

# Minutes

## ENCJ Project Team on Timeliness

*4<sup>th</sup> Meeting in Edinburgh on 28<sup>th</sup> February and 1<sup>st</sup> March 2011*

Present: Niels Grubbe (Coordinator), Kira Kolby Christensen (Secretary); Axel Kittel (Belgium); Jean Luc Cottyn (Belgium); Jean Marie Siscot (Belgium); Árpád Orosz (Hungary); Riccardo Fuzio (Italy); Alessandro D'Andrea (Italy); Zita Smirnoviene (Lithuania); Vytautas Dvaereckas (Lithuania); Frits Bakker (Netherlands); Malgorzata Niezgodka-Medek (Poland); Rafal Michalczewski (Poland); Patrícia Helena Costa (Portugal); Thomas Gottwald (Austria); Sakari Laukkanen (Finland); Julia Roth (Germany); Iarfhlaith O'Neill (Ireland); Patrick Hodge (Scotland); Ann Ganelind (Sweden).

### **1. Opening**

The Project Team was warmly welcomed by Lord Patrick Hodge.

Mr. Niels Grubbe also bid everyone welcome, especially to Ms. Julia Roth, Ms. Malgorzata Niezgodka-Medek and Mr. Rafal Michalczewski who were all for the first time attending. Unfortunately Mr. Keith Cutler (England and Wales); Mr. Jean Pierre Dreno (France), Ms. Ana Cristina Labus (Romania), Ms. Diana Minca (Romania), Mr. Matej Čujovič (Slovenia) and Mr. Joaquín Delgado Martín (Spain) had not been able to attend.

The purpose of this meeting is to go through the first draft of the Report on Timeliness and decide on the style, form and content of the Report. Coordinator thanked the members who had contributed to the Report.

The Team must also go through the draft paper on Best Practices/Recommendations and the draft Framework for a Conference on Timeliness.

### **2. Minutes of the 3<sup>rd</sup> meeting in Rome**

The Minutes of the last meeting were finally adopted.

### **3. The Report on Timeliness**

Coordinator presented the first draft of the Report. The contributions received are very varied in style, volume, and specification, and in this first draft the contributions have merely been put together in a unified format and left more or less as is with their differences. This has resulted in a draft report with much duplication of the issues discussed, and with a large variety between the sections in regard to both their volume and level of specification. The Team must therefore first decide on how to unify the sections. The Report should appear as a common report done by the Project Team as such. It should not specify the contributors. It should also appear broadly based with references to the different countries and not describe local systems in singular countries.

The Team members discussed the Report in general and agreed on the following:

- To re-arrange the issues addressed and put them only in the most relevant section.
- To only address common solutions and not discuss local issues albeit the Finnish Logistic System described in section 6.6. of the draft should be handled specifically.
- To thus address issues commonly with phrases like “some countries (...)”.
- To in a note (not in parenthesis) name the countries who have described said system in their Questionnaire but with a “f.i./e.g.” as also others may have the same system but did not describe it.
- To combine the common description with any necessary examples in order that a new reader will find it easier to understand the concept – f.i. by using the phrase “One way of doing it is the Hungarian (...)”.
- To have in each description of a remedy also a short discussion of the pros and cons.
- To reconsider the headlines of each section.

On especially pros and cons the Team Members discussed the effect of putting in cons as it may demoralize the Report and the Team be viewed as simply opposing any change. The members however agreed that some discussion should be made in order that the Report does not simply contain a list of remedies all valued equally. A discussion will also be necessary for the list of Recommendations.

Regarding the size of the Report the Team Members agreed that it could be restrained to 30 pages and that this would be acceptable.

The Team Members then discussed each section of the draft Report in detail and agreed on the following:

*Section 1 - Introduction*

It was decided to shorten down the information on background. It is tradition to give a full description but not important.

