



NACIONALINĖ TEISMŲ ADMINISTRACIJA

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Teisėjų tarybai

2020-01-24 Nr. 4R-127-(117)

DĖL JUNGTINĖS KARALYSTĖS TEISĖJŲ TARYBŲ PADĖTIES EUROPOS TEISMŲ TARYBŲ TINKLE (ENCJ) PO „BREXIT‘O“

Nacionalinė teismų administracija informuoja, kad yra gautas Europos teismų tarybų tinklo (toliau – ENCJ) prezidento Kees Sterk laiškas, kuriuo prašoma Teisėjų tarybą išreikšti poziciją dėl Jungtinės Karalystės (toliau – JK) teisėjų tarybų, kurios yra trys (Anglijos ir Velso, Škotijos bei Šiaurės Airijos), padėties ENCJ tinkle po „Brexit‘o“.

2019 m. gruodžio 12 d. JK įvykusių rinkimų rezultatai rodo, kad JK netrukus nebebus Europos Sąjungos narė. Taip pat tikėtina, kad JK nedalyvaus muitų sąjungoje ir bendrojoje rinkoje bei nebepriims ir neįgyvendins Europos Sąjungos Teisingumo Teismo sprendimų. Manoma, kad pereinamasis laikotarpis taip pat bus labai trumpas.

ENCJ Statuto 6 straipsnio 1 dalyje numatyta, kad teisėjų tarybos narystė ENCJ galima, tik kai šios tarybos valstybė yra Europos Sąjungos narė.

ENCJ Vykdomoji valdyba yra priėmusi sprendimą, kad JK narystė ENCJ nebus nutraukta iki kitos po Brexit‘o vyksiančios Generalinės asamblėjos, kad būtų galima pasirengti Generalinės asamblėjos sprendimui dėl būsimo JK teisėjų tarybų statuso ENCJ tinkle.

2019 m. gruodžio mėn. įvykusio ENCJ Vykdomosios tarybos atstovų susitikimo su JK teisėjų tarybų atstovais metu buvo išreikštas noras ENCJ tinkle likti stebėtojų teisėmis.

Atkreiptinas dėmesys, kad ENCJ Generalinė asamblėja negali priimti sprendimo dėl šio statuso nepakeičiant ENCJ Statuto. ENCJ Vykdomojo valdyba Statutą siūlo keisti papildant 6.6 straipsnį, į ENCJ tinklo stebėtojų sąrašą įtraukiant Europos valstybes, sudariusias teismo bendradarbiavimo susitarimą su Europos Sąjunga.

ENCJ prezidentas savo laišku teiraujasi, ar ENCJ tinklo narės sutiktų su Vykdomosios valdybos siūlymu JK teisėjų taryboms suteikti stebėtojo statusą, kuris leistų šioms taryboms

toliau būti ir dirbti ENCJ tinkle. ENCJ tinklo narių savo poziciją prašoma patekti ENCJ iki 2020-01-31.

Maloniai prašome artimiausio posėdžio metu apsvarstyti klausimą dėl Lietuvos Teisėjų tarybos nuomonės dėl JK teisėjų tarybų padėties ENCJ tinkle po „Brexit“ o“.

PRIDEDAMA:

1. ENCJ prezidento laiškas, 2 psl.
2. ENCJ Vykdamosios tarybos pozicija, pristatyta 2018 m. gegužės mėn. Generalinėje asamblėjoje, 4 psl.

Direktoriaus pavaduotojas,
atliekantis direktoriaus funkcijas



Antanas Jatkevičius

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LIETUVOS
TEISMAI





European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Brussels, 19 December 2019

Dear Members of the ENCJ,

I would like to informally consult you on the subject of the consequences of the Brexit for the position of the councils of the United Kingdom in our network.

On the 30th of May 2018 the position of the Executive Board of the ENCJ regarding the Councils for the Judiciary of the United Kingdom in the ENCJ after Brexit was presented to the General Assembly (see appendix).

