Abstract
This article focuses on the current state of horizontal judicial cooperation and provides an overall image of the working model of different professional judicial and legal associations and networks. Furthermore it touches on two distinct phenomena of jurisprudential judicial cooperation, namely participation on European law development and judicial use of other Member States courts’ case law, and tries to connect these aspects to the practical matters of judicial cooperation through the concept of mutual trust and judicial participation in the European integration. To look at given problems from the perspective of an independent observer, embodied by a judge at a lower level of judiciary structure who is not affiliated to any of the professional associations, can reflect the stalemate at which current horizontal judicial cooperation could freeze if professional judicial associations do not look to the vast possibilities that innovations in information and communication technology can offer. By taking this perspective I point out that improvement in external and internal communication of the associations and the creation of elaborated databases can render the position of professional networks stronger and more effective and foster jurisprudential judicial cooperation which has been until now pushed aside in the reinforcement of the area of freedom, security and justice.

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Horizontal Cooperation between Nation Courts in the EU
An Empirical Study

Alexandra Molitorisova
Research fellow in European Law
Faculty of Law, Uppsala University
Box 512
SE 751 20 Uppsala
carl.fredrik.bergstrom@jur.uu.se

Available at http://uu.diva-portal.org
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1 Introduction

Horizontal judicial cooperation among European judges is becoming a more and more realized and largely debated phenomenon in today’s EU 27. As proclaimed in the Stockholm Programme, the vision of the European Council is to create a consolidated European area of justice and move beyond the current fragmentation. Politicians, academics but mostly judges themselves are recognizing that as EU law is becoming an inseparable and ubiquitous part of domestic law, integration at internal market is deepening, civil and criminal procedures are having increasingly numerous cross-border aspects and as administration of European judicial sphere demands certain degree of homogeneity, horizontal judicial cooperation must play a supportive and complementary tool for everyday work of a European judge and her management of cross-border litigation. Studies carried out by the Commission showed that about 10 million people are currently involved in the cross border civil litigation and this number is expected to escalate in connection with the intensification of the movement of persons within the EU.

Exchange of ideas, reflections and considerations as well as identification of common problems and possible obstacles are thus crucial for better judicial participation in the process of European legal integration. Why not benefit from it when all progress in communication and information technologies and communication models points out that horizontal judicial cooperation today can be very fruitful, conducive, operative and non-intrusive? The importance of judicial cooperation is undeniable and is becoming more pressing. Consolidated European jurisprudence is on the verge of its. Judges themselves are very aware of these developments and are actively trying to find ways of enhancing closer cooperation, mutual understanding and better participation in the process of fast EU law development. As stated in the European Commission communication COM(2008)329 final of 30 May 2008, placing information and communication technologies at the service of judi-

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cial systems creates possible solutions by improving their functioning and contributing to a streamlining of procedures and a reduction in costs. Moreover as will be presented in this article, information and communication technology at the service of the European professional judicial associations has the potential to be an unprecedented kick-off for European legal integration, the building of mutual trust and the creation of a genuine mutually inspiring legal environment.

Judicial cooperation is taking on different modes and applying different approaches. Questions, however, remain as to what extent initiatives are coordinated, or in which areas non-coordinated and rather “competitive” environments can produce desired outcomes; what means can be used to involve all levels of judiciary structures in pursuit of mutual trust; and how to create dense virtual nexus connections rather then explicit ones that would prevent pitfalls of “torpor” that might follow the latter.

In this article I investigate the current model of judicial cooperation, networking, its organization, instruments and their functional importance in European integration process and try to identify the key areas of activities and points of convergence of different legal and especially judicial associations. The paper reveals mainly practical aspects and my analysis centers on the current and prospective state of horizontal judicial cooperation in the European Union law development process. I first try to describe and classify forms of cooperation that are prevailing and forms that have potential to be created and fostered. I describe and evaluate current European instruments governing the area of judicial collaboration and how European judicial associations should engage in the given legal framework and how they have the potential to become a juggernaut in judicial cooperation. Finally I turn my attention to the role of judicial networks in EU law development and draw conclusions in respect to judicial engagement in European integration through use of comparative inspiration when facing EU law interpretation issues. My analysis attempts to divert from the discourse of constitutionalism and democracy theories regarding cooperation issues and focus more on its empirical context.
1.1 Current model of judicial cooperation: Multiple accounts

First I would like to start with a little typology of mine in order to better understand what types of judicial cooperation it is possible to observe today. According to its form judicial cooperation can be classified primarily as direct personal cooperation and secondarily as virtual remote cooperation. What I mean by virtual remote cooperation is a cooperation using all means of digital information and communication technologies, such as websites, databases, chat rooms, social networking services, cloud computing and other digital platforms used for communication and information purposes. In this type of cooperation we can further distinguish implicit and explicit communication. The former uncovers and tracks relationships among groups of judges according to their affinities (for instance fields of expertise). Explicit communication is established deliberately with full participation of all parties involved. The direct personal cooperation covers in my typology well-defined, direct contacts. It can also take on many different forms including personal face-to-face formal or informal meetings, conferences, seminars, colloquiums, workshops, executive trainings and other channels providing personal and direct contact between participants.

According to the content, I make a distinction primarily between practical forms of cooperation connected to the procedural matters that are predominantly covered by hard law such as mutual recognition and enforcement of judicial decisions, mutual assistance, notification, obtaining the evidence, authentication, interconnection of different national registers and transfer of judicial and extrajudicial documents, and secondarily I recognize jurisprudential cooperation in legal interpretation, in sharing information on foreign statutory and case law, information of interpretation and implementation of EU law and judicial use of foreign case law “governed” mostly by soft law approach and thirdly I distinguish area of mutual exchange of good judicial practice. Judicial practice is rather a broad term, touching boundaries of both jurisprudential and practical judicial cooperation and is partly covered by hard law instruments.

According to the initiator, the judicial cooperation can be coordinated and organized by European institutions such as the Commission’s project of the European Judicial Network and Eurojust, by academic and other institutional initiators or by judges themselves such as independent judicial and other professional legal associations and bodies.

