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In many European countries there is a Council for the Judiciary, and the European Community is promoting the idea of setting up a council in those new Member States that do not yet have one in place.

These Councils for the Judiciary may have a wide range of different tasks. Some of them are primarily set up to deal with personnel matters such as recruitment and selection, posting and training, as well as disciplinary measures and career advancement. Others are responsible for the overall management of the judicial system; they obtain funds and allocate them to the relevant courts, and they support the operational functions of courts. Finally, some councils combine these two sets of duties.

However, all Councils for the Judiciary share at least the following peculiarities: they are national institutions of EU Member States, they are independent from the executive and the legislature or they are self-governing bodies, and they are in charge of supporting the judiciary in its independent delivery of justice.

The European Network of the Councils for the Judiciary has been developed with a view to attaining the main objectives envisaged by the EU Treaty, i.e. to maintain and develop the Union as an area of freedom, security and justice, as specifically set forth in the preamble of the Network’s Charter.

The Network was set up in Rome in May 2004 and now it includes 22 members and observers from EU Member States and candidate countries.

Its ambition is to become a co-ordination body connecting European institutions and their policies on the one side, and the judiciaries of Member States on the other.

The Network should play a key role in building the aforementioned area of freedom, security and justice by implementing those principles that already belong to

the legal traditions and consciences of EU Member States, and by acting as a link between this cultural context and the said political building process.

The principle of mutual recognition will be effectively implemented and thus given a privileged role only if Member States are able to abandon, to a certain extent, their own legal traditions, as they are still afraid to sacrifice their national sovereignty.

I would say that mutual recognition is just a way to harmonise decisions issued by different jurisdictions and to develop common practices in the field of interpretation, rather than in respect of national legislation.

Case law, especially when it comes to protecting fundamental rights, knows no national borders. The decisions made by supranational courts in the field of fundamental rights have paved the way for direct dialogue with domestic courts as well as with European citizens who are able to file their own applications directly, without any interference deriving from national sovereignty.

For these reasons, mutual recognition can be an easier and more effective way for EU policies to develop a unified legal system.

The principle of mutual recognition implies mutual trust as its essential basis, and, on this point, considerable progress has been made: just think of the much appreciated effort by liaison magistrates and the various European Networks in recent years.

However, it is worth pointing out that the application of the principle of mutual recognition should be appreciated from a twofold point of view, as specified by Mrs. Kathalijne Buitenweg in the working document of November 12<sup>th</sup> 2004 concerning a proposal for a framework decision on certain procedural rights in criminal proceedings throughout the EU: *“If these measures, and indeed future proposals on mutual recognition, are to be implemented successfully a spirit of confidence is needed. Not only judicial authorities, but all actors in criminal proceedings, have to consider decisions of the judicial authorities of another Member State as equivalent to their own decisions”*.

As far as mutual trust among magistrates is concerned, significant steps forward have been made by the European Judicial Training Network, liaison magistrates, Eurojust, etc.

Our Network, as specified in the objectives set forth in the Charter, can have a role in the exchange of experience on the organisation and functioning of the judiciary.

However, we can further enhance the principle of trust among all actors in criminal proceedings, because the confidence of a party to the proceedings in a judge of a different State actually depends on the very capacity of every single judge and judicial system of being recognised as an independent and self-governing body.

There are various grounds why the principle of mutual recognition should be developed under different perspectives, and the Network can certainly contribute to increasing mutual trust which is at the basis of an effective and efficient implementation of the mutual recognition principle.

To further clarify the above considerations, I will make the following example: the main instrument which put the principle of mutual recognition into practice is the Framework Decision on the European Arrest Warrant.

This Framework Decision has taken much time to be incorporated into national legislation in a number of Member States because procedural safeguards also needed to be preliminary strengthened, considering that the development of co-operation instruments has not been accompanied by an appropriate evaluation of the actual effectiveness of those safeguards provided by the recognition of the principles of self-government and independence.

Ensuring adherence to minimal standards in the field of procedural safeguards is of paramount importance; however, the protection of the self-government and independence of the judiciary must be equally guaranteed to the maximum extent possible.

