



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

ENCJ PROJECT TEAM

Measurement of National & Transnational Public Confidence

Report 2010-2011



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1. Introduction

1.1 The Project Team “Measurement of national and transnational Public Confidence”

The Project Team “Measurement of national and transnational Public Confidence” was established by the European Network of Councils for the Judiciary (ENCJ) in June 2010 upon the decision taken by the General Assembly in London on the 2nd of June 2010.

The members of the Project Team include representatives¹ of 13 member countries: Belgium, Denmark, England and Wales, France, Hungary, Italy, the Irish Republic, Lithuania, the Netherlands, Poland, Portugal, Romania and Slovenia. The Project Team was chaired by Prof. Dr. Geert Vervaeke, Belgium.

The Project Team was established as a new ENCJ Project Team but in continuation of the work done by the former ENCJ Working Group on Public Confidence that was chaired by Poland and has presented its “Public Confidence Report and recommendations 2009-2010” during the General Assembly in London. The creation of the Project Team “Measurement of national and transnational Public Confidence” was in fact a suggestion that was made in the recommendations that were joined to the 2009 Public Confidence Report.

For the purpose of drawing up this report the Project Team has met four times: In Leuven on October 11th and 12th 2010, in Brussels on December 13th and 14th 2010, in The Hague on February 7th and 8th 2011 and in Budapest on April 4th and 5th 2011.

The Project Team was very happy to have the assistance of two experts in the field of Public Confidence surveys: Prof. Mike Hough from the Birbeck College, London, England, who is one of the leading experts of Euro-Justis, and Prof. Grazyna Skapska from the Jagiellonian University, Krakow, Poland, who is the expert that was involved in the development of the

¹ The list of participants is attached to this report (appendix 1).

survey in Poland. We wish to thank these experts very warmly for their cooperation, which is very much appreciated and has proven most helpful.

The report will be presented at the General Assembly on June 8th – 10th 2011.

1.2 The context

1.2.1. Opinion research as a tool for monitoring the client's perspective on public services

For many years, opinion research has been used as a tool for monitoring the quality of public services (Flanagan, 2004). Besides other tools to measure process, output and outcome and particularly in fields where the public service needs the legitimacy of the (citizen-) clients, their opinion is being considered as a valuable indicator for the need to undertake service improvement actions.

That is why in many countries during the second half of the past century programmes have been developed to assess and monitor confidence and trust of citizens in the justice system. Among others we can refer to Canada (Roberts, 2004) and to several states of the USA (Flanagan, 2004). In Europe, similar research has been carried out in Spain (Toharia, 2004), Belgium (Cloet, Biren, Vanderhallen et al., 2004; High Council of Justice Belgium, 2007), France (Robert, 2004; CSM 2009), The Netherlands (Kommer, 2004; Dekker e.a., 2006; Dekker & Van der Meer, 2007), Sweden (Swedish National Council of Crime Prevention, 2005 and 2008), Switzerland (Languin, Widmer, Kellerhals et al., 2004), Poland (High Council of Justice Poland, 2009), England and Wales (Hough, Yordanova, Markov et al., 2009, Hungary (2004).

The assessment of public confidence in the justice system has been and must be conceived in its four different aspects:

1. The institution: basic values – justice system
2. The organizational structure: courts

3. The behavioural aspects: judges & court officials
4. The instrumental aspect: judgement (rulings/procedures)

1.2.2. Changing context, changing needs

Although these different initiatives to assess the (evolution of) confidence in the justice system have been of major importance for the increasing awareness of the people's impression of their own justice system and for the development of improvement actions in each country, new challenges – related to a changing society – are still ahead.

In the light of the efforts to move to a strong Europe (cf. Lisbon Treaty) and hence the increasing mobility of citizens and economic activity, the development of an efficient, effective and trustworthy justice system in each EU member state becomes more and more important. Due to the above-mentioned mobility, the perception of the quality of the justice system in other member states becomes growingly significant, since this – amongst other criteria such as medical care, finances, safety issues, ...– could determine in some way the transnational activities (private, business,...) of citizens, enterprises and magistrates. Furthermore European law is developing, which urges for more collaboration of the justice systems all across Europe.

1.2.3. The need for valid comparisons in monitoring public confidence

A first consequence of the changing context is the need to standardise the assessment and monitoring of public confidence in the court system. Standardized assessment of public confidence will reveal similarities and differences in the perception of the European courts, as well as in the justice system of each country. The current situation, in which different tools are used in various countries to measure confidence in the justice system, does not allow valid comparisons, due to the diversity of content and applied methodology.

In any case, once a standardized assessment has been created, further discussion will be needed among the ENCJ members as well in the context of the EU, on the ways in which the

results will be monitored and on the actors who will be involved in the follow-up. An accurate and comparable measurement of public national and transnational confidence is only the first step to foster an exchange of what could work to improve public confidence in the member states.

1.2.4. The need for the development of measures of transnational confidence for different stakeholders

A second need is the development of tools for the measurement of transnational confidence among different stakeholders.

The first group of stakeholders that can be identified are the prosecutors and judges themselves. Since the development of European law and regulations (e.g. European arrest warrant), there is an increasing need to collaborate and simultaneously, also a demand is rising to ensure this collaboration takes place within an environment of trustworthy partners and institutions. The application of EU measures is sometimes hampered by a lack of information and/or trust in the system of each partner's country. Among others, ENCJ is contributing to increase transnational confidence in the justice systems and among magistrates and prosecutors in Europe. An important effort to reach this goal has been announced in the Stockholm Program, namely the proposal of stimulating the exchange of prosecutors and judges in the EU. In addition to the initiatives that are presented here, ENCJ wants to stress the need for a reliable and valid monitoring of judges' and prosecutors' knowledge and experience on the field of European laws and regulations. This monitoring will not only contribute to a greater awareness among judges and prosecutors, but will also be a tool to evaluate the efforts to enhance transnational confidence and – if needed – supplement or redirect the efforts to reach this goal.

The second group of stakeholders are the private enterprises. One criterion for enterprises to determine the level of their investment is the perceived trustworthiness of the justice system and the effectiveness and efficiency of the administration of justice in a particular country. Therefore their opinion on the actual functioning of the justice system and its

evolution may be used as an additional source of information to develop improvement actions.