At the present time many different independent associations and organizations are operating, with the aim to gather judges and judiciary officials across the EU and to provide a platform for open communication. Their domain of activity can differ to a certain extent nevertheless their share certain basic characteristics and modes of function. However sometimes their program and offered project portfolio overlap and compete. One may think that a certain type of “market” of European professional legal organizations is created, where different working frameworks employed, agendas offered and outcomes generated are put into contest. Among the most noteworthy associations the Network of the Presidents of the Supreme Judicial Courts of the European Union, the European Network of the Councils of the Judiciary, the European Associations of Judges, the Associations of the Councils of State and Supreme Administrative Jurisdictions of the European Union, the European Judicial Network, the European Association of Commercial Judges, European Judicial Network in Civil and Commercial Matters, the Association of the European Administrative Judges, the European Judicial Training Network, the Academy of European Law and Lisbon Network should be listed.

In the following section I would like to illustrate the working scheme of such professional legal associations providing three examples, one of a purely judicial organization, the Network of the Presidents of the Supreme Courts of the European Union which represents a classic model of professional European association; the newly established European Law Institute, a non-profit organization focused on EU law development, which serves as an example of a different institutional approach combining research, networking and advisory activities; and the Justice Forum created by the European Commission. The approach I use is imagining the perspective of a European judge at a lower level of judiciary structure who is not a member of any judicial association and tries to gather information about activities and programmes offered by different networks or just to monitor judicial associations of judges.
of higher judiciary from the available public sources. I adopted this approach first of all because there is a great number of different professional and legal associations existing nowadays, which implies that even if our judge was a member of one of them, her information about others would be solely based on publicly available sources, second of all because some of the associations have very strict and limiting membership rules (either restricted to certain type or level of judiciary) which would prevent her from becoming a member so she could again rely predominantly on information published online. I therefore believe that such approach can reveal certain communication shortages as well as possible solutions and that to look at communication channels through “public” glasses can help European professional judicial associations to find a good practice of organization and communication as well.

1.2 Current model of judicial cooperation: Three prominent examples

The Network of the Presidents of Supreme Judicial Courts of the European Union (the “Network”) is a self-governing professional association created in 2004 and gathering current presidents of supreme courts of the European Union. Organizational structure consists of a general assembly composed of all presidents of the EU 27 supreme courts and a board. One of the key tasks of the Network is to provide a forum through which European institutions are able to request opinions of supreme courts. Besides encouraging discussions and facilitating communication between supreme courts and EU institutions, it also tries to bring European supreme court judges closer together and to enable exchange of ideas and views on certain urgent legal problems in EU law, particularly in the area of practical judicial cooperation5. The Network runs a website, provides an interface that connects national supreme courts’ case law databases, issues newsletters, organizes colloquiums, seminars and establishes contacts with different European institutions. To complete the spectrum of activities, since 2006 the Network enables its members to undertake internships for two weeks at another member court. The internships offered

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are part of the framework created by the exchange programme of European judicial authorities with the support of the European Judicial Training Network. Despite a great variety of activities one should notice that they are not very numerous. At least when it comes to personal formal meetings according to the available information published online, the Network organized colloquiums biennially and one seminar and a conference since 2004. Even if one of the Newsletter mentions vivid and frequent encounters⁶, an independent judge cannot acquire much information about these activities. There are of course many informal meetings, as well as formal meetings of an organizational nature such as general assemblies and board meetings arranged regularly. Organization of those events is mentioned sporadically in the Network’s newsletter published on average four times per year and it is the only way the public can get information about them.

As for the part of the Network’s activities, particular attention is dedicated to identifying and adopting the best judicial practice among the European judges. From the available information on Network’s activities it is noticeable that a lot of discussion is addressed to questions of judicial impartiality and independence, to the reasonable time of judicial decision making process, and to the best ways how to manage and handle a case with regard to human rights’ perspective, especially the right to a fair trial. Furthermore, comparative questionnaires were distributed in an attempt to find out more about courts’ motivations in decisions, use of different interpretative techniques, non-legal considerations in judgments and assistance in judgment’s drafting⁷. Judges discussed actively how the decision is prepared and how the decision is reached. Colloquiums have been organized to discuss other matters of common interest such as relationship between supreme courts and the executive branch, comparisons of disciplinary proceedings against supreme court judges, budget of supreme courts, appointment of supreme court judges and other issues of organizational nature⁸. Others were dedicated to such thematic fields of judicial cooperation as the creation of a European judicial area, the contribution of

the ECJ to its creation and prospective confidence building measures. During one of the colloquiums several ways how to tackle cooperation problems were recognized such as reinforcement of the European Judicial Network, good practice in mutual legal assistance, and support for liaison magistrates and mutual evaluation. Specific attention was drawn to jurisprudential cooperation at the Ljubljana conference, at which ways of disseminating and publicizing national judgments was discussed, as well as the effects of the decision as precedent.

For reasons similar to that for which the Network was created, the Justice Forum came into existence by the Communication from the Commission COM(2008) 387 final on the creation of a Forum for discussing EU justice policies and practice and it was launched in May 2008. In general terms, the role of the Forum consists of reviewing justice in the EU. More specifically this was intended to take place at multiple stages, e.g. at the ex ante evaluation stage where the Forum is invited to comment, to advise and to provide expertise on designated and proposed legislative programmes following their legal and practical implications, and to offer a global approach to the model of judicial cooperation and at the evaluation level to review the impact of EU policies. Furthermore, the Forum should scrutinize judicial cooperation and to identify good practice in it. It was foreseen by the Communication that the Forum can be called upon to provide external expertise and assessment in the Commission report drafting on implementation issues such as transposition assessment. The set up key is to make express all the stakeholders involved and touched by the Commission’s policies and legislation and reinforce transparency from the part of the Commission. Through this participation in discussion, the Commission aims at better comprehension of her policies and objectives meanwhile providing her with better feedback and possibility of review. Furthermore it was envisaged that the Forum should play an important role in strengthening mutual trust by providing strong and regular interaction between professionals. The Justice Forum was created to pool opinions, knowledge and experience of different stakeholders throughout the EU. Members of the Forum are organizations representing legal practitioners, judges, legal aca-
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demics or other legal professional, membership is thus institutional and not individual.9

According to the Communication, the Forum shall meet several times a year on a regular basis. Subgroups were envisaged to be constituted to deal with specific areas of interests and particular subjects in criminal and civil matters. The Justice Forum organizes two types of meeting: thematic and general. The Forum’s outcomes should be presented by annual reports, occasional studies and a website.10 Apart from the purpose of the Forum conceived by the Commission, the Forum could likely aim at better coordination of different judicial and legal associations through the annual meetings of representatives of these associations. As it was suggested at the second annual Forum’s meeting, a panel reviewing best practice of European judicial and other legal associations could have been established, associations can get familiar with the work of each other and provide a facility which would pool propositions and comments of different associations.

