



CONSEJO GENERAL DEL PODER JUDICIAL
ESCUELA JUDICIAL



Red Europea de Formación Judicial
European Judicial Training Network (EJTN)
Réseau Européen de Formation Judiciaire (REFJ)

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DIDACTIC GUIDE

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Senior Judge
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DISTANCE-LEARNING COURSE
THE JUDGE IN THE EUROPEAN JUDICIAL AREA
IN CIVIL AND COMMERCIAL MATTERS
FIRST EDITION - 2011 / 2012



Con el apoyo de la Unión Europea
With the support of The European Union
Avec le soutien de l'Union européenne
Mit der Unterstützung der Europäischen Union

PRESENTATION OF THE COURSE

Judges of the different EU Member States are called on to play an important role in the construction process of the European Judicial Area, and are contributors and protagonists of a new judicial culture which displays significant effects on the protection of the rights of European citizens.

This Distance-learning Course attempts to **increase the training and awareness** of EU Judicial Authorities of normative, institutional and technological instruments of the European Judicial Area in civil and commercial matters. It will also facilitate the **reciprocal knowledge** of the different judicial systems in the EU, thus contributing to increasing the trust necessary for the effective functioning of the principle of mutual recognition.

Over the past few years we have witnessed the exciting construction process of a common Judicial Area and Judicial Culture at EU level which derives from the Treaty of Maastricht (with the incorporation of Justice in the so-called intergovernmental “third pillar”), continuing with the Treaty of Amsterdam in which civil judicial cooperation was “communitarised” (coming under the “first pillar”) and the Treaty of Nice (with the application of the co-decision mechanism) and culminating with the Treaty of Lisbon in which the distinction of community action in pillars disappeared clearly delimiting the possibilities of action of the EU in the realm of Justice.

Three policies have been carried out to date in order to lend impetus to the possibilities outlined in the Treaties and make them a reality. The first was the Tampere European Council, continuing with The Hague Programme and taking a further step forward with the Stockholm Programme which is currently in force. One of its priorities is to establish “A Europe of law and justice” by stating that: “A European area of justice must be consolidated so as to move beyond the current fragmentation. Priority should be given to mechanisms that facilitate access to justice, so that people can enforce their rights throughout the Union. Cooperation between public professionals and their training should also be improved, and resources should be mobilised to eliminate barriers to the recognition of legal acts in other Member States”.

In enforcing the aforementioned, European Union action is essentially extended in different directions which include firstly the approval of numerous legal instruments which aim to avoid the existence of elements belonging to different European states constituting a barrier to the establishment of legal relationships. This is particularly true with regards to the fact that they can involve the necessary recourse to the Courts (access to Justice). To the above-mentioned is added significant awareness-raising regarding these instruments, their application and the legal and procedural systems of the different states.

This awareness-raising campaign is diverse and is currently being simplified and harmonised by the European E-Justice Programme. All of the aforementioned is accompanied by institutional action through the creation of new bodies (Liaison Magistrates, Judicial Networks, etc.) which facilitate the application of the approved normative instruments and respond to the issues and problems derived from it.

This distance-learning course analyses the current status of the construction of the European Judicial Area in civil and commercial matters, as well as its future perspectives.

This course will be carried out in four languages: Spanish, French, English and German.

1.- TRAINING MODULES

In the first module, the aim is to provide a **general view of the European Judicial area**, analysing its background and evolution; the instruments to improve legal assistance in this matter, as well as the free circulation of judgements and the principle of mutual recognition. The subsequent modules will analyse the essential elements laid down in application of the principle of mutual recognition

- Regulation (EC) 44/2001 on legal jurisdiction, recognition and enforcement of judgements in civil and commercial matters.
- Regulation (EC) 805/2004 creating a European Enforcement Order for uncontested claims
- Regulation (EC) 4/200, on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations
- Proposed regulation on successions and wills

In the second module the legal instruments approved within the field of **Family Law and European Procedural Law** are studied systematically and comprehensively:

- Regulation (EC) 2201/2003 on jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility
- Regulation (EC) 1896/2006 creating a European order for payment procedure
- Regulation (EC) 861/2007, of 11 July, establishing a European Small Claims Procedure
- Regulation (EC) 1393/2007 of the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)
- Regulation (EC) 1206/2001 on cooperation between the courts of the Member States in the taking of evidence

Lastly, the third module addresses, together with the instruments approved with regards to **applicable law**, all that which refers to the **access to justice** and

legal, informative and institutional means provided to facilitate information and practical application, referring in particular to the EU's **E-Justice action**. This includes:

- Directive 2002/8, of 27 January 2003, to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.
- Directive 2008/52, of 21 May 2008, on certain aspects of mediation in civil and commercial matters
- Directive 864/2007, of 11 July, on the law applicable to non-contractual obligations (“Rome II”).
- Directive 593/2008, of 17 July, on the law applicable to contractual obligations (“Rome I”).
- Council Framework Decision 2001/220/JAI, of 15 March 2001, on the standing of victims in criminal proceedings
- Directive 2004/80/EC, of 29 April 2004, relating to compensation to crime victims
- Council Decision, of 12 July 2010, authorising enhanced cooperation in the area of the law applicable to divorce and legal separation
- E-Justice Action Plan 2009-2013. E-Justice Portal.
- Judicial Networks and Liaison Magistrates
- Catalogue of web-based tools

2.- ADDITIONAL ACTIVITIES

Three videoconferences are also scheduled to take place **which serve as an introduction to each module** and will be uploaded onto the Virtual Course platform.

As well as this, **each module will have a practical case study** which will incorporate elements from the different topics integrated into it and will complement the **self-assessment exercises** in each topic. Essential normative and jurisprudential elements which enable the interested participants to study the topics in greater detail will also be available on the **virtual library**.

The course (in its virtual aspects) is complemented by a **debate forum** between all the participants in which as well as commenting on topics of interest, any queries arising during the course can be answered.

A periodical **Newsletter (“European Civil Justice”)** will also be provided with up-to-date topics related to this field and which informs the students from this edition and previous editions of the course on news thanks to the **former student’ forum**.

A **Former Students’ Community** will also be created, in which more than 300 Senior Judges and judicial authorities of 15 EU countries who have participated in the Virtual Courses organised by the Spanish Judicial School on the European Civil Judicial Area over the past few years will take part. It is a forum for debate and exchange of experience in the different fields of the European

Judicial Area, establishing a news channel, which will boast a Facilitator (a Senior Judge with extensive experience in international legal aid) who will be assisted by the tutors and authors of units in the Virtual Course. The Community members can also access certain contents of the Virtual Course (the newsletter, videos, new topics, etc.), in order to keep their knowledge on the subject up-to-date.

Lastly, a **final on-site session** of the course is planned in which the students who have passed the practical exercises can extend their knowledge both through direct contact with experts in the different subjects as well as with the students themselves. The format of this seminar will be dynamic promoting the workshop format, with the students drawing up conclusions.

PRESENTATION OF THE TEACHING TEAM

The teaching team (Course Directors, tutors and content authors) is comprised of Legal Professionals from different countries within the European Union, who are experts in the subjects studied on the course.

Below is a brief professional profile of the Directors and Course Tutors:

General Coordinator:



Félix V. Azón Vilas.


Senior Judge.

Member of the General Council of the Judiciary

Co-directors:

 <p>6. 2. 2001</p>	<p>Joaquín Delgado Martín Senior Judge Head of Central Services of the General Council of the Judiciary Expert in the Spanish Judicial Network for International Judicial Cooperation (REJUE)</p>
	<p>Francisco de Paula Puig Blanes Senior Judge. First-instance Court no. 44 of Barcelona Expert in the Spanish Judicial Network for International Judicial Cooperation (REJUE)</p>

Technical Director

	<p>Carlos Uribe Ubago Senior Judge Director of the Continual Training Service</p>
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Tutors:



Module I Tutor

José Antonio Varela Agrelo

Senior Judge. President of the Provincial Court of Lugo.

Expert in the Spanish Judicial Network for International Judicial Cooperation (REJUE)



Module II Tutor

Gonzalo Ferrer Amigó

Senior Judge of First-instance Court no. 3 of Gerona.

Expert in the Spanish Judicial Network for International Judicial Cooperation (REJUE)



Module III Tutor

José Guillermo Nogales Cejudo

Senior Judge. First-instance Court no. 13 of Murcia.

Expert in the Spanish Judicial Network for International Judicial Cooperation (REJUE)

Editor and Moderator of the Virtual Community of Former Students:



José Francisco Cobo Sáenz

Senior Judge. President of Section 2 of the Provincial Court of Navarre

Expert in the Spanish Judicial Network for International Judicial Cooperation (REJUE)

Spanish Representative at the Consultative Council of European Judges (CCJE)

Authority on Civil and Commercial matters appointed by the European Judicial Network

Spanish National Expert on European Union Law (REDUE)

AIMS

Participants will learn about all the normative developments in the European Judicial Area in civil and commercial matters, and will analyse both content and the principal practical problems; also addressing the tools facilitating their application: institutional tools (Networks, Liaison Magistrates, etc.) and virtual tools (European Judicial Atlas, etc.), focusing on the European Union E-Justice Portal.

