



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Distillation of ENCJ Principles, Recommendations and Guidelines 2004-2017



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**Final Report of the ENCJ's Project Group on the Distillation of ENCJ Guidelines
Recommendations and Standards**

Report 2012-2013, updated 2015-2017

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1. Introduction to the Final Report

- (i)** This project group was formed in order to prepare a concise document distilling the principles established by the ENCJ, and its standards, guidelines and recommendations.
- (ii)** The objective was to distil the wisdom of all previous ENCJ project teams and to create an approachable document that encapsulates the results of most of the pre-existing ENCJ reports and papers.
- (iii)** It was hoped that the final document would be an accessible summary that could be used to enable member Councils for the Judiciary and equivalent bodies in candidate and potential candidate Member States to identify good practices in relation to the management of a modern European justice system.
- (iv)** The Summary of the Principles and Recommendations of the ENCJ (the “Summary”) has been prepared with the intention of producing as short a document as possible. Accessibility has been central to the project group’s objective. The consequence is that the project group has had to be selective. It has included the most important principles and recommendations, but has not always included all of them, and has often excluded the detailed reasons for them. Moreover, some of the wording of earlier documents has occasionally been altered slightly to achieve a consistency of style, or brevity, or both.
- (v)** The Summary does, however, include two mechanisms to enable the reader to obtain further detail as to any specific theme:-
 - (a)** End-notes which refer the reader to the ENCJ documents from which the principles and recommendations are taken; and
 - (b)** A summary of those ENCJ documents in the Appendix to this report, with links to those documents on the ENCJ website.
- (vi)** The intention is to create “a living document” which will be augmented by further principles to be distilled from ENCJ papers and reports yet to be written.

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Project Co-ordinator
13th May 2013

Lord Justice Geoffrey Vos
President
9th May 2016

Update 2016-2017
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Summary of the Principles and Recommendations of the ENCJ

Updated 2015-2016

2. Summary

1. This summary is intended to encapsulate the principles and recommendations of the ENCJ's reports and papers since its inception in 2004.
2. The principles and recommendations are divided into the following 16 themes:-
 - (1) Independence of the judiciary.
 - (2) Councils for the Judiciary.
 - (3) Judicial ethics.
 - (4) Selection, appointment evaluation and promotion.
 - (5) Remuneration and irremovability of judges.
 - (6) Judicial training.
 - (7) Prosecutors.
 - (8) Quality management.
 - (9) Case management, timeliness and ADR.
 - (10) Judicial performance, discipline and management.
 - (11) Access to justice.
 - (12) Funding of the Judiciary.
 - (13) Allocation of cases.
 - (14) Transparency, accountability and media relations.
 - (15) Public confidence.
 - (16) Mutual confidence.
3. Where Councils for the Judiciary are referred to in this Summary, they are to be taken to include other equivalent independent and autonomous bodies.

Theme 1: Independence of the judiciary

4. Every citizen in a democratic society is entitled to benefit from an independent judiciary.ⁱ
5. An independent judiciary must be, and be seen to be:-
 - (1) independent of both the legislative and executive branches of government;
 - (2) established to safeguard freedom and the rights of the citizen under the rule of law;ⁱⁱ and
 - (3) self-governing.ⁱⁱⁱ
6. Judges and the Council for the Judiciary should be closely involved in the formation and implementation of all plans for the reform of the judiciary and the judicial system.^{iv}
7. The best safeguard of judicial independence is the provision of a high quality of justice for all in the form of timely, impartial and well-reasoned decisions. Independence must be earned. High standards will not be achieved without formal safeguards such as the existence of a Council for the Judiciary, objectively determined court budgets, proper administrative facilities and adequate human resources.^v
8. If politicians, citizens and judges alike recognise the need for real judicial independence, a lack of transparency and a lack of funding will not be tolerated. For that reason, education is key to ensuring that judicial systems progress towards appropriate independence and accountability.^{vi}

Theme 2: Councils for the Judiciary

9. A Council for the Judiciary must be self-governing and operate autonomously to guarantee judicial independence, the maintenance of the rule of law, the promotion of civil liberties and individual freedoms, basic human rights and the effective and transparent administration of justice.^{vii}
10. The following should be wholly or partly under the control of a Council for the Judiciary or of equivalent independent and autonomous bodies:-^{viii}
 - (1) The appointment and promotion of judges;
 - (2) The training of judges;
 - (3) Judicial discipline and judicial ethics;^{ix}
 - (4) Complaints against the judiciary;
 - (5) The performance management of the judiciary;
 - (6) The administration of courts;
 - (7) The financing of the judiciary;
 - (8) Proposing legislation concerning the courts and the judiciary.
11. A Council for the Judiciary shall control its own finances and activities independently of both the legislative and executive branches of government.^x

12. At least 50% of the members of a Council for the Judiciary shall be judges chosen by their peers,^{xi} and the Minister of Justice nor politicians^{xii} should be members^{xiii}
13. Concerning the composition of the Councils with respect to non-judicial members:
 - the composition of Councils for the Judiciary and equivalent bodies should include non-judicial members, reflecting the diversity of society;
 - non-judicial members should have the same status and voting rights as judicial members. Civil society should be involved in either or all stages of the selection, election or appointment of non-judicial members, including the possibility to propose appropriate candidates for consideration.
 - Where non-judicial members are appointed by parliamentary bodies, it is desirable that their selection be subject to the achievement of particular qualified majorities in order to avoid political influence.