Despite all the grandiose ambitions and plans formulated by the European Commission’s Communication, an independent judge cannot acquire much information about the Forum’s current activities. Two reports from the annual and thematic meetings of 2008 and 2009 have been published by European Criminal Bar Association, one of the associated organizations to the Forum at which so far following matters were discussed: judicial training, mutual recognition in criminal matters, judicial e-Justice, economic crises and procedural rights.12 After 2009 any information on Forum’s activities are not available and the Forum is virtually non-existent.

The European Law Institute was created in 2011 as a joint initiative of the Network of the Presidents of Supreme Court of the European Union and the European University Institute. It describes itself as “an independent non-profit organization established to initiate, conduct and facilitate research, make recommendations and provide practical guidance in the field of European legal devel-

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opment”\(^{13}\). Practical suggestions rather than academic discussions are at forefront of its activities. Building on the wealth of diverse legal traditions, its mission is the quest for better law-making in Europe and the enhancement of European legal integration through participation on EU law development. ELI seeks to contribute to the formation of a more vigorous European legal community by internalizing the achievements of the various legal organizations, endorsing the value of comparative knowledge, and taking on a pan-European perspective in particular when it comes to common legal principles and rules. As such its work tries to cover all branches of law: substantive and procedural; private and public. It is also available for consultation by institutions involved in the development of law on European, international or national level. As its perspective is not limited to the European experience, ELI is ready to seek cooperation with non-European or international organizations such as the American Law Institute or UNIDROIT\(^{14}\).

ELI is committed to the principles of comprehensiveness and collaborative working, thus striving to bridge the oft perceived gap between the different legal cultures as well as between scholars and practitioners. To further that commitment it seeks to involve a diverse range of personalities, reflecting the richness of legal traditions, legal disciplines and professions found throughout Europe. ELI is also open to the use of different methodological approaches and to canvassing the insights and perspectives of multicultural and wide audience. To fulfill this scheme, the ELI is based on individual membership of academics, judges, lawyers and other legal professional all across Europe\(^{15}\).

As of organizational structure, the ELI consists of a general assembly, a council, an executive committee, a secretariat and a senate. Moreover the ELI establishes different working groups which are elaborating on different chapters and producing finalized outcomes in form of restatement or revision. One of such projects, proposed but not yet executed, of great practical importance for jurisprudential judicial cooperation is an interpretative guidance


\(^{14}\) Ibid.

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Current projects in executive stage include a statement on the case overload at the European Court of Human Rights and statement on the Commission Proposal for a Common European Sales Law\(^1\). The conclusions of working groups can be then referred to by courts or used in law-making process.

All of the European associations stand and build on grounds of legal diversity and culture differences. All of them have a rather homogenous centralized institutional structure and some of them gave rise to relatively decentralized working units. As of the program part, the common objective of these and other judicial networks and associations, express or sometimes more vague, is to find a place in the process of EU law development, meaning putting forward judicial expertise and providing opinions, joint responses and practical experiences of judicial and other legal practice and either to circulate this outcome on decentralized judicial “orbit” or to dislodge it towards the “centre” of European institutions. To achieve this objective I believe a suitable organizational framework is needed. The ELI provides a good example. Taking for a model the American Law Institute, the ELI’s structure of several groups working independently on different projects, restatements and proposals related to different fields of law provides a good way of how to effectively formulate and communicate outcomes\(^2\). Such channels of communication towards European institutions can be maintained transparent and comprehensible\(^3\). The reason for this is that one should be mindful of overlapping membership bases of different networks and of the fact of how hard it is to formulate an opinion of a large professional organization if no smaller working platforms are available. And because other professionals shall be regarded as equally important stakeholders in EU law development, broad participation of all legal professions and

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\(^1\) [https://typo3.univie.ac.at/fileadmin/user_upload/p_eli/Vienna-Memorandum_-_03-12-2010.pdf](https://typo3.univie.ac.at/fileadmin/user_upload/p_eli/Vienna-Memorandum_-_03-12-2010.pdf) (accessed on 29 May 2012).


\(^4\) The European Criminal Bar Association adopts the same concept of working groups elaborating on different projects [http://www.ecba.org/content/index.php?option=com_content&view=article&id=206&Itemid=20](http://www.ecba.org/content/index.php?option=com_content&view=article&id=206&Itemid=20) (accessed on 30 May 2012).
academia as it is offered by the ELI is a wise concept. To prove this we can just look at the achievements of the ALI and its impact on American law. Meanwhile these channels should stay open line between judge and the association, so that she would be able to keep track of all ideas and influences that are trying to blaze a trail in EU law development and to participate in defining the spirit of EU law, so that she would be able to maintain her awareness and understanding of EU law interpretation.

One could notice that a thriving and assertive professional judicial or legal association must have a good internal organizational structure as well as good internal and external communication strategy that would keep information flowing from the organization to the public (e.g. with help of website, providing basic information about association, publishing statutes and founding documents, history overview, clear synopsis of association’s activities, summaries from internal meetings, reports from conferences and seminars) and vice versa and thus achieve goals set up by these associations. EU law development demands exchange of opinions and experience on EU law and its application which on its turn demands transparent and effective communication pathways. To put it plainly it means it is necessary to publish papers from conferences and seminars, to disclose outcomes of different working groups, initiate digital platforms for discussion (in form of chat rooms, digital social networks, e-mail), in short not to stay silent about what the organization is doing is that field of judicial cooperation so that everyone most of all judges at lower levels of judiciary structure would be provided with possibility to look up the information and even contribute through digital remote means. It will be then also necessary to find good practice of professional legal networks and associations which appropriately responds to current need of EU development. In the below section I will elaborate on the cooperative work model of judicial associations supported by information technology (as first sketched by Johansen20) which tries to provide a good illustration how to deal with communication problems and brings a clear matrix of modern communication structure.