RESOURCES AND STUDY MATERIALS

Participants will have the following study materials at their disposal which will be accessible on the Virtual Campus:

- ✓ Eleven units in *pdf* format written by the specialist teachers, which may be consulted and downloaded from the virtual campus. In order to facilitate study the units have been structured with

different sections (summary, introduction, links to the internet for a more in-depth study of the subject, bibliography, etc.)

- ✓ Each unit will have an explanatory outline in PowerPoint format
- ✓ In each unit access to European Union regulations and Case Law of the European Union Court of Justice will also be facilitated
- ✓ A self-assessment questionnaire for each study unit which may be completed on the virtual campus
- ✓ One practical case study for each of the course's three modules
- ✓ Document entitled an *Overview of the European Judicial Area* with internet links relating to the subject
- ✓ Presentation of the course by the Academic Staff in video format.
- ✓ Newsletter: "European Civil Justice"
- ✓ Three presentations in audiovisual format which together with the video recording is accompanied by a synchronised schedule
- ✓ Other material which is considered of interest, both in electronic and printed format

The list of resources above are supplemented by synchronous and asynchronous communication tools provided by the Virtual Campus (e-mail address, chat, forums) which enable direct communication between all the members comprising the Learning Community: students, tutors and the management.

It is necessary to highlight from among these communication tools, the forums which will be maintained throughout the Course and which will be moderated by the tutors of each module. In these forums all the participants can exchange opinions and experiences on the topics of debate proposed by the tutors or those which the participants wish to propose.

COURSE CONTENT

The programme of course content has a total of eleven units plus three presentations in audiovisual format which are grouped into three themed modules. Below is the programme of study with the content authors which has been designed and drawn up expressly for this course.

Module I

THE EUROPEAN JUDICIAL AREA AND THE PRINCIPLE OF MUTUAL RECOGNITION

TUTOR: **José Antonio Varela Agrelo**. Senior Judge. President of the Provincial Court of Lugo. Expert in the Spanish Judicial Network for International Judicial Cooperation (REJUE).

UNIT 1.- The European Judicial Area in civil and commercial matters. Background and development. General principles. The Stockholm Programme 2010-2014.

Joaquín Delgado Martín Senior Judge. Head of Central Services of the General Council of the Judiciary. Expert in the Spanish Judicial Network for International Judicial Cooperation (REJUE).

UNIT 2.- The Judge in the construction of the European Judicial Area: towards a new judicial culture. **General view of EU regulations** regarding civil and commercial matters: characteristic notes and tendencies.

Joaquín Delgado Martín Senior Judge. Head of Central Services of the General Council of the Judiciary. Member of the Spanish Judicial Network for International Judicial Cooperation (REJUE)

UNIT 3.- The principle of mutual recognition: trust as a pillar in the construction of the Judicial Area. **Brussels I:** Regulation 44/2001, of 22 December 2000, on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters.

Flora Calvo Babío. Professor of Private International Law at Rey Juan Carlos University of Madrid and Lawyer.

UNIT 4.- Maintenance: Regulation 4/2009, jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters related to maintenance obligations. **Successions:** Regulation Project. **European Enforcement Order:** Regulation 805/2004, of 21 April, creating a European Enforcement Order for uncontested claims

Carlos Manuel Gonçalves de Melo Marinho. Senior Judge (Portugal)

UNIT 5.- International judicial cooperation: bilateral, multilateral; the role of the **Hague Conference** on Private International Law and its relations with the European Union (Presentation in audiovisual format)

Francisco Javier Arroyo Fiestas. Senior Judge of the Civil Court of the Supreme Court

Module II

FAMILY LAW AND EUROPEAN PROCEDURAL LAW

TUTOR: **Gonzalo Ferrer Amigó**. Senior Judge of First-instance Court no. 3 Gerona. Expert in the Spanish Judicial Network for International Judicial Cooperation (REJUE).

UNIT 6.- **Judge and Family Law in the EU. Brussels II bis:** Regulation 2201/2003 concerning jurisdiction, and the recognition and enforcement of judgements in matrimonial matters and matters of parental responsibility. **Protection of minors:** Hague Conventions; the International Hague Network of Judges

Emelina Santana Páez Senior Judge of the First-instance Court no. 79 (Family) of Madrid.