The third group of stakeholders are the European citizens. Since 1973, efforts have been made to collect EU citizens' views on their preferred EU policy in different policy domains (such as combating organised crime, climate change, poverty and social exclusion etc.). Furthermore, EU citizens' perspectives on sensitive issues have been asked for (e.g. discrimination or corruption). In the context of the increasing mobility on the one hand and the creation and enhancement of an EU area of trust and security on the other, the measurement of the EU citizens' confidence in the justice systems of other member states (apart from their own) can certainly play its role in determining the working topics for improving the confidence in justice systems across Europe. The project group is aware of the fact that the perception of citizens of the justice system is only one of the criteria for people's choices to undertake transnational activities.

1.3 The final aim

The final aim of our work is to create tools in order to preserve and improve the functioning of the court systems throughout the European Union. This plan is not theoretically but rather practically driven, as it aims at creating a tool for evaluating/monitoring interventions that can serve as a support for policy makers. The first step to reach the final goal, is to enlarge our knowledge on the level of public and transnational confidence in the courts systems of the EU member states (or member states of ENCJ) and in the EU courts. Consequently, the Project Team has been working on four different tools that will not only broaden our knowledge on the level of public and transnational confidence in the courts systems throughout the European Union, but that will also offer a more valid basis for comparing the (public) opinion on the functioning of these court systems between the EU countries. It is evident that this kind of information can be of great importance for policy makers in order to pinpoint and tackle the problems and challenges that the E.U. court systems are faced with.

1.4 The four tools for the measurement of national and transnational public confidence

1.4.1. The first tool

In order to enhance the validity of comparisons in monitoring public confidence, the Project Team has developed a common assessment of the in-country public confidence in courts. Therefore, a common questionnaire has been elaborated. This common questionnaire will be put on the ENCJ website and will reach citizens of all countries that are represented in the Project Team. Even more, also the member councils who have not participated in the Project Team are very much encouraged to take part in distributing this common questionnaire. This common questionnaire is also meant to be included in the national surveys on public confidence that are yet being conducted on a recurrent basis in the ENCJ member countries. Finally, the ENCJ could ask the European Commission collaboration in order to conduct an in-dept survey on public trust among the citizens of all E.U. countries. The results of our ENCJ web-poll can be a very important argument for the ENCJ in order to start this collaboration and eventually to get extra funding to realize it. The ENCJ is in fact the body to coordinate these kind of activity since it can guarantee an independent position towards the governments as well as towards the judicial organization.

The first tool is set out in chapter 2 of the report.

1.4.2. The second tool

In order to collect some data about the confidence of citizens in the functioning of other EU court systems (transnational trust of citizens), the Project Team has decided to take part in a survey that will be conducted by the Euro-Justis consortium. The results of this survey can give us a more clear idea of the feasibility of an in dept assessment of the transnational trust of citizens.

The second tool is set out in chapter 3 of the report.

1.4.3. The third tool

In order to examine the knowledge that judges and prosecutors have of European laws and regulations and in order to determine the difficulties that they experience when they are confronted with these laws and regulations, the Project Team has contributed in the development of the questionnaire for a survey that will be carried out by ERA (Academy of European Law) in collaboration with EJTN (European Judicial Training Network). From this survey, we will obtain yet a great deal of information on the experience of European judges and prosecutors with the European laws and regulations and the difficulties they are faced with in the application of these laws and regulations. This information can also serve as an indicator for the feasibility of assessing the mutual confidence of judges and prosecutors in the future.

The third tool is set out in chapter 4 of the report.

1.4.4. The fourth tool

The Project Team did some preliminary research in order to investigate the feasibility to assess the national and transnational trust of private enterprises in the court systems throughout the European Union.

The fourth tool is set out in chapter 5 of the report.

2. The development of a common questionnaire for assessing the public confidence in courts throughout the European Union

2.1 Existing research in the field of Public Confidence in Courts

2.1.1. Identifying and collecting existing surveys on public confidence in the justice system

Before elaborating the common questionnaire, we have identified the existing surveys which measure the in-country public confidence in the justice system. Each member of the Project Team was asked for the existing questionnaires that were used in the different surveys or

polls that have recently been conducted in their country and was asked to identify the body that is responsible for these surveys or polls. Both questions and answering categories were translated in English.

This is the information we have obtained:

Belgium: In Belgium the third “Justice Barometer” was executed in 2010 (the first “Justice Barometer” was carried out in 2004, and the second “Justice Barometer” in 2007). The body that is responsible for this survey on public confidence is the Belgian High Council of Justice itself. The questionnaire that was used is similar to the French, Polish and Romanian questionnaire. The results are comparable to those in France.

Denmark: The Danish Council for the Judiciary has never conducted any survey on public confidence in the judiciary. There are however a variety of surveys that measure the client satisfaction of the users of the courts. Those client satisfaction polls are not the aim of this project group.

In a survey conducted by “Monday Morning” there was one question that can be considered measuring the public confidence of citizens in the Danish Justice system.

England and Wales: The Judges’ Council of England and Wales is not the responsible body for measuring public confidence in the Judiciary. There are however a lot of national survey conducted by other institutions and media, most of them also cover client satisfaction and are not very useful for us. Two surveys are relevant, the first is a recent survey on the confidence in the UK criminal justice system and the second is the “Public Attitude Survey” with tables of comparison including judges.

France: In France there are two surveys that are very relevant. One survey was conducted by a university and the second was conducted by the French High Council for the Magistrates in April 2008. The results are fairly positive for the courts.

Hungary: No useful studies or surveys have been conducted recently.

Ireland: After thorough investigation, it seems that there have not been any national surveys on public confidence in Ireland. The only recent study which can be of some relevancy, was carried out by the Irish Council for Civil Liberties, which is an independent human rights watchdog.

Italy: There are no studies that have been conducted by institutional sector bodies such as the Italian Council for the Judiciary or the Ministry of Justice. Most surveys are conducted by the media. There is one survey that can be relevant: it is a survey that was carried out by “Eurispes” in 2010. The results show a slight increase of the public confidence in the judiciary. However, the judiciary is not well trusted in general. Geographically, there is more confidence in the North than in the South. Also important to note is the fact that, in the Italian Justice system, there is no distinction between judges and the prosecutor’s office.