In the graph below\textsuperscript{21} I map the annual frequency of personal direct cooperation of four judicial organizations during the period of 2004 to 2011 according to the officially available data published on their respective websites. We can observe relatively different phenomena: either personal direct encounters (counted for general assemblies, conferences, colloquia, seminars, board meetings if mentioned) stay relatively low over years or they reach a certain peak (on average one in two and a half months) and must be then necessarily complemented by virtual remote cooperation. The explanation for low activity level can also be that information about personal direct encounters is not accessible which can be also regarded as communication deficit and solved by upgrade in virtual information flow in which recent information and communication technology plays a vital role.

\begin{graph}
\centering
\includegraphics[width=\textwidth]{graph1.1.png}
\caption{Graph 1.1}
\end{graph}

\subsection{EU instruments and judicial cooperation and training}
Following the above mentioned classification of judicial cooperation, all so-called practical matters and their effective carrying out are built on the premise of mutual trust. Instruments strengthening mutual trust across the European judicial scene are miscellaneous. Among the most vital ones belong judicial training in EU acquis, language and communication technology skills improvement, training in interpretation techniques and using of comparative jurispru-

\textsuperscript{21} Graph 1.1 depicting number of personal direct encounters as monitored by association's websites: NPSJCEU – the Network of the Presidents of Supreme Judicial Courts of the European Union, ACSSAJ - the Associations of the Councils of State and Supreme Administrative Jurisdictions of the European Union, AEAJ – the Association of European Administrative Judges.
idence with the emphasis on horizontal exchange of views, common adoption of good judicial practice, judicial exchange programs, both formal and informal judicial meetings as well as other forms of personal direct judicial cooperation. Judicial organizations and networks deliver strategic function in this field, offering facilities, membership base, both formal and informal working structure, in other words the “glue” that holds judges together. An important potential is uncovered also by the European Union’s initiatives. In the following subsection I would like to discuss what kind of European law instruments should regulate these tools of cooperation and whether these tools require the regime of soft or hard law. Furthermore it is important to delineate what the role of judicial professional associations can prospectively be if a soft law approach is at place.

In recent years we have witnessed an increasing number of hard law instruments or at least proposed hard law instruments relating for the most part to the practical domains of judicial cooperation. The common denominator of these instruments is focus on the problems and needs of citizens, articulation of human rights and

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facilitating exercise of and access to justice. With respect to the cooperation via networking, in both modes virtual remote and personal direct, significant achievement was attained by creation of the Eurojust and the European Judicial Network consisting of contact points vested with specific responsibilities in judicial cooperation that shall act as intermediaries between European judicial authorities providing information, executing requests of foreign judicial bodies, etc.

On the other hand soft law instruments encompass measures in certain ways related to so-called jurisprudential cooperation offering suggestions, defining problems and objectives of initiatives and proposing action plans for the improvements in this field and creating background for the practical judicial cooperation. The common denominator of these implements can be also perceived as the development of European law and jurisprudence and creation of the European legal culture from which eventually the European citizen would benefit. Nevertheless in this respect it is important to notice that certain aspects of good judicial practice which in my typology converges both practical and jurisprudential cooperation are governed by hard law (or proposed hard law) instruments. They are focused likewise at the citizen and his rights. The reason for this is, as most judges agree, that mutual trust must be deserved and cannot be forced, more importantly in the area of criminal justice where mutual trust is deemed to be a more sensitive issue

and where right to fair trial plays a cardinal role. Trust presumes adequacy in procedural safeguards\textsuperscript{27}. Good judicial practice especially in criminal matters should thus involve providing of right to effective access to justice, accurate interpretation, translation, right to specific attention, legal aid, diplomatic assistance, written notification and other procedural rights\textsuperscript{28}.

The EU has started to recognize that improvement in the area of practical judicial cooperation must be also followed by improvements in jurisprudential judicial cooperation. In both cases, the EU follows the same policy line, at which the common basis of the protection of citizens (suspects, accused persons, victims or litigants) serves as a unifying factor. Good judicial practice related to procedural rights is one of such areas where rigid regimes shall be regarded as adequate, hard law measures setting up the minimum rights as proportionate and disparities as unwelcome. In this respect, to provide an example, a model EU-Letter of rights for suspects and defendants in criminal proceedings was adopted\textsuperscript{29}.

However other aspects of good judicial practice where rights of citizens are not preponderant even though they are effectively impinged are left aside from the European legislation. Here professional judicial associations and networks are coming up to offer platforms for discussions related to organization of the court, investigation, communication with law clerks, publication and dissemination of judgments, confidentiality, case management, good practice at hearings and consultations, etc. as we could see these topics were largely discussed at the Network’s seminars. These issues do not require consistency and rigidity offered by hard law. A one-way mirror would be not a good solution, but on the other hand open and liberal identification of good practice in these matters should be considered.

Moreover as we have observed above, judicial and other legal associations try to find direct active dialogues with the European institutions and enhance their role in EU law development. This is where I find the strongest position for European judicial networks. And as judicial and other legal associations try to find direct vigor-

\textsuperscript{27} Tyre C., The future of legal Europe: an emerging European judicial culture?, edited by Heusel W., ERA Forum [1612-3093], 2008 Vol. 9, Issue 1., at 119.


ous dialogue with European institutions, this capable position crystallizes in particular with respect to their participation on the development of hard law instruments regulating minimum procedural safeguards and related aspects of good judicial practice. Discourse is vital to the development of EU law regulating good judicial practice. European institutions are in their turn also very well aware of the contribution in evaluation process that professional judicial and other legal associations can bring to improve the discourse about practical points of lawmaking and EU law development.

Hard and soft law approaches have both their pros and cons. The EU legal instruments should be appropriately adopted for tools bolstering mutual trust and understanding so they will respond to the urgency of harmonization, coordination and precision, in accordance with the principles of subsidiarity and proportionality, but at the same time they will leave necessary space for flexibility and stimulation of new approaches where needed.

Nevertheless I assert that additional tools of horizontal judicial cooperation in jurisprudential matters should be consolidated by EU hard law instruments, specifically those use of which is inextricably intertwined with the practical judicial cooperation for which hard law approach is commonplace. As it was previously seen, such is the case of good judicial practice where for the time being, rights and protection of citizens still play a central concern. However new instruments should assign a comparable importance to the creation European judicial area in terms of judicial culture and jurisprudence. As of the moment those existent are not formally binding, they have the capability to “nudge” judicial cooperation towards stable results. Namely they should cover the area of judicial training in EU law, language skills and information technology proficiency and lay down measures that would assist judicial recourse to foreign courts’ case law such as the proposed unified European case law identifier. It is desirable to introduce certain hard law instruments regulating these tools strengthening mutual trust that explore the potential of jurisprudential judicial cooperation.