UNIT 7.- **Normative instruments for judicial cooperation. Service of documents:** Regulation 1393/2007, of 13 November, on the service of judicial and extrajudicial documents. **Taking of evidence:** Regulation 1206/01, of 28 May, on cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters

Gordon Lingard. District Judge, United Kingdom

UNIT 8.-. **European Order for Payment Procedure:** Regulation 1896/2006, of 12 December. **Small Claims Procedure:** Regulation 861/2007, of 11 July, establishing a European small claims procedure.

Matthias Frey, Senior Judge and Chief Judge of the First-instance Courts of Kandel. Germany.

UNIT 9.-. **International child abduction:** Role of the Hague Conference and Incadat (Presentation in audiovisual format)

Francisco Javier Forcada Miranda. Senior Judge of First-instance Court no. 6 (Family) Zaragoza

Module III

APPLICABLE LAW AND INSTRUMENTS FOR THE PROMOTION OF EUROPEAN JUDICIAL CULTURE

TUTOR: **José Guillermo Nogales Cejudo**. Senior Judge. First-instance Court no. 13 of Murcia. Expert in the Spanish Judicial Network for International Judicial Cooperation (REJUE).

UNIT 10.- **Law applicable to obligations: Rome I** (Regulation 593/2008, of 17 June, on the law applicable to contractual obligations) and **Rome II** (Regulation 864/2007, of 11 July, on the law applicable to non-contractual obligations). **Reinforced cooperation** in the field of the law applicable to divorce and legal separation.

Mónica Herranz Ballesteros. Associate Professor of Private International Law at the Spanish National Distance-Learning University (UNED)

UNIT 11.- **E-Justice: online justice in the EU**. E-Justice Action Plan 2009-2013. E-Justice Portal. E-Justice for more effective judicial cooperation: interconnection of registers and databases, information exchange, videoconferencing.

Francisco de Paula Puig Blanes Senior Judge. First-instance Court no. 44 of Barcelona. Expert in the European Judicial Network in Civil and Commercial Matters (REJUE)

UNIT 12.- **Judicial cooperation in the EU. Promoting institutions**: Civil and Commercial European Judicial Network. Liaison Magistrates. Internal Judicial Networks: REJUE, REDUE, Network of Court Clerks, Network of Public Prosecutors. The European Network of Councils for the Judiciary. **Catalogue of web-based tools**: European Judicial Atlas, Handbook, other resources.

Hugo Novales Bilbao Senior Judge. Commercial Court 1 of Gerona.

UNIT 13.- **Access to justice**. Victims of crime (Directive 2004/80 and Framework Decision 15-3-01) Mediation (Directive 2008/52). Free justice (Directive 2002/8).

Francisco de Paula Puig Blanes Senior Judge. First-instance Court no. 44 of Barcelona. Member in the European Judicial Network in Civil and Commercial Matters (REJUE).

UNIT 14.- Future perspectives in international judicial cooperation in the European arena: the development of the Stockholm Programme and Plan (Presentation in audiovisual format)

María Teresa Bendito Cañizares. Associate Professor of Civil Law at the UNED.

SCHEDULE

The schedule proposed below may be subject to changes throughout the course.

The course consists of two phases:

- A. E-learning stage:** to be held from **12 December 2011 to 25 May 2012.**
- B. On-site learning stage, with conclusions and course evaluation:** this will take place over two days once the course has finished, and will be held at the headquarters of the Judicial School in Barcelona on **25th-26th June 2012.**

A. E-learning stage

Although the course development is flexible in nature, in an effort to adjust as far as possible to personal characteristics, the following basic schedule has been established where the course content will be at the disposal of these participants.

PASSWORDS SENT ACCESS TO VIRTUAL CAMPUS	From 12 to 16 December 2011
MODULE ZERO ¹	From 19 to 30 December 2011
MODULE ONE	9 January to 2 March 2012
MODULE TWO	From 2 to 30 March 2012
MODULE THREE	2 April to 11 May 2012
FINAL DEADLINE FOR SUBMITTING CASE STUDIES	14 to 25 May 2012
ON-SITE SESSION	25 th and 26 th June 2012

¹The objective of module zero is for the participants to become familiar with the interface of the course and to introduce themselves using the communication tools provided by the platform. It will be suggested that the participants undertake a voluntary "placement" in order to acquaint themselves with the uses of the course.

