

Training Needs and Programme Proposals for National Judges on European Environmental Law



8 February 2022

Training Needs Assessment & Programme Proposals for National Judges on European Environmental Law

First specific contract implementing framework contract No ENV.E.2/FRA/2020/0026
“Co-operation with national judges in the field of environmental law”

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Key findings

Judges and prosecutors dealing with EU environmental law are not homogenous but have different training needs and priorities

There is high demand for more training on EU environmental law even among judges and prosecutors who encounter it rarely

Judges and prosecutors prefer face-to-face training but are mostly willing to do more online training in shorter formats

More networking opportunities for judges and prosecutors would be welcomed but the existing associations in the field are little known

Training Needs Assessment & Programme Proposals for National Judges on European Environmental Law

Background and methodology

In the framework of its long-standing training project “Co-operation with national judges in the field of environmental law”, DG Environment contracted ERA to carry out a needs assessment amongst national judges and prosecutors in the European Union on both the content of future training modules and the ways of delivering them, including on the language regime. On this basis, ERA has elaborated proposals for further improvement of the effectiveness of the programme. These include ideas and propositions relating to the alternative ways to deliver training modules, the possible forms of networking amongst participants, the potential challenges linked to their implementation and strategic actions towards a diversification of the training offer as well as ensuring its maximum uptake.

The needs assessment was based on two key elements. The first was the establishment of an Expert Panel with representatives from the different European judicial associations who supported ERA’s work both on designing and implementing the survey. The following stakeholders participated in the Expert Panel: the Association of European Administrative Judges (AEAJ), the European Network of Prosecutors for the Environment (ENPE), the European Judicial Training Network (EJTN) and the European Union Forum of Judges for the Environment (EUFJE). The Expert Panel met online before and after the needs assessment survey was conducted and the members were also able to contribute in written form.

Expert Panel

Anne Brosnan (ENPE)
Fernando Duarte (EJTN)
Matthias Keller (AEAJ)
Luc Lavrysen (EUFJE)
Klaus Lernhart (ERA)
Christina Olsen-Lundh (ERA)

The survey of national judges, prosecutors and court staff constituted the second element of the needs assessment. The questionnaire was made available in 22 languages in order to ensure the highest possible response rate. It was launched on 25 October 2021 and distributed via national judicial training institutions, the judges’ associations mentioned above and directly to judges and prosecutors from ERA’s own database. After a number of targeted deadline extensions to increase the response rate from selected Member States, the survey was closed on 25 November 2021.

Profile of the survey respondents

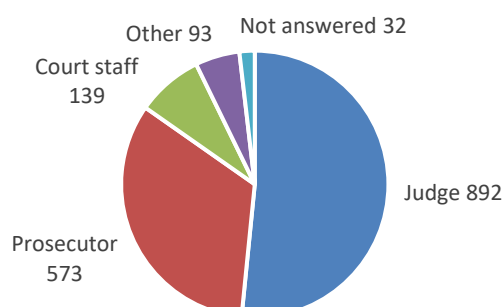
A total of 1729 complete responses to the survey were received. 1.08% of all judges in the European Union and 1.68% of all prosecutors participated (based on the numbers collated by the Council of Europe's CEPEJ). It is a large sample and, compared to previous Europe-wide surveys addressed to the judiciary in a specific area of law, a very satisfactory result (for example, for the "Study on judges' training needs in the field of European competition law" published by the European Commission's DG Competition in 2016, a total of 843 responses from judges were received). While the sample is large, it is also important that it be representative of the target audience of the training programme.

To ensure representativity, the project team set out to gather the views of judges, prosecutors and court staff in all EU Member States in proportion to their share of the judicial population. Responses were received from every Member State. In Cyprus and Ireland, the response rate was much higher than in other Member States (18% of all judges in Ireland responded to the survey, for example), but their respective shares of the judicial population are so small that this will not unduly influence the overall result. In Romania, the response rate was much higher among prosecutors than among judges and court staff. The response rate in the following Member States was (sometimes much) lower than expected, despite several reminders and extensions being given: France, Slovakia, Italy, Hungary, Austria, Belgium (in order of response rate, starting with the lowest). The response rate from Germany was also lower than hoped for but this is due to its relatively high share of the judicial population. With a total of 185 responses from German judges, prosecutors and court staff, the size of the sample can be considered adequate. For the remaining 17 Member States, the response rate was more or less in line with their share of the judicial population. Overall, the project team is satisfied that the responses are broadly geographically representative, with the only proviso being that care should be taken in drawing any conclusions that refer specifically to the most underrepresented Member States.

To obtain as complete a picture as possible of training needs in the field of European environmental law, the project team addressed the survey not only to the classic target group of administrative judges but to all judges, prosecutors and court staff. In order to draw relevant and tailor-made conclusions for each of the different groups based on their answers to the questionnaire, the results of the survey

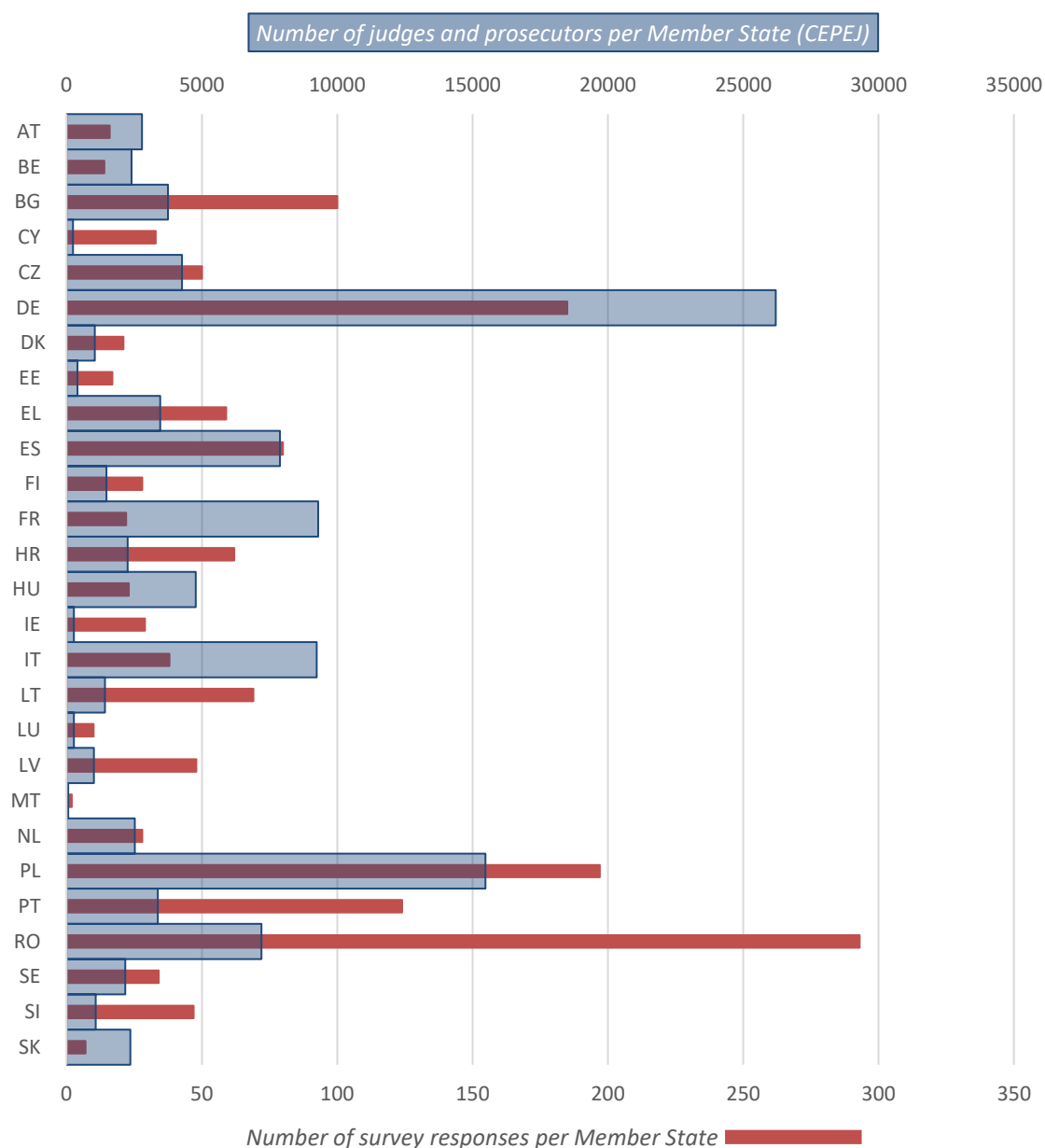
are mostly presented separately for each target group. This approach also helps to prevent any misleading conclusions being drawn from, for example, the relatively large number of replies from prosecutors. To increase further the relevance of the analysis, selected results are also split according to the type of court in which the respondent