According to the recent figures provided by the European Parliament study, as of May 2011, 51% of judges and prosecutors declared that they had never taken part in any judicial training on Union’s or another Member State’s law. 24% of judges and
prosecutors had never attended such training because no training had been available\textsuperscript{31}. These figures are too low to be ignored. A solid base and clear guidance are needed. Not only ignorance of the Union acquis but other potential hindrances to the creation of European judicial space should be overcome such as judges’ relative lack of familiarity with the preliminary ruling procedure, inaccurate use of acte clair doctrine, absence of use of comparative jurisprudence, disparities in use of legal principles that are important for EU law application\textsuperscript{32}, insufficient implementation of existing EU instruments\textsuperscript{33} and systematic gap in perception of the European legal order as understood by different national courts\textsuperscript{34}. Obligation regarding standardized judicial training in the above mentioned areas should be imposed on national training structures and, as the European Parliament suggests, it is pivotal to incorporate systematically EU element into training at the earliest stage for and the examination to enter the judicial professions\textsuperscript{35}.

No one can deny that common judicial training is one of the cornerstones for the creation of strong threads of mutual trust between judicial authorities as well as prerequisite of judicial participation on EU law development. Including the Commission which acknowledges that judicial training is the crucial element for the development of mutual confidence\textsuperscript{36}. Both initial and continuous training should take place\textsuperscript{37}. Judicial training is one of the most essential elements in strengthening mutual trust in each other’s skills and opinions if one assumes that the harmonized educational background of same standards or at least an education without significant disparities with regard to the duration and curriculum, with equally accessible training throughout judicial career would en-

\textsuperscript{31} COM(2011)551 final of 13 September 2011 on building trust in EU-wide justice: A new dimension to European judicial training.


\textsuperscript{35} European Parliament resolution 2007/2027(INI) of 9 July 2008 on the role of the national judge in the European judicial system.

\textsuperscript{36} COM(2011)551 final of 13 September 2011, Building trust in EU wide justice. A new dimension to European judicial training.

hance the reciprocal perception of judges as equivalently skillful professionals and thus facilitate the practical as well as jurisprudential judicial cooperation. The easiest way to achieve this objective is rely on already developed national training structures and to ensure standardized training at the most initial stage.

Secondly, training in communication technology has a great impact on cooperation improvement as well as on the day-to-day work of judges. It should therefore constitute a part of the common judicial curricula. Hard law instruments can provide a way with which to deal with huge discrepancies in information and communication technology skills among judges, so information and communication courses will become standard part of judicial training. It is important to develop basic competence in software use, work with databases, storage and dissemination of information, use of digital communication platforms. And lastly, improvement of language skills is an obvious necessity to establish a truly European cooperation among judges.

As I have mentioned above because of high number of European professional judicial and other legal associations and institutions, a certain “market” of educational programs and training structures, conferences, seminars and workshops has been created (at the European level for example European Academy of Law, College of Europe, European University Institute, EIPA's European Centre for Judges and Lawyers in Luxembourg and above-mentioned judicial associations). Both hard and soft law instruments are good tools to reconcile these initiatives: hard law setting up e.g. minimum duration, making the minimum training compulsory and built in national training structures and by this coherent approach avoiding overlapping of programs and duplication of efforts at the European and national level, soft law in its turn, by identification of areas that deserve specific attention, setting up priorities that can be easily adjusted and thus providing necessary minimum coordination of actions of the decentralized organizations. Even the Commission is encouraging national and European networks, professional organizations and training structures to work together, exchange best practices on training methods, build consortia, and set up trans-sectoral training activities38. Within these instruments judicial professional associations would provide added

value, educational superstructure in EU law, as well as language and information and communication technology particularly if market forces come into play for determining high-quality, value added and innovative approaches. Judicial networks and associations can offer courses’ differentiation, multinational expertise and programs tailored to judges’ needs and interests. Specifically by promoting the above-mentioned “other” means invigorating mutual trust such formal and informal judicial meetings and other forms of personal direct judicial cooperation providing contacts establishment, horizontal judicial dialogues, judicial exchange programs, all of which accentuate exchange of information rather than instructive methods. In the future, the key issue will be to keep these structures as open and accessible as possible to all judges, e.g. open conferences and seminars in distant learning mode, using blogs, video sharing websites or podcasts, so that the content and valuable information does not stay restricted to a limited group of professionals.

Strengthening mutual trust would still require regular personal encounters. Here again professional judicial associations play irreplaceable role. Even if we expand the use of remote virtual cooperation in order to widen the judicial participation in professional networking, personal encounters have the potential to build a more frank discourse and establish more sincere contacts, a role of importance that cannot be neglected. Nonetheless we will see that limits laid down by reliance on personal direct cooperation must be overcome, or at least very well complemented in order to speed up and facilitate communication between judges, so to say make it more “convenient”.

Besides the reinforcement of common knowledge of Union acquis it is equally as important to inculcate the “spirit of EU law”. The spirit of EU law can, to put it from a more visionary perspective, represents an identifying power in European judicial space which would help European judges to identify themselves as European jurists encompassing the European constitutional telos and broader European context. Practically to indoctrinate this element in legal interpretation or to make it widely present in national courts’ adjudication can help courts’ work, e.g. with regard to the obligation imposed on national courts to interpret national law in accordance with European law. It can form a substructure for

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harmonization of national courts’ case law. Acquiring familiarity with the EU spirit and participation on the development of EU law are acting as two attractive forces. If the spirit of EU law is derived from the legislator’s will then by participation on EU law development, establishing dialogue with the European institutions can provide that judges unwittingly or knowingly develop understanding of European spirit. I will dedicate the subsequent section to detailed analysis of the functionality of EU law development in European judicial integration and how judicial association as well as certain European legal instruments can make a great contribution in this domain.