Theme 3: Judicial ethics^{xiv}

14. Judges must fulfil their duties with integrity, and in the interests of justice and society.
15. Judges have the same duties of integrity in both their public and their personal lives.
16. Judges must refuse to accept any gifts or advantages for himself or for those close to him while exercising his functions as a judge.
17. Judges must decide cases without influence from any third parties.
18. Judges must be impartial. Impartiality means that judges should act and appear to act in all matters without prejudice or preconceived ideas.
19. Judges must treat all persons equally. This requires judges to recognise the uniqueness of the individual and to allow everyone the justice to which he is entitled at all stages of the judicial process.
20. Judges must decide cases diligently and within a period that is reasonable having regard to the subject matter.
21. A code of conduct and ethics should be drawn up by judges or a Council for the Judiciary. It should state the types of breach of the principles of judicial conduct or ethics which would be unacceptable, including conduct which is capable of bringing the Judiciary into disrepute.

Theme 4: Selection, appointment, evaluation and promotion of judges^{xv}

22. Judges should always be selected for appointment on the basis of merit and capability alone. The criteria of merit and capability include intellectual and personal skills, work ethic, and written and oral communication skills.
23. The selection criteria and defined competencies, against which candidates for judicial appointment are to be assessed at all stages of the appointment process, should be public and accessible.
24. The judicial appointment and promotion processes must:-

- (1) be undertaken by a body that is independent of both the legislative and executive branches of government, and involves members of the existing judiciary *and non-judicial members*^{xvi}
 - (2) be open to public scrutiny and be fully and properly documented;
 - (3) be undertaken according to published criteria;
 - (4) promote the diversity of the range of persons available for selection, whilst avoiding all kinds of discrimination;
 - (5) only involve consultation which is open, fair and transparent, with views being (a) related to relevant competencies, (b) recorded in writing, (c) available for scrutiny, and (d) evidence-based.
 - (6) provide for an unsuccessful candidate to be informed of the reasons for his/ her lack of success; and
 - (7) provide for an independent process of challenge and complaint.
25. Any role played by the government or the Head of State in the appointment of judges must be clearly defined. Their decision-making processes must be clearly documented.
26. The bodies responsible for appointing and promoting judges must be adequately funded, and have procedures in place to guarantee the confidentiality of the process.
27. When a judge's performance is evaluated, the independence of the judiciary must be safeguarded.
28. The criteria for the evaluation of professional performance of judges should be varied and comprehensive, including quantitative and qualitative indicators.^{xvii}
29. Any method of evaluating judges on basis of the quality of judicial decisions should not interfere with the independence of the judicial system or the independence of any individual judge's decision-making.^{xviii}

30.

Theme 5: Remuneration and irremovability of judges^{xix}

31. The remuneration of judges must:-
- (1) remain at all times commensurate with their professional responsibilities and public duties; and
 - (2) be constitutionally guaranteed in law so as to preserve judicial independence and impartiality.
32. All discussions and negotiations relating to judicial remuneration should involve the judiciary.
33. Judges may not be transferred to a different post or function without his/her consent. Acceptable exceptions should be determined by law or otherwise established methods.
34. Grounds for transfer should be clearly established and a mandatory transfer should be decided by means of transparent proceedings conducted by an independent body whose decisions are subject to challenge or review.^{xx}

Theme 6: Judicial training

35. High quality training must be available throughout a judge's professional career.^{xxi} Proper training promotes high quality and prompt judicial decisions, which themselves strengthen predictability and legal certainty.^{xxii}
36. The body responsible for judicial training, if not the Council for the Judiciary itself, should be autonomous and have its own budget. It should be supervised by and/or bound by guidelines promoted by the Council for the Judiciary.^{xxiii}

Theme 7: Prosecutors^{xxiv}

37. The autonomy of criminal investigations must be guaranteed, and their outcomes must be monitored by an independent entity.^{xxv}
38. Strong safeguards must be in place to ensure the autonomy and independence of the bodies in charge of investigations so that every offence is enquired into, especially those committed by those with political or economic power.^{xxvi}
39. Prosecution services may in some measure be determined by the state to prioritise the criminal policy of the state. That is why it may prove to be difficult to provide common standards for the independence of both judges and prosecutors. But in relation to their decisions as to whether or not to prosecute any particular case, prosecutors must act as independently as judges, and their independence should be guaranteed by legal provisions at a constitutional level or by laws.

Theme 8: Quality Management^{xxvii} and Evaluation of Quality^{xxviii}

40. The quality of the delivery of justice is paramount, and must be considered in relation to all activities that judges undertake.
41. The main principles of quality management are as follows:-
 - (1) The requirements and expectations of court users and other interested parties must be clearly understood.
 - (2) Quality objectives should be formulated that allow these requirements and expectations to be met.
 - (3) Quality management policy should aim for continuous improvement.
 - (4) Quality management decisions should be evidence-based.
 - (5) Judicial management must show a commitment to quality.

- 42.** A Council for the Judiciary or equivalent governance body should participate in the process of evaluating the quality of justice by:
- (1) defining a quality framework which sets out indicators including criteria for the assessment and evaluation of the quality of justice;
 - (2) defining methods by which the quality of the judicial decision-making process can be evaluated, maintained and improved;
 - (3) identifying and implementing good practices which increase the confidence of citizens in the judicial system; and
 - (4) ensuring that these systems do not interfere with the independence of the judiciary, individually or collectively, or the judicial system.

Theme 9: Case Management^{xxix} Timeliness and ADR^{xxx}

- 43.** The interests of justice require speed, and speed is only advanced by case management. Accordingly, effective case management allows judges to ensure that cases are determined justly, at proportionate cost and in a timely manner.
- 44.** Every Judiciary should set up a structure on how to establish methodologies for case management, including associated standards for the (average) duration of cases for specific categories of cases/jurisdictions. These structures should be guided by the judges and should allow for discussion with stakeholders such as lawyers.^{xxxi}
- 45.** It is right to say that “justice delayed is justice denied”. Timeliness must, however, be balanced against other aspects of judicial performance. The quality of the decision-making should have the highest priority.
- 46.** Introduction of new technologies improves case management, access to justice, and the quality of justice. Judges, Councils for the Judiciary and all other stakeholders should proactively engage in these processes.
- 47.** To achieve timeliness in the delivery of justice, co-operation is required from the executive and legislative branches of government, Councils for the Judiciary, court administrations, judges and court staff, as well as advocates and prosecutors.
- 48.** Changes in court practices proposed by Councils for the Judiciary and/or court administrations must always be evaluated by judges, so as to safeguard the independence of the judiciary.
- 49.** Councils for the Judiciary should achieve timeliness by analysing the problems of their judicial system, identifying remedies, considering the impact of proposed remedies, and establishing methods to measure outcomes, before implementing remedial action.
- 50.** Useful tools for improving case management and timeliness include the following:
- 1) Statistics should normally be published annually for each court, with more frequent data being available to the court administration. Data collection methods should be approved by the judiciary and the Council for the Judiciary.

