



European Network of Councils  
for the Judiciary (ENCJ)

Réseau européen des Conseils  
de la Justice (RECJ)

**Working Group  
“Strengthening Mutual Confidence”**

**REPORT OF THE MEETINGS**

**MEETING OF 1 DECEMBER 2008**

**1. Opening of the meeting**

J. Thomas, President of the ENCJ, introduced the meeting by stating the following points:

1. The quality of the judicial decision: this topic is discussed at the CCEJ level. The ENCJ working group “Quality Management” will also discuss this topic.  
This subject could be also discussed within this working group.
2. The necessity for a common frame of references in criminal, family and civil law matters: it is fundamental to make significant steps in these fields.
3. The information on the legal systems: problem of the huge number of portals.
4. The judicial exchanges: it is necessary to examine the reports delivered by the judges who participated in this program in order to improve the functioning of the judiciaries.
5. Contacts between judges: look at what is mentioned in the first report of the WG “Mutual Confidence”.
6. The necessity of improving a European attitude in judges.

**2. Intervention of Mrs Caroline MORGAN, European Commission**

Two questions are now being discussed :

- The procedural rights
- The rights of the victims.

## 2.1. The procedural rights

a) From 1950 to nowadays: free circulation of European citizens (holidays, trade, ...)

10 million Europeans are living in another State that isn't their own.

The cross border problems are increasing.

b) The 3<sup>rd</sup> pillar: the judicial decisions are supposed to be equivalent even if the situations are very different.

Tampere and The Hague Programme developed the principle of mutual recognition, which implies mutual recognition.

The European Arrest Warrant is the only system that really functions.

Other projects are being developed.

c) The monitoring by the European Commission of some States.

The problem is to define which standards have to be implemented in these countries.

Problems related to the judicial backlog at the European Court of Human Rights.

## 2.2. The common minimum standards

2002 : Internet consultation : 5 rights have been indentified.

2003 : public hearings.

2004 : proposal of framework decision on the procedural rights : right of legal advice, right to an interpreter, right to be informed about his rights, right to consular assistance.

Citizens are not well informed of their rights (ex.: right to a free interpreter).

3 years of negotiations at the EU Council.

2007: German presidency tried to force the decision: 6 States opposed it.

Lisbon Treaty will no more require the unanimity on this matter.

## 2.3. The mutual recognition

In 2006, the Council financed a research on the obstacles related to mutual recognition in criminal matters.

This research, realised by the University of Brussels, contains some recommendations:

- Exchange of good practices
- Better exercise of rights
- Obtaining evidence

- Conflicts of jurisdictions
- The problem of the age limit necessary to be charged as an adult.
- Methods of negotiation (inclusion of judges and practitioners in the discussions)

The Swedish Presidency would like to reopen the debate on the procedural rights.

### **3. Discussion**

The members of the working group intervene in the debate.

- Necessity to strengthen the cooperation with EJN
- Necessity to improve the procedure on what happens after the judgment
- The working group must be very practical and work on reports from judges (who participated in the exchange programme).
- The Justice Forum allows the networks to meet
- The European Judiciaries must be present at the EU level: ENCJ, Network of the presidents of the Supreme Courts, the Association of EU Councils of State and EJTN.
- EJN has no links with the judiciaries

### **4. Conclusions**

#### **4.1. Aims of the Working group :**

- a) **Quality is essential : we must discuss this question in Bucharest because it is important for transparency and access to justice**
- b) **E-Justice and E Law are important because they contribute to simplification : this topic is not a priority for the ENCJ**
- c) **Training : we learn by getting to know each other and on the functioning of the judicial systems : ENCJ must work on this topic**

**4.2. Send a questionnaire to the ENCJ Members asking them how the contact points (network civil matters) work concretely.**

**4.3. Integration of the results of this WG with the other ENCJ WG**

**4.4. Setting up a network of experts in civil matters**

**4.5. Meetings with other networks**

**4.6. We must use the content of the reports in the framework of the Exchange Programme of Judges**

## **MEETING OF 4 MAY 2009**

### **1. Opening of the meeting**

John THOMAS, President of the ENCJ, thanks warmly the German Association of Judges for giving the ENCJ the opportunity to organise this meeting of the working group in Berlin. He thanks especially Martin Petrasch who played an important role in the preparation of this very first meeting in Germany for the ENCJ.