In order to get familiar and possibly harmonize national case law concerning EU law interpretation, effective communication technology tools must be at place such as databases, digital communication platforms and networks that would enable immediate exchange of information, rapid searches and processing. An effort must be made to embolden judges to recourse to foreign case law and for that reason to use different forms of cooperation. The acquired training in EU acquis, EU law spirit, foreign languages and information and communication knowledge can be easily and readily transferable to all domains of judicial cooperation; it fosters not only practical judicial cooperation but mutual legal inspiration, makes comparative jurisprudence comfortably usable and altogether promotes European horizontal judicial cooperation.

1.4 EU law interpretation and development: After making acquaintances, it is time for friendships

I would continue with the premise that jurisprudential cooperation especially comparative inspiration in EU law interpretation and judicial participation in EU law development have the potential to become an indispensible driving force of EU legal integration and alongside good practice exchange a backup for the practical judicial cooperation. Multiple reasons immediately come to mind as to why this is the case.

Taking into consideration other courts’ decisions is an excellent way in which to display and foster mutual trust and confidence. And the other way around: it is a great way to prove familiarity with EU law and demonstrate professional expertise in it. One could argue that in order to actually evidence the positive effect on
mutual trust between national courts, an extensive explicit referencing would be needed. However recourse to foreign case law is not only about explicit citations but in broader context it presupposes bearing in mind the instructive and informative influences that foreign case law can show and to consider diverse means of exploring and discussing foreign imprints. Judicial recourse to other Member States courts’ case law especially when facing EU law interpretation must be understood as a synergetic product of judicial discourse and comparativism that is capable of bringing assets to all parties involved – among other things it can help to better assess outcomes of judicial decisions, help to deal with highly technical legislation, represent an instrumental source of objectivity or can merely serve as a source of inspiration in legal reasoning. It is the way judges enter proactively and collectively in the process of EU law development. This mutually stimulating discursive climate has a great potential to lead to good consistency of EU law, approximation of national case law and universalisability of national decisions on EU law. The development of the European law is eventually based on observation of legal discourses. The discourse and mutual inspiration must not necessarily be visibly displayed, tacit instrumentality can take place as well. And even the ECJ opened up a way for more intensive judicial dialogue in EU law interpretation. Introduction of acte clair and acte éclairé doctrine are underlying discursive character of EU law and importance of jurisprudential judicial cooperation.

Comparative analysis of other Member State court’s case law related to EU law interpretation is a comparative analysis per se. It might seem to be less arduous and the use of comparative methodology in this field might be perceived as a less demanding exerc-

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40 Fields S. E., Constitutional comparativism and the Eighth Amendment: How a flawed proportionality requirement can benefit from foreign law, Boston University Law Review, Vol.86:963, at 970.
41 See Maduro, supra note 35, at 25.
42 Ibid., at 40.
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cise. Interpretation of primary legislation, secondary legislation directly applicable or implemented and ECJ’s rulings is basically interpretation of the same or at least very similar set of rules derived from the single legislator’s will. It thus seems to be an obvious option that is offered to cope with EU law interpretation problems faced by national courts. Despite this, recourse to comparative reasoning by European courts is less frequent than one would expect; one would say it is rather minimal.

Michal Bobek identifies in his thesis Comparative Reasoning in European Supreme Courts various factors influencing the use of comparative reasoning by courts that can be categorized as general, institutional, procedural and human factors. As for the institutional factors, three of them deserve to be specifically mentioned. First, the argument that the comparative reasoning would be predominantly carried out by courts at the top of judicial hierarchy puts forward a premise of pragmatic nature which is that comparative analysis in general is in terms of time, expertise and resources, a demanding exercise. Only courts of last instance have time and resources available to espouse comparative arguments in their reasoning. Together with this, another argument appears simultaneously which states that proper analytical support (law clerks, legal secretaries, referendaires or institutionalized research and documentation departments) is needed for judges in order to undertake comparative legal research. One should then address difficulties of pragmatic nature with a pragmatic solution. This pragmatic solution should be founded on two distinct pillars: self-initiated behavior and diversification of possibilities of dissemination, use and consolidation of information.

As it will be discussed further a creation of more elaborated databases with the contribution of all national courts through judicial associations (or for now at least supreme courts) is one of the promising ways to reach this scenario. Conceptualized, well structured collaborative software tools both for synchronous and asynchronous communication such web logs, online social networking services, online consultations platforms, wikis as well as digital dis-

47 See Bobek, infra note 50, at 307.
49 See Bobek, supra note 50, at 53.
50 Ibid., at 55.
tribution software, content sites, electronic publishing and file sharing are another one. Judiciary as well must keep pace with information society which is interdependent on the flow of information and in which diffusion and obtaining of information can be held at relatively low cost and high speed.

Perhaps it will be beneficial to consider the perspective of a non-associated judge at lower level of judiciary structure working self-reliantly without any external analytical support. She might encounter an interpretation problem concerning EU law which was not dealt with by domestic courts but it might have been clarified by a foreign court. Assuming her knowledge of English language is fairly good, she might try to look for relevant information by using various web search browsers, she might directly search case law databases of national courts using English language or indirectly by addressing other online legal research services available to court, she might even use the publically available version of the Common Portal of Jurisprudence operated by the Network. Nevertheless her attempt to retrieve information might be today quite grueling and limited in scope. On the other hand, alternatively, she can involve independently in “judicial dialogue” through different platforms of virtual remote cooperation that European judicial and other legal associations could provide facilities for. Our judge can then hold online communication through text-style conversation about a specific topic of her interest, synchronous or asynchronous, she can retrieve information that was already published and shared by her fellow judges, software might even trace the connections to other judges according to certain affinities (for instance if they have dealt with the specific problem that our judge has in mind), she might seek for an answer or an inspiration in a specific database created by a judicial association regrouping translated decisions from different Member States’ courts. All these means of collaboration might provide good complementary help “in a case-specific query a judge might have” concerning European law. As far as I can see European judicial networks have the ability to improve knowledge about certain important national decisions, give them necessary publicity and offer official translation or at least translated summa-

52 See Bobek, supra note 50, at 58.
ries through databases or solely through regularly published reviews. A good example is the practice of the European Court of Justice’s “Reflets” which is used to keep European legal community informed about interpretation and the development issues in EU law. European judicial networks are capable of building a well conceptualized second pillar of the outlined pragmatic solution that would support the first one of “self-initiated behavior” by securing continuity of interest of national judges in EU law interpretation through better dissemination and consolidation of information provided by their members.