- 2) User surveys should be carried out regularly in order to obtain feedback on court performance. Objectives as to processing times may be published by court administrations in co-operation with the judiciary, but inflexible fixed deadlines should be avoided.
 - 3) Initiatives to reduce caseloads may include: (a) alternative dispute resolution and judicial promotion of amicable settlement, (b) methods to reduce the number of similar cases heard separately, including test cases and multi-party actions, (c) the extension of jurisdictional limits of lower courts, and (d) the restriction and/or limitation of rights of appeal.
 - 4) Introduction of capacity management systems to balance judges' workloads and capacity, enlargement of courts and re-allocation of judges.
 - 5) The efficiency of court procedures should be improved by (a) introducing small claims procedures, (b) reducing and setting time limits for procedural steps, (c) limiting hearing times, (d) introducing court video and telephone conferences and electronic recording of proceedings, and (e) simplifying written decisions.
 - 6) Processing initiatives may include: (a) electronic filing and access to documents, (b) electronic communication with the court, (c) court specialisation, and (d) delegation to administrative staff.
51. There should be available procedures for mediation and other ADR decided through consultation with relevant stakeholders.
 52. ADR should be a voluntary process. Judges may encourage parties to undertake mediation but should not be able to insist.
 53. Mediation should be conducted by appropriately trained and accredited mediators, but the use of mediation techniques by judges within court procedures is acceptable, where it makes court procedures less formal.^{xxxii}

Theme 10: Judicial Performance, Discipline and Management^{xxxiii}

54. The distribution of responsibilities within a court system should, so far as possible, allow judges to concentrate on their core task of judging.
55. Judges must be provided with all necessary support, including properly qualified staff.
56. A code of conduct and ethics should be drawn up by judges or a Council for the Judiciary. It should state the types of breach of the principles of judicial conduct or ethics which would be unacceptable, including conduct which is capable of bringing the Judiciary into disrepute.^{xxxiv}
57. There should be a separate body responsible for receiving complaints and for the administration of them, independent of the Ministry of Justice and answerable only to the Judiciary. The decision making body should be regulated by law and should include a majority of Judges, and a Judge expert in the jurisdiction and senior to the Judge being investigated.^{xxxv}
58. The body in charge of judicial discipline could be the appropriate national Council for the Judiciary or an independent national judicial discipline board or committee independent from the executive and legislature.^{xxxvi}

59. A judge should only be suspended in the most serious and exceptional cases, and where it is necessary for the administration of Justice. A judge if suspended should remain on full salary during the investigation.^{xxxvii}

Theme 11: Access to Justice^{xxxviii}

60. The principle is that every citizen, from whatever background, should have affordable timely access to justice at convenient locations, so that all proceedings can be easily brought against any person whether public or private, natural or legal.
61. Judicial decisions should be clearly reasoned and made public, subject to considerations of data protection, privacy, personal security and confidentiality.
62. The interests of all those involved in judicial proceedings, including victims and witnesses, should be taken into account. They should all be treated with consideration and fairness.
63. Measures to remove hindrances to access to justice should be carefully planned, analysed and implemented with the co-operation of judges. Such measures should include:-
- (1) Reduction of financial hindrances such as court fees and the absence of free legal aid and/or affordable insurance.
 - (2) Reduction of geographical and technological hindrances, such as excessively large court districts, absence of local seats or travelling courts: better transportation and communication, and the greater use of video and telephone conferences, e-working, and written evidence.
 - (3) Reduction of psychological and social hindrances, such as the use of formal attire and court rooms: improving access to information and explanations of outcomes and treatment of witnesses, linguistic and other facilities for minority groups.
 - (4) Reduction in the requirements for professional representation.
 - (5) Reducing delays and improving timeliness.
64. Legislation, including EU legislation, should be accessible and easily understood.

Theme 12: Funding of the Judiciary^{xxxix xl}

65. The maintenance of the rule of law (“Etat de droit”) requires long-term financial stability in the funding of the judiciary. Courts should not be funded on an annual basis but should have the certainty of longer-term financial budgets. Funding of courts should be protected from fluctuations caused by political instability.
66. The creation of the budget should be systemically and practically free from inappropriate political interference, so that courts are financed on the basis of objective and transparent criteria;
67. The Council for the Judiciary or equivalent body should be closely involved at all stages in the budgetary process, and courts must be resourced to a level which provides an effective and efficient justice system;

- 68. Budgetary priorities must be defined in collaboration with the relevant judiciary according to transparent criteria, and must not themselves dictate the court procedures to be followed.
- 69. The judiciary should be closely involved in the budgetary process and should be responsible for financial management within the budgets allocated to them.
- 70. The allocation of court resources should:-
 - (1) be agreed with the judiciary;
 - (2) be based on transparent, objective and cost-effective criteria; and
 - (3) be sufficient to allow the courts to manage their caseload effectively.
- 71. Financial reports relating to court funding should be drawn up and independently audited.