### **2. Evaluation of the rule of law**

Mr. Martin BRUINSMA, secretary of embassy in the Dutch Embassy in Berlin, introduces the note prepared by the Dutch Ministry of Justice concerning the evaluation of the rule of law within the European Union.

See document in annex 1.

The working group proceeds to an exchange of views on the prepared document.

The result of the discussion is included in annex 2.

### **3. Training of judges and role of the lead judges in the field of European law**

The members of the working group discussed the judicial training in the field of European law and in particular of the development of a function of lead judge in European law.

The issues of the creation by the EU Institutions of an European organ for judicial training, en the setting up of a coherent set of training programmes in European law, for all the European judiciaries, prepared and decided by the European Institutions, seem to be one of the European priorities.

Ruud WINTER, Dutch judge and member of the working group, introduces the system of “Court Coordinator of European Law” developed in the Netherlands.

See annex 3.

## **CONCLUSIONS**

**The working group proposes to the General Assembly :**

- 1) to conduct further work in relation to issues on the evaluation of the rule of law in the European Union, that had to be addressed and their possible solutions.**
- 2) to send a questionnaire to the ENCJ Members asking them how the contact points of the European Judicial Network in civil and commercial matters work concretely, and afterwards, to analyse the answers and prepare some recommendations**

- 3) **to be particularly present and active in the European debate on the issues of judicial training (in direct contacts with the European officials, via the Justice Forum, or in cooperation with the European Judicial Training Network).**
  
- 4) **to promote the Dutch model of the “Court Coordinator for European Law” which already proved its efficiency in the Netherlands**
  
- 5) **that the ENCJ continues its work on the “Mutual Confidence”, but giving the priority to these two aspects :**
  - **the evaluation**
  - **the training.**

## **ANNEX 1 - Strengthening without burdening: thoughts on an additional evaluation mechanism in the field of EU judicial cooperation in criminal matters<sup>1</sup>**

**Meeting ENCJ Working Group on Mutual Confidence, Berlin, 4 May 2009**

This note explains the Dutch proposal to strengthen evaluation activities in the field of EU judicial cooperation in criminal matters by way of developing an additional evaluation system. It describes the background and political context of this initiative and highlights a number of crucial components that an additional system with added value would need to contain. The purpose of the initiative is to develop detailed proposals about additional evaluation of aspects of national legal systems in the Stockholm Programme.

### **Background and context**

During the Informal JHA Council in Prague on 15 and 16 January 2009, the Dutch Minister of Justice, Mr. Hirsch Ballin, intervened during the discussion about mutual recognition. He observed that mutual trust is important for the application of the principle of mutual recognition. Monitoring and evaluation activities are an important tool to guarantee such mutual trust between Member States, as well as between judicial professionals within Member States when they cooperate across EU internal borders. It has been frequently acknowledged that current monitoring and evaluation activities, although useful in principle, are to be improved. Particularly, implementation of ensuing recommendations, including where they relate to aspects of national legal systems, needs to be strengthened. Therefore, Minister Hirsch Ballin proposed to develop an additional system of evaluation to systematically assess a number of obstacles to cooperation in this area that are not yet subject to evaluation at the moment.

In reaction to this intervention, the European Commission organised an Expert Meeting on monitoring and evaluation in the JHA field on 18 February 2009. During this meeting sufficient support emerged to continue discussion about ways to strengthen evaluation activities of national legal systems. In a speech at a conference on the Stockholm Programme in Bruges on 4 March, Commission Vice-President Barrot mentioned enhancing evaluation modalities in the JHA area – including the possibility of designing as one of the Commission's priorities for the new Multi-annual programme. In the meantime, proposals for additional evaluation activities in the field of judicial cooperation in criminal matters have also been tabled by other Member States, including by the German Federal Republic.