Bobek acknowledges that judicial networking and information exchanges enable more flexible access to information on foreign law. Nonetheless he concedes mostly a psychological and socializing relevance to them that is keeping up the spirit of broader European judicial community. Indeed as for the personal direct cooperation it will be difficult to make judicial meetings in the future more intensified and increasingly fuel the information flow provided by these personal direct channels (for instance the Association of the Councils of State and Supreme Administrative Jurisdictions organizes comparative colloquiums biennially in addition to general assembly and board meetings, three seminars organized on average per year and other semiformal meetings, which between 2010 and 2011 counted for approximately 15 meetings altogether and realistically no one can expect to participate more frequently on rather time-consuming personal meetings). It is true as Michal Bobek writes that “repetitive meetings between” the same judges “for the purpose of being seen can [then] barely be translated into anything internally useful for the institution.” And there is nothing to dispute about this point. But that is exactly the reason why virtual remote cooperation presented as an example above should be eagerly supported as a complement to personal remote cooperation and should involve all judges willing to engage and share. The virtual remote cooperation will result in the necessary and more instrumental channel for obtaining information. Nevertheless one should never downplay the importance and benefit of personal direct meetings with other judges for individual judges. I believe

54 See Bobek, supra note 50, at 57.
55 Ibid., at 57 & 58.
56 Ibid., at 53.
that even international socializing and psychological elements brought to the institutions by different judges can possibly spread and make an impact on court’s work considering the fact higher judicial bodies sit in multi-member chambers or senates. When asking a judge directly involved in such European judicial organization, it is still this personal direct contact that constitutes the masonry and mortar of mutual trust towards her fellow judges.

Hence creation of European judicial associations should not only stay a fashionable socializing phenomenon but should accomplish its reason. If the objective is of “exchanges of views and experience”\(^{57}\), “encouraging discussion and the exchange of ideas”\(^{58}\), “to keep up to date with professional developments”\(^{59}\), “exchanging judicial decisions and by sharing experience”\(^{60}\), etc. to raise the sentiment of belonging to the European judicial community through personal judicial exchanges is certainly a good way to meet these proclamations, however one should bear in mind that this sentiment will stay very provincial if judicial associations marginalize prospects of virtual information channels. And the danger of underestimating this potential still exists.

Moreover Bobek explains that comparative reports are of little use for everyday work of judges and that they provide for just basic legal geography\(^{61}\). That is true for finding comparative legal arguments but as we could see, comparative questionnaires very often relate to providing a fairly good sketch of different judicial practices. Nonetheless in respect of broader term of jurisprudential cooperation, comparative questionnaires and reports can be very relevant went it comes to identification of best judicial practice where general or selective information\(^{62}\) are not necessarily downsides but map sometimes clearly different praxis in institutional work of courts. And if they do sometimes aim at providing comparisons of different national law, general and selective information provided in the reports many times reflect only the way in which questions are framed and specified which would only require an inevitable shift from generality to specificity and an academic fol-

\(^{60}\) http://www.eufje.org/ (accessed on 27 May 2012).
\(^{61}\) Ibid., at 58.
\(^{62}\) Ibid.
low up analyzing questionnaires. Even if comparative reports relate to general legal problematic, they can be good “point de départ” where judicial reasoning in European law can induce further deliberations and enquiries. Notably if national judges identify such areas in which looking at decisions of other judicial bodies becomes mandatory such as European patent law and other “hot topics” largely discussed at European judicial level such as international child abduction case, personal data protection, smoothing the enforcement of criminal judgments, etc.

Questionnaires, databases, exceptionally also online discussion forums, prove well some initial attempts to share information on foreign law and legal systems and to make judges acquainted with it. Importantly, no matter how imperfect they are, they prove the interest on the part of professional judicial associations. Therefore they should not end in the dead-end-street of repetition but open on highway of improvements and innovations.

To summarize, there are two ways to make the visible imprint in EU law development with the impact of horizontal judicial cooperation: as it was shown previously, by institutionalized way of judicial and other professional legal associations via products or outcomes delivered by collaborative institutionalized avenues preceded by some internal procedure (working groups, selection and approval by general assemblies) and communicated to the European institutions within law-making process or in evaluation phase. The other way is carried out via judicial recourse to other member states’ case law when it comes to EU law interpretation. Yes, indeed at the moment comparative inspiration is qualitatively negligible phenomenon, it will remain a contingency, a random process of deliberation, even a judicial eccentricity unless the European judicial networks do not respond to the call of current challenges in the way how people are communicating, sharing and gathering information and do not seize the benefits of low cost and fast operating systems of virtual remote cooperation. There is a will, there is an objective and there is a facility however the means to meet the goal stay fundamentally underexplored.

1.5 Databases: Mutual legal inspiration is opening up

At present many different case law databases exist within different institutions and associations regrouping case law of national courts.
of the European Union. The following important initiatives should be mentioned: the Common Portal of Jurisprudence\textsuperscript{63} (the Network of the Presidents of the Supreme Judicial Courts of the European Union), JURE (the European Commission), Dec.Net\textsuperscript{64} and Jurifast\textsuperscript{65} (Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union), CODICES\textsuperscript{66} (constitutional courts’ case law, by Venice Commission), FRA Case Law database\textsuperscript{67} (European Union Agency for Fundamental Rights) and Caselex\textsuperscript{68} (independent publisher initiative).

For illustration, the Common Portal of Jurisprudence, which was launched in June 2006, is a metasearch interface allowing one to search the national case law databases of Member States’ Supreme Courts Jurisdictions by their parallel searching and using their own search engines. The database is fully available for EU Supreme Courts judges, the European Commission and the European Court of Justice; restricted access without translation tools is provided to the public. Nevertheless the portal is struggling with major translation problems and further training of the Network’s members is needed in order to make them well acquainted with the Portal’s usage\textsuperscript{69}. In March 2012, the paid version of Google translation software was incorporated into the Portal which can help to improve translation of key words\textsuperscript{70}. The Network acknowledges the translation problems, however the Portal can give a first impulse and represent a starting point for further research\textsuperscript{71}.

