

# **Final Report of the ENCJ's 4<sup>th</sup> Project Group**

## **“Requests for Co-operation”**

**2011-2012**

### **Index**

<b><u>Section</u></b>	<b><u>Page</u></b>
Introduction	2
1. Making the request for co-operation	4
2. The ENCJ's consideration of the request for co-operation	12
3. The appointment of representatives to deal with the request for co-operation	15
4. Financing the delivery of the co-operation	17
5. Methods of delivery of the co-operation	20
6. Reporting on the response to the request for co-operation	21
7. The risks associated with the response to the request for co-operation	22
Conclusions	24
Appendix: A summary of the recommendations that the project group proposes for adoption at the ENCJ's General Assembly in Dublin in May 2012	25

## **Final Report of the ENCJ's 4<sup>th</sup> Project Group**

### **“Requests for Co-operation”**

#### **Introduction**

1. For several years, the ENCJ has focused on sharing judicial experience and promoting best practices with a view to increasing the quality and efficiency of justice in Europe. This began with the establishment of a network for the exchange of information amongst Members and Observers. The next step was the formulation of recommendations, guidelines and standards in areas such as judicial independence, ethics, quality management, transparency, and timeliness.
2. This project was born from the idea that the time had come for the ENCJ to establish a system whereby it could provide assistance to Councils for the Judiciary in the implementation of its recommendations, guidelines and standards, and in problem solving. The concept was that such assistance would be provided in the form of co-operation in response to a request from the Council concerned.
3. As a result, this project group was established to examine:-
  - (1) the methods by which the ENCJ could respond to requests for co-operation from ENCJ Members and possibly from others;
  - (2) the appropriate limits of that co-operation; and
  - (3) the advantages and the risks involved.
4. The project group has considered these questions and has stated its main conclusions in this report. It has also agreed the recommendations contained in the Appendix as defining the basis and the boundaries of this new ENCJ activity.
5. The members of the project group comprised representatives of 16 member countries (Belgium, Bulgaria, England and Wales, Denmark, France, Hungary, Ireland, Italy, Lithuania, Poland, Portugal, Romania, Scotland, Slovakia, Slovenia and Spain) as well as representatives of 1 observer country, Turkey. The project group was chaired and coordinated by Mr Justice Geoffrey Vos representing the Judge's Council of England and Wales.
6. The project group met on the following three occasions:-
  - (1) A kick-off meeting in Den Haag on 15<sup>th</sup> and 16<sup>th</sup> September 2011.

- (2) A meeting in London on 25<sup>th</sup> November 2011, at which a detailed blueprint document incorporating members' comments was discussed.
  - (3) Meetings in Rome on 5<sup>th</sup> and 6<sup>th</sup> March 2012, at which a draft of the project group's report and members' written comments were discussed.
7. Since the kick-off meeting, the project has been considered in the following 7 areas:-
- (1) Making the request for co-operation.
  - (2) The ENCJ's consideration of the request for co-operation.
  - (3) The appointment of representatives to deal with the request for co-operation.
  - (4) Financing the delivery of the co-operation.
  - (5) Methods of delivery of the co-operation.
  - (6) Reporting on the response to the request for co-operation.
  - (7) The risks associated with the response to the request for co-operation.

This report follows the same sequence.

## **1. Making the request for co-operation**

8. The project group considered the following 3 main questions under this head:-

- (1) From whom should requests be accepted?
- (2) To whom should requests be made?
- (3) In what form should requests be made?

### **From whom should requests be accepted?**

9. The project group took the view that the two most important questions were:-

- (1) Whether requests must come from a Council for the Judiciary of the requesting state or an equivalent body, or whether requests should be accepted from groups or associations of judges, and if so, what types of judges' groups?
- (2) Whether requests should be accepted from any, and if so which, states apart from those that are represented by Members and Observers of the ENCJ?

