



European Network of Councils  
for the Judiciary (ENCJ)

Réseau européen des Conseils  
de la Justice (RECJ)



with the support of the European Union

## Background

In 2014, the ENCJ celebrated its 10<sup>th</sup> anniversary. At the General assembly in Rome, the 2014-2018 Strategic and Action plan was adopted. The plan stated that after 10 years of producing a number of important documents containing guidelines, standards and statements of best practices the time had come to focus on strengthening the position of the ENCJ and on improving the justice systems and the operation of Councils for the Judiciary.

The 2014-2018 Strategic and Action plan was implemented through annual work plans. It also served as a basis for the 2015-2017 Framework Partnership Agreement with the European Commission and an annual Operating Grant for these years.

Over the last few years the ENCJ has grown and now has 24 Members and 14 Observers covering 28 European member and most candidate member states. ENCJ has to date issued many important documents containing minimum standards, guidelines and recommendations which are of a distinguished standing in today's European Justice System. The ENCJ has delivered groundbreaking work especially within the framework of the Independence and Accountability project. Weaknesses and strengths of the individual justice systems have been mapped and the views of judges on their own independence have been collected.

We now have to look to the future to strive to strengthen the Justice Systems in order to secure Access to Justice for all.

Developments across Europe show that these are challenging times for the Justice Systems and the Judiciaries. The Rule of Law is at the core of the European Union. It is one of the fundamental values upon which the EU is founded, together with democracy and fundamental rights. To uphold and preserve the rule of law is a responsibility for both the judiciary and other state powers. Respect for fair and impartial courts, as the key institutions of an independent judiciary is being challenged across Europe. More than ever the Judiciaries need to stand together to command respect for the role and position of the Judiciary. Councils for the Judiciary have a pivotal role in this regard. The ENCJ unites the Councils and is of vital importance to the further development of judiciaries in Europe.

At the same time ENCJ reiterates that judicial independence does not stand on its own. A Judiciary that claims independence but which refuses to be accountable to society will not enjoy the trust of society and will not achieve the independence for which it strives. Councils for the Judiciary or similar independent bodies, in order to maintain the rule of law, must do all they can to ensure the maintenance of an open and transparent system of justice.

This four-year plan will take the above mentioned into account and will assist the ENCJ to set out clear priorities and follow a more comprehensive approach in achieving its goals.

### **ENCJ Mission Statement:**

*The ENCJ is the body which unites all Councils for the Judiciary of the EU member states and represents them in the EU. It reinforces an independent yet accountable judiciary and promotes best practices to enable the judiciary to deliver timely and effective justice for the benefit of all.*

## 1. Core Values and basis for the cooperation in the framework of ENCJ

### Diversity

Recognising that all legal systems are different and are vested in their own legal tradition, the ENCJ respects the diversity of the judicial systems of its members subject to the Rule of Law.

### Equality and Mutual Respect

Recognising that mutual respect and equality are fundamental to full cooperation within the ENCJ.

### Collaboration

Recognising that effective and responsive involvement requires the input of all members, the ENCJ is committed to inspiring dialogue, promoting consultation, building consensus and engaging diverse stakeholders in a participatory way.

## 2. Statutory objectives and Strategic plan 2014-2018

The ENCJ has as its statutory aim the improvement of cooperation between, and good mutual understanding amongst, the Councils for the Judiciary and the members of the judiciary of both the European Union Member States and of any European Union candidate Member States.<sup>1</sup>

Within the framework of the creation of the European Area of freedom, security and justice, the objectives of the ENCJ 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 organisations.

In 2010 ENCJ adopted a strategic plan and a Mission and Vision. After a consultation in late 2016 – early 2017 of the ENCJ Members and Observers there seems to be a need to alter the vision slightly:

### The vision of the ENCJ

The ENCJ will be:

- A unique body representing the judicial perspective to European Institutions;
- The center of a vibrant forum for the judiciary across Europe;
- The main support for independent Councils for the Judiciary ***in their mission to promote and preserve an independent, accountable and high quality judiciary.***

All to enable the judiciary to optimize the timely, ***impartial***, and effective delivery of justice for the benefit of all.

