



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

OPINION ON THE FUTURE PROGRAMME « JUSTICE » OF THE EUROPEAN UNION

1. Framework of the opinion

In November 2004, the European Council adopted the « *The Hague Programme : Strengthening Freedom, Security and Justice in the European Union.* »

This Programme established the general framework for the future work of the European Union in the field of Justice and Home Affairs for the period 2005-2009.

In anticipation of the completion of this Programme, the EU Institutions decided to organise the preparation of a new Programme which would follow « The Hague Programme ». This has become popularly known as the "Stockholm Programme".

The European Network of Councils for the Judiciary intends to take part in the process of preparing the new draft Stockholm Programme which is expected to be adopted under the Swedish Presidency.

Indeed, this is in accordance with the statutes of the ENCJ which set out the following objective:

"Within the framework of the creation of the European Area of freedom, security and justice, the objectives of the Network are co-operation between members on the following:

- *analysis of and information on the structures and competencies of members, and exchanges between the members ;*
- *exchange of experience in relation to how the judiciary is organised and how it functions;*
- *provision of expertise, experience and proposals to European Union institutions and other national and international organizations.*"

In this context, the Steering Committee on 24 October 2008, approved a note on the "Procedure for the participation of the ENCJ in the process of the preparation of the Stockholm Programme". The ENCJ's Permanent Commission "European Union Policies" thereafter undertook the responsibility for preparing a paper setting out the ENCJ priorities for this Programme. The draft has been sent to all the Councils for comment. This paper was then approved by the Steering Committee at its meeting on 20 February 2009 as setting out the views of the ENCJ.

The ENCJ has been invited by the representatives of the European Commission and the European Parliament to communicate their thoughts and proposals on this new Programme.

2. Proposals

2.1. The specific contribution of ENCJ

The Hague Programme sought the establishment of a common area for justice and, accordingly, recommended that the work to provide access to justice and judicial cooperation should continue, together with wider use of mutual recognition.

The same document suggested that, in order to increase judicial cooperation in both civil and criminal matters, it was necessary to strengthen mutual confidence and develop incrementally a European judicial culture. It was in this context that it placed importance on the EU's support for judicial institutions and the organisation networks, which expressly included the European Network of Councils for the Judiciary.

Five years later, the ENCJ agrees that these objectives should remain.

Moreover the ENCJ wishes to make a real contribution to achievement of these objectives by promoting mutual confidence among members of the judiciaries of the Member States, and public confidence in the administration of justice in the European judicial area.

Councils are comprised of judges and, in many states, also have representatives of the general public; their responsibilities are wide and can include the selection and training of judges, administration of justice, professional conduct and judicial ethics.

The ENCJ who gathers these Councils, is able to promote a common judicial and legal culture across Europe in :

- developing mutual understanding and exchanges between the members of the different Judiciaries ;
- developing understanding between the Judiciary and the other participants in the justice system, including prosecutors;
- developing understanding and confidence between the Judiciary and the general public;
- developing contacts and cooperation between the European Judicial Networks comprised of the Judiciary (the European Judicial Training Network, the Network of the Presidents of the Supreme Courts of the European Union and the Association of Councils of State and Supreme Administrative Jurisdictions of the European Union).

In addition, the ENCJ is able to provide expert assistance for European Institutions, through its members which comprise judiciaries with a diverse legal, historical and cultural background.

Finally, the ENCJ can make a real and positive contribution to the implementation of EU policies in the field of justice through its internal working procedures of the ENCJ which enable those with day to day experience as judges (and others interested in the administration of justice) to provide

- an analysis of the advantages and disadvantages on any proposals relating to the administration of justice
- an analysis of any practical steps that are needed to ensure implementation in the member states
- an analysis of the way in which legislation is actually working in practice at periodic intervals after implementation.

2.2. The specific priorities of ENCJ for the future Justice Programme

Given the broad scope of the responsibilities of Councils for the Judiciary which are members of the ENCJ, the ENCJ puts forward the following proposals for inclusion in the next Justice Program of the European Union.

- Proposal which directly affects citizens

The ENCJ calls for the support of the EU in the preparation and carrying out of a comprehensive survey of public opinion of European citizens on the one hand, and of participants in the justice system on the other hand, on the mutual confidence (then on the confidence in the system of justice in other Member States), on the perception of the public image of Justice and on confidence in the system of justice in their own state.

To guarantee the impartiality of such a "Euro Just Barometer", the ENCJ is ready to ensure its co-ordination and the follow up of the conclusions.

- Proposal which directly affects litigants

The ENCJ calls for the issue of access to civil and criminal justice in all its aspects (including the financial means and cultural background of citizens) to be made the subject of specific action by the EU.