The Team Members discussed whether the answers to the Questionnaire on Timeliness should be made available on the internet. If the Report is detailed in its description a publication can make it necessary to check all the information used in the Report. On the other hand the Team Members found that a publication will validate the Report. It will also give the reader an access to more detailed information. Further it should be kept in mind that the answers merely have served as an inspiration for the discussions in the Report. Therefore any discrepancies between the Report and the answers cannot be a problem. The members agreed to make the answers available.

When sending out the Questionnaire the Team did however not notify the members and observers that the answers would be made public. As some might have answered the Questionnaire thinking it would only be for internal use the members agreed to give all who answered the Questionnaire an opportunity to perfect their answer before they are made available. Coordinator will send out a mail notifying the countries that their answer will be made available and give a short deadline for any felt need for perfection.

*Section 2 – Situation and Impact*

The Team discussed the purpose of this section. It was decided to stress that the need for quality to some extent limits timeliness and that timeliness on the other hand is an important factor in quality.

Timeliness is important in all cases but the differences in the impact of long processing times in the various types of cases should also be underlined. The impact may be vital in some cases and be of less importance in other cases. It should further be stressed that the problem of timeliness is “shelf time” within the courts and with the parties.

The section should further discuss how general political requirements may influence the courts independence. It must be left for the courts as part of their case management to decide which cases should be processed faster than others. However, in order to inform the public on processing time to be expected it may be recommendable to Councils/Administrations to publish targeted processing times for different groups of cases and report on the extent to which targets have actually been met. For this reason any requirements should be kept as flexible recommendations or targets leaving it for the task of the councils and the courts to keep the balance between timeliness and quality. The Team however agreed that it will not be possible in this report to state a principal connection between timeliness and quality or to give recommendations on how to keep this balance.

It was pointed out that according to the answers to the Questionnaire and the provided figures on processing times most cases are actually handled within an appropriate time. The Team decided to stress this fact in the Report and found that it could be done in section 2. Mr. Thomas Gottwald (Austria) agreed to do a short paragraph pointing out that the mainline of the figures shows appropriate timeliness but also stressing the fact that many cases are not handled within an acceptable time which is a problem.

As regards the management of expectation in regard to processing times, it was the general conception that courts should rather give information on prospected processing time including giving a judgement than set a short deadline and then postpone. The Team Members agreed to address this as a remedy within case management in section 6.

### *Section 3 - Causes*

The Team decided to add the following causes to the list:

- the judicial map
- delay of lawyers
- no-show of parties and need of rescheduling
- lack of proper management
- lack of training/specialization of judges
- psychological barriers with the judge (troublesome case)
- lack of moral responsibility with the judge
- delay of expert opinions
- delay of rulings from the European Court
- delay of “try-out”-cases

It was also decided to in general have this section correspond with the discussion of various remedies in section 6 and to have a cross reference to section 6.

The Team Members discussed whether it would be possible to weight the causes and state that f.i. lack of resources is a factor of 50 % in all delays whereas delays of expert opinions only count 5 % of all delays. The members agreed that this would not be possible because the situation is very different in each country wherefore the weight of each cause also counts very differently. It should however be underlined that a problem in some countries may not be a problem in others.

#### *Section 4 – Stakeholders – Competence, Initiative and Corporation*

As for section 4.1. the Team Members agreed that the functions are very spread within the EU wherefore it will be difficult to describe the situation mean fully in a short text for this report. The topic has also already been largely dealt with in many other reports. It was therefore decided to leave out section 4.1.

As for section 4.2. the text should be shortened by simply listing in a note the countries where the courts are administered respectively by an independent court administration, by a council or by the ministry. It was further decided to have a description of the various competences. Not in detail but merely as facts.

The Team Members agreed that the purpose of section 4.3. is mainly to point out that all stakeholders should keep it open to take initiative and not let themselves be prevented by the fact that action in some cases must be taken by another stakeholder.