The evaluation of the 2014-2018 strategic and work plan by the Members and Observers provided the following input in key-words (alphabetic order – frequently mentioned are in bold)) as regards the future objectives and topics:

- **Access to Justice**
- **Accountability**
- **Communication media and general public /society/education of the public**
- Court Presidents (role and position)
- Corruption

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<sup>1</sup> Article 3 ENCJ Statutes

- Dialogue with other State Powers
- **Digital Justice(in relation to Access to Justice and Independence)**
- **Economic value of the Judiciary**
- **Implementation of ENCJ Standards / recommendations**
- **Independence (promotion and protection) especially vis a vis executive**
- **Independence in relation to budget**
- Mapping of the Judicial Domain
- Modernisation of Justice
- **Public Confidence / trust and the Image of Justice**
- **Quality**
- **Rule of Law**
- Status of judges (ethics/integrity /external functions)
- **Timeliness / Efficiency**

### **3. Strategic objectives 2018-2021**

The ENCJ promotes the interaction between the judiciaries of Europe in order to improve collaboration and to stimulate the exchange and implementation of best practices. Mutual trust between courts and judicial authorities assists in mutual recognition and facilitates access to justice on equal terms in all Member States. The ENCJ engages in activities that increase good mutual understanding amongst the Councils for the Judiciary and the members of the judiciary. Gradually and continuously, the ENCJ is assisting the emerging European Judicial Culture. The ENCJ will also contribute, where and when appropriate, to the priorities as laid down by the European Commission in the communication regarding the EU Justice Agenda 2020, especially in the field of Access to Justice, and mutual trust.

Apart from furthering mutual trust, which is at the heart of the work of ENCJ, the ENCJ will be focusing on improvement to justice systems and the operation of Councils for the Judiciary. The ENCJ will seek to enhance the impact of its activities in its member Councils for the Judiciary, and on Councils and equivalent bodies in member states and in candidate member states. That influence will continue to be aimed at improving justice systems across Europe for the benefit of citizens generally.

The outcomes of the **2016 ENCJ survey among judges** on their independence revealed a number of important issues that need to be addressed. The first one reflects on the functioning of the Councils for the Judiciary and relates to the appointment and promotion of judges. Across Europe the perception of judges is that judges have been appointed and/or promoted other than on the basis of capacity and experience. Other issues are pressure from the media which judges feel do not respect their independence and relations with the other State Powers. Another more fundamental issue which affects the core of Councils for the Judiciary and ENCJ, is that a substantial number of judges feel that their Council does not have the appropriate mechanisms and procedures in order to defend judicial independence effectively. All these issues have to be examined from a perspective of structural safeguards and their effectiveness in practice.

For the four-year plan, recent developments in the EU have also been taken into account. These developments include the now widely accepted notion of the economic value of a well-functioning justice system. It also takes into account the increasing need for resilient justice systems that can withstand external pressure but that have the ability to adjust to the changing needs of society.

ENCJ will continue to cooperate with the European Commission on the further development of the Justice Scoreboard particularly in the field of independence and possibly quality. As such, the ENCJ feeds the policy development of the European Commission in this area. The ENCJ agrees with the Commission that a key requirement for mutual trust is the independence, quality and efficiency of the judicial systems and the respect of the rule of law.

The ENCJ will strive to increase the impact of its work by more intense interaction and cooperation with relevant stakeholders and organisations such as the Fundamental Rights Agency (FRA) the lawyers (CCBE); academics, experts in the field of public opinion management, the EJTN etc.

### **Work-formats**

The focus of the activities will be on increasing the impact of the ENCJ and the improvement of justice systems. There will be less emphasis on project teams producing reports containing ENCJ standards and guidelines and more on implementation of the standards and guidelines thus far, and interaction between Councils and their representatives. Various new formats will be introduced including intensive workshops and seminars with an aim to promote dialogue and change.



To achieve these objectives a number of actions and activities have been identified. Each year a number of these activities will be implemented upon the proposal of the Executive Board and after agreement by the General Assembly.

**1. Within the framework of protecting the Rule of Law, to provide support for the independence, accountability and quality of judiciaries in Europe and to promote understanding of and respect for judicial independence**

To uphold and preserve the Rule of Law is a responsibility for both the judiciary and other state powers. Access to fair, independent and impartial courts as the key institutions of an independent judiciary is a fundamental right also laid down in article 47 of the EU Charter of Fundamental Rights.

Judicial independence is directly linked to accountability. Accountability of the judiciary relates to the transparency about its performance. Accountability of the individual judges relates to the transparency of his judicial decisions.

Judicial accountability is also a function of public understanding and public confidence. The ENCJ believes that education is the key to ensuring that judicial systems progress towards greater independence and accountability rather than the reverse. There is an increasing need to promote understanding of and respect for the independence of the judiciary. A pro-active attitude of the judiciary itself is indispensable and will be a priority topic.

Independence and accountability capture important elements of the quality of the judicial systems and the perception by its users and citizens in general.