Number of responses by professional group

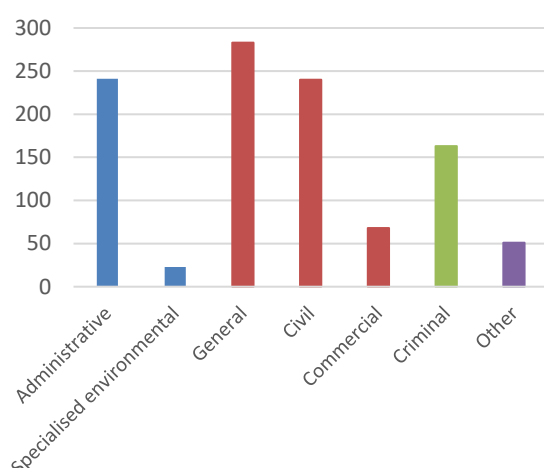


judge sits: (a) administrative or specialised environmental courts; (b) general, civil or commercial courts; or (c) criminal courts and prosecutors.

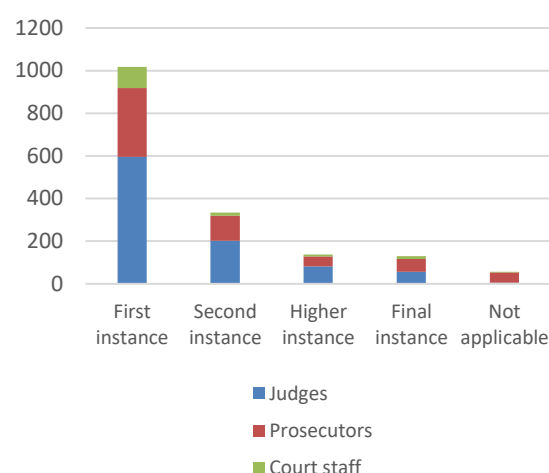
Responses were received from judges, prosecutors and court staff working at all instances. The vast majority came from practitioners at first instance. The answers to the questions on knowledge of EU law and EU environmental law were split according to the instance at which the respondent worked.



Type of court of respondents



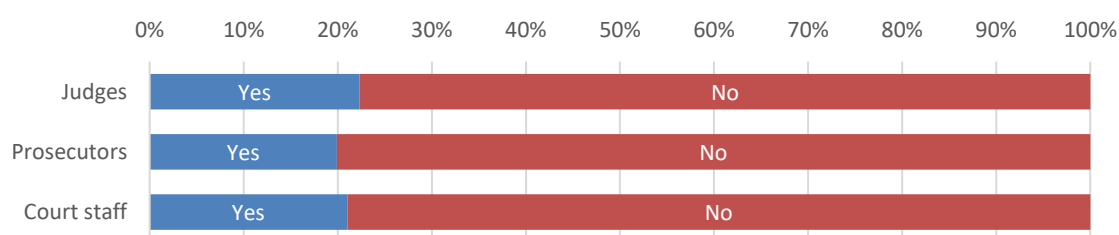
Level of the judicial system



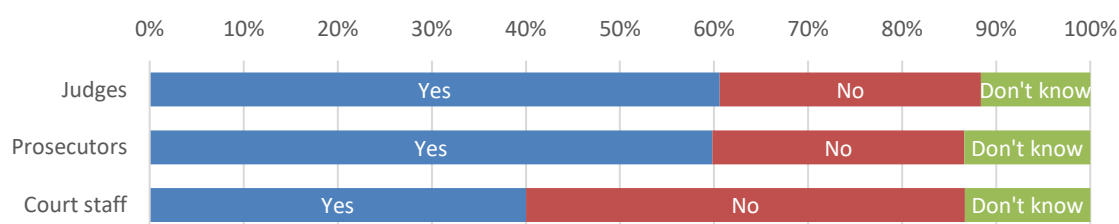
Knowledge and experience of EU environmental law

Only around 20% of the respondents had already participated in training activities on EU environmental law. Of those who had, the majority of judges and prosecutors had done so through programmes funded by the European Commission. Taken together, these results show (a) the continuing need to offer training for judges, prosecutors and court staff on EU environmental law and (b) the critical role of the European Commission's programme in raising awareness of EU environmental law and policy among the judiciary and providing a forum for the exchange of knowledge and experience.

Have you ever participated in a training programme on EU environmental law?

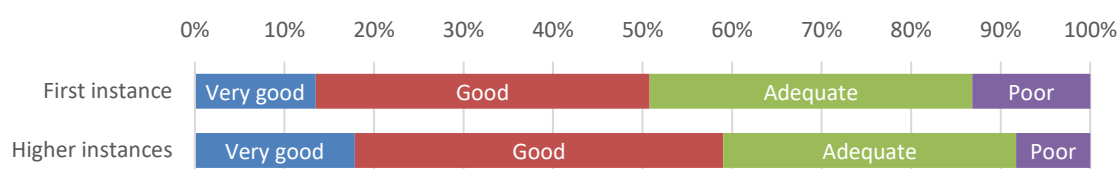


If yes, have you ever participated in a training programme for judges or prosecutors on EU environmental law funded by the European Commission?

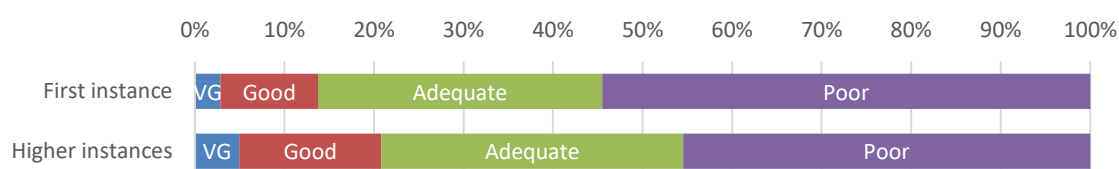


Although around 90% of respondents self-assessed their knowledge of general principles of European Union law at least as “adequate”, around half of the respondents from both first and higher instances self-evaluated their knowledge of general principles of European environmental law as “poor”. While the level of knowledge on both counts was higher at the higher instances, the result is still striking in terms of the need for further training in the field of EU environmental law.

What is your knowledge of general principles of European Union law?

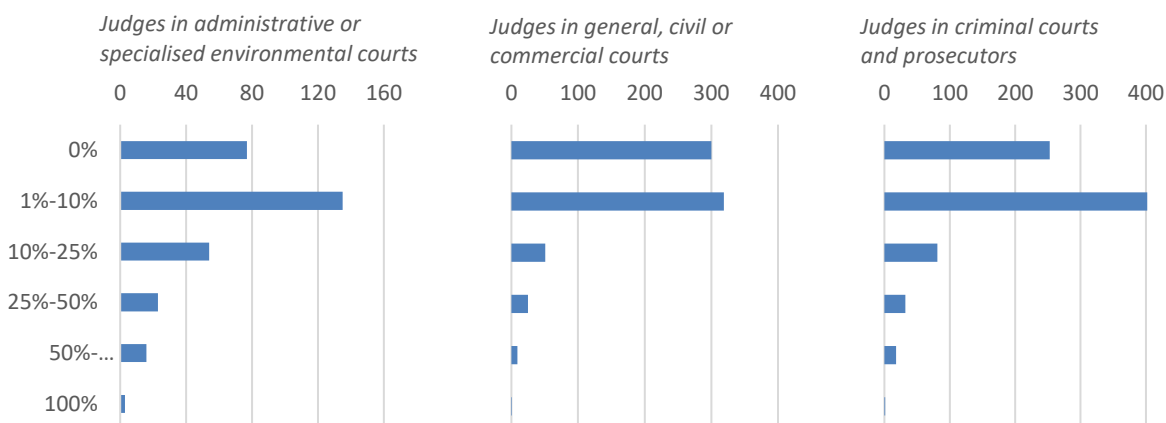


What is your knowledge of general principles of European environmental law?