Lithuania: As of today, no specific surveys have been carried out on public confidence in the judiciary. The only research that has been done is very general and covers public confidence in a number of public institutions. However, plans exist to conduct more specific research to measure public confidence in the judiciary in the near future.

Poland : In Poland, three different types of surveys exist:

1. General public institutions trust survey
2. Occasional surveys focused on different institutions of the judiciary
3. The pilot project that was developed by the Polish Council for the Judiciary in 2009

Portugal: No useful studies or surveys have been conducted recently.

The Netherlands: There are a number of relevant studies. The Netherlands Council for the Judiciary commissioned in 2003 the SCP to direct a research project that had a twofold intention: (1) summarizing the conceptualisation of the concept of ‘(public) confidence’ within the international research literature and (2) presenting the actual findings on the question of factors increasing or decreasing public confidence in the Judiciary (as well as the

underlying explaining mechanisms). There is also the Justice Issue Monitor (JIM), which was commissioned by the Ministry of Justice in the mid nineties. Four time a year a random sample (N=400) out of the Dutch population is questioned (by telephone) on a number of specific items on four different policy areas: criminal policy, youth crime, asylum policy, integration policy and the judiciary (including access to Justice). The Continue Research on the Citizen's Perspective is a project that is directed - since January 2008 - by the Social and Cultural Planning Office (SCP) that is the most important State policy research institute. To a great extent this project can be considered to be the successor of the JIM-project, however the scope of the actual project is broader whereas all kind of policy issues can be taken into account. The project itself encompasses four times a year both a survey among a random sample out of the Dutch population.

Romania (council): In 2008, the Romanian Council for the Judiciary conducted a survey on public confidence in the judiciary. The survey itself was carried out by the Romanian Gallup Organization, and was published in January 2008.

Slovenia: No useful studies or surveys have been conducted recently.

Sweden: Surveys probing the public confidence of citizens in the Swedish justice system have been conducted by the Swedish National Authority of Statistics in 2008 and yearly by the Crimeprevention authority.

2.1.2. Developing an overview of different confidence-related questions

In order to facilitate the choice of common questions, a shortlist was made of all the confidence-related questions and the answering categories used in the different national surveys we dispose of. Different types of questions are identified and for each question the country that conducted the survey is mentioned. You will find this document as an appendix to this report².

2.2 The development of a common questionnaire

² Cfr. Appendix 2.

2.1.3. The leading principles

The members of the Project Team had a thorough discussion to identify the common questions. Before identifying these questions, the following leading principles were taken into account:

- The questions are meant for a very broad public, namely the E.U. citizens. Therefore short, clear and simple questions have to be selected.
- Since the justice system is one of the pillars of our democratic society the focus will be directed to questions that probe to the legitimacy of the justice system and the values of the system and its actors.
- We will not measure the confidence of the clients of the courts as such. Client satisfaction surveys have been developed by the European Commission for the Efficiency of Justice (CEPEJ)³.
- We will relate the confidence measures with a minimum of socio-demographic variables: gender, age, level of education and experience with courts.
- The common questionnaire is conceived as a minimal common assessment instrument. Every member council will be free to include yet more and other questions in their own surveys, in addition to the common questionnaire. Important to mention is that additional questions of member councils have to be included after the common questions and that the order of the common questionnaire cannot be affected (the order in which the questions are asked, can in fact influence the answers of the respondents).
- We searched for common grounds in the existing body of questions in order to suggest questions that are as close as possible to the questions that have already been used in different surveys. Questions were chosen to fathom:

³ This very recent client satisfaction survey developed by CEPEJ can be found on the internet: http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp

1. the relative position of confidence in the justice system to other public services (we chose to make a differentiation in the justice system between the courts and the public prosecutor's office)
2. the essential qualities of a judge
3. the essential features of the court system
4. the expectations on the performance of the court system in its different aspects
5. the expectations on the performance of the European court system

2.3 The common questionnaire

The Project Team agrees upon the following common questionnaire:

The European Network of Councils for the Judiciary is very interested in the way the national and European courts are perceived by the citizens of the different countries in the European Union. Therefore we have prepared a questionnaire on public confidence in courts. We are interested in your own views on judges and courts in the country in which you are resident. The results we obtain will be used to optimize the functioning of the courts throughout the European Union.

We wish to thank you in advance for your time and attention to fill out this questionnaire, which will take you about 10 minutes. We assure you that the submitted information will be treated completely confidentially."

1. What is your country of residence?

- Austria
- Belgium

- Bulgaria
- Cyprus
- Czech Republic
- Denmark
- England & Wales
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Northern Ireland
- Poland
- Portugal
- Romania
- Scotland
- Slovakia
- Slovenia
- Spain
- Sweden

Questions on public confidence in the national and European courts and judges

2. To what degree, on a scale from 0 to 10, do you have confidence in the following institutions in your country of residence (0 meaning “no confidence at all” and 10 meaning “the highest possible degree of confidence”)?

Media	0	1	2	3	4	5	6	7	8	9	10
Health care services	0	1	2	3	4	5	6	7	8	9	10
Banks	0	1	2	3	4	5	6	7	8	9	10
Police	0	1	2	3	4	5	6	7	8	9	10
Courts	0	1	2	3	4	5	6	7	8	9	10
Prosecutors office	0	1	2	3	4	5	6	7	8	9	10
Parliament	0	1	2	3	4	5	6	7	8	9	10
Government	0	1	2	3	4	5	6	7	8	9	10
Education system	0	1	2	3	4	5	6	7	8	9	10

3. To what degree, on a scale from 0 to 10, is your confidence in the courts of your country of residence determined by the following (0 meaning “not at all determined by” and 10 meaning “very strongly determined by”)?

