probability of being sustainable over time. In particular, building communities or networks or developing resources that can be re-used and updated requires the active engagement of training providers for the long term.

Programme monitoring system and performance indicators

The implementation of the Programme is currently monitored through ongoing communication with project beneficiaries, on-the-spot visits, the final report of each project, and the provision of a few specific performance indicators. Although effective, these monitoring activities have a non-structured nature, making it difficult to report on, share and compare the information. The study therefore proposes a more systematic approach, giving beneficiaries a clear reference framework for gathering information to monitor and evaluate performance, and recommends further indicators (from essential to beneficial) and tools for the Commission to make use of the feedback received. It also proposes a common draft evaluation form for participants.

5. Conclusions and recommendations

The study ends with conclusions and recommendations related to each of the sub-sections of Chapters 3 and 4 mentioned above. The key recommendations are:

Regarding the training of judges:

- To target training for judges dealing with judicial review of NCA decisions more on the specific needs of this relatively small group;
- To provide similarly targeted training for judges in courts specialised in competition-related private actions;
- To ensure that the rest of the judges dealing with private actions or State aid have access to on-demand training resources in local languages;
- To promote cross-border networking, exchanges and language-learning in particular among more specialised judges;
- To encourage the concentration of competition-related cases on judges and courts specialised in this field.

Regarding the funding programme:

- To continue the programme as a main source of funding for judicial training in the field, focusing on jurisdictions that have under-benefitted until now;
- To target grants on the specific needs of different training profiles and/or to consider procurement as a more efficient method to target funding;
- To develop a more systematic and documented approach to performance indicators, monitoring and reporting;
- To coordinate more strongly with target groups and training providers to ensure that programmes meet judges' current needs;
- To establish a separate legal base from the Justice Programme.

Abstract

This study maps the jurisdictions at national level for the application of European Union competition law, including enforcement of its State aid rules. It details the courts competent in the Member States for public enforcement, private enforcement and State aid cases, including the responsible chambers or divisions and the number of judges sitting in them. It analyses the needs and demand for training among judges and proposes specific training profiles. It highlights the important role of the specialisation of courts in concentrating cases, developing expertise and enabling training to be targeted efficiently. The study also evaluates DG Competition's "Training of National Judges" programme, proposes performance indicators and makes concrete recommendations for ensuring that the programme meets the needs of judges dealing with EU competition law in the future. The study has benefited from close cooperation with the judges and institutions concerned, including extensive surveys of both practising judges and former participants in European Commission-funded training programmes.