As regards the caseload dealing with environmental law issues, the largest number of respondents replied that environmental cases amount to less than 10% of their total caseload, pertaining mainly to purely domestic cases. Small but relevant numbers of judges in administrative and specialised environmental courts, as well as judges in criminal courts and prosecutors, said that EU environmental law accounted for more than 10% of their annual workload. These categories were also less likely to report no cases related to EU environmental law. This emphasises the need to include (as much as possible) criminal judges and prosecutors in the target groups of the training programme.

Roughly speaking, in the course of a year how much of your caseload involves EU environmental law?



A significant minority reported that they handled no environmental law cases on a regular basis. As explained later, the same respondents nevertheless stated emphatically that they would like more training on EU environmental law. As with many specific areas of substantive law, the challenge for judicial training is that a judge never knows when an issue might arise in a case brought before the court. Being prepared for such an eventuality is one approach (“just-in-case training”); providing training in formats that can be accessed when they are needed is another (“just-in-time training”); and the two approaches can be complementary.

More specifically, among those respondents dealing with environmental law cases to at least some extent, the top five sub-topics encountered by each group were as indicated in the table below. To the greatest extent, these have been addressed by the training modules within the project so far – but it is important to note the variations. The three distinct categories of judges identified – (a) those in administrative and specialised environmental courts, (b) those in general, civil or commercial courts and (c) those in criminal courts and prosecutors – each encounter EU environmental law in different types of cases. The bottom five sub-topics encountered by each group are also shown as it may be relevant when designing future programmes to note that certain topics deemed important may not in fact be encountered regularly – at least by specific target groups. These insights reinforce the need for differentiation in the training programme. (For the full list of topics for each category, see annex A.)

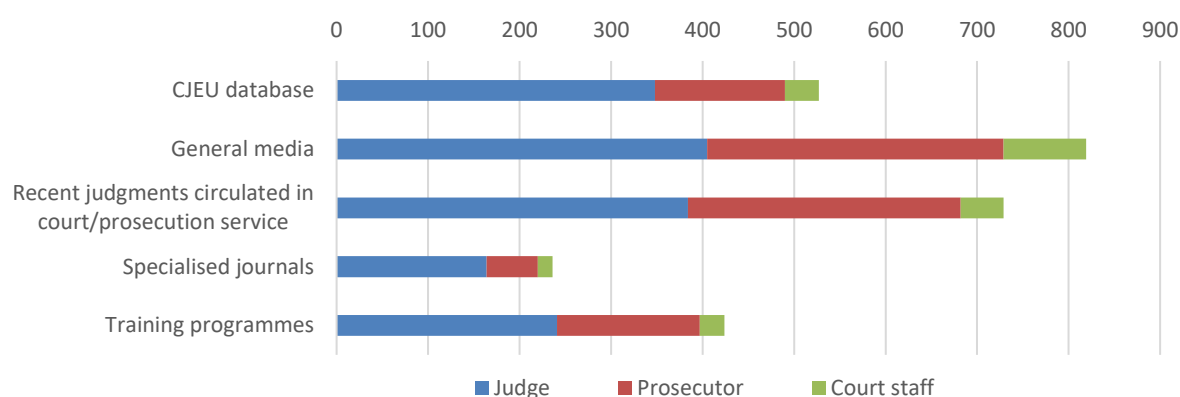
To which particular issue(s) are your European environmental law cases related?

	<i>Judges in administrative/ special'd environmental courts</i>	<i>Judges in general/civil/ commercial courts</i>	<i>Judges in criminal courts and prosecutors</i>
1	• Environmental impact assessment	• Noise Pollution	• Protection of environment through criminal law
2	• Nature protection	• Nature Protection	• Waste management
3	• Principles of EU environmental law	• Air Pollution	• Nature protection
4	• Waste management	• Waste management	• Noise pollution
5	• Procedural rights in environmental matters	• Water management	• Industrial emissions
10	• Industrial Emissions	• Procedural rights in environmental matters	• Marine environment
11	• Strategic Environmental Impact Assessment	• Access to environmental information	• Access to environmental information
12	• Marine environment	• Strategic Environmental Impact Assessment	• Procedural rights in environmental matters
13	• Climate change	• Marine environment	• Strategic Environmental Impact Assessment
14	• Protection of environment through criminal law	• Climate change	• Climate change

The sub-topics most frequently suggested by respondents that had not been proposed as multiple-choice answers were environmental taxation, species protection and forest protection. It should be noted that the number of respondents spontaneously suggesting these topics remained relatively small.

The main sources for respondents to stay up-to-date with developments in the field of EU environmental law were (a) the general media and (b) information circulated at national level within their court/prosecution service. National databases were also cited by respondents in their written remarks.

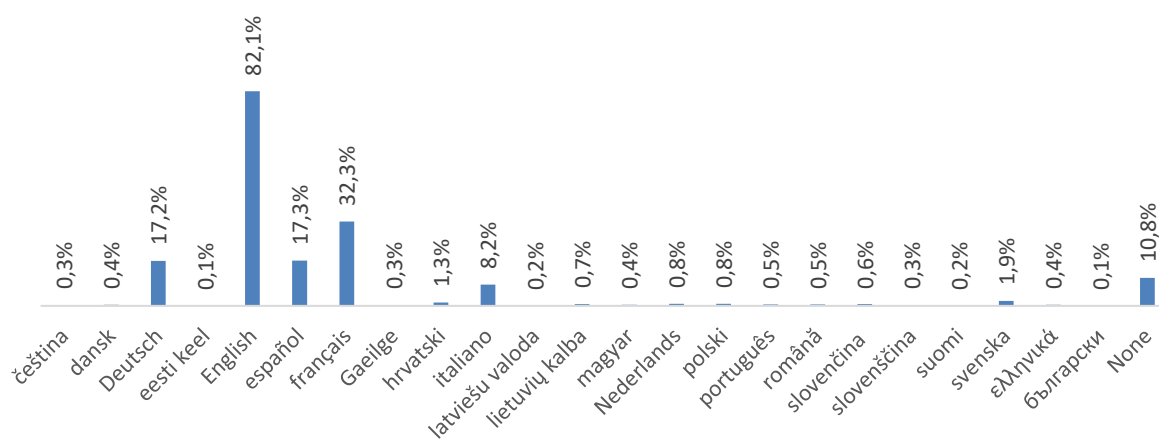
How do you keep up-to-date with developments in the field of EU environmental law?

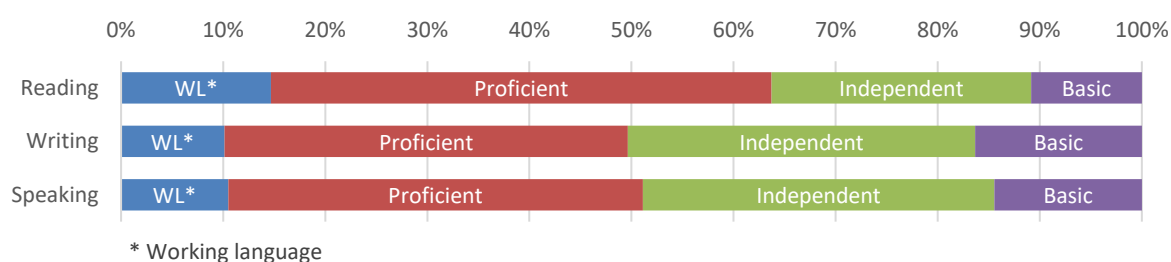


Language skills

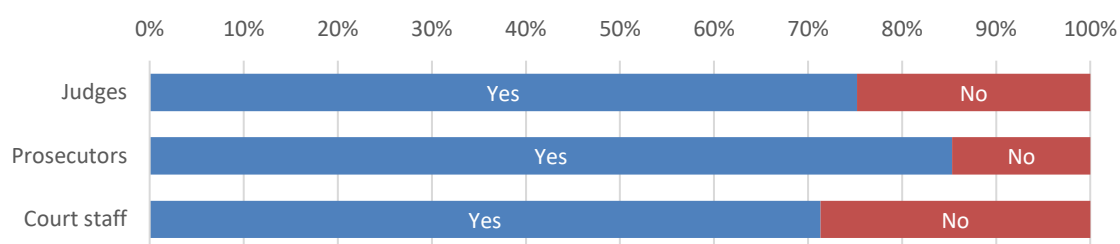
Concerning the knowledge of foreign languages, English is by far the most favoured option for delivering international training activities. 89% of respondents said that they spoke a foreign language and 82% said that they spoke English, with French (32%), Spanish (17%) and German (17%) the next most spoken foreign languages. Of those who speak English, almost 90% self-assessed themselves as at least independent users. There was no significant difference between the different categories (type of court) in terms of the respondents' proficiency in English.

