



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Working Group

“Strengthening Mutual Confidence”

REPORT

The participants had all received a copy of the particularly rich report of the preceding working group. At the end of the presentation of the reports by the representatives of the European Commission, the working group has examined the follow-up to be added to the Dublin report on “Mutual Confidence” written by the Irish Courts Service.

1. Interventions of the representatives of the European Commission

1.1. Intervention of Mrs Isabelle JEGOUZO

During the general meeting of the ENCJ in Wroclaw, Commissioner FRATTINI insisted on giving priority to this objective of reinforcing mutual confidence between the actors in justice.

Concrete actions have already been taken, among them being the European Arrest Warrant.

Other actions are being prepared both in civil and criminal matters. Thus, mutual recognition of decisions in the subject of seizure.

If one wants the instruments of mutual recognition to function, it is important that the judges execute the decisions of other judges without the fear that the legal systems of the countries of these other judges are dubious.

A judge will have difficulty in applying the decisions of another judge if he doubts the quality of the legal system involved.

The ENCJ has an important role to play in this framework because it can reinforce confidence as regards:

- the ethics of judges
- the quality of justice
- the deontology of the judges
- the evaluation of the judges.

How can one improve mutual confidence?

The European Commission can facilitate the work of the ENCJ

In other words, what is necessary for a judge to execute the decision of another judge?

1.2. Intervention of Mrs Caroline MORGAN :

During the last meeting of the working group in Dublin, a list was compiled of what is necessary for mutual recognition.

3 aspects are to be considered:

1) The Forum on the Evaluation of Justice¹

- This is a Forum in which the participants will be invited to say what they think about the plans of the European Commission both in the civil and in the criminal sector. This should be a place of dialogue and identification of positive aspects.
- A small group, the composition of which will be fixed, will meet regularly (4 x per year); it is important that these people know each other.
- Topics would be identified and thematic sub-groups could be established; studies could also be commissioned (for example, the quality of the interpretation and the translation of judicial decisions)
- The Forum will be composed of all the actors concerned as follows:
 - o The representatives of the 27 Member States
 - o The networks, of which the ENCJ
 - o The representatives of the judges, the prosecutors, the attorneys, the interpreters, the victim-support associations, the specialized NGOs, university professors, etc.
- 2 specific sectors are proposed:
 - o In the sector of criminal procedure, it is possible that the European Commission would have overlooked aspects considered important by the actors in the field. What is needed? Where are the judicial gaps?
 - o How do the European reforms function in the concrete? For example, how does the European Arrest Warrant function in practice?
The point of view of the actors in the field can differ from that of the experts of the Ministries of Justice.

2) Forum on commercial law

- This forum was organised by the ERA with judges and prosecutors
- Workshops were organised in French, English, and German on different subjects
- The reports are expected soon.
- This forum has been evaluated positively by the services of the Commission because they consider that they do not have enough contact with the practitioners.

3) The financing programmes

- The call for proposals will be published next January.
- There are many possibilities: studies, training programmes, exchanges, etc.

¹ Since the meeting of the working group, the Commission published on 4 February 2008 a Communication concerning the *creation of a forum for discussing EU justice policies and practice*.

- The European Commission will provide a maximum of 70% of the costs of the proposal.

Also note that, in 2006, the European Commission approved an evaluation mechanism for its justice policies.

1.3. Intervention of Mrs Adrienne BOERWINKEL

- The Commission conducted a study on the question of mutual recognition in criminal matters:
 - o the horizontal problems: the various instruments of mutual recognition
 - o the existing judicial gaps

⇒ the results of this study are expected by the end of 2008.
- The background of this study: the observation of the existence of several problems upon the implementation of various instruments such as the European Arrest Warrant adopted by the JHA Council in September 2006:
 - o the slowness of the negotiation procedures
 - o the delays in implementation
 - o the present concrete application.
- These observations can be summarized in 2 groups of problems:
 - o Procedural problems: institutional problems
 - No sanctions in the event of delayed implementation
 - The unanimity (at the time, because in the Lisbon Treaty, this was decided by qualified majority)
 - o Problems concerning differences of legislation
 - E.g.: the criminalisation of certain actions varies from State to State
 - E.g.: the judgement by default does not exist in all the States
 - o Problems in the lack of mutual confidence
 - Concrete measures are necessary.

=> The ENCJ could play an important role in the framework of this study.

1.4. Conclusions of the representatives of the European Commission.

They propose to ENCJ to act in two directions :

- 1) The ENCJ could lobby the national legislators to proceed more rapidly to the implementation of the directives concerned.

E.g.: The European Arrest Warrant was the object of much pressure and thus was, relatively, implemented quickly.

- 2) There are differences not only in legislation but also in practice.

The practitioners have to speak out.

E.g.: In some countries, the European Arrest Warrant is used for minor crimes => the limits of these measures have to be defined.

2. Definition of the Mutual Confidence

The good functioning of mutual recognition of judicial decisions rests on the existence between Member States of a very high degree of mutual confidence among all those who are confronted with the application of this principle: judges in the first place, but also attorneys, policy-makers, and citizens.

If the mutual recognition instruments are to function, it is important that the judges execute the decisions of other judges without the fear that the legal systems of the countries of these other judges are dubious.

The ENCJ has an important role to play in this framework for it can reinforce confidence as regards:

- the ethics of the judges
- the quality of justice
- the deontology of the judges
- the evaluation of the judges.

At this stage, it is underlined that ENCJ could also take benefit of the experience developed in the framework of the programme of the European Union "EUROSOCIAL" and more particularly its file "Justice". In this framework, a joint working commission has been set up between the Iberoamerican Judicial Summit, the Network of the Presidents of Supreme Courts of the EU and the European Network of Councils for the Judiciary.