Their capacity to reach fair decisions	0	1	2	3	4	5	6	7	8	9	10
Their capacity to solve problems and resolve conflicts	0	1	2	3	4	5	6	7	8	9	10
Their capacity to treat people properly (respectfully, correctly)	0	1	2	3	4	5	6	7	8	9	10
Cost of their procedures	0	1	2	3	4	5	6	7	8	9	10
The promptness of the decisions	0	1	2	3	4	5	6	7	8	9	10
The degree to which they set out decisions clearly and explain the reasons for them	0	1	2	3	4	5	6	7	8	9	10

4. To what degree, on a scale from 0 to 10, do you believe judges of your country of residence are (0 meaning “not at all” and 10 meaning “absolutely”):

Honest	0	1	2	3	4	5	6	7	8	9	10
Impartial	0	1	2	3	4	5	6	7	8	9	10
Competent	0	1	2	3	4	5	6	7	8	9	10
Independent	0	1	2	3	4	5	6	7	8	9	10
Understanding of people	0	1	2	3	4	5	6	7	8	9	10

5. Do you expect that the functioning of the courts in your country of residence will improve, remain the same or worsen over the next five to ten years?

- Improve
- Remain the same
- Worsen
- Don't know

6. Do you think the decisions of the European courts (Court of Justice of the European Union, European Court of Human Rights, International Court of Justice in the Hague) will have a positive effect, a negative effect or no effect on:

6.1. The quality of the laws in your country of residence

- Positive effect
- Negative effect
- No effect
- Don't know

6.2. The quality of court decisions in your country of residence

- Positive effect
- Negative effect
- No effect

- Don't know

About you

7. What is your gender?

- Man
- Woman

8. In what year were you born?

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9. What is the highest level of education you have completed?

- No formal education
- Primary school
- Secondary school
- Post-secondary education
- University education

10. Did you have any personal experience (other than professional) in courts during the last five years? (for example as a witness, as a defendant, as a suspect, ...)

- Yes (go to question 10.1 and further)
- No (go to question 11)

The following questions (10.1. to 10.5.) are about your latest experience in court.

10.1 In what year did you have your latest personal experience in court (other than professional)?

--	--	--	--

10.2 What type of court case was it?

- Criminal case
- Other case

10.3 What was your role in this case?

- Claimant
- Defendant
- Victim of a crime
- Suspect
- Witness
- Other

10.4 To what degree, on a scale from 0 to 10, did you consider the outcome of your last case to be fair (0 meaning “not fair at all” and 10 meaning “completely fair”)?

00 01 02 03 04 05 06 07 08 09 10

10.5 To what degree, on a scale from 0 to 10, did you consider the treatment to be respectful during your last case (0 meaning “not respectful at all” and 10 meaning “completely respectful”)?

00 01 02 03 04 05 06 07 08 09 10

11 Have you been professionally involved in courts within the last 5 years (for example as a judge, prosecutor, lawyer, registrar, court clerk, expert, notary, member of a jury)?

- Yes (go to q. 12)
- No

12 If so, were you professionally involved as a

- Judge
- Prosecutor
- Lay judge
- Lawyer
- Court staff
- Expert
- Notary
- Member of a jury
- Other

2.4 The translations of the questionnaire

Each member of the Project Team was asked to provide a translation of the questionnaire into their official language(s), as well as an independent back translation into English. This back-translation was asked in order to check if the translation is close enough to the original English version, and thus to validate the translations.

Baring in mind that one of our objectives is to create a more valid basis for comparable data about the confidence of citizens in the court systems across Europe, it is essential to our work that each and every translation of our common questionnaire is as similar as possible to the original English version. Every difference, even minor differences caused by the use of different words or wordings in other languages, should be excluded. This method will ensure

that every citizen, in whatever country he or she resides, is confronted with the very same set of questions.

By the end of March 2011, all translations and back translations were collected⁴. The back translations have revealed some differences between the original English version and the distinct translations, those differences have in the mean time been eliminated. This concludes the validation process of the translations.

2.5 The socio-demographical questions

In order to fully analyze the data that will be collected, the respondents are asked a number of questions concerning their personal situation. These questions are particularly important in order to draw up various statistics of the results of the survey and, in a later phase, to find out the degree of representativeness of the sample for a particular country .

The socio-demographic questionnaire includes the following aspects: age – gender – level of education – experience in courts.

The questions probing to the age, gender and the level of education of the respondents are asked in almost every survey or poll when assessing the confidence of citizens in a number of public institutions. These questions are of evident relevancy in terms of data collection and statistical analysis.

The Project Team also considers it of great importance to question the respondents about their eventual experience in courts. Although it is certainly not our aim to conduct a client satisfaction poll, we cannot overlook the fact that a number of citizens would have or have had an experience in courts during the recent past. To compare the level of confidence of those people to the level of confidence of people who have not had any recent experience in

⁴ The following translations and back translations were supplied: Danish, Dutch, French, Hungarian, Italian, Lithuanian, Polish, Portuguese, Romanian and Slovenian. The translations of the questionnaire are attached to the report (cfr. appendices 3-13).

courts, can result into a very relevant indicator for policy makers: if the level of confidence shown by the first group is significantly greater than the level of confidence of the second group (people who have a real experience in courts, show more confidence in courts), that would mean that the real problem is not the functioning of the court system in the first place. The other way around: if people who have a real experience in courts show less confidence in courts than people who have no experience in courts, then it would mean that the courts themselves are, amongst other factors, responsible for this distrust.

In order to fully investigate this matter, a number of different questions are asked. If a respondent has a recent personal experience in court, he or she will be asked to provide more detailed information about the latest case he or she had in court. A very interesting set of questions follows. The respondent is asked to state the degree to which he or she feels that the treatment during this court case was respectful and the degree to which he or she feels that the outcome was fair. These are in fact the two key elements that, according to the “procedural justice theory” (Tom Taylor), determine the level of trust in courts.

There is also a question that asks the respondents if they have or have recently had a professional involvement in courts. When this question is answered in a positive way, the respondent will be asked to state the nature of this involvement. This involvement can be as a judge, a lay judge, a lawyer, a member of the court staff, a member of the jury, and so on. The distinction between the personal and professional experience is very relevant, as we have to take into account that respondents can have had both a personal and a professional experience in courts. Apart from this, it will also give us the opportunity to compare the results of the survey of two distinct groups of respondents one against the other: one group that could be called “the insiders of the court system” (these are the persons who have or have had a professional involvement in courts, such as the judges themselves, court staff, members of a jury, lawyers, etc..) and another group consisting of “the outsiders of the court system”. This distinction is used in almost every national survey and has led to interesting interpretations (see for example Toharia).