Knowledge of foreign languages



Proficiency in English as a foreign language**Demand for training in the field of EU environmental law**

The vast majority of respondents (72% of court staff, 75% of judges and 85% of prosecutors) expressed their desire for more training in the field of environmental law. This is in spite of the fact that, as mentioned above, for many of them, environmental law makes up a small proportion of their caseload – or they do not deal with it regularly at all. This points to a high degree of awareness of the importance of environmental law and the potential for it to arise in future cases, making this programme extremely relevant and important even beyond the classic target groups for environmental law training.

Would you like more training on EU environmental law?

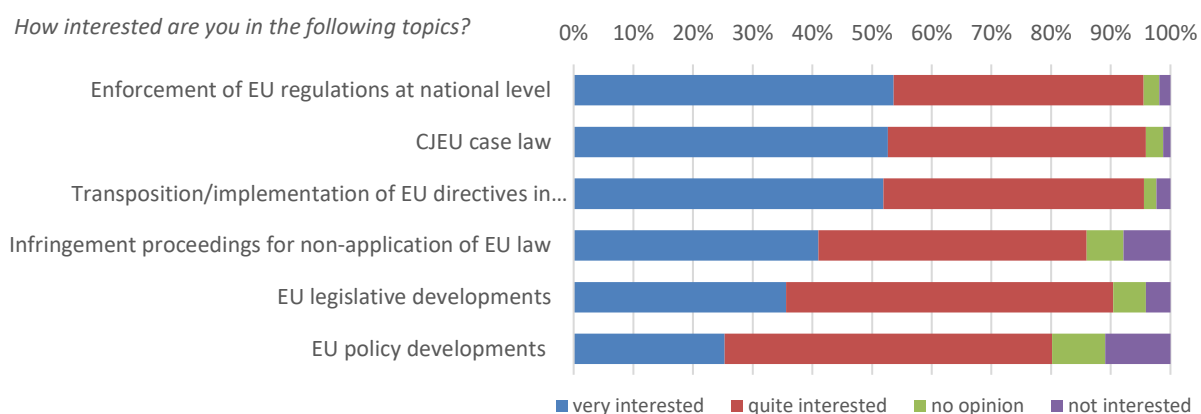
By filtering out the different needs of each target group, it is possible to identify topics that should be priorities for future training modules and should be taken into consideration when conceiving and designing the new training activities. While some topics are relevant to all target groups, others will require a different approach depending on the target group or will only be of relevance to certain target groups and should be addressed specifically to them. See the table on the next page for a summary; the full list of topics for each category can be consulted in annex B.

The most frequently cited topic on which respondents said they would like more training and which was not proposed as a multiple-choice answer was environmental taxation. It should be noted that the number of respondents who spontaneously suggested additional topics was relatively small.

On which EU environmental law matters would you like more training?

Topic	Specially relevant to:
- Principles of EU environmental law - Access to environmental justice	All target groups
- Environmental liability - Nature protection - Climate protection	All target groups requiring a specific approach to each
- Environmental impact assessment - Aarhus Convention	Judges in administrative/specialised environmental courts
- Air pollution - Access to environmental information	Judges in general/civil/commercial courts
- Protection of environment through criminal law - Waste crimes and waste management - Species protection	Judges in criminal courts and prosecutors

Beyond the substantive content of the trainings, respondents expressed particular interest in the following aspects of EU environmental law: (a) enforcement of EU regulations at national level, (b) CJEU case law and (c) transposition/implementation of EU directives in national legislation. They expressed less interest in EU legislative and policy developments, reflecting the fact that – as practitioners – they are concerned more by *lex lata* than *lex ferenda*.

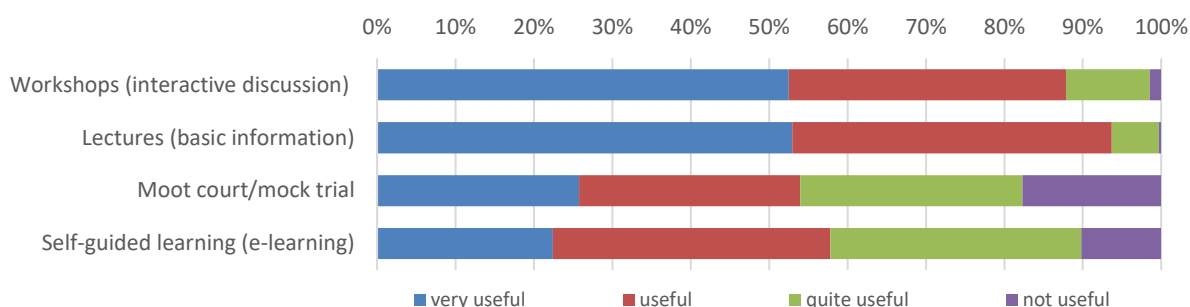


Preferences for the delivery of training modules

Workshops (interactive discussion settings) together with lectures (frontal presentations delivering basic information) constituted the most preferred training methods, which confirms that the current format of the project workshops corresponds to the needs and expectations of judges and prosecutors. While alternative methods such as moot courts and self-guided learning were less popular, they were each still rated as useful or very useful by over 50% of respondents. Among the methods

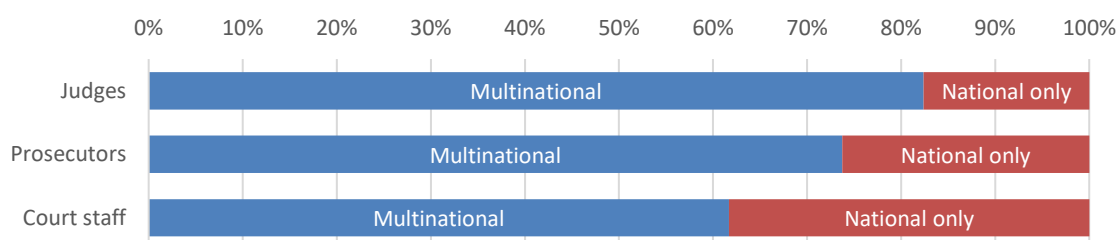
proposed by respondents themselves, practical case studies were most frequently mentioned.

How useful do you find the following forms of training?



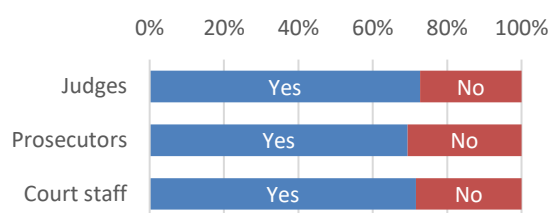
The vast majority of the respondents from all three target groups expressed their preference for multinational instead of national-only training in EU environmental law. This clear stance is at odds with the choice taken within the current programme to implement monolingual webinars in languages other than English (French, German, Greek, Italian). Taking into consideration the generally high level of English-language skills reported by respondents above – all of whom had the opportunity to answer the survey in their mother-tongue to avoid bias towards those who understood English – the organisation of English-only training should not be considered a barrier to access. In this context, an alternative option would be to organise the webinars in English with simultaneous interpretation to other languages. With this format participants from different Member States could join, increasing the interaction and the fruitful discussions as well as the networking perspectives.

What composition of participants at training programmes do you prefer?