On the other hand, it should be emphasised that for all citizens to be able to recognise the principles of self-government and independence as essential values, judges and the judicial systems need to be efficient.

As specified in the Hague Programme, “*strengthening mutual confidence requires an explicit effort to improve mutual understanding among judicial authorities and institutions such as the Network of the Councils for the Judiciary, the European Network of Supreme Courts and the European Judicial Training Network (...)*”. (Par. 3.2.)

In light of the above, the European Commission is promoting the setting up of a system that ensures the objective evaluation of EU policies and fully complies with the pivotal principles of independence and self-government of the judiciary.

In this respect, the principles and priorities set forth in the Hague Programme of the European Council are a remarkable step forward within the Understanding Phase. Confidence-building and mutual trust have, in many ways, the same playing field and can be regarded as two sides of the same coin.

The ENCJ’s activities schedule, as reflected in the tasks assigned to its working groups, shows a clear intention to enhance mutual trust and confidence, both aspects implying a thorough knowledge of the judicial systems of the countries concerned as well as of the judiciary’s historical background.

Although the European judicial culture is based on EU Member States’ different legal systems, many aspects can be unified by European law by providing a correct approach to the judiciary organisation, which appears to be in many ways quite elusive.

That’s why the ENCJ has decided to carry out its activities by setting up a number of Working Groups mostly devoted to the Councils’ mission and vision, and other matters of interest, such as case management and evaluation of judges.

The very first step involving a set of comparative studies to work out a global vision of the Councils was made during the General Assembly held in Rome in May 2004. The first WG I has been assigned the task of providing full knowledge of the

Councils' own rules and regulations in the framework of Member States' constitutional laws and principles. These activities already provide, to a certain extent, a given vision of justice because the setting up of such public bodies is aimed at ensuring the independence and impartiality of judges, courts and justice. This point should be particularly emphasised because under international standards the independence of the judiciary is connected with many formal declarations, ranging from the 1948 UN Universal Declaration to the European Constitution, to the Recommendation of the Council of Europe R94, October 13<sup>th</sup>, etc.

Therefore, in an enlarged European Union, mutual confidence shall be based on the certainty that all European citizens have access to a judicial system meeting high standards of quality, nevertheless ensuring an impartial evaluation of the implementation of EU policies in justice matters, and fully recognising the independence of the judiciary. This - I would say - "duty" can only be fulfilled by strengthening mutual understanding between the different legal systems in respect of the organisation of the judiciary.

The Network should play a significant role by fostering knowledge and reforms, acting as a link between this cultural and technical context and the European law-making process, so as to effectively implement the principle of mutual recognition.

The mutual recognition principle, aimed at providing common practices, can and must be applied first of all to the judiciary itself, to its way of organising courts, evaluating judges and case management, with a view to ensuring a fair trial, an efficient management and courageous, irreproachable and honest judges, in a word: independent justice.

It is worth remembering that the Councils for the Judiciary, Court Services and similar bodies set up in EU Member States, which are all responsible for the organisation of the judiciary, have recognised the need to analyse their structure and competencies within their respective Member States, to exchange experience on the organisation and functioning of the judiciary, to thoroughly study those issues

concerning the independence of the judiciary, to provide expertise and experience and submit proposals to EU institutions and other national and international organisations with a view to creating and maintaining the Union as an area of freedom, security and justice, and in particular in the field of co-operation between different administration systems.

Case management, case administration systems and the evaluation of judges are also extremely important issues, because the way of measuring justice is strictly related to the different ways of approaching such matters. In any study on benchmarking, difficulties arise which are due to the consistency of the applied methods.

Furthermore, the work performed by judges cannot be evaluated and compared without knowing how a court or tribunal is managing its caseload, how a judicial system enforces judgements or deals with any relevant applications and appeals.

In this regard, there is still a long way to go, however the Network is certainly in a position to follow this path. If you want confidence you cannot impose it top-down. You must promote it bottom up through the role of justice itself and its protagonists. We are very willing to contribute to the work carried out by EU institutions and we believe that we could give a significant and fruitful contribution.