B. On-site Stage

This will be held at the venue of the Judicial School of the General Council of the Judiciary in Barcelona, and will take place over two days (25th-26th June 2012) after the course has finished.

Attendance **will not be compulsory** and **will be reserved for those students who have completed the full course, carried out the practical task work set and obtained a favourable mark from the teaching staff.**

The purpose of this stage is to attend a series of lectures given by specialists in the subject, and for the participants and their tutors to exchange experiences and opinions, in addition to assessing the various aspects of the course. A report will be published detailing the conclusions on the debates held in respect of each module in the virtual course.

ASSESSMENT AND CERTIFICATION

Assessment of learning

Each tutor will ask the students to carry out one case study per module, which is compulsory. Once the chosen case study has been prepared, it should be sent to the module tutor using the tool provided on the platform for this purpose.

Once the tutor has studied the case study submitted by each student, he/she will send back an academic commentary on the piece using the IT tool on the platform, in order to exchange opinions and broaden their learning experience.

Assessment of the project

Upon completion of the course's e-learning stage the participants will be requested to express their opinion on how the course was carried out by filling out an anonymous online questionnaire. In addition, at the end of the on-site session the students will be passed a questionnaire regarding the on-site session. Lastly, a short period of time will be set aside in this session to exchange opinions on the course and propose possible measures to improve the training activities.

The Course Directors always welcome any suggestions that might improve implementation of the training activities.

Certificates

Two types of certificates will be issued on completion of the e-learning stage of the course:

- **Certificate of successful completion** for those students who have completed all three proposed case studies (one per module) and which have been positively assessed by each module tutor. This certificate of successful completion will be issued with a number equivalent to a total of **75 hours** of personal dedication (study of the basic materials, consultation of the additional materials, participation in the debate forums, completion of the case studies). This study load is equivalent to 3 European ECTS credits.
- **Certificate of participation** for those students who have regularly followed the course but who have not completed all the tasks.

Participants in the on-site final session (non-compulsory) will obtain a certificate of attendance.

TUTORIALS AND ADMINISTRATIVE MATTERS

We consider the tutors' work to be a key aspect in the design of this course. This work will consist of the exchanging of opinions which arise from the assessment of the case studies, the moderation of the debate topics or in person during the final on-site session.

Students may also contact them for any academic or legal consultation during the online stage, using the e-mail service provided on the platform. You may contact the tutors in any of the working languages (Spanish*, French, English and German) and you will receive a response in your chosen language.

In addition, the Course Directors will be at your disposal through the same e-mail channels for any general questions relating to the course.

For any queries of an administrative nature, please contact the Judicial School of the General Council of the Judiciary using the internal e-mail provided on the platform or by telephone on 34 91 700 58 07 / 19 (Continuous Training Service, for Spanish participants) or 34 93 406 73 79 (Initial Training Service for participants of other nationalities).

* Taking advantage of the linguistic affinities between Spanish and Portuguese, Portuguese participants may address their queries to the tutors or write their case studies in their own language. Replies to queries in Portuguese will be drafted in Spanish. Naturally, if they prefer, Portuguese participants may choose another working language of the course (Spanish, French, English or German)

GUIDANCE FOR STUDY

The Course content (units, outlines, self-assessment questionnaires, additional material, etc.) will be provided on the Virtual Campus in accordance with the above schedule, and will be available to the participants until the end of the course. This documentation can be consulted online and can also be downloaded by the participants so that they may consult it off-line.

The course is designed so it can be followed flexibly by the participants; however, we strongly advise that you adjust your study of the content and the undertaking of the case studies for each module, in accordance with your means, to the above schedule.

In addition, we encourage you to participate in any debate forums that are opened, for which you can write your contributions in your chosen working language. The translation service will provide, subsequently and in the forum itself, your contributions translated into the rest of the languages.

You may state opinions and queries on the course material so they may be addressed by the rest of your fellow participants and tutors.

All the debate forums except the presentation forum* will be moderated by the tutors.

It should also be highlighted that a **Former Students' Community** will also be created, in which more than 300 Senior Judges and judicial authorities of 15 EU countries who have participated in the Virtual Courses organised by the Spanish Judicial School on the European Civil Judicial Area over the past few years will take part. This forum for debate and exchange of experience will have a Facilitator (a Senior Judge with extensive experience in international legal aid) who will be aided by the tutors and authors of the Virtual Course units.

* The course will have a "presentations" forum so that the participants can upload an informal presentation about themselves during Module Zero. Given its non-academic nature this forum will not be translated.