10. Both questions require a consideration of Articles 3 and 4 of the Statutes, Rules and Regulations of the ENCJ, which provide as follows:-

Article 3.1: *“The Association has as its aim the improvement of co-operation 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”.*

Article 4: *“...the objectives of the Association are co-operation between members on the following: ...*

- *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”.*

Article 6 which governs membership and the status of Observers is also relevant. It provides as follows:-

Article 6.1: *“Membership is open to all national institutions of Member States of the European Union which are independent of*

*the executive and legislature, or which are autonomous, and which ensure the final responsibility for the support of the judiciary in the independent delivery of justice”.*

Article 6.5: *“The status of observer may, at its request, be granted by a unanimous decision of the General Assembly to:*

- *The Ministry of Justice in European Union Member States where institutions as specified in Article 6.1 do not exist.*
- *The institution as specified in article 6.1 from European Union candidate states [and the Member States of the European Economic Area ...”.*

11. Article 3 seems to make two things clear: first that the ENCJ is concerned with the relationship between judges and Councils in different states, and secondly that the states in question are European Union (“EU”) Member States and candidate Member States. The provision could, however, also be read as indicating that the ENCJ was established to improve co-operation and understanding between individual councils and the judges in that state. It is to be noted that the emphasis is upon the improvement of co-operation and understanding, which is precisely the objective of this project.
12. Article 4 emphasises the objectives of the ENCJ as including co-operation between Members in relation to the organisation and functioning of judiciaries, and the provision of experience to national organisations within a state. Both objectives are relevant to the co-operation proposed by this project.

*From what bodies should requests be accepted?*

13. This question provoked more debate than any other considered by the project group. Ultimately, the competing positions resolved themselves into the following two possibilities:-
  - (1) **Option 1: Only Councils themselves:** Requests should only be accepted from Members or Observers of the ENCJ or from Councils or equivalent bodies in some other European states. In essence, this view was expressed by those that thought that no request could be satisfactorily dealt with if it did not have the active support of a requesting Council or an ENCJ Observer.
  - (2) **Option 2: Councils themselves or judges groups with approval from their Council:** Requests should be accepted from Members or Observers of the ENCJ or from Councils or equivalent bodies in some other European states, or from significant groups of judges with the express consent or approval of their Council.
14. The project group agreed early on that requests should not be accepted from individual judges, as it would be undesirable for the ENCJ to become involved in parochial disputes. There was, however, more debate about whether it might be appropriate for the ENCJ to become involved in circumstances of which the following are examples:-
  - (1) If a group of judges were concerned about the ethics of a decision made by their Council, and thought there was a threatened or actual contravention of recommendations, guidelines or standards promoted by the ENCJ.
  - (2) If a union of judges or prosecutors contended that its Council or Ministry of Justice was adopting an approach to pay, terms and conditions or pensions that contravened established ENCJ principles and standards.
  - (3) If it were alleged by a group of judges or prosecutors that a disciplinary procedure was being used so as to threaten the independence of the judiciary.
15. In each of these cases, although the ENCJ might become entangled in a dispute between the national government and individual judges, it could also be said that important principles established and promoted by the ENCJ were at stake, and that the ENCJ's main purpose is to promote adherence to best practice by its Members.

16. The project group also took into consideration that a number of other European bodies respond to requests from groups of judges in respect of questions of judicial independence and in other areas. It was, therefore, important that the ENCJ did not duplicate what others were already doing.
17. In addition, the project group considered the kind of requests that are likely to be raised by Councils as opposed to other groupings of judges and prosecutors. The requests that may be expected from Councils would, in all probability, relate more generally to the justice system – in a word, they are likely to be ‘systemic’. Requests from groups of judges would perhaps be more likely to relate to a specific internal problem. Both kinds of request could, of course, bring into focus the best practices advocated by the ENCJ.
18. The project group ultimately concluded that it should recommend Option 1. Its reasoning can be summarised briefly as follows:-
  - (1) The main purpose of this project is to establish a system whereby the ENCJ can respond to requests that raise issues concerning the improvement of a judicial system or the attainment of the ENCJ’s recommendations, guidelines and standards. This can best be fulfilled by other Councils collaborating and co-operating with the requesting Council to resolve its perceived problem.
  - (2) The ENCJ is established to improve co-operation between Councils in different EU Member States and candidate Member States. It is beyond the scope of the ENCJ’s aims and objectives for it to act as an intermediary between a Member State’s Council and its Government. If the ENCJ were to accept requests from unions or groups of judges within a Member State, it would face too great a risk of becoming embroiled in internal politics. If a group of judges raises a question with its Council, that Council can, of course, make a request if it sees fit.
  - (3) If requests were accepted from groups of judges, there would be insoluble issues as to the lines of reporting. The ENCJ cannot co-operate with or assist external bodies, such as a judges’ union in a Member State, without risking conflict with the ENCJ’s own Members. The ENCJ is no more than an association of its members, so can only act at the behest of one of its members.
  - (4) Whilst the project group understood the benefits of a flexible approach, it was thought best to have defined limits in the first instance. Article 4 of the ENCJ statutes will always provide some flexibility if a deserving and funded project outside the boundaries agreed were to present itself.
19. Once the process of co-operation has been tried and tested, it will be possible for the ENCJ to consider, with the benefit of real experiences,