The proposal for the creation of an additional system of evaluation goes hand in hand with other developments aimed at strengthening mutual trust. Firstly, current Council and Commission driven evaluation methods need to be strengthened themselves. Moreover, the different ways of enhancing evaluation in monitoring is complementary to the Dutch support for the current development of a Framework Decision on procedural rights in criminal proceedings. The setting up of an additional system of evaluation focused specifically on aspects of national legal systems would be an important further way to increase mutual trust. A commitment to set up such a system should form part of a series of initiatives in the Stockholm Programme aimed at boosting mutual trust. More specific plans about the focus and architecture of an additional system of evaluation in EU judicial cooperation in criminal matters should become part of the Action Programme that will implement the Stockholm

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<sup>1</sup> Background note prepared by the Department of International and European Affairs, Ministry of Justice, The Hague; 27 April 2009.

Programme.

## **Strengthening without burdening: designing an additional system of evaluation**

The Dutch Minister of Justice envisages a form of permanent evaluation of aspects of national legal systems that are relevant for guaranteeing mutual trust between Member States and legal practitioners. Extensive internal and external consultations have led to the identification of the three following aspects that should be reflected in an additional system of evaluation:

1. In scope, the additional evaluation would concern both institutional and procedural aspect of Member States' legal systems. Therefore, rather than on narrowly concentrating on the national implementation of specific EU legal instruments, it should thematically focus on issues such as length of procedures, access to justice, treatment in custody, and fighting corruption among judicial and other public officials. In order for analysis of these obstacles to be as complete and useful as possible, relevant existing information, such as that resulting from the activities of the Council of Europe, should be taken into account.

***-> With a view to ensuring the practical relevance of any additional evaluation activities, input from practitioners with regard to obstacles to day-to-day cooperation is crucial to fine-tune proposals. Comments from representatives of Councils of the Judiciary would be most welcome.***

2. In execution, the additional evaluation would need to combine objectivity and independence with political commitment to using the outcomes. The evaluation of the obstacles would need to be undertaken independently, but overall supervision would need to be anchored in the EU institutional structure, for example under auspices of the European Commission. Involvement of Member States, the Council of Europe, and possibly the Fundamental Rights Agency, the Justice Forum and of universities could be sought. The Final Report would need to be discussed in the JHA Council, and include recommendations to and commitments for individual Member States.

3. In purpose, the additional system of evaluation would be aimed at ensuring practical follow-up to its outcomes. For that to be achieved a clear and pre-agreed method to guarantee follow-up to the outcome of the evaluation exercise should be put in place, as well as a commitment to keep the additional evaluation going. Follow-up is often lacking in current evaluation activities. Reflecting the fundamental importance of this element of evaluation activities, the Dutch Minister of Justice has commissioned a research project on obstacles to compliance with findings of EU and Council of Europe evaluation mechanisms. Research outcomes are expected by the summer, so that these can be taken into account when seeking developing proposals with regard to an additional system of evaluation.

If these three components are present, an additional system of evaluation with considerable added value can be set up. It would facilitate a better understanding of the background of the problems that may occur in the context of EU judicial cooperation in criminal matters. It would acknowledge that the state of the national rule of law in each Member State is important to the Member State concerned, but also for the community of EU Member States

and EU judicial and other legal professionals as a whole. Moreover, the additional system responding to these three elements would not duplicate existing evaluation systems (that are based in specific legal instruments, but do not give a global picture of the basis for cooperation), would not lead to an additional administrative burden on the part of Member States, and would not interfere with other initiatives that aim at strengthening mutual trust.