Dec.Net is an interface allowing one to connect to the database of the ECJ’s Research and Documentation Department and use multiple research tools. This database contains around 21,400 references to national decisions concerning European Union law from 1959 up to the present day, references to annotations and com-

\textsuperscript{63} http://www.reseau-presidents.eu/rpcsjue/ (accessed on 27 May 2012).
\textsuperscript{68} http://www.caselex.com/ (accessed on 10 May 2012).
\textsuperscript{70} Ibid. (accessed 15 May 2012).
\textsuperscript{71} See supra note 6.
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ments in books and articles related to national decisions and judgments delivered under the preliminary ruled procedure by the ECJ. The ECJ has established the database on the basis of selective process when considering legal journals as well as directly contacted national courts and tribunals. The Association’s Dec.Net interface thus provides access only to the analytical summary of important cases together with national, European and international references referring to the cases. On the other hand, the Jurifast database contains decisions submitted by the Research and Documentation Services of the Association's member institutions and covers both summary and full text of national decisions related to the interpretation of EU law, with and without preliminary ruling. The summary is always provided in French and in English.

With respect to this, the Council's notice 2011/C127/01 recognizes that the “knowledge on the substance and application of European Union law cannot be solely acquired from EU legal sources but also the case law of national courts has to be taken into account, both decisions asking for preliminary ruling as well as decisions following a preliminary ruling and certainly from those applying EU law on its own”. The indicated initiatives aim to fulfill this ambition to create the European legal culture as a tool of deeper integration in the European area of freedom, security and justice. The Council’s notice further states that in order to comply with principles of proportionality and decentralization there should be no centralized European database of case law. It seems reasonable to create one interface connected to all databases already created. First of all because national case law is represented disproportionately in different databases; secondly, because different databases follow different methods of selection; thirdly, it will require fewer resources than to create a whole new database; and fourthly, decentralized databases can better address the translation problems.

All of the aforementioned initiatives possess traits that are useful for work with foreign case-law. First of all, an interface which allows to connect to all 27 Supreme Courts’ case law databases. It is of course not feasible at the moment to provide individual transla-

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74 Council conclusions 2011/C 127/ 01 inviting the introduction of the European Case Law Identifier (ECLI) and a minimum set of uniform metadata for case law, at 6.
tion for all decisions issued by Supreme Courts to at least one of the official languages. Naturally those judges who master other languages can easily access foreign databases without need of machine translation. The second approach of creating a database consisting of selected cases, which are correlated to the European law and its interpretation, seems very useful as well. It is also good to keep the selection process partly decentralized so that national courts can actively participate, identify important judgments and if possible provide their translation. Displaying references to national decisions seems very useful to keep track of the relevance of decisions but this information should be accompanied with the summary in foreign language and at least original full text if translation is not possible.

A study performed by a working group established that besides problems with translation, lack of uniform identifiers for case law is a considerable obstruction to the search and citation of case law. Different identification systems used in national case law databases as well as those created by judicial networks hinder effective search of case law. Therefore the Council in this matter proposes to introduce one unified case law identifier. The Council’s notice conclusions do not bring any mandatory obligations upon the Member States however even the Network as independent professional organization recognizes that its Portal of jurisprudence can be fully operative and effective after the adoption of the ECLI system.

We can then imagine a scheme of smaller databases providing for carefully selected decisions linked to specific jurisdiction (e.g. Supreme Courts) or specific field of law (e.g. criminal law) either entirely translated into foreign language or associated by a summary in foreign language and full text in original language. For that reason a common conception at the EU level is needed, emphasizing urgency of dematerialization and publicity of decisions and mandatory use of common case law identifier and standardized set of metadata. And a national case law “one-stop-shop” can be created by connecting all the databases through a search interface.

75 Ibid.
The future depends on what we do today: Towards European Judicial Space

In talking about the future, one cannot get by without a certain portion of “the visionary”. Michal Bobek asserts that judicial dialogue in the form of comparative reasoning represents anything but the reality in the European supreme courts. And he is right that evaluating current involvement in judicial dialogues through use of comparative inspiration deserves a realistic and sober approach. But observing the current state of judicial cooperation can push us to realizing things that ought to be done better and more zealously. It can show us a model of horizontal judicial cooperation that understands the importance of equal and dedicated involvement and engagement of all (at now at least national supreme courts) overcoming the oscillation of judicial “will” and “self-initiation”. And yet such a model that would triumph over the so often raised red card of increasing demand on administrative capacity of courts and working capacity of judges that usually blows out all the enthusiasm.

This article does not envisage any dramatic structural change in the functioning of judicial cooperation. However it calls all parties to become open to the new possibilities that information and communication technologies can bring to the process of the development of European law and legal culture. The bottom line is to socialize and communicate more in non-intrusive and time-saving way. And so my article is supposed to instigate an urge for a more interdisciplinary approach in today’s horizontal judicial cooperation. European legal culture and European judicial space should be reinforced by both jurisprudential and practical judicial cooperation where all stakeholders take active part. Mostly judges themselves must understand that after they started to trust their national counterparts from the human perspective, they must equally develop trust and confidence in each others’ legal skills and knowledge. But those involved must also understand that after limiting this experience to a tiny knot of European judges, this empiricism must tightly swathe all levels of European judiciary. That is the reason why not only observation of good judicial practice but also deliberate judicial engagement in EU law development through pliable beams of judicial discourse or solid crystal sphere of European ju-

77 See Bobek, supra note 50, at 2.
Judicial associations are both pieces of European legal puzzle that is so essential for the conception of area of freedom, security and justice.

The Stockholm Programme 2010/C115/01 states that the mutual recognition principle remains as a cornerstone of judicial cooperation and is established primarily to facilitate access to justice for European citizens and to ensure judicial protection of individual rights. To accomplish this task, mutual trust among European judicial bodies must be promoted and strengthened. The Stockholm Programme declares that a European legal culture based on the diversity of legal systems and unity through European law must be developed for this reason. And it is also for this reason why the national judge, the front-line actor of the application (and consequently the interpretation) of EU law must become a comparist.

European legal associations and networks are able to provide time-proven facilities and to undertake a new dimension of communication that will be able to verify the feasibility of “European judicial space”. No one should downplay the social capital that European judicial associations deliver to their members, or the human capital that they could deliver to the rest. But the key will be to reconcile grandiose visions as promulgated by European instruments or institutions’ statutes and inauguration conferences with the possibilities of practical reality (institutional and technological) of today.