whether to expand the ambit of the project. For the initial period, the project group felt it was most prudent to adopt the safest course of accepting requests only from ENCJ Members and Observers.

20. The project group considered whether accepting requests from Observers would broaden the ambit of the project beyond Councils and equivalent bodies, but decided that it would be undesirable to exclude Observers on the grounds that the state they represented had no Council for the Judiciary or even an equivalent body. It can also be noted that Observers include Councils and equivalent bodies from candidate Member States.



*From what states should requests be accepted?*

21. It is plain that the ENCJ cannot accept requests from a Council or equivalent body in any state however remote from Europe or the European Union. The project group did, however, carefully consider whether the ENCJ ought to be responding to requests from Councils in states that aspire to EU membership, and are attempting to improve the standards of their justice systems for that purpose. The two views that were initially considered by the project group were as follows:-
  - (1) **Option A:** requests should only be accepted from Councils or equivalent bodies in Member States and those states which have been formally accepted by the EU as candidate Member States.
  - (2) **Option B:** requests should be accepted, subject to an over-riding discretion, from Councils or equivalent bodies in Member States, candidate Member States, and from potential candidate Member States.
22. At the moment, the formally accepted candidates for EU membership are Croatia (which is, subject to treaty ratification, to become a member of the EU on 1<sup>st</sup> July 2013), the former Yugoslav Republic of Macedonia, Montenegro, Iceland, Turkey, and Serbia.
23. The EU designates potential candidates for EU membership, so this category is not an open-ended or ill-defined one. At present, these potential candidates for EU membership are Bosnia and Herzegovina, Kosovo under UN Security Council Resolution 1244, and Albania.
24. The project group, as we have said in paragraph 20, ultimately concluded for a slightly broader formulation so as not to exclude Observers that are not representing a Council for the Judiciary or even an equivalent body. Its recommendation is that: **requests should be accepted, subject to an over-riding discretion, from ENCJ Members or Observers, and from Councils or equivalent bodies of EU potential candidate Member States.** It will be observed that this formulation includes Councils and equivalent bodies of candidate Member States, all of whom are or become Observers.
25. One of the ENCJ's main objectives is to help states that aspire to accession to the EU to improve their justice systems. The ENCJ would be failing in its duty if it ignored European states that were likely to become candidates, but had not yet achieved that status.
26. There is no difficulty in identifying potential candidate Member States, even bearing in mind the lack of a formal process under which the EU defines a state as a "potential candidate Member State". The EU enters into discussions with certain states with a view to formally declaring their candidature; and it is those states that are considered eligible for the purposes of the ENCJ responding to requests for co-operation. The ENCJ

will, in any event, retain an over-riding discretion to refuse a request from an inappropriate source.

27. Whilst Article 3.1 specifically refers to candidate Member States, the project group did not regard the article as excluding the power of the ENCJ to respond to requests from potential candidates. It would be surprising if the ENCJ were mandated to refuse any assistance to Councils for the Judiciary, even from non-European states, if it were thought that, in a special case, the experience of its members could be of specific benefit to that Council.
28. Some members of the project group thought that, based upon Article 4, requests for assistance might properly be accepted from Councils or equivalent bodies in all of the 17 European states who are not members of the EU. Though this would greatly widen the scope of the project, the requests could be limited to those involving the recommendations, guidelines and standards advocated by the ENCJ. The project group decided that, for the time being, this would be a bridge too far; but it was accepted that it could be considered again in future years, having regard to the flexibility in article 4.