Theme 13: Allocation of Cases^{xli}

- 72. Individual cases should be assigned to individual judges by a mechanism that safeguards the independence of the judiciary and excludes the possibility of any pre-determination of the decision.
- 73. There should be an established and publicly available method of allocation of cases, governed by statute, regulation or judicial or administrative practice.
- 74. In all established methods of allocation, including administrative or electronic allocation and allocation by a senior judge, Presiding Judge or President of a Court, the following criteria should be paramount: the right to a fair trial; the independence of the Judiciary; the legality of the procedure; the nature and complexity of the case; the competence, experience and specialism of the Judge; the availability and/or workload of the Judge; the impartiality of the Judge; the public perception of the independence and impartiality of the allocation.
- 75. The parties to a case are entitled to be informed about the allocation of the case at a time prior to the start of the hearing/consideration of the case that is reasonable taking into account the nature and complexity of the case, and the time by which the party has to exercise any right to challenge the allocation of the case to the specific Judge/Judges.

Theme 14: Transparency, Accountability and Media Relations^{xliii}

- 76. Councils for the Judiciary, courts and judges must maintain an open and transparent system of justice.
- 77. In discharging this responsibility:-
 - (1) The judiciary should be active in promoting understanding of its work.
 - (2) Sufficient information should be provided to the public and to the media to ensure that the public gains an accurate perception of the administration of justice;

- (3) All bodies, including Councils for the Judiciary, should (a) provide periodic reports on how they have discharged their functions, and (b) publish such reports with a view to promoting the efficiency and quality of justice without jeopardising the independence of the judge's decision-making.^{xliii}

78. The following tools to improve transparency should be considered and implemented:-^{xliv}

- (1) A system of judicial spokespersons, press judges, and communications advisors. These persons should have a detailed knowledge of the judicial system, and be trained in the social and media skills necessary to provide intelligible information to the public concerning the judicial system and judicial decisions.
- (2) Audio and video recording of court hearings, under the control of the judge, with safeguards for non-professionals involved in proceedings.
- (3) Clear guidelines on the use of smart phones and other communication devices in court.
- (4) A strategy relating to the use of social media for communication of information concerning the judicial system and judicial decisions.
- (5) Freely available websites concerning the judiciary, the justice system and decided cases, under the control of the Council for the Judiciary.
- (6) Press guidelines, clarifying the goals and interests of both the judiciary and the media, and stating how courts deal with the media and what the media may expect of court staff.

79. A judiciary can only gain the trust of the society it serves by being accountable. Judicial accountability is a function of public understanding. The more interest that citizens show in the operation of their justice system, the more likely it is to be truly accountable.^{xlv}

Theme 15: Public confidence^{xlvi}

- 80.** It is essential to secure respect for the law and public confidence in the judiciary.
- 81.** Councils for the Judiciary should monitor public confidence in the judiciary and promote measures to increase it.
- 82.** A system should be devised and improved to research public trust and confidence in 5 areas: (a) the justice system and its basic values, (b) the courts, (c) judges and court officials, (d) decisions, judgments and rulings, and (e) EU courts, European laws and regulations. The research should be undertaken at regular intervals and the results should be freely available to the media and the public.

Theme 16: Mutual confidence^{xlvii}

- 83.** Mutual confidence amongst the judiciaries of the EU is required to promote mutual recognition and respect for judicial decisions in other Member States and to improve the functioning of the judicial systems throughout the EU.

- 84.** Judges and prosecutors should proceed on the general assumption that, even though another EU legal system may not be similar, it has the same fundamental guarantees.
- 85.** In order to strengthen mutual confidence, the following steps should be taken:-
- (1) Evaluation and maintenance of minimum standards and minimum procedural safeguards;
 - (2) Promotion of judicial training;
 - (3) Strengthening existing judicial networks and the creation of new links between judiciaries, Councils for the Judiciary, courts and interpreters; and
 - (4) The creation of a database of judicial decisions in other Member States on the interpretation and application of relevant European and national legislation.^{xlviii}

3. Appendix: Summaries of ENCJ Reports

Title and link	Summary of the report
2005	
Mission and Vision I	<p>The report defined mission as “What is our raison d’être”, including permanent intentions, targets, and central values. Vision was defined as “Giving an image of what the organisation wishes to achieve in the long term”, the purpose being to motivate the organisation to achieve concrete results. The objectives were to inform members of the usefulness of these means and to offer them support in using them or improving their use. It contained information about Councils of Justice etc.</p>
Case Management	<p>The speech (at pages 73 -75 of the report to the General Assembly) emphasised that the essence of case management is to provide an effective means by which the judiciary can ensure that cases are determined justly, at the lowest cost, and at the greatest speed. The speech stressed that this was a matter for the judiciary, as it is fundamental to the independence of the judiciary that judges control the business of the courts.</p>
2006	
Judiciary and the Media	<p>The report discussed different topics and findings made during the previous years. Major discussion points were the influence of media on the public’s trust of the Judiciary, the need of a limited role of national organisations, the relationship between media and justice and the daily practice in different countries. It pointed out the need for best practices.</p>
Mission and Vision II	<p>Strategic management comprised defining mission, vision, values, and strategic plan. It upgraded the organisation’s performance. It implemented the role and the place of the judiciary, self-criticism, and confidence. Trust, strategy, performance and transparency are interconnected.</p> <p>The Action Framework consisted of three basic processes: (A) formulating, (B) implementing and (C) evaluating a strategy. The first cycle was an experiment; each successive cycle was an improvement. Formulating the strategy comprises strategic analysis, strategic direction and strategic planning</p>
2007	
Mission and Vision III	<p>The document entitled “ENCJ Working Group Mission and Vision III — If you can’t recognize failure you can’t correct it: Report on Managing and assessing the performance of a Council or Judicial System” is at:-</p> <p>http://www.encj.eu/images/stories/pdf/workinggroups/missionvision20062007en.pdf</p> <p>It described systems of strategic management and performance measurement. A multi-annual strategic agenda is encapsulated in successive year plans. Results are published annually. A planning and accountability system is used for implementation.</p>