3. Proposals of the working group to concretely develop the mutual confidence

3.1. To organise the active participation of the ENCJ in the "Justice Forum » set up by the European Commission

The Commission has set up a *Justice Forum* (see the *Communication of the EC*):

- Composition: the Member States, the Networks and representatives of the actors in justice
- Mission :
 - o to contribute to the evaluation of the concrete needs of justice in matters of European judicial cooperation;
 - o to contribute to the evaluation of the practical conditions for implementing the instruments of the Union;
 - o to contribute to a global evaluation of the functioning of justice in order to assure that the judicial decisions meet the elevated standards of quality;
 - o to become the privileged place for contacts between and meetings of justice professionals (the Network of Networks!).

Proposals of the Working Group

1. ENCJ decides to actively participate in the Justice Forum of the European Commission.
2. ENCJ will designate its president to represent it there on a permanent basis.
3. ENCJ will take the necessary initiatives to be part of the small permanent group which eventually could be created.
4. ENCJ will formulate concrete proposals in order to become a "motor" of this Forum.

5. ENCJ will propose to the Forum to approach the following themes:

- the problem of backlog in the judicial decisions
- the liability of judges
- the question of direct information of judge on the decisions of a judge from another country on similar cases
- the question of diversity in the judiciary (ethnic, gender, ...)
- the self government for the judiciary.

6. Every ENCJ Member will nominate one particular contact-person for the follow-up of the Forum.

3.2. To organise the cooperation relations between the various actors involved

The working group formulates the following proposals to improve the **cooperation relations** and the **communication** between the various actors involved:

3.2.1. between the Councils of Justice

- the setting up of the Permanent Office should allow to ameliorate and to professionalize the exchange of information between the Councils of Justice
- the Website should be developed also as a tool for internal communication with and between the Members
- every Member and Observer should nominate a person of reference for everything concerning ENCJ
- the participation of the Councils of Justice in the "Exchange Programme of the actors of justice" (EPAJ), granted by the European Commission and managed by the European Network for Judicial Training, should be concretely supported.

3.2.2. between the ENCJ and the institutions of the European Union

- with the **European Parliament** and more particularly the "Justice" and the "Legal Affairs" committees" :
 - o personal contact should be organised between the Executive Board and the Permanent Office and the presidents of these Committees and with the concerned civil servants of the Parliament.
 - o ENCJ Members should organise some contacts with the EP Members from their State, members of these Committees.
- with the **European Commission** and more particularly, the Commissioner of Justice and the Directorate-General for Justice :
 - o work relations should be deepened with the members of the Justice Commissioner's Staff and with the civil servants of the DG Justice and Home Affairs.
- with the **Council of the Union**
 - o the work relations should be set up and deepened with the civil servants of the Directorate Justice of the Council, and with the Permanent

Representations of the State (the States) exercising the presidency of the Council

- the ENCJ Members should set up contacts with the concerned civil servants of the Permanent Representation of their Member State
- with **the Court of Justice** of the European Communities :
 - contact should be relaunched with the Court of Justice.

3.3. To prepare these relations, ENCJ should develop the following points

3.3.1 to develop a ENCJ Network of experts

- every ENCJ Member should be invited to propose an expert in the different themes subjects of discussion within the Justice Forum, en for the different EU policies in the field of Justice ; to this end, a curriculum standard should be prepared by the Permanent Office (profile, vocational experience, experience in the European matters, languages, links with the Council of Justice, knowledge of the tasks of the Councils, ...)
- the Permanent Office should set up lists of experts in function of the different fields of the EU competencies
- ENCJ should organise consultation meetings with experts, in order to prepare, if necessary, a joint position to be communicated to the European institutions ; this draft joint position should then be discussed and approved by the Steering Committee ; according to the importance of the joint position to be adopted, the Steering Committee should decide to use the procedure of decision in case of emergency, foreseen in the Statutes of the Association.

3.3.2. to adopt an internal procedure for the hearing of ENCJ representatives by the European Institutions.

ENCJ could take inspiration from the procedure followed in England for the hearings of judges by the Parliament (as explained to the Steering Committee).

3.3.2 to adopt a procedure for the preparation of the ENCJ opinions in which all ENCJ Members can participate.

3.4. ENCJ should cooperate with the European Network of Judicial Training

With respect for the competences of this Network, ENCJ could propose to cooperate:

- either on the subjects of which the ENCJ considers that a training programme must be developed;
- or on the subjects linked to the objective of developing mutual confidence.

The ENCJ should also request that it be able to use the reports/conclusions of activities organized by the ENCJ in order to examine them and to promote them with the European authorities.

3.5. ENCJ should amend the annexes of the first report as regards information on the Member States of the European Union and their judicial system

The working group considers that the annexes to the first report of the working group (Denham Report) constitute fundamental documents for reinforcing mutual confidence: they contribute to better knowledge of the judicial systems of the Member States of the European Union and to the development of a network of liaison people on the various Councils.

The working group recommends the adaptation and completion of the various topics.

To this end, there is an important role to be exercised by the Permanent Office in the coordination of these tasks.

Provisional Conclusions

According to the working group, the theme of this working group could be a standing theme for the ENCJ.

In any case, the working group wishes to continue to follow the proceedings within the Justice Forum organised by the European Commission, on behalf of and under the control of the Steering Committee.

Mutual confidence is in the heart of the development of the Europe of Justice.

The process of harmonization of legislations in the field of Justice will be followed very slowly and limited to some matters in which the law must be unique for all Europeans.

But in some years (if not, today already !), the essential of the judicial life in Europe will be based on this principle of mutual confidence between all the judicial actors.

ENCJ must take a central position on this long way !

The High Council of Justice of Belgium