

METHODOLOGY AND QUESTIONNAIRE CONTENT  
STRUCTURAL WORKING GROUP OF THE EUROPEAN NETWORK  
OF GENERAL COUNCILS FOR THE JUDICIARY  
San Sebastian 10<sup>th</sup> October 2006

The European Network of Councils for the Judiciary was created as the result of prior contact work in Rome and its Statutes were adopted on 20 May 2004.

It consists of national institutions in the member states of the European Union which are independent of the executive and legislature, and which are responsible for the support of the Judiciaries in the independent delivery of justice.

The Ministries of Justice, in member states where institutions as specified above do not exist, may be granted observer status. Institutions from European Union candidate member states may be granted observer status.

So far, national organisations for the judiciary from 24 EU (candidate) member states have joined the ENCJ and requests have been received from a number of other member states organisations to be granted membership or observer status as well.

The ENCJ proposes to act as a mediator between the institutions of the European Union and the national judiciaries and it has formulated a number of objectives within the framework of the creation of the European Area of freedom, security and justice helping in the creation of a European judicial culture.

Its objectives (within the context of the creation of a European Area of Freedom, Security and Justice) are to encourage collaboration between members on the following issues:

- Analysis of and information on the structures and competencies of its members.
- Exchange of experience in relation to how the Judiciary is organised and how it functions.
- Issues pertaining to the independence of the Judiciary and other issues of common interest.
- Provision of expertise, experience and proposals to the European Union institutions and other national and international organisations.

From its inception, the Network has fulfilled these objectives as expressly recognised by the European Union in its mention of the Network in the Hague Programme (also known as Tampere II) which was approved at the European Summit held in Brussels in November 2005 indicating :

### 3.2. Confidence-building and mutual trust

Judicial cooperation both in criminal and civil matters could be further enhanced by strengthening mutual trust and by progressive development of a European judicial culture based on diversity of the legal systems of the Member States and unity through European law. 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. In order to facilitate full implementation of the principle of mutual recognition, a system providing for objective and impartial evaluation of the implementation of EU policies in the field of justice, while fully respecting the independence of the judiciary and consistent with all the existing European mechanisms, must be established.

Strengthening mutual confidence requires an explicit effort to improve mutual understanding among judicial authorities and different legal systems. In this regard, networks of judicial organisations and institutions, such as the network of the Councils for the Judiciary, the European Network of Supreme Courts and the European Judicial Training Network, should be supported by the Union

Exchange programmes for judicial authorities will facilitate cooperation and help develop mutual trust. An EU component should be systematically included in the training of judicial authorities. The Commission is invited to prepare as soon as possible a proposal aimed at creating, from the existing structures, an effective European training network for judicial authorities for both civil and criminal matters, as envisaged by Articles III-269 and III-270 of the Constitutional Treaty.

After two years in operation, and with the experience already accumulated, the General Assembly of the ENCJ held in Wroclaw (Poland) decided to create a working group for the purpose of analysing the internal operation of the ENCJ so that it can fulfil its tasks and achieve its objectives in such a way that is fully capable of responding to the new requirements that have arisen since its foundation.

After the meeting of the working group held in San Sebastian on October 10<sup>th</sup> a workshedule has been elaborated so that a proper proposal can be made before the next General Assembly to be held in Brussels in June 2007.

Therefore, the present methodological document and questionnaire has been formulated and validated by the workgroup so that a clear framework could lead in the achievement of the results and objectives of the workgroup.

## METHODOLOGY PROPOSAL

The purpose of the present methodology is to set a schedule and procedure for providing an adequate response to the mandate of the General Assembly to analyse the internal operation of the ENCJ for the purpose of achieving:

- A strengthened Network
- Increased stability and continuity in coordinating and evaluating Network activities.
- Increased transparency

- VII) Work Group Meeting (October 2006)
  - a. Approval of the methodological proposal: Proposal approved in the meeting.
  - b. Approval of questionnaire: Questionnaire approved in the meeting with one week for proposal of additional questions and another week for validation of the additional questions
  - c. Determination of institutions to which the questionnaire can be submitted: Members and observers of ENCJ submitting the questionnaire by e-mail and post in the end of October-beginning November.
- VIII) Submission of questionnaire: Final date for the reception of answers December 15<sup>th</sup>.
- IX) Reception of Responses and creation of a Synthesis Document to be submitted to the workgroup with all the responses received in the beginning of January 2007.
- X) Work Group Meeting: 5<sup>th</sup> February 2006 in Rome before the Steering Committee to be held on February 6<sup>th</sup> in Rome.
  - a. Presentation of questionnaire responses.
  - b. Presentation and debate of document of conclusions
  - c. Proposals
- XI) Work Group Meeting (April/May 2007) : The possibility of celebrating an additional meeting of the workgroup will be decided in the meeting to be held in Rome on February 5<sup>th</sup> 2007.