To whom should requests be made?

29. The project group concluded that requests should be made to the President, who is content that he should be the conduit for this purpose.
30. The project group thought that the President should automatically share a request with the other members of the Executive Board, and that the Executive Board should have the final responsibility for dealing with requests.

The form of the request

31. The project group agreed unanimously that all requests for assistance should be in writing, and should include a clear written definition of the problem upon which co-operation is sought, and all relevant information and documentation. The nature and scope of the particular project must be clear and be properly recorded. Beyond that, however, it was agreed that the request did not need to be in any particular form. Requests will relate to many different issues, and it would be unduly restrictive if each one had to be made in a particular form.
32. The ENCJ's website should set out clearly the criteria applicable to requests for co-operation (as to which see below).

## **2. The ENCJ's consideration of the request for co-operation**

33. The project group took the unanimous view that each request should be considered and decided upon by the Executive Board. The President concurred with this approach.
34. It is axiomatic that the President would report upon all requests received and the response of the Executive Board to them to the immediately subsequent steering group meetings and annual assemblies.
35. The reason for this consensus is that requests need to be dealt with promptly, and there are currently only 3 steering group meetings each year, and only one General Assembly each year. It was also agreed that the ENCJ would need to set out on its publicly accessible website the procedure that will be adopted once a request is received.
36. The more difficult question under this heading was the criteria against which requests for co-operation should be considered. The section concerning requests for co-operation on the ENCJ's website should include the criteria against which requests would be considered, alongside an explanation of the procedure to be adopted. The criteria, therefore, need to be clear.
37. There was general agreement within the members of the project group that the primary purpose of the ENCJ's response to requests should be to promote the better implementation of the recommendations, guidelines and standards that the ENCJ has developed since its inception. But this agreement does not wholly answer the question of the precise limits of the criteria against which the ENCJ should respond to requests.
38. For example, when the project group first met, it considered that one of the criteria might state expressly that: "*the ENCJ would not normally expect to provide assistance where the issue concerns or involves a dispute between the requesting council and the government of the requesting state*". After further debate, however, the project group thought that such a criterion was unnecessary, since it would be up to the Executive Board to be astute to ensure that the ENCJ was not drawn into a political dispute. Whilst acknowledging the force of this premise, several members of the project group thought that the ENCJ could become involved if its recommendations, guidelines and standards were being blatantly flouted by a Council or by Government action. In such a case, it would be open to the ENCJ to make it clear, at least, that it would prefer to see its principles respected, and that that could only be achieved if it responded to an appropriate request.
39. The project group considered a number of examples of the kinds of request that might be received and that would, directly or indirectly, raise this potential conflict. Such examples included the following:-

- (1) A request from a Council to advise on how to deal with proposed legislation to change the system for appointment of judges in such a way as would exclude or restrict appointments from one section of society or one region.
  - (2) A request from a Council to consider its approach to under-funding of the judicial system leading to significant back-logs in the disposal of cases.
  - (3) A request from a Council to advise on how it should respond to proposals to close important court centres.
  - (4) A request concerning a new disciplinary procedure for judges, which has resulted in the removal of judges who do not deal with administrative disputes involving the Government in ways that the Government approves.
40. After considerable discussion at its three meetings, the project group recommends that the ENCJ adopts the following criteria:-
- (1) **The ENCJ's objective is to try to assist where the request for co-operation seeks collaboration with a view to resolving an issue relating to:-**
    - (a) **the improvement of a judicial system or the attainment of the ENCJ's recommendations, guidelines and standards; and/or**
    - (b) **the effective and efficient disposal of judicial business.**
  - (2) **The ENCJ is not obliged to provide co-operation or assistance in any case. Each case will be considered on its merits.**
41. In dealing with a request, the ENCJ should inquire of the requesting party as to what else is being done by other agencies, so that it can avoid interfering with steps being taken by other bodies providing similar or complementary assistance.

