CHAPTER SIX

GERMANY, THE NETHERLANDS, AND POLAND: A COMPARATIVE PERSPECTIVE

1. Introduction

The findings presented in the preceding chapters provide a novel picture of how national civil judges function as EU law judges. However, the results are specific to the country, and therefore may neither be stretched to include other Member States nor be used to draw more general conclusions that would have a wider validity. Hence, it seems plausible to juxtapose selected results of the present research with the outcomes of another corresponding study. Such a cross-national comparison across legal traditions leads to fresh and striking insights, and to a deeper understanding of issues that are of central concern in different countries. It also allows the construction of a more enhanced and complete picture of the situation within the European Union, and of the range of problems attached to the functioning of national judges in an EU law capacity. The foregoing observation is not meant to imply that a total and comprehensive picture of the situation across the EU can be drawn by comparing several Member States. To provide such a picture, the jurisdictions of all Member States would have to be included in this study. Nonetheless, a comparative analysis makes it possible to identify common phenomena: that is to say, general patterns—or a lack thereof—in adjudication across the juxtaposed countries. Finally, the purpose of a comparative exercise is to determine whether significant differences exist between Old and New Member States in the way their judiciaries function as EU judges.

As mentioned in Chapter 1, the present study exploits the results that emerged from a parallel empirical study on the Netherlands and the German federal state of North Rhine-Westphalia (Nowak, Amtenbrink,

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1 The methodological problem of insufficient representation is inherently attached to comparative studies, and is often downplayed. On the methodological problems of using a questionnaire in comparative studies, see Schultz (2009), pp. 173–184.

2 See General Introduction for the background of the assumption that there might be differences between the Old and New Member States as to how their judiciaries function in the context of EU law.
Hertogh, and Wissink [2011]). The project was based on virtually the same theoretical premises, research design, and method as the present study. However, the execution of the survey and the process of analysis took a slightly different form in each of the respective Member States. It is also important to note that the relevant project for Germany and the Netherlands is of a descriptive character: that is, it illustrates the results stemming from the empirical survey without looking too closely at the possible grounds, causes, and explanations. Hence, the analysis included in this chapter focuses predominantly on the process of comparing the empirical evidence without touching closely upon the potential reasons for the situation in the respective countries. Therefore, the following section will focus on the general findings concerning knowledge of, experience with, and attitudes towards EU law. In other words, the general approach employed in Chapter 4 is followed, but the analysis is conducted at a more aggregate level, in that it discusses the general common trends in the countries involved. The comparative exercise is necessarily preceded by a general introduction to the German and Dutch legal systems, with a special focus is on aspects of the organisation of the judiciary, the sources of law, and the position and role of judges in the entire system involving the enforcement of rights. Such a descriptive enterprise is essential to obtain a more comprehensive insight into the respective jurisdictions and the context in which national judges operate.

2. LEGAL AND JUDICIARY SYSTEMS IN GERMANY AND THE NETHERLANDS

2.1. General Overview of the Court Systems

Due to its federal structure, decentralisation, and far-reaching specialisation, the German court system can be classified as complex. The judiciary is independent of the executive, and the legislative branches and judges are subject only to the law. The judicial power in Germany is vested in judges, and is exercised at the federal level by the Federal Constitutional

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3 For the differences, see Section 4.4 of Chapter 1.
4 De Cruz (1999), p. 229.
6 See Art.97(1) of the Basic Law of the Federal Republic of Germany, and Chapter 4, Section 25, of the German Judiciary Act (Deutsches Richtergesetz – DriG) in the version published on 19 April 1972, Bundesgesetzblatt, part I, p. 713, with later amendments.