	The report included a section entitled: policy evaluation and performance measurement use key indicators, currently comprising quality, production and finance, people and organization and development.
Courts Funding and Accountability	The report took the form of compiled answers from Member States to a detailed ENCJ questionnaire looking at the two topics of court funding and accountability.
Mutual Confidence I	The report recommended a step by step and practical approach to build mutual confidence. It included a useful table of relevant official websites of Member States.
Performance management	The document constituted a fully-reasoned synthesis of all the responses to a questionnaire written by a working group of the ENCJ and entitled “Performance Management”.
2008	Summary of the report
Mutual Confidence II	The report recommended practical steps for the ENCJ to promote mutual confidence including participation in the Justice Forum of the European Commission, co-operating with other EU institutions and the EJTN and developing the contact details published in the previous report.
Budapest Resolution	The resolution , entitled “Self-Governance for the Judiciary: Balancing Independence and Accountability” sets out the general principles which the ENCJ affirms should apply to the governance and working of all Councils for the Judiciary.
Quality Management	The report defined the concept of quality and discussed the role of the councils and similar bodies. Best practices were described in the following categories: mission, vision and strategy, total quality system, leadership and management, complaints procedure, peer review, processing times and working procedures, training, quality assessment and judicial quality, staff evaluation, client evaluation, management information, auditing and reporting, and external communication.
Register	The register listed quality activities in ENCJ countries, thus facilitating the learning from experiences in other countries.
Criminal Justice in the EU	The report looked at terrorism within the context of the criminal justice system, and the need for impartiality of criminal investigations.
2009	Summary of the report
Mutual Confidence III	The papers studied described and recommended further research into a possible model for a court co-ordinator in EU law.
E-Justice	The report focused its activities on channeling the needs of European Judiciaries towards e-justice initiatives in the EU. To that end they followed various European actions and instruments which are listed in the report.
Transparency and Access to Justice I	The report dealt with access to justice in a narrow sense, access to information in judicial organisations and in proceedings. Quality management and transparency were viewed as instruments to improve access to justice. The report focussed on the transparency

<p>Register</p>	<p>aspects of quality management activities corresponding to those described in the 2008 Report on Quality Management.</p> <p>The register listed quality activities in ENCJ countries, including information on transparency. It updated the 2008 Quality Management register.</p>
<p>Bucharest Resolution</p>	<p>The Bucharest Resolution on Transparency and Access to Justice stated that 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.</p>
<p>2010</p>	<p>Summary of the report</p>
<p>Mutual Confidence III</p>	<p>The report contained detailed recommendations for evaluation and training in relation to strengthening Mutual Confidence and the development of a European judicial culture. The report also contained recommendations on court co-ordinators, networks of experts on EU law, and proposals for future action from the ENCJ to strengthen Mutual Confidence.</p>
<p>Public Confidence</p>	<p>The report investigated various methods, including opinion surveys, to monitor and assess public confidence in the various justice systems in operation across the EU.</p>
<p>Access to Justice II</p> <p>Register</p>	<p>The report described specific hindrances to access to justice and the initiatives undertaken to remedy them. It described the methodology and analysis that must be the basis of any initiative. It contained a comparative description focussing on financial, geographical, psychological and social hindrances. Finally it described two national programs, both containing new attitudes and viewpoints.</p> <p>The register described the current situation in ENCJ countries in relation to hindrances to access to justice in 9 categories: Financial, Geographical, Physical, Technological, Psychological, Personal Appearance, Social, Time, Enforcement, and Treatment of Victims of Crime.</p>
<p>Judicial Ethics</p> <p>London declaration</p>	<p>It said that Society's expectations of judges have caused the [ENCJ] to reflect on the question of judicial ethics. It is concerned with striking a balance between the independence of justice, the transparency of institutions, the freedom of the press and the public's right to information. It is also important to preserve judicial independence, free from any pressure or manipulation. This is so that the judge can maintain the impartiality and efficiency that the public expects. Judicial ethics have been addressed in a positive manner, so that the duties of the judge encompass the common founding values of the judge's work and personal qualities of the judge in response to the public's expectations. Independence, integrity, impartiality, reserve and discretion, diligence, respect and the ability to listen, equality of treatment, competence and transparency are the common values identified as essential to the judicial role (Part I). The judge must also demonstrate personal qualities of wisdom, loyalty, a sense of humanity, courage, seriousness and prudence, an ability to work hard and an ability to listen and to communicate effectively. A judge should be aware that his professional behaviour, his private life and his conduct in society have an influence on the image of justice and public confidence (Part II).</p>

	The declaration, provided that ENCJ Members and Observers should promote actively the content of the above report on Judicial Ethics at national and European levels.
2011	Summary of the report
Timeliness	<p>The report contained an analysis on the various solutions used for meeting the problem of long processing times, and a list of recommended actions. First, it contains some general views on aspects of the quality and independence of the judiciary. The report described the causes for delay, and the stakeholders in this problem. It emphasised the importance of cooperation between stakeholders. A chapter on quality management dealt with measurement, analysis and response. The larger part of the report dealt with various remedies to delays, focussing on time requirements, reduction of caseload, increase of capacity, facilitating and speeding up court procedures, and improvement on processing, including case management.</p> <p>A questionnaire on timeliness asked both for statistics on processing times and for other information (answers)</p>
Public Confidence II	The report entitled “Measurement of National & Transnational Public Confidence: Report 2010-2011” contained a series of practical suggestions as to how public confidence in judicial systems might be investigated and evaluated, including a common questionnaire, cooperation with Euro-Justis and the opportunity and feasibility to assess the national and transnational confidence of enterprises in courts throughout the European Union.
Councils for the Judiciary	The report contained a set of recommendations dealing with the composition, presidency and powers of Councils for the Judiciary. It also considered the participation of the Minister of Justice in the Council and the relationship between the Council and the other State powers.
Vilnius Declaration	The “Vilnius Declaration on Challenges and Opportunities for the Judiciary in the Current Economic Climate” addressed how the judiciary might respond to the economic crisis having a significant impact in most European countries.
Standards I	<p>The report entitled “Development of Minimum Judicial Standards: Report 2010-2011” described the proposals on minimum standards regarding judicial recruitment, selection and appointment; judicial training and judicial ethics.</p> <p>The proposals were made in the conviction that mutual confidence in the judiciary of the various European countries may be undermined by a lack of understanding of the minimum standards applied by each country in these areas and that the adoption of minimum standards in these fields would support the development of independent Councils for the Judiciary and contribute to the attainment of a common European judicial culture.</p>
Questionnaire report	The questionnaire report gives an overview of national systems regarding judicial recruitment, selection and appointment; judicial training and judicial ethics
2012	Summary of the report
Standards II	The Report focused on indicators of standards regarding recruitment, selection, appointment and evaluation and promotion of members of the judiciary.