Since the results of the general elections of December 12th last in the United Kingdom, it is now clear that the United Kingdom will soon stop to be a member of the European Union. Moreover, the United Kingdom will, most likely, not be in the customs union and the single market. Nor will it accept and implement the judgements of the European Court in Luxembourg any longer. The transition period will probably be very short.

In article 6.1 the statutes of the ENCJ require for a membership of a council that its country is a member of the European Union.

Shortly, the membership of the councils of the United Kingdom will not be in compliance with this rule. As an interim measure the Executive Board decided that the membership of the United Kingdom will not be ended until the next General Assembly after the Brexit date, in order to be able to prepare for a decision of the General Assembly about the status of the councils of the United Kingdom in our network.

The Executive Board considered all these developments in its last meeting and decided to start a dialogue with the councils of the United Kingdom about their position after the Brexit. Last Tuesday a delegation of the Executive Board went up to London and had a meeting with representatives of the councils.

The councils expressed the profound wish to remain connected to the ENCJ as an observer.

The Executive Board considered this wish, and is for several obvious reasons very much in favor of this status for the United Kingdom.

However, the status of observer for the councils of the United Kingdom cannot be decided upon by the General Assembly without a change of the statutes.

On its meeting of the 12th of February 2020 the Executive Board will again discuss this topic. If and when the date of the Brexit has been decided upon, a decision has to be taken about a proposal of the Executive Board to the General Assembly in Brussels, including a proposal to change the statutes.

Now comes my question to you. Do you agree with the Executive Board that the status of observer for the councils of the United Kingdom is the right way to keep these councils connected to and working in our network?

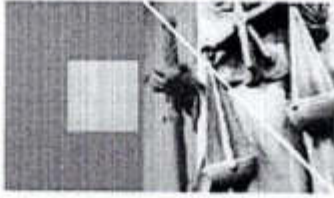
I would be very happy if you would find the time to consider this question and reply to the ENCJ Office before **31 January 2020**.

Merry Christmas to you all and a happy 2020!

On behalf of the Executive Board

A handwritten signature in black ink, appearing to be 'K. Sterk', with a horizontal line underneath.

Kees Sterk
President



European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

The position of the Executive Board of the ENCJ regarding the Councils for the Judiciary of the United Kingdom in the ENCJ after Brexit presented to the General Assembly on 30 May 2018

According to its Statutes the European Network of Councils for the Judiciary (ENCJ) is a non profit association that has as its aim *"the improvement of cooperation between and good mutual understanding amongst the Councils for the Judiciary and the members of the judiciary of both the European Union Member States and any European Union candidate Member States"* (Article 3). When enumerating its objectives Article 4 says:

"within the framework of the creation of the Area of Freedom, Security and Justice, the objectives of the Association are cooperation between members on the following:

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

The Statutes differentiates between the positions of the Members and the Observers.

Members are *"national institutions of Member States of the European Union which are independent of the executive and legislature, or which are autonomous, and which ensure the final responsibility for the support of the judiciary in the independent delivery of justice"* (art.6.1). Members are entitled to participate fully in the activities of ENCJ and have the duty to participate in them within the limits of their resources. Only Members can be members of the Executive Board or present the candidacy for the Presidency of ENCJ. Members pay an annual membership fee used to cover the operating costs of the association. ENCJ has currently 24 members, amongst them the Judges' Council of England and Wales, the Judicial

Council of Scotland and the Judges' Council of Northern Ireland. Members contribute to the ENCJ budget with a membership fee. In the case of the UK the amount of this fee for 2018 is 6.474 euros.

Observers are, according to Article 6.6, either the Ministries of Justice of European Union Member States where institutions as specified in Article 6.1 do not exist, or institutions as specified in Article 6.1 from European Union candidate States and Member States of the European Economic Area (EEA), or the institutions of the European Union or, lastly, advisory bodies of European organisations, in particular the Council of Europe, dealing with matters relating to Justice. Observers are entitled to attend meetings of the General Assembly, but are not entitled to vote. They are invited to participate in the activities of ENCJ, especially in the project teams, and they contribute to the financial support of the association in accordance with the Financial Regulations of ENCJ. Observers contribute to the ENCJ budget with a participation fee in the project teams and in the General Assembly. The participation in the project teams would be of 1.500 euros and the participation in the General Assembly is of 300 euros per person with a maximum of four participants.