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## **Mutual Confidence**

### **Evaluation of EU Judicial Co-operation and the Rule of Law:**

#### **Preliminary Thoughts on the Proposal of the Dutch Government**

- 1 The Dutch Government has advanced a proposal to strengthen evaluation in the field of EU judicial co-operation in criminal matters. The proposal was welcomed by a number of Member States and the European Commission. It was agreed that the discussion should be continued and the Dutch Government would go ahead and work out a more detailed proposal.
- 2 The objective of the proposal is to support mutual confidence and to enhance the rule of law across the EU. They wish to develop the proposal so that it can be included in the Stockholm Programme. Although the proposal relates to criminal justice, the working group considers that the principles should equally apply to civil and administrative justice.
- 3 The ENCJ Working Group on Mutual Confidence warmly welcomed the invitation of the Dutch Government to provide some preliminary views and was very grateful to Mr Martin Bruinsma for his introduction to the proposal at its meeting on 4 May 2009.

#### **(i) What should be evaluated?**

- 4 The first question that arises is what should be evaluated in relation to the criminal justice system. Suggestions discussed included:
  - The time proceedings took.
  - The adequacy of training of judges in European Law.

- The existence and enforcement of ethical codes.
- The measures in place to enable judges to understand other legal systems.
- The respect for defendants' rights (e.g. the right to interpretation, the time during which a suspect can be held without access to a lawyer).
- Police powers.
- The real independence of the judiciary.
- The earnings of judges.
- Public confidence in judiciaries.

5 Some information is currently held about some of these topics. For example, in some states, the Council for the Judiciary regularly collects information on how long cases are taking before the courts, and if the position is not satisfactory enquiries are then made.

6 It is clear from the breadth and nature of the topics that, although some related exclusively to the judiciary, other topics would include an evaluation of other parts of a criminal justice system, such as police or prosecutors.

**(ii) Responsibility for functions: the independence of the judiciary**

7 In devising an evaluation system, it is necessary to draw a distinction between those aspects for which the Minister of Justice or the Minister of the Interior is responsible (such as the police or the provision of court buildings and other resources for the courts) and those for which the judiciary is responsible (such as the performance of the judiciary of their judicial functions).

8 Any system of evaluation will have to ensure that the independent responsibility and accountability of the judiciary for judicial work and judicial functions was properly recognised. It will also be necessary to take into account the fact that in different states responsibilities differ. For example in some states it is important to draw a distinction between the investigation phase and the trial phase, as in the case of the former it would be the responsibility of the police and thus the Minister of the Interior, whereas in the trials phase it would be the responsibility of the judiciary. In other states, however, where the examining Magistrate was in charge of the investigation and the police acted under his direction, the responsibility would rest with the Council responsible for the judiciary. Much

detailed work is required to ensure that these distinctions are properly understood and taken into account.

### **(iii) Gathering Information**

- 9 There are a number of methods by which the information could be gathered for the purposes of evaluation: (i) self-evaluation such as requesting answers to a questionnaire, (ii) a visit by a team (iii) a permanent independent body.
- 10 As to the second and third, although there must be a central role for the EU Commission, it will be necessary to consider how a team or a body which carries out these tasks should be constituted. Proper safeguards would be required to preserve judicial independence. A considerable amount of work needs doing to look at the way in which independent bodies such as the OECD operate to see if a model could be developed for evaluation which properly safeguarded the position of Member States whilst at the same time providing robust and independent examination of the information in each Member State.
- 11 It will be important to include those with practical experience of the operation of a justice system and not merely officials and academics. The ENCJ considers that it is essential that the judiciary is closely involved in the work of such a body. It is important to appreciate that a justice system is complex and the interrelationships between the different functions important. For example a thorough investigation by the police may take time, but it will save time in court; an investigation by the police can be quick and superficial, but the court will then have to spend more time. Furthermore if proper resources are not provided (such as an insufficient number of judges) this can affect the performance of the system. Such complex inter-relationships with differing responsibilities within Member State needs to be taken into account.