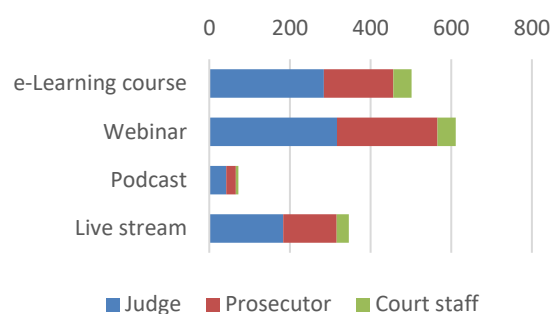


Most respondents had used distance-learning/e-learning products, with webinars and e-learning courses at the top of the list. In this context, they expressed a distinct preference for face-to-face training activities against online formats but a slight majority is nevertheless interested in making greater use of distance-learning.

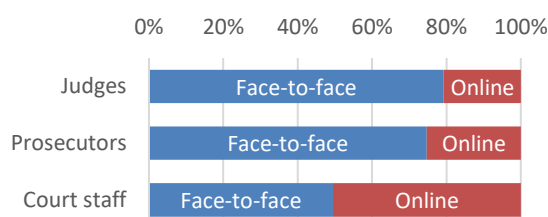
Have you ever used e-learning or engaged in a distance-learning activity on a legal subject?



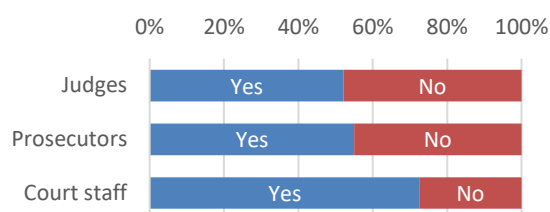
If yes, which form did it take?



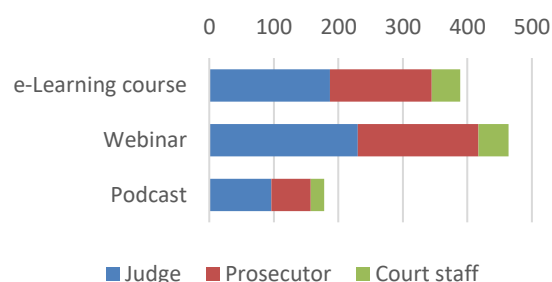
Which medium do you prefer?



Would you like to make greater use of distance learning?

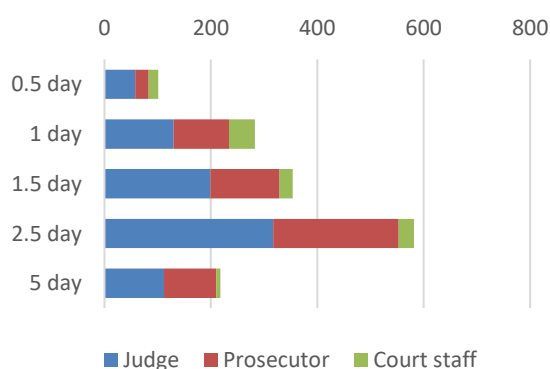


If yes, in what form?

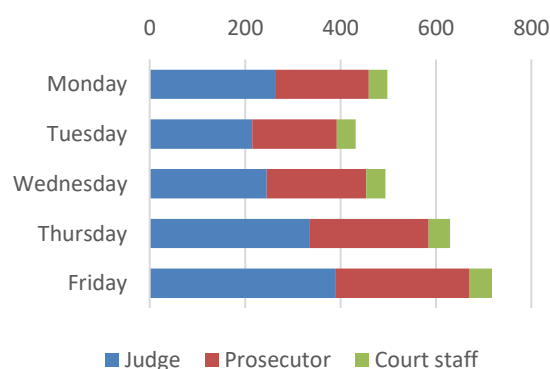


Concerning *face-to-face* training programmes, the 2.5-day format, which is already implemented in the project workshops, is the most favoured option, whereas Thursdays and Fridays are the most preferred days of the week.

For *face-to-face* training programmes, what duration of training do you prefer?



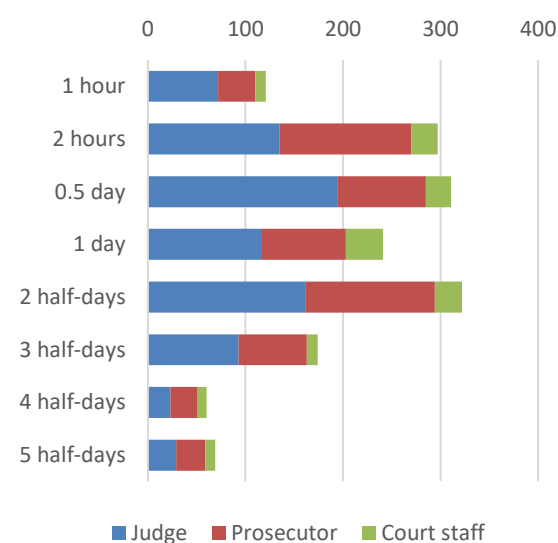
For *face-to-face* training programmes, on which day do you prefer to do training?



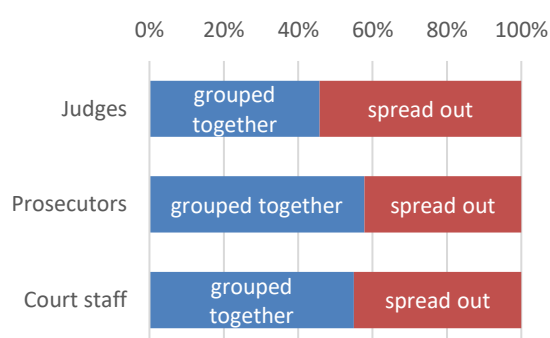
Concerning *online* training programmes, the 2 half-day format received the most votes, with other shorter formats (2 hours, 0.5 day) also proving popular. The currently implemented format (4 half-day sessions) was the least favoured option. In practice, the 4 half-days webinars were attended completely by the participants, without fading away, suggesting that the programmes were considered adequate in length and depth for covering the necessary contents. A tendency towards “e-fatigue” is a probable reason for shorter formats to be more popular.

On the question of whether online training programmes consisting of several half-day sessions should be grouped together in one week or spread out over several weeks, opinion was fairly evenly split, with a slight majority of judges opting for spreading the half-day sessions over several weeks and a slight majority of prosecutors preferring to have all sessions within the same week. This divergence between the target groups might be explained due to the fact that the prosecutors work collectively, while the judges have their hearings and their working commitments in a more “individual mode”.

*For **online** training programmes, what duration of training do you prefer?*

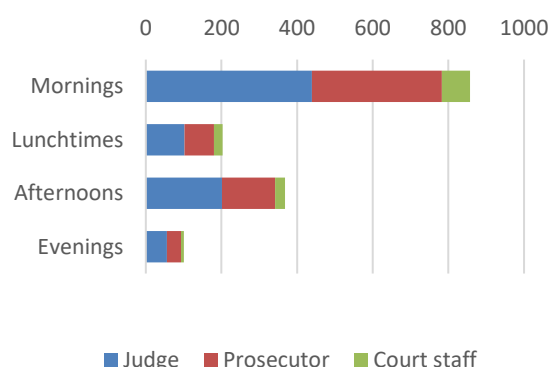


Do you prefer online training programmes consisting of several half-day sessions to be grouped together in the same week or spread out over several weeks?

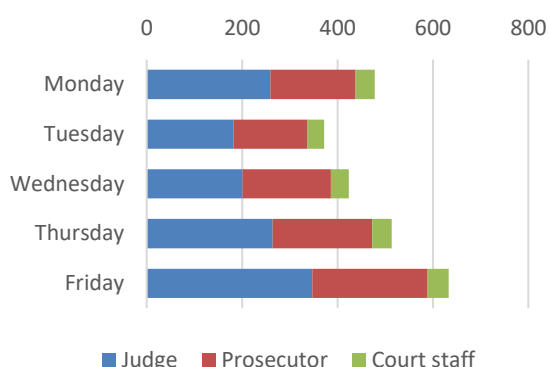


Finally, with respect to the preferred timing of online events, Thursday and Friday were again the top options, and morning sessions were by far the most favoured option among respondents. Lunchtimes and evenings were the least popular.

For **online** training programmes, at which time of day do you prefer to do training?



For **online** training programmes, on which day do you prefer to do training?