2.6 How to determine the E.U. court system that is assessed by the respondents: residency or nationality of the respondent

In order to successfully collect and analyze the data that will be obtained by our survey, it is absolutely essential to choose one fixed criterion of determining which national court system that the respondent has in mind when filling out the questionnaire.

The Project Team decides this criterion should be the country of residence of the respondent and not his or her nationality. The residency of the respondents is the more relevant criterion, two major facts have to be taken into consideration.

First of all we have to consider the increased mobility of citizens throughout the European Union: for European citizens who don't have the nationality of the country they now have lived in for several years, it would be irrelevant to assess their level of confidence in the court system of the country of their nationality.

Secondly, we cannot exclude from the survey those people who don't have the nationality of one of the E.U. countries but nevertheless have their residency within the European Union. These people can also have a relevant opinion on the functioning of the court system in their country of residence, and that opinion cannot be left out.

Apart from this, we must also think about people who have a double nationality, it would be very confusing to them when being confronted with a question where they can only state one nationality.

Taking all this into account, the residency of the respondent will be the one, fixed criterion to determine the country whose court system is being assessed by a given respondent.

2.7 The methodology: from a web-poll on the ENCJ's website to an EC funded survey on public confidence in courts across the EU

2.7.1. Exploration and testing phase

After informing all members and observers about the project all of them will be invited to participate in the project. Before the General Assembly in Vilnius, we will send our final report to all ENCJ councils and observers, we will explain to them what our hopes and aims are and we will ask them to take part in the survey. If they are willing to participate, they will be asked to provide for a translation and back translation of the questionnaire in order to put this on the ENCJ website.

The *first step* to be taken will be to put our common questionnaire on the website of the ENCJ (in the format of a web based application). Each of the member and observer councils is asked to provide a link from their own website to this application on the ENCJ website. There is also the possibility to put the application on the website of the member council itself. During the meeting a demonstration of the web application is given.

For the development of the web application and for the statistical analysis of the results of our survey, the ENCJ will make use of “SPSS”⁵, which is a very complete computer program with a very well established reputation in the field of statistical analysis.

This survey in the format of a web application on the ENCJ’s website can figure as a kind of pilot project. It has the value of an exploratory research, of which the main purpose is to collect a certain amount of data on a relatively short term. In fact, by conducting a web based poll, we can obtain information on public confidence fairly quickly and we won’t depend on the timing of the more extensive surveys which are often conducted only every two or three years. Once these data are collected and analyzed, that will be the very basis for any future and more extensive activities.

The Project Team will gather information from at least 400 respondents per country (non-representative sample). This will make a total of over 4000 respondents throughout the European Union and should be sufficient in order to have a first idea about the confidence in the court systems of the European Union.

2.7.2. Strategy on informing citizens about the web-poll and getting them to participate

⁵ The SPSS computer program has been put at the disposal of the ENCJ by the High Council of Belgium.

The question is raised how to find people/citizens willing to fill out the questionnaire. Indeed, we have to find a way of making citizens aware of the existence of our survey besides the link on the website of every participating member or observer council. Once they know of it, we have to somehow be able persuade them to fill out the questionnaire.

The Project Team has the idea to start a facebook and/or twitter account on this topic. This is a very easy way of informing people and it is very likely to get a quick and big response to it. The details of this strategy will be elaborated by the Dutch Raad voor de Rechtspraak and will be presented at the General Assembly in Vilnius.

2.7.3. Integration of the common questions in national surveys

The *next step* would be to integrate these common questions in national surveys that are conducted by the ENCJ member councils themselves. In some countries, the council is not the responsible body for conducting surveys on public confidence. In these countries, the member council will contact the responsible body or bodies and try to convince them to introduce our common questions in their questionnaire. By extending the common use of our questionnaire, we hope to increase the basis of comparison and hence the validity and importance of our findings.

2.7.4. EU funded research to extend the use of the common questions to all EU countries

The *ultimate step* would be to communicate the first results of our web-poll to the European Commission. With these results we will have yet another convincing argument to hopefully get some funding of the European Commission to do a thorough survey on public confidence among the citizens of all E.U. countries.

<h2>3. The opportunity and feasibility to assess the transnational public confidence in courts throughout the European Union</h2>
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3.1 Cooperation with Euro-Justis

3.1.1. Context

In order to investigate the opportunity and feasibility to assess the transnational public confidence in courts, the Project Team chose to cooperate with the Euro-Justis consortium in a FP7 funded project proposal called “NECTAR”.

On January 24th the ENCJ Executive Board expressed its support to this initiative.

In the steering committee of this project, the ENCJ will be represented by the president of the ENCJ, Miguel Carmona Ruano, as well as Geert Vervaeke, coordinator of this Project Team and member of the ENCJ executive board and Marc Bertrand, director of the ENCJ office.

3.1.2. Euro-Justis

The Euro-JUSTIS is a project that is co-funded by the European Community’s FP7 2007-2013, and is designed to provide EU institutions and Member States with new evidence-based indicators for the assessment of public trust in criminal justice and public feelings of security.

The Euro-JUSTIS project aims to develop and pilot new survey-based indicators of public confidence in justice, a term used here to embrace issues relating to fairness, trust and insecurity. It will assemble contextual data for interpreting the indicators, on the assumption that there are close relationships between public perceptions of justice and the substantive quality of justice as reflected in the workings of the justice process.

It will develop tools for presenting and interpreting the indicators in ways that are intuitive and accessible.

The Euro-JUSTIS project also aims to build some consensus across E.U. Member States about the importance of assessing crime policy against objective criteria of public confidence and trust.

3.2 The NECTAR Project

In February 2011, the Euro-Justis consortium has submitted a proposal under the Seventh Framework Program (FP7), which is the European Union's chief instrument for funding research over the period 2007 to 2013.

The NECTAR project aims to explore some “crimes of mobility and integration” that recently emerged in unified Europe, using the procedural justice theory (Tom Taylor) as a theoretical framework.