### **(iv) Consideration of the Evaluation Report**

- 12 It was clear that if an evaluation report was provided on any Member State, that report would have to be considered by the JHA Council, subject to suitable safeguards. However, within each Member State, it would not be for the Minister of Justice (or other Minister) to see that all the matters raised in the report were addressed, as matters might not be within the responsibility of a Minister but would be the responsibility of other independent bodies

such as the judiciary. It would be necessary to work out carefully to whom the report was addressed and how the recommendations were to be carried out.

**(v) Recommendations as to Progress**

- 13 If such a system was to move forward, it would be important to do so by small incremental steps, given the complexity of the subject. It might, for example, be possible to see if such a system could be operated by taking a very simple matter such as the amount of time in each Member State a suspect could be held without access to a lawyer.
- 14 It might also be desirable to avoid drawing conclusions initially and merely to report on facts, possibly in the form of league tables where each Member State could be named and the conclusion as to praise or shame drawn.

**Conclusion**

- 15 The Working Group considered that the Dutch proposal was very interesting, and offered to propose to the General Assembly of the ENCJ to conduct further work in relation to issues that had to be addressed and their possible solutions.

## **Annex 3**

### **Job description<sup>2</sup>**

#### **Court Co-ordinator for European Law**

### **1. Reference data**

Job title:	Court Co-ordinator for European Law (referred to below as CCE)
Unit:	district court, court of appeal, Administrative High Court, Administrative High Court for Trade and Industry
Date:	April 2008

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### **2. Aim of the job**

To contribute to the correct application of European law. To this end the CCE is responsible for adequately co-ordinating access to European law with a view to its practical application.

The CCE serves as an information intermediary. He knows where and how he can quickly generate knowledge about European law. Within his court he serves as the contact for matters concerning European law and, where necessary, uses the CCE network for this purpose. He shares knowledge and information about European law with colleagues in the court and the CCE network, for example by gathering and providing such information.

### **3. Environment and position**

The activities are performed within the court. A district court generally consists of the following sectors: administrative, civil (family and commercial), sub-district (limited jurisdiction) and criminal. A court of appeal generally has criminal, civil and tax sectors.

A sector generally consists of a sector chairperson, judges, a sector co-ordinator, staff lawyers, secretaries and administrative assistants. The sector chairman is in charge of the sector. The sectors are in turn usually subdivided into chambers that each deal with a particular type of case.

The CCE acts within the quality policy parameters fixed by the court management board.

The CCE co-ordinates his activities with the sector chairperson(s), any quality co-ordinator and training co-ordinator who may have been appointed and (unless the size and/or configuration of the court does not warrant their presence) the contacts for the various sectors.

The CCE reports to the court management board.

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<sup>2</sup> 23 April 2008

## **Contacts (with explanation of their nature and purpose)**

- *president and other members of the court* - *management board*  
- *concerning quality policy in respect of European law*
- *quality co-ordinator and training co-ordinator (if any)* - *concerning quality policy in respect of European law; co-ordination with training needs*
- *justices, judges, legal support staff and sectoral contacts (if any)* *gathering and provision of information about European law and its application*
- *local knowledge network (judges and deputies with specific knowledge of European law and local universities)* *contributions to local expertise, for the purpose of acquiring a broader and deeper knowledge of European law*
- *fellow CCEs (CCE network)* *gathering and providing information about European law; sharing knowledge; maintaining the network.*

## **5. Remit**

*The CCE is responsible for adequately co-ordinating access to European law with a view to its practical application. He generates knowledge of and provides information about European law. He does this within the context of the quality policy adopted by the court management board. He co-ordinates his activities with the court management board, the sector chairperson, the quality co-ordinator and training co-ordinator (if any) and sectoral contacts (if any).*

## **6. Result areas**

- 6.1 Co-ordinating access to European law with a view to its practical application.
- 6.2 Keeping abreast of and passing on knowledge of European law.
- 6.3 Provision of information about European law.