#### *Section 5 – Registration and Reaction*

The Team Members agreed that the main purpose of the section should be

- to state the type of statistics gathered and
- to discuss what they are used for (why they are gathered)

The text should therefore have more emphasis on these two questions. Also the usefulness of statistics should be discussed. Gathering statistics makes it f.i. possible to evaluate the impact of any initiative taken. Furthermore statistics provide for transparency within case management. Who is collecting statistics and the method used is however of no importance for the purpose of this report.

It was pointed out that the Report may meet objections against gathering any statistical data. Considering also the addressee of the Report it might therefore be wise to at least not encourage published statistical data. Statistics should only be left for internal use in the case management system. If the media hear of their existence they will however still raise a large campaign in order to get insight. On the other hand the Team Members also agreed that the judiciary must face facts and that statistics constitute an important tool in case management.

For now it was decided to make a new draft of this section with focus on the use of statistics.

#### *Section 6.1. – Requirements and Reaction*

It was decided to shorten the text leaving out issues addressed in other sections.

In regard to requirements the Team Members further agreed that the point to be made is that internal targets laid down by the judiciary itself are acceptable but that parliamentary fixed requirements laid down in law should be avoided as it may contradict the independency of the courts.

#### *Section 6.2. – Reduction of Caseload*

The Team decided to re-arrange the remedies and put them in the relevant sections as suggested by coordinator in the draft.

#### *Section 6.3. – Increase of Capacity*

The Team decided to re-arrange the remedies and put them in the relevant sections as suggested by coordinator in the draft.

It was further decided to have a discussion of the Judicial Map and the possibility for minimizing the number of courts. Often local politicians find closure of courts disastrous which makes it a politically sensitive matter.

Lack of resources is listed in section 3 as a reason for delays. The Team therefore also found it appropriate to have a more detailed description and discussion on the allocation of budget and non-judicial staff in section 6.3. For inspiration in writing this section the Team Members decided that they should all send coordinator a small description (two paragraphs) of the system in their country on how budgets/resources are allocated to and distributed among the ordinary courts.

The Team Members agreed that it would be too complicated an issue for this report to discuss methods and procedures for national budgeting for the judiciary including Councils/Administrations that may be a separate future project of an ENCJ Team.

*Section 6.4. – Facilitating and Speeding up Court Procedures and Section 6.5. – Improvement of Processing*

The Team decided to have the issues addressed in 6.4. and 6.5 re-arranged as suggested by coordinator in the draft. Although “6.5.7. Increased use of Written Procedures” should be moved to 6.4 and “6.5.6. Colour-Coding” should be left out.

It was further decided to broaden the description in section “6.4.3. Avoiding the Need for Parties to Attend a Hearing” and to have it also cover the possibility of telephone- and videoconferences and the possibility of reducing oral hearings.

The Team also decided to have a discussion in section 6.4. on the demand in some countries of extensive and detailed judgements and in turn the access to give oral judgements.

The Team Members discussed the difference between “6.5.1. Case Management” and “6.5.3. Case Flow Management” and agreed that in essence both of these regard case management. “Case Management” is the “general” management system and “Case Flow Management” is case management by staff without involving a judge. The latter could therefore be included as part of the first.

The Team Members however agreed that “6.5.2. Call overs and list management” is a separate issue. In order to improve understanding of the background for the concept of “Call overs and list management” Mr. Iarfhlaith O’Neill (Ireland) agreed to send a more detailed description.

*Section 6.6. – Minimizing Waiting Times*

The Team Members agreed that many of the comments in this draft section could be included in other more appropriate sections but that “The Project of Logistics in Finland” should be described separately.

## **5. Best Practices/Recommendations**

The Project Team decided to give Recommendations instead of listing a number of “Best Practices”. The Team also decided to not do a separate paper but to have the Team’s recommendations included in the Report as a final chapter. In that way they will appear as the Project Teams conclusion of the work.