- XII) General Assembly (7 and 8 June 2007)
- a. Presentation of document of conclusions
  - b. Decision making in respect of document of conclusions

## QUESTIONNAIRE

This questionnaire proposal has been designed on the basis of an analysis of the functions of the currently existing bodies in the ENCJ Statute, for the purpose of evaluating various aspects thereof.

Members and Observers are requested to respond to this questionnaire so that all opinions are taken into consideration in the analysis that is being done by the Internal Organisation Workgroup as to whether to keep the actual structure or to advance into a more developed one, so that the ENCJ General Assembly in Brussels takes the proper decisions on its future.

### GENERAL QUESTIONS

- 1.- What is the view of Members and Observers as to how ENCJ should develop?
- 2.- In order as to reinforce the structures of ENCJ, Could you agree with the following principles:
  - ENCJ needs to have a legal personality
  - ENCJ needs to have funding:
    - From the EU
    - From Members (ex: membership fees)
    - From others
- 3.- How do you evaluate the implementation done by ENCJ to achieve its objective of providing an analysis of and information on the structures and competencies of its members.
- 4.- How do you evaluate the implementation done by ENCJ to achieve its objective of exchanging of experience in relation to how the Judiciary is organised and how it functions.
- 5.- How do you evaluate the implementation done by ENCJ to achieve its objective of studying issues pertaining to the independence of the Judiciary and other issues of common interest.
- 6.- How do you evaluate the implementation done by ENCJ to achieve its objective of providing expertise, experience and proposals to the European Union institutions and other national and international organisations.
- 7.- Do you agree that only structural and legal questions need to be in the ENCJ Charter so that organisational questions are included in its Rules of Procedure?
- 8.- Do you think that the ENCJ Statutes/Charter as well as its Rules of Procedure are to be approved by the General Assembly?

### MEMBERS & OBSERVERS

1.- In relation to the statute of observers, Would you make a difference between:

- Councils of candidate countries
- Other observers

2.- What kind of relations could ENCJ have with association, international organisations and other Judiciaries different from Members and Observers? (ex: Cepej)

## PRESIDENT

DUTIES:

- Convene and preside meetings of the General Assembly and the Steering Committee
- Represent the Network.

QUESTIONS:

1.-) Representation of the ENCJ is the task of the President and the Secretary General – according to arts. 5 and 9 of the Statutes

- Do you consider that this dual representation is an adequate mechanism?
- How do you consider that coordination of these functions can be ensured?

2.-) The ENCJ does not provide for the figure of an "Incoming President"

- Would it be useful to create such a figure?
- Which functions could be assigned, in addition to those of acting as a liaison between one Presidency and another? That of substituting the President? Any additional function?

3.-) According to the Statutes of the ENCJ, the President is responsible for convening the General Assembly and the Steering Committee (art. 5)

- Would it be appropriate for meetings of both the General Assembly and the Steering Committee to be proposed by other Network Bodies or a specific number of Member States? In what conditions should this take place?
- Could these proposals for convocation be binding on the President?
- If so, what should be the requirements of this call for meeting by a Network body or Member States – term, number of States, subject matter, etc.?

4.-) With respect to the determination of content of the Steering Committee and General Assembly meetings already convened

- Might other Network bodies or Member States propose contents?
- Could these content proposals be binding on the President?
- If so, what should be the requirements for this request for content?

5.-) The President of the ENCJ presides over the meetings of the Steering Committee and the General Assembly (art 5)

- Can the President delegate this function?

- If so, to whom should the function be delegated and with what requirements?

## GENERAL ASSEMBLY

ATTRIBUTED FUNCTIONS (arts. 6 and 7 of the Statutes):

- Amendment of the Statutes
- Adoption of the Internal Regime Regulation
- Determination of the policy and activities of the Network.
- Appointment of President, General Secretary, Steering Committee.
- Determination of working groups
- Reception of Activity Reports from the General Secretary, Steering Committee and Working Groups.

QUESTIONS

1.-) In the exercise of its functions of determining the policy and activities of the ENCJ (art 6)

- Would it be of interest for the General Assembly to approve the work of the Network carried out in the period between assemblies?
- Would it be of interest to submit to the Assembly an Annual Report on the Network activity which was subject to debate and voting in the Assembly?
- Who should draft this Annual Report?