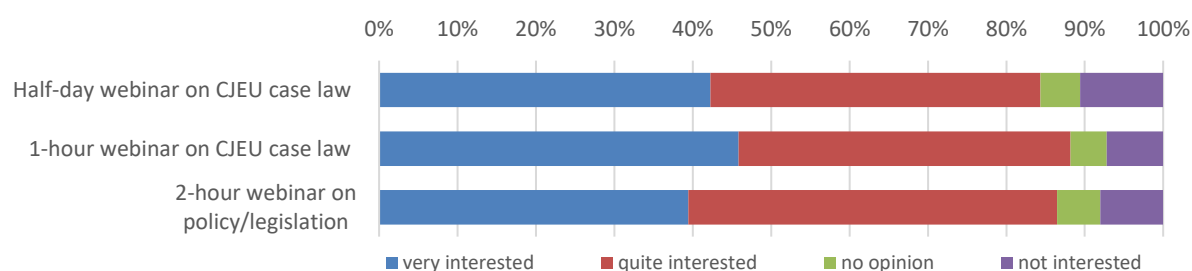


Three new training concepts were proposed to respondents for their initial feedback:

- Half-day webinar on CJEU case law with roundtable discussion among speakers from different backgrounds (judges, prosecutors, regulatory authorities, NGOs, lawyers in private practice)
- One-hour webinar on CJEU case law with analysis by a single expert
- Two-hour webinar on the latest policy and legislative developments in the field of environmental protection

All three were appraised positively. Concise ways of delivering training modules are clearly preferred, so a new training format might be the implementation of a 1-hour webinar on CJEU case law delivered by one expert.

How interested would you be in the following new training formats?

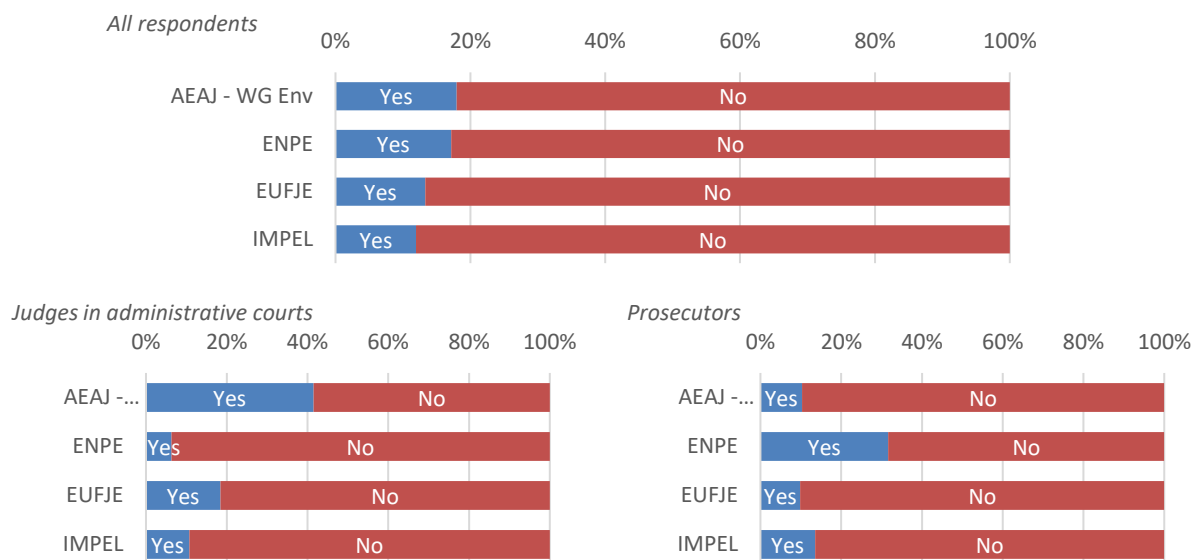


Possible forms of networking amongst participants

Respondents demonstrated limited knowledge of the existing European associations relevant for judges and prosecutors in the field of EU environmental law: (a) Association of European Administrative Judges (AEAJ) – Working Group on Environmental Law; (b) European Network of Prosecutors for the Environment (ENPE); (c) European Union Forum of Judges for the Environment (EUFJE); (d) European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL). While the level of awareness of the respective associations was higher among their core target groups (e.g. administrative court judges and prosecutors), the

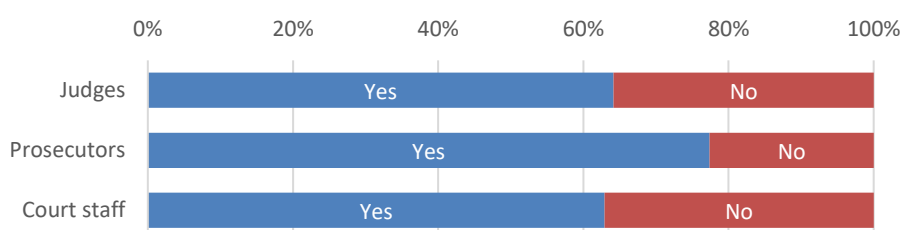
existence of a base level of awareness of all associations across all categories points to a relatively small group of judges and prosecutors who are already aware of all the networking opportunities available and a significant majority who are aware of none.

Are you aware of the following networks?



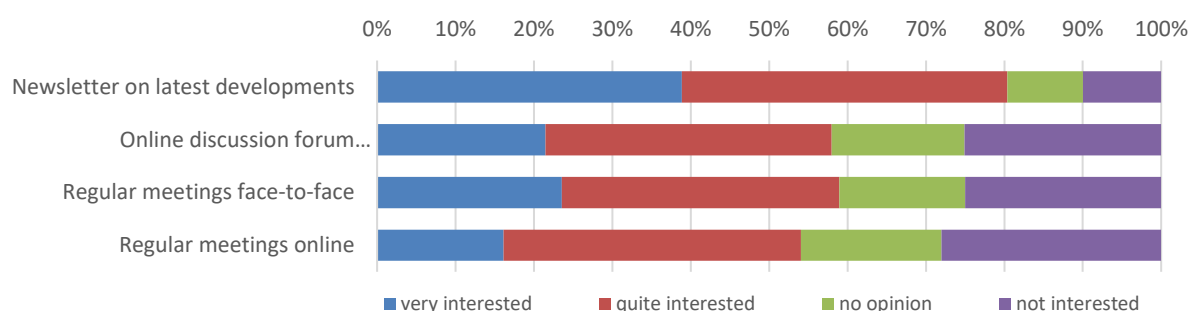
About two-thirds of judges and court staff and nearly four-fifths of prosecutors expressed an appetite for more networking opportunities in the field of EU environmental law, revealing a significant potential for the already existing channels/associations to make themselves and their activities better known. For example, face-to-face networking discussions could be organised in the framework of regular face-to-face events.

Would you like more networking opportunities on matters of European environmental law?



A regular newsletter on the latest developments in the field was the most preferred option for networking and staying up-to-date, with additional face-to-face or online networking meetings proving less popular.

How interested would you be in the following opportunities to stay up-to-date and network?



Conclusions and recommendations

Conclusions

- The needs assessment was conducted with the support of all the key stakeholders, including national judicial training institutions and the associations of judges and prosecutors concerned with European environmental law.
- The needs assessment also deliberately aimed to reach out beyond the group of judges and prosecutors most intensively involved in European environmental law in order to gain a broader picture of training needs in this field.
- The responses received to the needs assessment survey provide a large and geographically representative sample, and thus a reliable basis for analysis.
- Most survey respondents had not attended any training on EU environmental law. Of those who had, at least three-fifths had attended a course funded by the EU.
- While many judges and prosecutors are confident in their knowledge of the general principles of EU law, at first instance most admit that their knowledge of EU environmental law is poor (55%) or only adequate (30%).
- For most judges and prosecutors, EU environmental law accounts for less than 10% of their caseload. There is nevertheless high demand for more training on it, as it may arise at any time.
- There are at least three different target groups among judges and prosecutors concerned with environmental law, and each is concerned with different aspects of it:
 - Judges in administrative and specialised environmental courts
 - Judges in general, civil or commercial courts
 - Judges in criminal courts and prosecutors

- Most judges and prosecutors with an interest in environmental law report a high level of proficiency in English as a foreign language. The majority also prefer to attend training programmes with participants from other jurisdictions.
- Different sub-topics of European environmental law are relevant for different target groups and the demand for training varies accordingly.
- Most judges and prosecutors prefer face-to-face as opposed to online training. A slight majority is nevertheless interested in doing more online training.
- The ideal formula for face-to-face training would be a 2.5-day programme, in the second half of the week, based on practical workshops and case studies.
- The ideal formula for online training would be a two half-day (or shorter) programme, in the mornings, towards the end of the week.
- Demand for more networking for judges and prosecutors is relatively high but awareness of the existing European associations in the field of EU environmental law is relatively low. A regular newsletter on the latest developments would be welcomed.