The NECTAR project will shed light on a number of distinctively “new European” criminal acts that have emerged in the last decade as a consequence of technological developments and the increased mobility of populations across Europe.

The objective of the project is to develop policy responses to “new” forms of deviant behaviours. The NECTAR concept stems from the idea that public trust in justice is critically important for social regulation, in that it leads to public acceptance of the legitimacy of institutions of justice and thus compliance with the law. The project will investigate whether a change of direction in criminal policy – from deterrence strategies and penal populism to procedural justice and trust based policy – is desirable, and in what terms.

While traditional research is primarily concerned on “why people break the law”, the focus in NECTAR is on “why people obey to the law”. NECTAR will conduct four case studies of new forms of criminality that reflect – in various ways – the development of supra-national structures and processes across Europe. The 4 crime categories are: a) trafficking of human beings; b) trafficking of goods; c) the criminalization of migration and ethnic minorities; and d) cyber-crimes. NECTAR will examine questions of criminalization; assess the importance of public trust in justice and beliefs about the legitimacy of their own criminal justice system; and explore whether trust-based regulation makes sense at a supra-national level. The findings will inform an innovative model of “trust-based” policy with a raft of far-reaching recommendations for politicians and law-makers in Member States and EU institutions.

The surveys will be carried out in 6 European countries, namely The United Kingdom, Finland, Bulgaria, Lithuania, Italy and Turkey. In each country, 1000 interviews will be taken.

The decision on this proposal is in the hands of the European Commission and is expected by July 2011. If all goes well, the project can be launched in September 2011.

As this project includes both an assessment on the public confidence at the domestic level and an assessment on the way people perceive justice systems of a number of other E.U. countries, this is an ideal opportunity to take yet a first step into collecting data about the transnational confidence of citizens.

4. Assessment on the knowledge and experience of European judges and prosecutors

4.1 Changed objective

The original plan that was mentioned in the project fiche was to develop a standardized assessment of transnational confidence of judges and prosecutors and thus measure the mutual confidence of European judges and prosecutors. However, after having thorough discussions about this during our consecutive meetings, the Project Team doesn't consider this plan to be feasible as of now. The problems and risks of measuring the mutual confidence of judges and prosecutors within the European Union seem too great. Amongst others, it could cause a risk of diplomatic incidents between E.U. countries once the results of the poll are published, the absolute secrecy of the submitted information would have to be guaranteed, judges and prosecutors might experience ethical problems when having to state their opinion about other E.U. judges and prosecutors and given these hazards, there is also a great risk that not all member councils would be willing to participate.

Before making any decisions in this matter, the Project Team therefore decided to do redirect this goal and to do research about the experience of E.U. judges and prosecutors with E.U. laws and regulations (eg. European arrest warrant, enforcement, family law, mutual assistance application, regulation of deliverance of documents, Brussel I, Brussel II,

Phenix project: assets in criminal cases,...), their experience in laws and regulations of other EU countries, the problems they are faced with when applying these laws and regulations and the contacts they have with other EU judges and prosecutors.

4.2 Cooperation with ERA-EJTN

4.2.1 The context

Early February 2011, the ENCJ office was contacted by the Academy of European Law in Trier (ERA). In fact, ERA and the European Judicial Training Network (EJTN) have been entrusted by the European Parliament to conduct a wide survey of all the judges and prosecutors of the European Union, mainly on the topic of judicial training in the field of European law and regulations.

The draft of this questionnaire showed some major similarities to the ideas that were set out by the Project Team during the meetings in Brussels and The Hague. Baring in mind the fact that the ERA-EJTN survey will reach all judges and prosecutors (as well as the court staff) of all E.U. countries and the overlaps that exists between the aims of the Project Team and this survey, we successfully negotiated with the ERA-EJTN into participating in this survey.

As a consequence, the president of the ENCJ, Miguel Carmona Ruano, will represent the ENCJ in the Research Advisory Committee of this ERA-EJTN study.

In February - March 2011, The ENCJ has actually been involved in the development of the final ERA-EJTN questionnaire and has added to the ERA-EJTN survey a number of questions relating to the aims of the Project Team⁶.

4.2.2 The ERA-EJTN survey

On March 9th 2011, Mr. John Coughlan, project leader of the survey and deputy director of ERA, has presented the ERA-EJTN "Judicial Training in the EU"⁷.

⁶ The questions that were suggested by the ENCJ are attached to the report (appendix 14).

The aim of this study is to provide an in-depth, objective analysis of judicial training in EU law, in the law of other Member States and in comparative law, with a view to compiling an inventory of training methods, schools and institutions and identifying best practices and possible shortcomings.

To reach as comprehensive a picture as possible, the research team will apply an exhaustive methodology, including a detailed questionnaire that will be addressed at different (though sometimes overlapping) target audiences: for different for judges and prosecutors in the individual Member States.

There will be three separate questionnaires addressed at different (though sometimes overlapping) target audiences:

- Survey of professional judges, public prosecutors and court staff in all 27 Member States (for the purpose of this study, court staff refers to persons with legal training who are not judges but who play a role in drafting judgments, at least at a preliminary level, or in judicial cooperation)
- Survey of judicial training actors on EU and national level (i.e. training institutions and networks, councils of judiciary, ministries of justice, courts and prosecutions with responsibilities in training, professional associations, etc.)
- Survey of European stakeholders in judicial training (institutions, bodies and networks without direct responsibility for providing training, but important for training strategy, contents and evaluation)

It is the first survey that will be conducted in collaboration with the ENCJ. It will consist in the analysis of the results obtained from a detailed questionnaire that is addressed to all individual professional judges, public prosecutors and court staff. The questionnaire will assess their evaluation of and attitude to existing judicial training. The survey should gather data on the function and experience of the respondents, on their academic legal studies, on their initial judicial training (if any), on their experiences of continuous training and language training, on the extent to which they deal with issues of EU law, on their contacts with

⁷ A powerpoint presentation of the ERA-EJTN survey 'Judicial Training in the EU' is attached to the report (appendix 15).

foreign judges and prosecutors, and on their recommendations for best practice and suggestions for improvement in judicial training at EU level. The questionnaire is translated into 22 official EU languages.