### **3. The appointment of representatives to deal with the request for co-operation**

42. The project group was in general agreement that the Executive Board should appoint appropriate representatives to deal with a particular request.
43. There was some discussion about whether it might be desirable to provide that:-
  - (1) the representatives appointed to deal with each request should include more than one nationality, so as to maintain the pan-European nature of the ENCJ's treatment of a request;
  - (2) each Member Council should provide a list of experts ready, able and willing to help with requests of a particular nature.
44. The areas in which experts in particular fields may be required were considered to include in particular the following:-
  - (1) Judicial independence.
  - (2) Judicial ethics.
  - (3) Methods and terms and conditions of appointment/ employment and promotion of judges and prosecutors.
  - (4) Judicial disciplinary procedures.
  - (5) Judicial complaints procedures.
  - (6) Timeliness.
  - (7) Judicial training.
  - (8) Judicial financing.
  - (9) The administration and finances of the courts and judiciary, and legislation concerning these matters.
45. Ultimately, the project group recommends that neither of the proposals in paragraph 43 is appropriate. It was concluded that the ENCJ needs to approach each request for co-operation with maximum flexibility.
46. It would also be problematic to make it a requirement that multi-national teams be appointed in each case. It may, for example, be impracticable in cases of urgency to appoint more than one appropriate person to deal with a particular request. Whilst it would certainly be desirable in many cases for multi-national teams to be appointed, the project group recommends that each request is dealt with by the Executive Board on a case-by-case basis. In principle each ENCJ Member ought to be willing to arrange for

such assistance when called upon to help but it may be impracticable to name individuals who can be made available at short notice.

47. Lists of experts would not be as useful as might at first appear. Such experts will inevitably have busy diaries, and it will be necessary to find an appropriate person or persons at short notice. The experts that might be suggested by different Members will change quite frequently, and requests in a particular field may not often be received. The Executive Board will be best placed to select experts with appropriate experience when a particular request is received. They will know who is best qualified at that specific time. And they will be able to ask some or all Members for their proposals if they are unable to find suitable experts when they require them.

#### **4. Financing the delivery of the co-operation**

48. The project group agreed that the starting point for the funding issues was that the ENCJ could not embark upon a project to deal with a request unless funding was available in advance to enable it to do so.
49. It was, therefore, decided that the default position was that the requesting party would need to fund the ENCJ to deal with its request. Accordingly, the requesting party should be asked to say in its request whether it was able to fund the request itself.
50. That said, many members of the project group were very keen not to discourage requests from less well-funded councils. It was thought that, in many cases, there would be other ways in which it might be desirable and/or possible for the ENCJ to fund the costs of dealing with a request. These possibilities can be broken down into the following:-
  - (1) Funding by the ENCJ itself.
  - (2) Funding by those delivering the co-operation.
  - (3) Funding by other charitable or pro bono bodies or national Governments.
  - (4) Funding in advance by the European Commission.
  - (5) Ad hoc funding by the European Commission.
51. Before addressing these funding methods, the project group considered whether funding should be limited to the out of pocket expenses of those involved in the co-operation project, or whether it should include also *per diem* allowances for the personnel involved or their employing Ministries of Justice.
52. There was general agreement that the ENCJ should not become involved in paying wages or salaries for the time of those involved in delivering its projects. It was expected and intended that those delivering assistance would only be called upon infrequently, so that it would be inappropriate for them to be remunerated or for the ENCJ or the requesting state to pay 'back-fill' costs, occasioned by their absence from their normal duties.

##### **Funding by the ENCJ itself**

53. The ENCJ will not be able to fund any substantial costs associated with requests for co-operation. But it may be able to defray some minor travel costs associated with the most deserving and important requests. Such funding should be entirely in the discretion of the President and the Executive Board.



#### Funding by those delivering the co-operation

54. Provided individual representatives from individual ENCJ members are not asked to deal with requests too frequently, there may well be deserving cases in which the representatives themselves might be prepared to fund their out of pocket expenses in dealing with the request. Other possibilities include the representatives paying travel costs, and the requesting state paying hotel and food expenses.
55. It was generally agreed that this method of funding should be neither discouraged nor compulsory.