In regard to the content of the list of Recommendations the Team decided to give as wide a range of recommendations as possible to leave “something for all”. The list should however only include recommendations on remedies utility to most or at least several countries.

The Team Members agreed that when considering which remedies to recommend, the impact of the remedy should be taken into account together with also the speediness of an implementation. Further the pros should naturally outdo the cons.

## **6. Framework for a Conference on Timeliness**

Coordinator underlined that it is not for this Project Team to actually plan the Conference. The Team has only been assigned to suggest a frame. It will be left for the ENCJ to decide on the further planning which might be done by setting up a new Project Team.

Coordinator presented the draft “Framework for a Conference”.

The Team Members agreed that 20-25 participants in total for each stakeholder would be optimum but that the list of stakeholders should include also representatives from national consumer organisations, victim organisations and commercial/industrial organisations. In order to ensure a practical focus at the Conference and a practical output the Team Members agreed to not invite representatives from universities.

The Team Members also agreed to have subgroup sessions in order to facilitate a forum where all will take part in the discussions. It was discussed how to ensure reporting from these sub group sessions to the rest of the Conference. The Team Members agreed that a reporting from each sub group at a plenary sessions would be too time consuming. A reporting could however be ensured by doing a survey during the conference or by using an interactive voting system where the participants vote on each recommendation.

The Team Members agreed that the output of the conference should not be a resolution but that it could be a report highlighting the conclusions.

As for the practical arrangements the Team Members agreed that it will not be possible to carry out the Conference before early summer 2012 and that the invitations should go out no later than December 2011. It was further agreed that the meeting venue should be a place which is easy to reach and pleasant to stay in.

The Team Members discussed the financial issues. It will be expensive and Coordinator welcomes any good ideas as to how to finance the project. It could be done through sponsors such as:

- Venice Commission
- European Commission
- Local authorities at the venue place
- Private organisations
- TAIEX or
- Other?

The Team Members agreed to not have an entrance fee and to not have the Conference be financed through private sponsors such as Business Associations or the like.

## **7. Register on Quality and Access to Justice**

Coordinator informed the members of the status of collecting updates/supplements for the Register on Quality and Access to Justice.

Coordinator has sent out three reminders and yet many still need to send their contribution. The Team decided that Coordinator should send out only one more reminder.

## **8. Delegation of Homework and Time Schedule**

The Team Members agreed to let coordinator do the revising of the report in accordance with the Team's discussion at this meeting.

The Team Members will in turn **within 11 March 2011** send Coordinator a short description (two short paragraphs) on how the budget to the Courts is allocated and distributed between the court districts: Who does the distribution and on basis of which criteria.

Mr. Thomas Gottwald (Austria) will **within the same date** send a short paragraph to section 2 of the Report describing the size of the problem – thus how most cases are handled within appropriate time, but that there are still long processing times in many cases which is a problem.

Mr. Iarflaith O'Neill (Ireland) will **within the same date** send a more detailed description of the system with "Call overs and list management".

Coordinator will send out a revised draft of the Report by the **end of March**. And the Team Members are asked to give any written comments **within Friday 8 April 2011**. Especially those who will not be attending the next meeting.

The Team decided that the **5<sup>th</sup> meeting planned on 11 – 12 April 2011** will be necessary for a last discussion on the Report, the Recommendations and the "Framework for a Conference".

**Romania** has kindly offered to host the **5<sup>th</sup> meeting in Bucharest**. The Romanian representatives will as soon as possible send out information on the location for the meeting and a list of recommendable hotels situated close to the meeting place.

Coordinator will revise the Time Schedule accordingly and send it out together with the minutes.

Coordinator finally asked the Team Members to consider which projects ENCJ should take up in the coming year and to present any ideas at the 5<sup>th</sup> meeting in Bucharest. One project could be to carry out the Conference on Timeliness.

Ms. Patrícia Helena Costa (Portugal) suggested "Enforcement of Decisions".

Referent: Kira Kolby Christensen 07-03-11