<p><u>Dublin Declaration</u></p>	<p>The “Dublin Declaration on Standards for the Recruitment and Appointment of Members of the Judiciary” approved the standards and indicators laid down in the ENCJ reports of 2010/2011 and 2011/2012 on minimum judicial standards regarding the recruitment, selection, appointment and (where relevant) the promotion of members of the judiciary and regarding the competent body to decide on these issues. The declaration also recommended that ENCJ Members and Observers would aim for compliance with the standards and relevant indicators within their organisation and promote the standards and relevant indicators actively within the judiciary and towards the other relevant authorities, including the executive and legislative powers.</p>
<p><u>Judiciary and the Media II</u></p>	<p>The report entitled: “Justice, Society and the Media: Report 2011-2012” discussed press judges and communication advisors, recordings in courtrooms, publications, press guidelines and proactivity of the judiciary. Each topic focused on recent developments and recommendations. The main recommendations were: the appointment of judicial spokespersons, how recordings can be allowed, the definition of communication strategies, dedicated websites for each court, regulated communication with the media and a proactive approach of the judiciary to involve the public, including use of social media.</p>
<p><u>Judicial Reform I</u></p>	<p>The objective of a judicial reform process should be to improve the quality of justice and the efficacy of the Judiciary, to protect the independence of the Judiciary, and to make more effective its responsibility and accountability. Access to justice, including cross border judicial proceedings, has to be facilitated. The report focused on 5 major areas of reform:</p> <ol style="list-style-type: none"> 1. Organization of courts and public prosecutor offices; 2. Volume of court cases; 3. Judicial proceedings, case management and new technologies; 4. Financing of the judicial system; 5. Court management and allocation of cases. <p>The report evaluated current developments and dealt with the process of reform requiring the maintenance of a careful balance between access to justice, effectiveness and efficiency. Fundamental rights must be guaranteed, despite adverse economic conditions.</p>
<p>2013</p>	<p>Summary of the report</p>
<p><u>Judicial Reform II</u></p>	<p>The 2012/2013 report (part 2) focuses on 5 areas:</p> <ol style="list-style-type: none"> 1. improving ease of access to justice; 2. maintaining and improving high quality justice delivery; 3. ensuring consistency of judgements and timeliness; 4. providing an effective service to public; 5. protecting judicial independence
<p><u>Standards III</u></p> <p>Evaluation and Irremovability of Judges</p>	<p>The report on Minimum Judicial Standards III: evaluation and irremovability of judges looked at the aims, criteria applied, the competent body and the process followed in relation the evaluation of the professional performance of judges. In addition the report looked at the principle of irremovability of judges.</p> <p>A questionnaire was drafted setting out the national systems in place regarding evaluation of judges and the arrangements for the irremovability of judges.</p>

<u>Collection of replies</u>	
<u>Sofia Declaration</u>	<p>Sofia Declaration on judicial independence and accountability included the following:-</p> <p>An independent and accountable judiciary is essential for the delivery of an efficient and effective system of justice for the benefit of the citizen and is an important feature of the rule of law in democratic societies.</p> <p>The judiciary must be accountable, comply with ethical guidelines and be subject to an impartial disciplinary system.</p> <p>Reductions in government expenditure cannot be allowed to undermine judicial independence.</p> <p>Financial stability, security of tenure and administrative independence are necessary safeguards for an independent and impartial judiciary.</p> <p>The protection of judicial independence can appropriately be achieved by a properly functioning council for the judiciary or a similar independent body to consider and determine or to make recommendations to government on all matters relevant to judicial remuneration and conditions.</p> <p>The prudent convention that judges should remain silent on matters of political controversy should not apply when the integrity and independence of the judiciary is threatened.</p> <p>There is now a collective duty on the European judiciary to state clearly and cogently its opposition to proposals from government which tend to undermine the independence of individual judges or Councils for the Judiciary.</p> <p>The ENCJ calls for an independent European rule of law mechanism, respecting the diversity of justice systems, which inter alia will assist in the protection of the independence of the judiciary and in ensuring the promotion of an effective justice system and growth for the benefit of all citizens</p>
2014	Summary of the report
<u>Independence and Accountability</u>	<p>The conclusions of the report can be summarised as follows:</p> <ol style="list-style-type: none"> 1. The best safeguard of judicial independence is the provision of a high quality of justice for all in the form of timely, impartial and well-reasoned decisions. 2. A judiciary that claims independence, but refuses to be accountable to society, will not gain its trust. Independence must be earned. 3. The judiciary achieves legitimacy and the respect of its citizens by delivering high quality and transparent justice. If this is achieved, attacks on the judiciary's independence will receive diminishing support from citizens and from the media. But high standards will not be achieved without objectively determined court budgets, proper administrative facilities and adequate human resources. 4. A high quality of justice is not, however, enough to guarantee an independent judiciary. There is still a need for formal safeguards, such as the existence of a Council