This detailed questionnaire can be found as an appendix to this report (appendix 16). The questions that were suggested by the ENCJ are included.

The timeframe regarding to this survey is the following:

- March 2011 Distribution of questionnaires
- Late April 2011 Deadline for submission of responses to questionnaires
- May 2011 Follow-up measures for jurisdictions with low response rate
- May-June 2011 Analysis of responses and compilation of national reports
- July 2011 Delivery of national reports to the European Parliament
- July 2011 Meeting of Expert Evaluation Group
- July-Sept 2011 Analysis of remaining data and preparation of draft study
- Sept 2011 Second meeting of Research Advisory Committee
- October 2011 Delivery of final study to the European Parliament

4.2.3 The gains of the ERA-EJTN survey for the ENCJ

Given the timeframe of the survey, by the kick-off meeting in The Hague on September 15th and 16th 2011 , the ENCJ should be able to report on the results and hopefully also on the first analysis of the ERA-EJTN survey.

In fact, the data on the extent to which EU judges and prosecutors deal with issues of EU law, on their contacts with other EU judges and prosecutors, and on their recommendations for best practices and suggestions for improvement in judicial training at EU level, can be related to several of the ENCJ's strategic goals, namely the 2nd and 4th strategic goals that consist in optimizing the provision of expertise and opinions on the Justice Sector and promoting best practices in the Justice sector for quality management.

5. The opportunity and feasibility to assess the national and transnational confidence of enterprises in courts throughout the European Union

During its consecutive meetings, the Project Team has discussed thoroughly about the opportunity and feasibility to assess the national and transnational confidence of enterprises in courts throughout the European Union.

Three member councils have conducted preliminary research in this matter:

- **Poland**

The Polish council has sent a letter to 15 organizations that represent different kinds of entrepreneurs. In this letter it was explained that the ENCJ is working on a project which would include a survey on the matter of confidence in courts amongst enterprises throughout the European Union. It was also asked if in fact, the court system in a given E.U. country, would be a factor that is taken into account by enterprises when making the decision to invest or to do business in this country.

From the 15 organizations that were summoned, only 4 have answered, 3 of them were willing to cooperate and stated that the functioning (or disfunctioning) of the court system has a role in determining in what country to do business, put up new branches or expand the market. The other organization (the Polish-German Chamber of Industry) however stated that the functioning of the courts is not the first thing that is taken into account by enterprises in making decisions for investing in other E.U. countries.

- **Lithuania**

The Lithuanian council has contacted the Lithuanian Confederation of Industrials (LCI), which is an umbrella organization joining together 35 associations of different industrial

branches and 9 regional associations. The members (a total of over 2700) are enterprises of various industries, most of which are large state or private capital companies, their activities mainly consist in trading, industry, training and scientific research.

The letter that was sent to the LCI explained that the ENCJ is working on a project whose main objective is to develop tools that help to raise confidence in the court system. This project would include a survey that will be conducted in all E.U. countries. It was also pointed out that the ENCJ is thinking about developing a questionnaire that would be distributed amongst E.U. enterprises. It was asked whether the LCI could establish a list of corporate executives or managers who make key and strategic decisions of enterprises and are able to respond to questions about confidence in the court system in Lithuania and abroad.

The Lithuanian council has received the following answer from MR. Mindaugas Puidokas, the executive director of the communications department of the LCI. He affirmed that the LCI represents almost all the industrial (and partly services such as transport and logistics) branches, so the questionnaire being addressed to the executives of associations that are target groups would give a good reflection of their experience with the judicial institutions and processes. The LCI is willing to disseminate the ENCJ questionnaire, but they feel it is important to clearly specify the objective of the survey and that it also points out that one of the objectives is to improve business situation. By doing this, it would be more likely that a big number of associations would participate. The LCI also gave the advice to put the questionnaire on-line and make it as simple as possible.

- **Belgium**

The Belgian council has contacted (a) a multinational company, (b) a law firm specialized in legal support for enterprises and (c) a professor in economics.

The company and the law firm responded that for investing/doing business within the European Union, the reliability of the court system is of little or no importance when making strategic decisions of what country to choose. E.U. treaties, laws and regulations offer some kind of a safeguard in this matter and the E.U. monitoring is a guarantee with regard to the evolution of and trust in the court system. The functioning of the court system is a factor, although not the first one, in making decisions to invest or do business in non E.U. countries. Purely economical factors, such as costs, labor market, logistics, and so on are far more important to enterprises when making international business decisions. In order to make such decisions big consultants in general prepare the file.

From the economist's point of view 4 approaches can be distinguished: a practical and three scientific ones. (1) the study work is done by consultants (analysis of costs, location, clients, labour market, etc.), but in the final phase when a choice must be made between the remaining options (different countries or/and locations within countries) that are considered economically equal the quality of the justice system could be/is often the decisive factor; (2) insights based on international business theories/research (e.g. contract theory). The quality of the manner in which contracts can be exacted determines the mode of investing (e.g. should a company work with local partners or should one do everything oneself?); (3) the country's international ranking, i.e. a macro-economical approach. How attractive is a county for foreign countries? One ranking factor is the quality of the public institutions; (4) literature on social trust and social cohesion in relation with international business. A society characterized by a high level of trust and belief in its institutions, performs better, has a more motivated labor force, higher productivity, less striking days, correct taxation, etc.

This preliminary research learned us that the confidence of enterprises in the functioning of the court systems within the European Union can be a factor for making strategic decisions. The Project Team thinks it is in fact an interesting topic for more research. Indeed, to our knowledge the confidence of the enterprises in the court systems of E.U. countries has not been assessed yet. Given the fact that enterprises are an important stakeholder of society, an assessment of their national and transnational confidence in the court system could give

us some important indications in order to improve the quality of the court systems throughout the European Union.

However, if we choose to assess the national and transnational confidence of enterprises, more in dept research is needed.

In Vilnius the ENCJ should decide whether to continue this work. In order to be able to conduct in dept research on national and transnational confidence of enterprises, the Project Team would need the assistance of experts in this matter (e.g. professors with expertise in economics and/or international law, big companies and consultancy firms, chambers of commerce).