Since the United Kingdom has formalized its intention to leave the European Union in future it will be neither a Member State of the Union, nor a Candidate State. Nor will it be a Member State of the EEA.

In order to keep the good relations with the three Councils for the Judiciary of the UK that have extensively contributed to the work of the ENCJ and taking into account that in future an intense judicial cooperation in all fields will be upheld with the UK, an amendment of the Statutes would be necessary to include them in our association. The amendments of the Statutes require three quarters of the votes cast (Article 10.3 of the Statutes).

There are various possibilities which might be explored. These include the following:

First, to maintain the position of Member permanently, Article 6.1 could be modified to include either "former Member States of the European Union" or, simply, "the United Kingdom of Great Britain and Northern Ireland".

This is what the EUFJE Board (the Environment Judges Association which is funded by the European Union) has decided to do with its constitution at its meeting in Paris on 14 April 2018, as follows.

"Can be Member of Association: every judge interested in environmental law who is member of the Court of Justice of the European Union, the European Court of Human Rights or a court or tribunal of a Member State of the European Union, a Member State of the European Free Trade Association or a former Member State of such an organization.

There are three categories of Members: corresponding Members, working Members and honorary Members. Members that retire as a judge can become honorary Member."

Secondly, Article 6.6 could be modified to include them as Observers adding "institutions as specified in Article 6.1 from European States that have an agreement on judicial cooperation with the European Union."

The Directives adopted by the Council on 22nd May 2017 for the negotiation of an agreement with the UK setting out the arrangements for its withdrawal from the European Union¹ under the title "Ongoing judicial cooperation in civil, commercial and criminal matters between Member States under Union law" foresee that:

"32. The Agreement should provide for arrangements relating to judicial cooperation proceedings in civil, commercial and criminal matters governed by Union law which are ongoing on the withdrawal date. It should establish in particular that such proceedings remain governed until their completion by the relevant provisions of Union law applicable before the withdrawal date.

33. Regarding judicial cooperation in civil and commercial matters between the United Kingdom and the EU27, the Agreement should ensure that the recognition and enforcement of national judicial decisions handed down before the withdrawal date remain governed by the relevant provisions of Union law applicable before the withdrawal date. The Agreement should also ensure the continued application of the

¹ Annex to Council Decision (EU, Euratom) 2017/... authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for an agreement setting out the arrangements for its withdrawal from the European Union

rules of Union law relating to choices of forum and choices of law made before the withdrawal date.”

On the basis of such an agreement the reform of the Statutes could be negotiated in future.

Meanwhile, to maintain the position of Member for the time being during the Brexit transition period, Article 6.1 could be modified to include “the United Kingdom of Great Britain and Northern Ireland in the transition period agreed with the European Union (i.e. until 31 December 2020)”.

In March this year, the European Union and the UK agreed 31 December 2020 as the end of the transition period.

Revising the Statutes in this way would keep all options open. It would, in particular, have the benefit of giving more time to consider what more permanent reform of the Statutes might be necessary in the light of what is agreed in the transition period as regards judicial cooperation. Therefore this is the option that the Executive Board prefers.

ENCJ Executive Board

14 May 2018

Projektas

TEISĖJŲ TARYBA

Protokolinis nutarimas

2020 m. sausio d. Nr.

Vilnius

Atsižvelgdama į Europos teismų tarybų tinklo prezidento kreipimąsi, Teisėjų taryba (pritaria/nepritaria) Europos teismų tarybų tinklo Vykdomosios valdybos siūlymui suteikti Jungtinės Karalystės teisėjų taryboms stebėtojo statusą.

Pirmininkas