	<p>for the Judiciary responsible for improving the quality of judicial performance and informing the public about the justice system.</p> <p>5. There are challenged judicial systems across the EU. An entirely compliant constitutional structure, including an apparently independent Council for the Judiciary, does not guarantee that the judicial system will be perceived as truly independent.</p> <p>6. Judicial accountability is a function of public understanding. The more interest that citizens show in the operation of their justice system, the more likely it is to be truly accountable.</p> <p>7. If politicians, citizens and judges alike recognise the need for real judicial independence, a lack of transparency and a lack of funding will not be tolerated. For that reason, education is key to ensuring that judicial systems progress towards appropriate independence and accountability.</p>
<p>Standards V</p> <p>Allocation of Cases</p>	<p>The Report on Minimum Judicial Standards V: Allocation of cases concluded that :-</p> <p>1. All cases should be allocated on a basis that is compatible with Article 6 ECHR.</p> <p>2. There should be an established and publicly available method of allocation of cases, governed by statute, regulation or judicial or administrative practice.</p> <p>3. The method for the allocation of cases should ensure the fair and time efficient administration of Justice, and the enhancing of public confidence.</p> <p>4. The following principles and criteria should be applied in the allocating of cases in all established methods of allocation, including administrative or electronic allocation, and allocation by a senior judge, Presiding Judge or President of a Court: the right to a fair trial; the independence of the Judiciary; the legality of the procedure; the nature and complexity of the case; the competence, experience and specialism of the Judge; the availability and/or workload of the Judge; the impartiality of the Judge; the public perception of the independence and impartiality of the allocation.</p> <p>5. Allocation should be the responsibility of the President, Senior Judge of the Court or a Court Board, but the practical arrangements for the allocation of cases can be delegated to either another judge or a civil servant authorised for the purpose of the allocation of cases.</p> <p>6. The motivation/reasoning for any derogation from the established method of allocation should be recorded.</p> <p>7. The method for the allocation of cases should comply with the principles and criteria set out herein whether the Judge is sitting alone or as part of a panel.</p> <p>8. The parties to a case are entitled to be informed about the allocation of the case at a time prior to the start of the hearing/consideration of the case that is reasonable taking into account the nature and complexity of the case, and the time by which the party has to exercise any right to challenge the allocation of the case to the specific Judge/Judges.</p>
<p>ENCJ Guide</p>	<p>On the occasion of the 10th anniversary of the ENCJ, a guide to the ENCJ was published. The guide contains information on the functioning of the ENCJ, the various models of</p>

	Councils for the Judiciary in Europe, the various ENCJ declarations and detailed information on the composition and functioning of the member Councils for the Judiciary of ENCJ. The Guide will be updated regularly.
Rome Declaration	<p>In its first 10 years, the ENCJ has achieved its principal objective of improving cooperation and mutual confidence between the Councils for the Judiciary and the judiciaries of EU member states and candidate member states.</p> <p>The ENCJ will continue to be the unique representative for the institutions that organize the justice systems of the EU, and to promote their relationships with the European Commission and other European institutions.</p>
2015	Summary of the report
Independence and Accountability - continuation	<p>The report includes version 0 of the performance indicators for the independence and accountability of the judicial systems of ENCJ member and observers, and the results of the first Europe-wide survey of the subjective views of nearly 6,000 judges across 22 countries on their own independence and accountability. The survey showed that, on average, judges rated their own independence on a scale of 1 to 10, at 8.8, and the independence of judges in their own country generally at 7.9.</p> <p>Several of the outcomes of the survey were, however, of concern. A large number of judges did not feel that their independence had been respected by government and the media. Many judges also thought that appointments and promotions in their countries had not been made only on the basis of ability and experience. In half of the countries surveyed, more than 30% of judges either thought that judicial bribery had occurred in the last 2 years or were not sure if it had occurred.</p> <p>The ENCJ's report also included the outcomes of the application of indicators of the independence and accountability of the judiciary to all its members and observers. This exercise showed that there was much room for improvement in both subjective and objective independence. In relation to objective independence, scores were particularly low for the funding and management of the judiciary showing that many are still financially and managerially dependent on discretionary decisions of government. Many judiciaries still need to gather data about the perceptions of court users.</p>
Minimum Standards V	Report on Minimum Judicial Standards V: Disciplinary proceedings and liability of judges
Disciplinary Proceedings and liability of judges	<p>The report's main conclusions were as follows:-</p> <ol style="list-style-type: none"> 1. Guidelines and/or a code of conduct/ethics should be drawn up by judges or a Council for the Judiciary. 2. There should be a list or description of types of judicial conduct/ethics the breach of which would be unacceptable in any particular country. 3. Conduct which is capable of bringing the Judiciary into disrepute should be capable of disciplinary action. 4. There should be a separate body responsible for receiving complaints and the administration of them, independent of the Ministry of Justice and answerable only to the Judiciary.