2.-) With respect to the general running and operation of the Assembly

- How can participation be encouraged, especially that of Members and Observers who are not part of the Steering Committee?
- Would it be of interest if, prior to holding a General Assembly, Member States could present an initiative or make a declaration of common interest to the future actions of the ENCJ?
- Should there be any other means of taking decisions apart from the provisions contained in art 7 of the Statutes? If so, what would be the necessary requirements?
- Would it be of interest for any Member State to request that a specific question be submitted to voting? If so what would be the necessary requirements?

3.-) With respect to the working groups of the ENCJ from year to year

- Do you consider it necessary for them to present their results to the Assembly?
- Should these results be subject to voting so that they could be considered a manifestation of the wishes of the ENCJ?

## STEERING COMMITTEE

Functions (art. 8 of the Statutes):

- Composition: President, Secretary General and at least four members

- Instructions to the General Secretary
- Decision making in questions relating to the operation of the Network between Assemblies, being accountable to the General Assembly.

## QUESTIONS

### 1.-) In carrying out its functions

- Should the functions of the Steering Committee include the approval of the actions of the President, Secretary General and, if appropriate, the "Incoming President"?
- Should this approval be manifested in the form of a six monthly report which would serve to anticipate the Annual Report to be presented to the General Assembly if this is deemed to be of interest?
- Should the Steering Committee approve the Annual Report on the Network Activities prior to submitting it for debate and voting to the Assembly?
- Who should draft these six-monthly reports for the Steering Committee in the event that they are deemed necessary?
- In order as to be able to give a quick response to the questions and requests put to ENCJ, could it be good to have a pool of experts appointed by the ENCJ Steering Committee and classified according to matters on which to rely?
- Could decisions and actions not approved by the General Assembly be taken by the Steering Committee and later on submitted to the approval of the General Assembly in case of immediate interest or need?

### 2.-) With respect to the operation of the Steering Committee

- Would it be of interest during the term prior to holding a meeting of the Steering Committee to create the possibility of submitting an initiative or making any declaration of common interest for action by the ENCJ?
- If so, to whom should this initiative be attributed, to the Steering Committee or the Members of the ENCJ?
- Should the Steering Committee invite any Member State which is not part of the Steering Committee in the event that it has made a proposal which is due to be debated by the Committee?
- Should any system be arbitrated for the decision making process in the Management Committee?
- Does the ENCJ Steering Committee need to have a virtual decision-taking procedure so that urgent decisions can be taken by It in the periods between meetings?

## WORKING GROUPS

### 1.-) Creation of Working Groups

- Who and how can the initiative for creating working groups be developed?
- What should be the requirements for a working group proposal?
- Who may be included in the working groups?
- What are the functions of the working group coordinator?

### 2.-) Results of the Working Group

- Who should present, and to whom and with what frequency should the actions of the working groups be presented?
- How can ENCJ publicise, make public and exploit in the most suitable way (both internally and externally) the results of the working groups?

3. Presently the ENCJ has one internal Standing Committee on the ENCJ Website.

- Do you consider it necessary to have Standing Committees and/or internal working groups?
- What kind of subjects should these organs deal with?
- Should membership be restricted to members of the Steering Committee and to whom should these Standing Committees or internal working groups report?

## SECRETARY GENERAL AND SECRETARIAT

Functions of the Secretary General (art. 9 Statutes):

- Responsibility for the Secretariat
- Responsibility for general administration of the Network
- Signature of documents
- Representation of the Network
- Responsible for European Union relations and consistency and coherence in the activities of the Network and EU priorities
- Collaboration in defining projects, in particular those which include the participation of various members.
- Ensuring dissemination of conclusions
- Facilitating an evaluation of the conclusions

Secretariat Functions (art. 9 Statutes):

- General Coordination of the Network
- Documentation
- Notification of meetings convened
- Distribution of documentation
- Contact with Councils
- Logistics

Permanent Secretariat (art. 9 Statutes):

- Possible establishment
- Possible appointment of a member entrusted with covering the office and personnel needs.

## QUESTIONS

10. Do you consider it necessary to detach the functions of the General Secretary from those of the Secretariat?
11. If so, what duties and competence should each undertake?

12. Should it be deemed necessary to define the functions of the Secretary General and the Secretariat, what should be their structure, duties and competence?
13. Is it appropriate to reinforce the Secretariat in its tasks? Can in that situation be considered the necessity of a Secretary General?
14. How can the work performed by the Secretariat be controlled by the Steering Committee? Which tasks are to be attributed for it to its members? Is the actual number of members of the Steering Committee appropriate to perform the control task of the Secretariat?
15. If the Secretariat is reinforced, should it be permanent? Which should be the term of a Secretariat? Is it to be located always in the same place?
16. Which are to be the functions granted to the Secretariat?
17. Is there a need for financing the Secretariat?