Recommendations

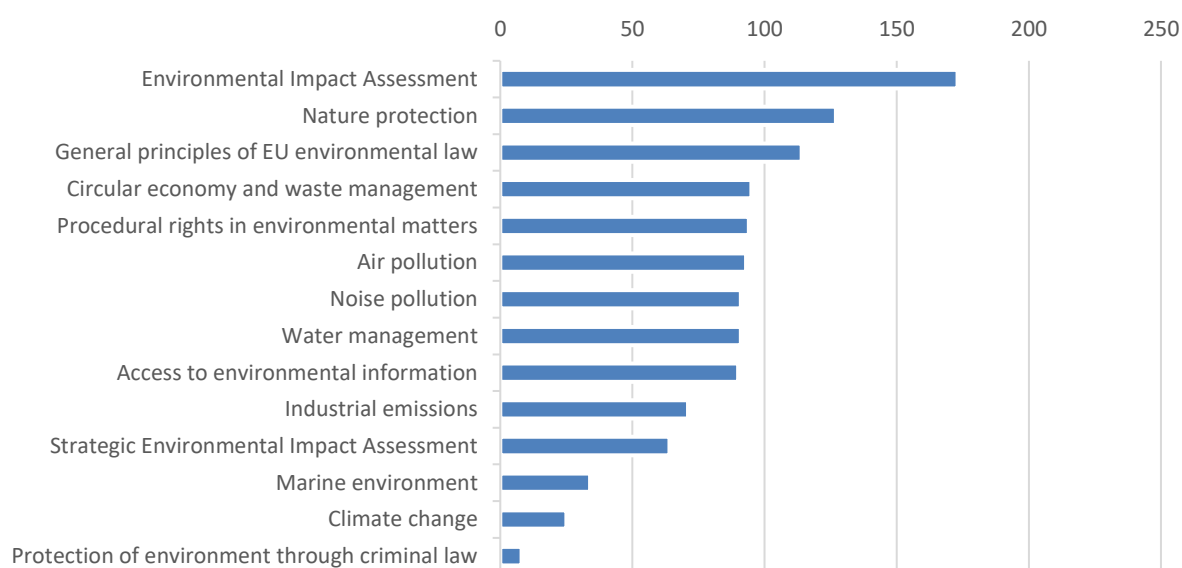
- The funding programme for training national judges on EU environmental law should be continued and even expanded, as it plugs a major gap in provision at national level and the need for training remains high.
- The training programme should invest in solutions for the vast majority of judges who do not deal with EU environmental law regularly but who believe that it is important to be prepared for when an issue may arise.
- The training programme should adopt a differentiated approach to the training needs of different target groups. This includes prioritising certain topics for certain groups and adapting the method of delivery in light of the frequency with which the judges and prosecutors concerned encounter environmental law issues. This implies also addressing different programmes to different target groups.
- English should be considered the most accessible lingua franca for multinational training programmes in this field of law. To cater for the small number of judges and prosecutors who do not have sufficient English to benefit from such programmes, simultaneous interpretation should be considered as a way to preserve the international exchange.

- The approach to face-to-face training – in terms of duration and format – implemented in the current programme is the most popular among the target groups and should be continued.
- For online training, the training programme should propose shorter formats – between two hours and two half-days in length.
- The existing associations relevant for judges and prosecutors in the field of European environmental law should be promoted more in order to provide the target groups with opportunities for networking. The possibility of a regular newsletter on the latest developments should be explored.

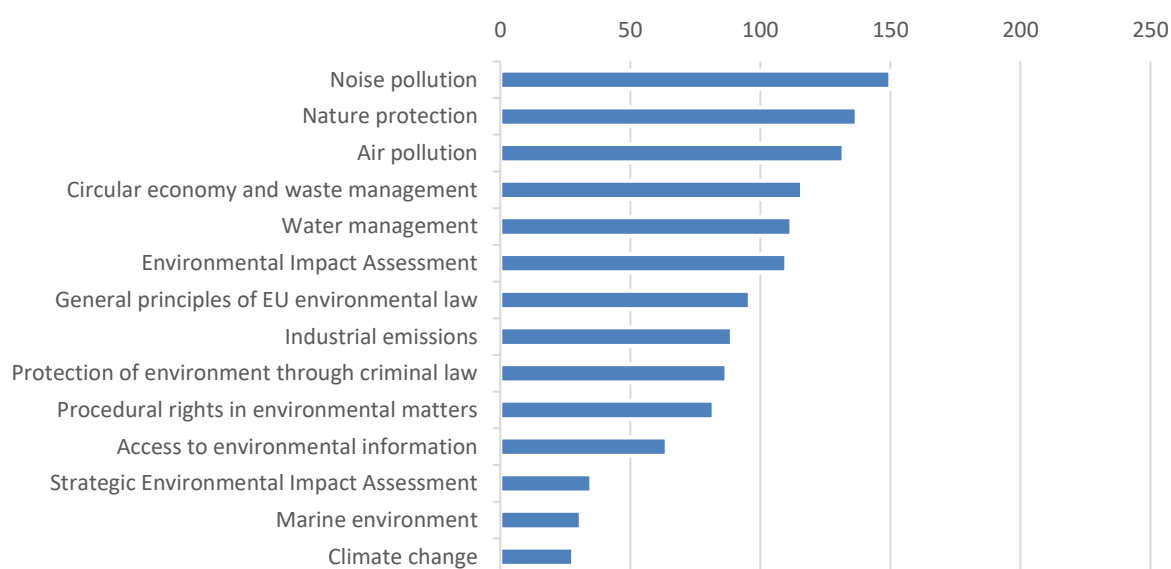
Annex A

To which particular issue(s) are your European environmental law cases related?

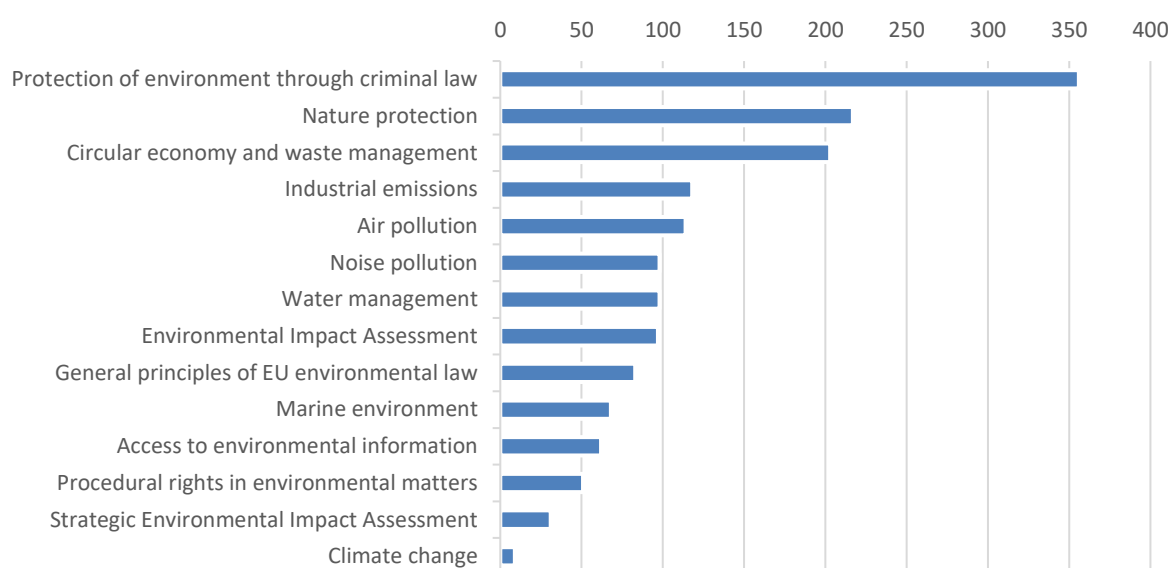
(a) Judges in administrative/specialised environmental courts