	<p>5. The decision making body should be regulated by law and should include a majority of Judges, and a Judge expert in the jurisdiction and senior to the Judge being investigated. The body in charge of judicial discipline could be the appropriate national Council for the Judiciary or an independent national judicial discipline board or committee independent from the executive and legislature.</p> <p>6. It is undesirable to publish the name of the Judge prior to any sanction being imposed.</p> <p>7. A judge should only be suspended in the most serious and exceptional cases, and where it is necessary for the administration of Justice. A judge if suspended should remain on full salary during the investigation.</p>
<u>The Hague Declaration</u>	<p>The declaration said that:-</p> <p>1. Independent and accountable judiciaries are an essential component of high quality, effective and efficient justice systems, and a prerequisite for a well-functioning EU area of justice;</p> <p>2. The ENCJ will facilitate the use of dialogue groups and other means to enable its members and observers to enhance the quality, efficiency and effectiveness of justice in their countries for the benefit of all persons;</p> <p>3. The ENCJ will continue to develop and improve its standards, guidelines and statements of best practice and find ways to ensure that its members and observers more closely comply with them in order to improve their justice systems; and</p> <p>4. The ENCJ will undertake an evaluation of the quality of justice with a view to its enhancement across the EU and in candidate member states.</p>
2016	Summary of the report
<u>Independence and Accountability: improving performance indicators and Quality of Justice</u>	The report contains and evaluation of the elements that make up the Quality of Justice and the Quality of Judicial Decisions, as the first step towards developing indicators of the Quality of Justice. In addition it includes recommended improvements and updates to (i) the Indicators of Independence and Accountability, (ii) the scoring rules for their application, (iii) the survey of judicial attitudes to their own independence and accountability, and (iv) the application of the indicators and the survey next year.
<u>Independence and Accountability of the Prosecution</u>	A sub-group comprising the representatives of five of those members of the ENCJ, which have a Council for both judges and prosecutors (Belgium, Bulgaria, France, Romania, and Italy), together with some interested observers developed indicators for the independence and accountability of the prosecution and implemented them in 2015/2016. The views and recommendations contained in this report are, therefore, the views and recommendations of these 5 Councils and not of the entire ENCJ. The work of the sub-group was to consider which of the indicators determined by the ENCJ to be applicable to the independence and accountability of judges were also applicable to the independence and accountability of prosecutors.
Minimum Standards VI	The report identifies minimum standards in this field on the basis that such standards, fully respecting the principle of subsidiarity and independence, should be limited to

<p><u>Non-judicial Members in judicial self governance</u></p>	<p>those which are considered indispensable for the organization and management of a Judicial Council or other relevant body as defined below. Taking into account the great variety of possible participants in Judicial Governance and the various systems for appointing and managing non-judicial members in Judicial Governance across Europe, the report looks at</p> <ul style="list-style-type: none"> a) Judicial Councils b) judicial appointment procedures and committees, and c) complaint and disciplinary procedures or committees.
<p><u>Funding of the Judiciary</u></p>	<p>The report contains principles, recommendations and indicators for the budgetary processes, the adequacy of the budget, remuneration of judges and training.</p>

4. END NOTES

- i Judicial Ethics Reports (2008-2010), and the London Declaration 2010.
- ii The London Declaration 2010.
- iii The Budapest Declaration on Councils for the Judiciary (2008).
- iv The Report on Judicial Reform in Europe (2012).
- v The Report on the independence and accountability of the judiciary (2014).
- vi The Report on the independence and accountability of the judiciary (2014).
- vii The Report on Councils for the Judiciary (2011).
- viii The Budapest Declaration on Councils for the Judiciary (2008).
- ix The Report on Minimum Judicial Standards V: disciplinary proceedings and liability of judges (2014).
- x The Budapest Declaration on Councils for the Judiciary (2008).
- xi The Report on Councils for the Judiciary (2011).
- xii The report on Minimum Judicial Standards VI: non judicial members in judicial governance (2016)
- xiii The Report on Councils for the Judiciary (2011).
- xiv The London Declaration 2010, and the reports on Judicial Ethics 2008-2010.
- xv The Dublin Declaration of 11th May 2012.
- xvi The report on Minimum Judicial Standards VI: non judicial members in judicial governance (2016)
- xvii The Report on Minimum Judicial Standards III: evaluation and irremovability of judges (2013)
- xviii The Report on Minimum Judicial Standards III: evaluation and irremovability of judges (2013)
- xix The Report on Judicial Reform in Europe (2012).
- xx The Report on Minimum Judicial Standards III: evaluation and irremovability of judges (2013)
- xxi The Report on Councils for the Judiciary (2011).
- xxii The ENCJ is fully committed to the goals set out in the European Commission Communication of 13th September 2011.
- xxiii The Report on Councils for the Judiciary (2011).
- xxiv Part 2 of the Report on the independence and accountability of the judiciary and of the prosecution (2015).
- xxv The Report on Criminal Law in the EU (2008).
- xxvi The Report on Criminal Law in the EU (2008).

xxvii	The Report on Quality Management (2008).
xxviii	The report on Independence and Accountability of the Judiciary; Improvement of the Performance Indicators and Quality of Justice (2016)
xxix	The Reports on Case Management I and II (2006) and the Report on Judicial Reform in Europe (2012).
xxx	The Report on Timeliness (2011) and the Report on Judicial Reform in Europe (2012).
xxxi	The report on Judicial Reform (2013)
xxxii	The report on Judicial Reform (2013)
xxxiii	The Report on Judicial Performance and Management (2007), the Report on Case Funding and Accountability (2007), and the Report on Judicial Reform in Europe (2012).
xxxiv	The Report on Minimum Judicial Standards V: disciplinary proceedings and liability of judges (2014).
xxxv	The Report on Minimum Judicial Standards V: disciplinary proceedings and liability of judges (2014).
xxxvi	The Report on Minimum Judicial Standards V: disciplinary proceedings and liability of judges (2014).
xxxvii	The Report on Minimum Judicial Standards V: disciplinary proceedings and liability of judges (2014).
xxxviii	The Report on Quality and Access to Justice II (2010) and the Bucharest Declaration on Transparency and Access to Justice (2009).
xxxix	The Report on Case Funding and Accountability (2007) and the Report on Judicial Reform in Europe (2012).
xl	The report on Funding of the Judiciary (2016)
xli	The Report on Minimum Judicial Standards IV: Allocation of cases (2014).
xlii	The Report on Quality Management and its Relation to Transparency and Access to Justice (2009) and the Bucharest Declaration on Transparency and Access to Justice (2009).
xliii	The Budapest Declaration on Councils for the Judiciary (Self Governance for the Judiciary: Balancing Independence and Accountability) (2008).
xliv	Justice, Society and the Media – Report 2012.
xlv	The Report on judicial independence and accountability (2014).
xlvi	Public Confidence 2010, and Measurement of National and Transnational Public Confidence 2011.
xlvii	Mutual Confidence IV 2010.
xlviii	E-Justice 2009.