## **7. Competences**

In addition to the skills/capabilities and knowledge required for the positions of judge and justice, a CCE must have the following:

### **Skills/capabilities**

- ability to co-operate and collaborate;
- awareness of surroundings.

### **Knowledge**

- knowledge of the organisation and the administration of justice in general;
- knowledge of the general part of European law;
- knowledge of sources of information about European law.

The CCE is an experienced judge/justice who plays an active part in the administration of justice.

The CCE is exempted from part of his other duties to allow time for his work as CCE.

## **8. Elaboration of result areas**

### **8.1 Co-ordination**

- arranges within his own court for a (consultation) structure (consisting of sectoral contacts);
- maintains and contributes to external contacts (CCE network and expert groups).

### **8.2. Keeping abreast of and passing on knowledge of European law as described below in the first indent**

- keeps abreast of European law, in any event the general part; to this end he reads the weekly survey of Porta Iuris (European law) supplied centrally by BISTRO, peruses the professional literature (NJB/NTER/SEW) and attends courses and meetings and takes part in study trips dealing with European law; he also provides good feedback;
- obtains information (from his sectoral contacts) about important judgments/proceedings (e.g. requests for preliminary rulings) on matters of European law within his court and shares this information with the CCE network;
- contributes to the effective operation of the local knowledge network;
- contributes, in consultation with the local court library, to a good European knowledge infrastructure (including European legal literature) and shares his knowledge about this with the CCE network;
- is involved and contributes to the quality policy and identifies, together with the quality co-ordinator and/or training co-ordinator (if any), the need for (specific) knowledge in the field of European law. Arranges and/or gives talks/lectures/courses on matters of European law.

### **8.3. Provision of information about European law (internal and external)**

- acts as contact for matters of European law; knows where and how he can generate knowledge (CCE network, databanks, Porta-Iuris, intranet, the Internet, knowledge base);
- is the first person to be contacted about questions concerning general aspects of European law; acts, if necessary, as a sounding board for matters regarding general aspects of European law;
- draws the attention of colleagues and the CCE network to important judgments/proceedings (including those of his own court, e.g. references for preliminary rulings), legislation and literature on relevant issues of European law;
- draws the attention of colleagues to – and is involved in the co-ordination of – courses/meetings/ study trips/seminars in the field of European law.

#### ***Performance indicators for the three result areas:***

- visibility of CCE (internal and external);
- satisfaction of the court management board with quality policy on European law;
- satisfaction of quality co-ordinator and training co-ordinator (if any) with quality policy on European law;
- satisfaction of justices, judges, legal support staff and sectoral contacts (if any) with the provision of information on European law and its application;
- satisfaction of local knowledge network (judges and deputy judges with specific knowledge of European law, local universities) with the contribution to the local knowledge network;
- satisfaction of fellow CCEs (CCE network) with the provision of information on European law, sharing of knowledge and maintenance of the network.

## 9. Elaboration of competences

### Skills/capabilities

**Co-operation:** contributes to a common result (even when the co-operation concerns a subject that does not come directly within his own remit).

*Behaviour indicators:*

- responds actively and constructively to the questions and ideas of others;
- passes on in good time information that can be important to others;
- exchanges knowledge and experience on his own initiative.

**Awareness of surroundings:** shows that he is well-informed about social and political developments or other external factors and uses this knowledge effectively in carrying out his own duties and for his own organisation.

*Behavioural indicators:*

- shows that he is aware of the trends and developments in society and Europe;
- shows that he recognises any problems regarding the practical application of European law in his court and that he can deal with this effectively;
- shows that he makes effective use of sources of knowledge about European law;
- shows that he makes effective use of his internal contacts (any sectoral contacts and local knowledge network) and external contacts (fellow CCEs).

### Knowledge

- Knowledge of the organisation and the administration of justice in general.
- Knowledge of the general aspects of European law.
- Knowledge of sources of knowledge on European law.