**1. To Initiate a dialogue on the Rule of Law and the role of the judiciary in a democratic state**

The ENCJ aims to initiate a dialogue with the other State Powers on the national and the European level. One of the issues to be discussed in this regard is the role of Councils for the Judiciary as guarantors of the independence of the judiciary. The 2016 survey among judges shows that judges do not feel respected by the other State Powers. The most recent Flash Eurobarometer 447 (April 2017) on the perception of the general public about the independence of the judiciary, interference from politicians and the government is mentioned most frequently as reason for a negative perception of the independence of the judiciary. This is an issue that needs to be addressed by the ENCJ.

This dialogue should include the notion that a well-functioning judiciary has an economic value and as such contributes to prosperity and society as a whole. A case study will be developed and implemented to research the impact of the handling by the judiciary of a specific category of legal problems that are important for the economy in a representative set of ENCJ members

**2. To promote and preserve the Rule of Law**

When an ENCJ Member or Observer signals that, the Rule of Law in its country may be in jeopardy especially in relation to the independence of the judiciary as a whole or of the judges, it may call upon the support of the ENCJ. The ENCJ is not in a position to get involved in any political dispute, but it will give its opinion on the compliance of any planned reform or with general European or specific ENCJ Standards in this field. The ENCJ will also seek cooperation with the European Institutions in such a case.

In addition, the ENCJ will continue cooperation with partners and stakeholders to promote and preserve the Rule of Law:

- Cooperate with DG Justice in the further development of the Justice Scoreboard.
- Upon request assist the European Commission within the framework of the Rule of Law mechanism.
- Engage with the European Parliament especially in relation to the Rule of Law and the Pact for Democracy, Fundamental Rights and the Rule of Law.
- Work with FRA on strengthening the Rule of Law in the EU

- Cooperate with Council of Europe: CCJE and Venice Commission
- Raise awareness for the Request for Co-operation mechanism and react to incoming requests.

### **3. To promote the independence and accountability of the judiciary**

This objective will be achieved by continuing the multi-annual project on independence and accountability. ENCJ will look at the challenges and weaknesses in the judicial systems both at the level of institutional safeguards and at the effectiveness of the safeguards in practice. The results of the 2016 survey among judges and the Independence and Accountability performance indicators will be studied within the framework of the project.

- External validation of independence and accountability indicators by science and partners such as bar associations in (first half of) 2018 and further development of indicators. To this intent, a conference with academics will be organised (2018).
- Study results of survey among lawyers (in cooperation with the CCBE) on the independence of the judiciary.
- Survey 2018/ 2019 on their independence, including an extension on accountability and 2020/2021 among judges on their independence and accountability
- Possibly organise a survey among lay judges on their independence
- Indicators implementation and scoring independence and accountability update 2018/2019 and 2020/2021
- 2019/2020 performance indicators implementation and scoring
- Dialogue Groups 2018 - in which challenges to the independence and the effectiveness of the safeguards in practice are discussed and possible solutions to remedy the challenges are identified. The results of the 2016 survey among judges and independence and accountability performance indicators will feed the discussions.
- Invite Members to present an action plan (GA 2018) and report back on the implementation (GA 2019/2020/2021)
- New round of Dialogue groups 2020/2021

### **4. To promote the quality of the Justice System**

The goal of the project on the topic of quality of justice is to demonstrate that quality of justice is one of the most important concerns for the judiciary and individual judges themselves. Standards of quality must be defined and evaluated by Councils themselves, when they exist, or by an independent body, and not by other powers of States. It is a duty for Councils to reconcile the topic of quality with the principle of independence of judges.

Within the framework of the project on Independence, Accountability and Quality of the Judiciary the following actions will be taken:

- The work on the development of Quality Indicators which was started in 2015 will be continued and all Members and Observers will be invited to fill in the questionnaire (2018). This will automatically lead to an improvement of the indicators.
- Indicators for the topics not covered yet will be developed (2018) and implemented (2019/2020).
- The scores and results of the indicators will need to be discussed with a view to the improvement of the quality of justice and the role of Councils for the Judiciary. (2019/2020)
- Workshops will be organised for in-depth discussions (2019-2021)

To improve the quality of justice is a shared responsibility between the Judiciary and the Lawyers. A joint action will be developed with the CCBE to work on aspects of the quality of Justice

## **5. To strengthen the Image of Justice and Public Confidence**

As the last public confidence surveys that were done in the light of the 2017 EU Justice Scoreboard show, low public confidence in the judiciary is still an issue. The project will look at various aspects of public confidence and the image of justice and will identify remedies that can be taken on by Councils for the Judiciary and other judicial authorities. Moreover, the 2016 survey among judges on their independence show that the impact of the media on the decisions of judges is increasing and is large in most countries. The influence of social media is much smaller than that of the traditional media, but is increasing in nearly all countries. The activities could include:

- Study the ways in which the image of justice can be improved and public confidence can be influenced and design a general action plan that can be use by national judicial authorities.
- Promote the development of a key message for the Councils based on core values
- Map and identify best practices in judicial outreach activities
- Study the relations with (social) media and update the 2012 ENCJ report on Justice, Society and the Media especially as regards the role of Councils for the Judiciary

## **6. To promote independent and accountable justice systems in wider Europe**

ENCJ believes that cooperation and interaction with the (potential) candidate Member States should start well before the accession of a country to the EU. ENCJ and in particular its Members can offer valuable insight and lessons-learned in relation to judicial reform and promoting effective justice systems (in terms of independence and accountability, efficiency and quality).

The ENCJ will also offer its cooperation in this regard to the European Commission.

## **2. To promote access to justice in a digital age (measured in terms of efficiency, cost and timeliness) for the benefit of all citizens in the EU**

### **1. To promote Digital Justice**

Set up the **ENCJ Digital Justice Forum** consisting of one representative of each ENCJ Member and the interested Observers. Through electronic exchanges and an annual seminar, the aim of the forum is:

- to promote Digital Justice and the modernization of justice and identify challenges and opportunities;
- to exchange best practices and developments on national level;
- to provide a judicial perspective on e-Justice to the European Commission

### **2. To promote access to fair and impartial courts**

The objective is to further the implementation of ENCJ guidelines and standards in the fields of independence, efficiency and quality of Justice. The ENCJ has been developing minimum judicial standards and the relevant indicators in particular fields as a tool for self-evaluation for judicial systems. It is believed that this would further the approximation and ultimately the improvement of the judicial systems in Europe and contribute to the development of independent Councils for the Judiciary and contribute to the attainment of a European judicial culture. Through a series of seminars and workshops awareness for these standards will be furthered and compliance will be enhanced. Possible topics (also deriving from some of the findings from the 2016 survey among judges and the Independence and Accountability Indicators) for the seminars are:

- Selection, appointment and promotion of judges (process / elements / key-competences)
- ethics (code / rules / implementation)
- court funding in practice
- role of court presidents/ court management (possibly in cooperation with EJTN)



### **3. To promote other aspects of access to justice**

In addition the possibility of assisting or developing joint activities with the Fundamental Rights Agency of the European Union will be researched (possible topics could be the Access to Justice for vulnerable groups and disabled people<sup>2</sup> or legal aid). The ENCJ will also assist in their bi-annual Fundamental Rights Forum (2018 & 2020)

### **3. To strengthen mutual trust among the judiciaries of Europe**

Interaction between the judiciaries in Europe is key to discover differences, but more importantly to discover which values are shared and which practices can be commonly implemented to enhance trust in the administration of justice in Europe. Exposure to other judicial systems and interacting with foreign judges not only leads to a better insight into the foreign system but also to a reflection on ones' own system and ones' own performance. As such, it gives an impulse to the improvement of the functioning of the judiciary. Getting to know each other on a systematic base and with clear goals and learning from each other will lead to an approximation of the judiciary systems of the EU, an increased level of the quality of justice (for the benefit of all) across the EU and the step-by-step development of a European Judicial Culture.

#### **1. To promote mutual trust among judges**

The EU is a Union of shared values. This also applies to the judiciaries. Each judge needs to have a thorough understanding of these shared values in the field of justice. To achieve this objective co-operation with EJTN will be sought to promote training on non-substantive issues such as judicial ethics and knowledge of justice systems of other Member States.

#### **2. To provide the judicial perspective**

Provide expert opinions on draft EU legislation that is likely to have an effect on the administration of justice. This could be done in cooperation with the European Law Institute and other relevant stakeholders in this field.

#### **3. To improve mutual knowledge and understanding of judicial systems**

- Improve access to information on national judicial systems by developing ENCJ-wiki's to map and publish details on the functioning of national judicial systems.
- Ensure that the ENCJ Guide published in June 2014 and the Distillation of ENCJ Principles report (initially published in June 2013) is kept up to date.
- Publish an annual report on the developments in the judiciaries of the ENCJ Members.

#### **4. To build mutual confidence among ENCJ Members**

Organise staff seminars to promote mutual confidence between staff members of the ENCJ Members and strengthen the impact of ENCJ on national level. In addition, two short-term internships will be offered annually for staff members of the ENCJ Members to the Office in Brussels.

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<sup>2</sup>In line with Article 13 on Access to Justice of the United Nations Convention on the Rights of Persons with Disabilities