The ENCJ calls for the strengthening of legislation on the rights of victims of crime and the adoption and implementation of mandatory standards for the status of the victim throughout the legal proceedings in all Member States. The work of associations for victim support, including their participation in the training of judicial personnel, should be supported by the EU.

- Proposal that directly affects judges

The ENCJ wishes to promote the establishment in each Member State of a panel of judges expert in European law whose purpose is to facilitate the task of judges in applying European law and jurisprudence more widely and comprehensively. With the support of the EU, the ENCJ is willing to undertake the initiative to organize this network of expert judges.

As mutual confidence can only be effective if all participants in the administration of justice meet ethical and professional standards, the ENCJ calls for minimum guidelines of judicial conduct and ethics to be established by the judiciary of each Member State. Although a detailed codification is not necessary, such guidelines should be high and be applicable to all.

The ENCJ is anxious to make an active and positive contribution in the preparation of such ethical and professional guidelines and the promotion of the protection of judicial independence to support the delivery of efficiency and quality in the administration of justice.

- Proposal that directly affects the judicial system

Mutual confidence and the rule of law are dependent on the quality of the judicial systems of each Member State. The ENCJ works actively on the promotion of standards of quality of each judicial system.

The ENCJ calls for the support of the European Union in collecting the best practices implemented by all judicial authorities and promoting their use by all participants in the judicial system.

If proposals are brought forward by the Member States for evaluation, the ENCJ would wish to act as a partner in such work and to play an active role in the development of methodologies and instruments for evaluation.

2.3. The continuation and the development of the current work

In the ENCJ's opinion, it is important that the EU continues and expands the work it has developed over several years in implementing the priorities of the Hague Programme.

The ENCJ wishes to emphasize the importance of the following issues, in bringing about an area of European justice in which mutual confidence is the central pillar:

- the training of those involved, including training on European law, foreign language training, training on practical topics such as the fight against terrorism, the development of mediation, and training of trainers. In the view of the ENCJ, it is absolutely necessary that the European Judicial Training Network (EJTN) continues to receive financial support not only from the EU but also from the Member States.
- the development of E-Justice, including the creation of a single Internet portal, providing participants in the justice system as well as citizens with communication features and easy access to national procedures, registers, various available databases, and national legislation, case law and other relevant materials such as standard forms for use in cross-border proceedings.
- Contacts between judges, lawyers and citizens should be improved and intensified to achieve better agreement on practices and processes, and to facilitate access to justice. The European Judicial Network in Civil and Commercial Matters should assist in this.

2.4. The quick adoption of priority legislation

The ENCJ is also willing and able to exercise an advisory role in the preparation of EU legislation affecting the Judiciaries of Member States and the administration of justice for the benefit of the citizens.

In the ENCJ's view it is only possible to have a properly functioning system of justice which enjoys the confidence of citizens if legislation meets the expectations of society and is well drafted.

The ENCJ wishes to assist the Community Institutions in their proposals to adopt the following long-awaited legislation:

- common procedural rights for defendants in criminal proceedings, established in a way which will overcome the current difficulties for approving framework decisions on the subject. The ENCJ considers that the legislation should be prepared on the basis of the fundamental principle that there should be the highest possible common recognition of basic rights to ensure, on the one hand, a European area of justice and, on the other, a high level of mutual confidence.
- the European supervision order providing for mutual recognition of pre-trial measures so that there is a realistic pre-trial alternative to detaining in custody an accused who does not live in the state where the trial is to take place, in cases where other measures short of custody and less restrictive of personal freedom would be sufficient.

- the regulation of conflicts of jurisdiction, beyond the current regulations (which are not sufficient) limited to the provisions on the *ne bis in idem* principle laid down in the Schengen Implementation Agreement and to certain specific regulations for certain types of crime, such as those provided in the recent framework decision 2008/841/JAI of the Council, dated 24 October 2008, on the fight against organised crime. This must take into account the proposal for a framework decision for preventing and resolving these conflicts as has been announced by the Czech presidency as a priority.
- proposals to improve, particularly by speeding up and making easier, the mutual recognition and execution of judgments in civil and family matters

The ENCJ wishes to stress the importance of the practicability of any new European legislation. It is absolutely necessary that before deciding on new legislation, the European Institutions request the opinion of judges and practitioners. The ENCJ is, by reason of its composition, one of the best placed bodies to reflect the opinions of the judiciaries of the Member States.

Conclusion,

The ENCJ hopes that the Stockholm Programme and especially its implementation in subsequent years, will meet not only the expectation of participants in the administration of justice, especially the judiciaries of Europe who wish to make a real contribution to better justice in their home or of their fellow Member State, but also the expectations of all European citizens, who require an independent, effective, and speedy system of justice, to ensure justice of the highest quality throughout Europe.