(b) Judges in general/civil/commercial courts



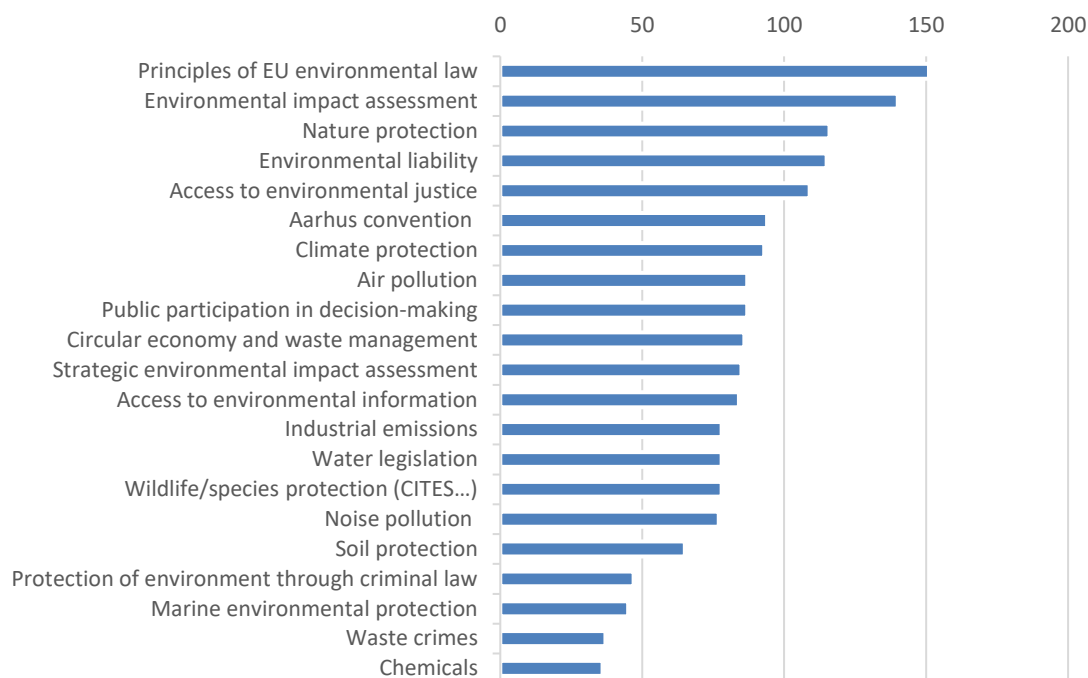
(c) Judges in criminal courts and prosecutors



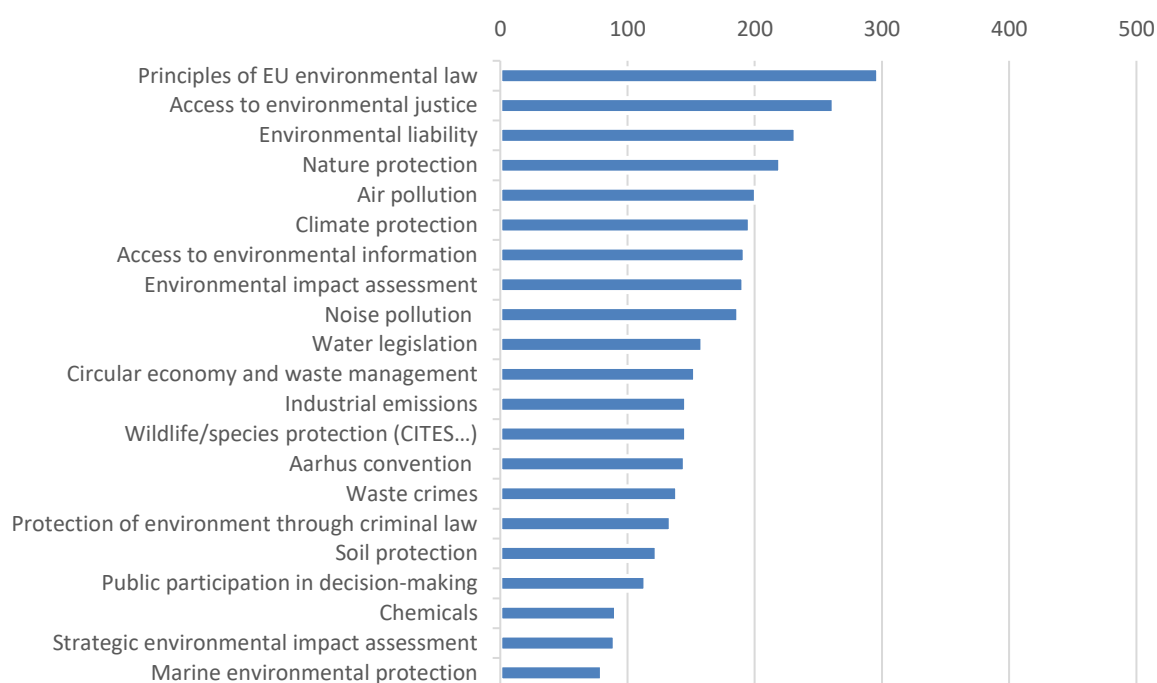
Annex B

On which EU environmental law matters would you like more training?

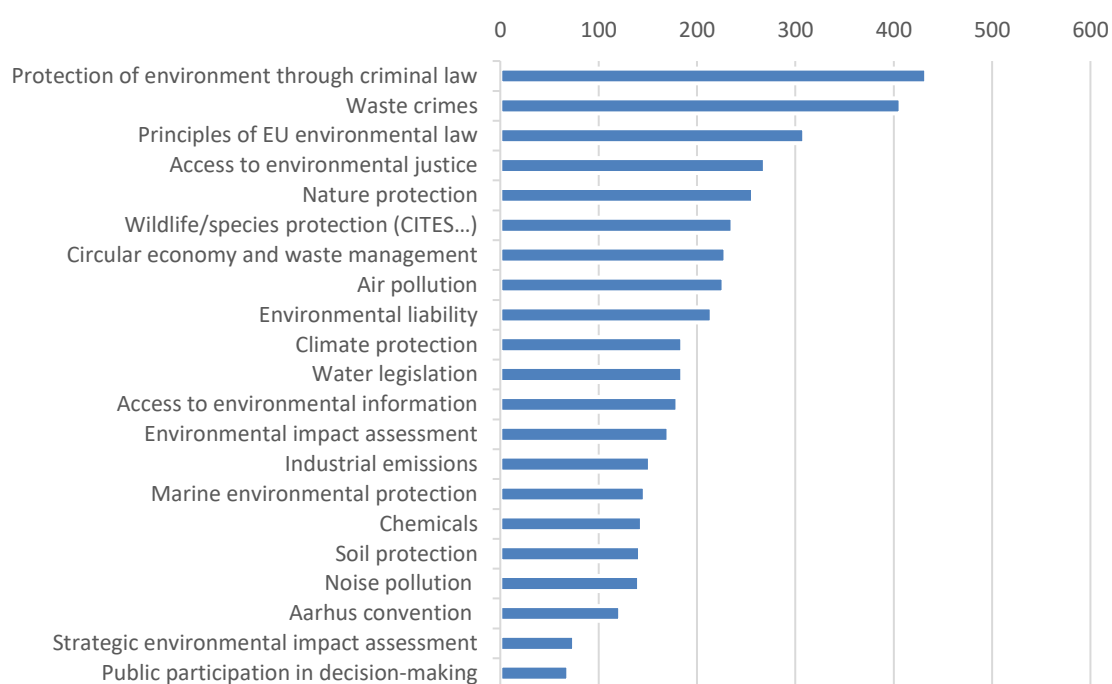
(a) Judges in administrative/specialised environmental courts



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(c) Judges in criminal courts and prosecutors





Training Needs and Programme Proposals for National Judges on European Environmental Law

First specific contract implementing framework contract No ENV.E.2/FRA/2020/0026
“Co-operation with national judges in the field of environmental law”

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8 February 2022