#### Funding by other charitable or pro bono bodies or national Governments

56. This method of funding is a real possibility in some cases. But it will be case sensitive. It was generally agreed, however, that a deserving request was unlikely to fail for want of third party funding, and that the ENCJ should be astute in individual cases to obtain funding from a range of Governments or philanthropic bodies wherever possible.

#### Funding in advance by the European Commission

57. It would in theory be possible to apply to the European Commission for funding of the co-operation project in advance. There are, however, a number of difficulties with this proposal, namely that the European Commission only funds 70-75% of any project, and that it can often take time for a project to be approved.
58. It was, however, considered that in the future as matters progressed it might be possible where necessary to make applications to the European Commission to gain funding for some aspects associated with this project.

#### Ad hoc funding by the European Commission

59. *Ad hoc* funding from the European Commission was generally agreed to be even more impracticable than advanced funding. It has to be borne in mind that the European Commission does not normally fund projects in that way.

## **5. Methods of delivery of the co-operation**

60. The working group concluded that methods of delivery for each request for co-operation should remain flexible. Much will depend on the nature of the request and the actions required to fulfil it.
61. In general terms, however, it is to be expected that a scoping visit to the country of the requesting party will be required in many cases. In addition, the value of visits by representatives of the requesting party to other ENCJ states should not be under-estimated.
62. It would also be preferable for the requesting party to be responsible for the organisation of visits so as to ensure that the ENCJ office is not over-burdened.
63. The project group considered whether details of project delivery should be included in the ENCJ website. It was decided that this might become desirable once there has been experience of dealing with a variety of requests, but that it would be undesirable for the moment for the ENCJ's delivery methods to be circumscribed in this way.

## **6. Reporting on the response to the request for co-operation**

64. The project group agreed that the representatives appointed to deal with each request for co-operation should make a report to the President and the Executive Board at the conclusion of its work. The reports would be made available to subsequent meetings of the Steering Committee and of the General Assembly, unless confidentiality is specifically agreed in advance.
65. The reports should not necessarily be in any prescribed form, but should contain information directed at how future requests can be dealt with more effectively and more efficiently.
66. It was also agreed that the requesting party should be asked to make a report from its perspective on how successfully the project was delivered. These reports too should be transmitted to the Steering Committee and the General Assembly. It would be preferable if this report were agreed with the ENCJ before it was promulgated.
67. The General Assembly could approve a report on the non-confidential experiences gained from dealing with requests for assistance each year to be posted on the ENCJ's website. Alternatively, the President could include a report on the process in his annual report posted on the website.

## **7. The risks associated with the response to the request for co-operation**

68. In considering the 6 points dealt with above, the project group has considered a large number of risks that may arise from the project. The risks can be broken down into risks for (a) the success of the response to a particular request for co-operation, and for (b) the ENCJ in undertaking this project. Several of the risks identified below have ramifications for both the project and the ENCJ itself.

69. Essentially, the project group concluded that, provided its recommendations were followed, the risks it had identified were worth taking in order that the ENCJ could respond effectively to genuine requests for co-operation.

70. The main risks associated with the ENCJ responding to requests for assistance can be categorised as follows.

- (1) The risks that the ENCJ might overstep its appropriate authority by becoming too closely involved in one Council's affairs or by being seen to be meddling in the internal politics of a Member State, or by being manipulated by persons within the requesting party.

These risks will be ameliorated by the application of the above criteria, and by the exercise of appropriate discretion by the Executive Board in responding to particular requests.

- (2) The risk that the personnel involved in the co-operation might be inadequately experienced or otherwise problematic.

The risk will be minimised by careful selection of the appropriate representatives to deal with each request.

- (3) The risk that the subject of a request might be better dealt with by another institution, such as the European Judicial Training Network.

The Executive Board should be astute to ensure that the ENCJ is the appropriate body to deal with any particular request.

- (4) The risk that the ENCJ might inadvertently find itself interfering with bilateral co-operation between councils.

Bilateral co-operation between councils is to be encouraged. But, provided that the Executive Board make appropriate enquiries before embarking on any project, there should be no risk that the ENCJ will interfere with or disrupt bilateral co-operation.