6. Future actions and decisions

6.1 The follow-up of the four tools conceived by the Project

With the development of a common questionnaire to measure the in-country public confidence in courts throughout the European Union, the collaboration with the Euro-Justis consortium for measuring the transnational confidence of citizens, the active contribution of the ENCJ in the ERA-EJTN “Judicial Training in the EU” survey and the preliminary research in the field of measuring the national and transnational confidence of private enterprises in the court systems throughout the European Union, the Project Team has taken first and important steps to reach the final aim of creating tools in order to preserve and improve the functioning of the court systems throughout the European Union. Each of the four tools that are set out above, will however need to be followed up within the next year to come.

6.1.1 The common questionnaire for assessing the public confidence in courts

The common questionnaire has been fully elaborated and validated by the Project Team. The web-application on the ENCJ’s website will be operational as of the General Assembly in Vilnius, on June 8th-10th 2011.

As mentioned above, other member councils and observers are still very welcome to take part in this survey. Those who are willing to participate, will be asked to deliver a validated translation of the common questions in order to put this on the ENCJ's website. These translations should be delivered by the end of June 2011.

The web-poll will be launched in September 2011. The data collecting will be stimulated via links on each participating member council's website and via a number of social network websites.

The web-poll will run for 6 months, that is until March 2011. By the next General Assembly, in Dublin on May 9th-11th 2012, the data obtained from this poll will be analyzed and a preliminary report will be delivered on the public confidence in courts in the countries of the ENCJ members engaged in this project.

Hence, by May 2012 the exploration and testing phase of our common questionnaire will be concluded. This exploration and testing phase has 3 major goals:

1. To check to what extent citizens are willing and motivated to fill out a questionnaire that assesses their confidence in courts
2. To check the quality of the questions themselves
3. To convince the European Commission to invest in creating a standard assessment on public confidence: with the results of our web-poll and the preliminary report, the ENCJ can negotiate EU funding in order to do thorough research in the field and extend the use of the common questionnaire to all EU member states

6.1.2 The measurement of transnational trust of citizens

The decision on the proposal of the Euro-Justis consortium is expected by July 2011. It can go two ways:

If the FP7 bid is not accepted, the ENCJ will have to decide whether to conduct a feasibility study on measuring the transnational confidence of citizens in the courts throughout the European Union. This could take the format of a continuation of the actual Project Team resulting in the proposal of some common questions about the transnational confidence of citizens that can be included in the common questionnaire that is set out above.

If the proposal of the Euro-Justis consortium is accepted, the NECTAR project can be launched in September 2011. The results of this project, will serve as a good indicator for the usefulness of assessing the transnational confidence of citizens. If assessing the transnational confidence appears feasible, this could also result into the development of some extra questions about the transnational confidence of citizens that can be included in our common questionnaire as mentioned above. As mentioned earlier, in this scenario the ENCJ will be following the research activities as a member of the scientific committee.

6.1.3 The measurement of mutual confidence of judges and prosecutors

The final report of the ERA-EJTN survey is due in October 2011. We have to wait for these results in order to discuss the usefulness of further activities in this field.

6.1.4 The measurement of national and transnational confidence of private enterprises

As mentioned above, the ENCJ will have to decide whether to continue this work. In the affirmative steps should be made by the project team 2011-2012 to contact university professors with expertise in international business, companies, big consultants and chambers of commerce.

For the measurement of national and transnational confidence of private enterprises, a new questionnaire should then be elaborated.

6.2 Whom to charge with the follow-up

As mentioned above, there is still a significant amount of work in process. The question remains whom to charge with this follow-up. There are 3 possibilities: (1) the Project Team continues for another year and does the follow-up itself, or (2) asks the ENCJ office to take on the responsibility for the follow-up and the implementation, or (3) the ENCJ office becomes responsible for the implementation of the first three tools/goals and the Project Team continues the development of the 4th tool (confidence of enterprises in the court systems).

In fact, entrusting the ENCJ office with part of the work could strengthen the position of the ENCJ office and could allow the office to expand its activities. However, we are aware of the fact that the ENCJ office would have to get more means and manpower to do so.

7. Appendixes

1. List of the participants of the Project Team
2. Analysis of the existing surveys on Public Confidence
3. Danish translation of the common questionnaire
4. Dutch translation of the common questionnaire
5. Dutch (Belgium) translation of the common questionnaire
6. French translation of the common questionnaire
7. Hungarian translation of the common questionnaire
8. Italian translation of the common questionnaire
9. Lithuanian translation of the common questionnaire
10. Polish translation of the common questionnaire
11. Portuguese translation of the common questionnaire
12. Romanian translation of the common questionnaire
13. Slovenian translation of the common questionnaire
14. List of questions suggested by the ENCJ to be added to the ERA-survey
15. PowerPoint presentation of the ERA-survey
16. The final questionnaire of the ERA-survey

Appendix 1: List of participants of the Project Team “Measurement of National and Transnational Public Confidence

Country and Organization	Participants
Belgium Belgian High Council of Justice	Mr. Geert Vervaeke (coordinator) Mr. Jean-Marie Siscot Mr. Nicolas Snelders Ms. Caroline De Groote (secretary)
Denmark Domstol	Mr. Michael Villemoes Larsen Mr. Soren Axelsen
France Conseil Supérieur de la Magistrature	Mr. Dominique Latournerie
England and Wales Judges’ Council of England and Wales	Mr. Derek Searby
Hungary National Council of Justice of Hungary	Ms. Beata Lukacsi
Ireland Courts’ service	Mr. William Hamill
Italy Consiglio Superiore della Magistratura	Mr. Alessandro d’Andrea Mr. Roberto Rossi
Lithuania Judicial Council of Lithuania	Ms. Diana Labokaite
The Netherlands Raad voor de Rechtspraak	Ms. Merel Berling Mr. Albert Klijn
Poland National Council of Justice of Poland	Mr. Lukasz Bojarski Ms. Barbara Godlewska-Michalak Mr. Janusz Zimny
Romania Consiliul Superior al Magistraturii	Mr. Alexandru Serban Ms. Alina Barbulescu Ms. Cristina Radu
Portugal Conselho Superior da Magistratura	Mr. Rui Coelho
Slovenia Republika Slovenija Sodni Svet	Mr. Miro Cerar