- (5) The risks occasioned by responding to requests from bodies or individuals other than ENCJ Members or Observers.

This risk has been dealt with extensively above in relation to the question of the entities from which requests should be accepted. Provided that the precautions mentioned above are observed, there should be minimal risk to the ENCJ and its Members.

- (6) The risk that the ENCJ will receive too many requests for it to be able to handle them effectively.

The Executive Board can control the responses to requests, and will be able to ensure that the ENCJ does not overstretch its capability and capacity.

- (7) The financial risks for the ENCJ.

Provided that the costs are covered, as recommended above, before any project begins, there should be no financial risk to the ENCJ.

## **Conclusions**

71. The project group has drafted a summary of the recommendations that it proposes for adoption at the General Assembly in Dublin. The document could form the basis of the page relating to requests for co-operation that might appear on the publicly accessible ENCJ website, should the project group's recommendations be accepted.
72. The project group was unanimously of the opinion that, if, notwithstanding the potential pitfalls identified above, co-operation and assistance can be made available to Councils that seek it, it would much enhance the reputation of the ENCJ. It would further one of its most important aims, namely to improve "*co-operation 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*".

Geoffrey Vos  
Project Co-ordinator  
16<sup>th</sup> March 2012

## **Appendix**

### **A summary of the recommendations that the project group proposes for adoption at the ENCJ's General Assembly in Dublin in May 2012**

The project group recommends that the ENCJ should in future deal with requests for co-operation received based upon the following principles and criteria.

#### **1. The request for co-operation or assistance**

1. Requests for co-operation or assistance will be only be accepted from Members or Observers of the ENCJ or from Councils or equivalent bodies of EU potential candidate Member States.
2. Requests for assistance should be made in writing addressed to the President of the ENCJ, and should include a clear written definition of the problem upon which co-operation is sought, and all relevant information and documentation. The requesting party should make clear whether any other Councils or European agencies or organisations have any current engagement in relation to the matters raised by the request.

#### **2. The ENCJ's consideration of the request**

3. Each request for co-operation will be considered and decided upon by the Executive Board of the ENCJ, upon the basis of the following criteria:-
  - (1) The ENCJ's objective is to try to assist where the request for co-operation seeks collaboration with a view to resolving an issue relating to:-
    - (a) the improvement of a judicial system or the attainment of the ENCJ's recommendations, guidelines and standards; and/or
    - (b) the effective and efficient disposal of judicial business.
  - (2) The ENCJ is not obliged to provide co-operation or assistance in any case. Each case will be considered on its merits.

#### **3. The appointment of representatives to deal with the request**

4. The Executive Board will, if it chooses in its discretion to respond to the request, appoint appropriately qualified expert representative(s) from a Member Council or Councils to deal with a particular request.

#### **4. Financing the delivery of the co-operation or assistance**

5. Unless other funding is available, the requesting party should say in its request whether it is able to pay the out-of-pocket expenses occasioned by the ENCJ's response to the request. Such out-of-pocket expenses will comprise travel and subsistence expenses for the representatives appointed to deal with the request, but not any *per diem* allowances for such persons.
6. If the requesting party is unable to fund the request, it can discuss with the ENCJ's administration the possibility of funding by the ENCJ itself, the EU, or by pro bono bodies or national Governments. The ENCJ will not respond to any request until appropriate funding is in place.

#### **5. Methods of delivery**

7. The ENCJ will decide whether to respond and how to respond to each request for co-operation made. It will inform the requesting party of the procedure and process it proposes to adopt.
8. The requesting party should expect to be responsible for the organisation of any visits in country required as part of the response to the request.



## **6. Reporting on the outcome of the request**

9. The representatives appointed to deal with each request for co-operation will make a report to the President and the Executive Board at the conclusion of its work. The reports will be made available to subsequent meetings of the Steering Committee and of the General Assembly. They will be aimed specifically at assisting the ENCJ to deal with future requests more effectively.
10. The requesting party will also be asked to make a report at the conclusion of the project describing from its perspective how successfully the request was handled.