

ENCJ WORKING GROUP

REPORT ON CODES OF CONDUCT FOR MEMBERS OF COUNCILS FOR THE JUDICIARY

PREAMBLE

Considering the **great variety of possible participants in Judicial Governance and the various systems for appointing and managing judicial, non-judicial and ex-officio members of Councils for the Judiciary across Europe**, the codes of conduct of members of Councils for the Judiciary should respect this variety.

Rules that already exist for the specific activity of judges or other legal professionals that might be appointed members of a Council for the Judiciary are not sufficient to guide the exercise of their duties. Regardless the existence of ethical rules concerning judges and other legal professionals, the position of a member of a Council for the Judiciary is different. Members of a Council for the Judiciary take part in an institution with administrative tasks. Therefore, this activity differs from the one judges must carry on in courts. Their deontological obligations are specific, and their content is directly linked to the nature of their missions, attributions and competences.

A code of conduct should clearly **define principles of activity and conduct** to be followed by members of a Council for the Judiciary while performing their statutory functions. After ceasing to hold office, members shall continue to be bound by their duties of integrity, dignity, loyalty and discretion. They should exercise their duties in any time with the highest standard of integrity in public as well as in private. A code of conduct supplements the stipulations of laws, decrees and rules of procedure and should contain guidelines, best practices and principles on the decision-making and **inform the public about the standards of conduct that can be expected from the members of a Council for the Judiciary.**

The highest standard of conduct and responsibility of the members of a Council for the Judiciary should be expected. The codes of conduct should identify moral and social norms which constitute the ideal and practical patrimony entrusted to the individual conscience of the members of the Council, although the respect of the norms rests on the internal adhesion of each of them. All members of a Council for the Judiciary must have moral and professional qualities which allow them to protect judicial legitimacy in general terms.

A code of conduct would **equally ensure the application of ethical rules to all members of the same Council for the Judiciary** - to all Councils as well, as a

consequence-, including non-judicial members who are not subject to any particular ethical rules in the context of their functions exercised (inside and) outside the Council.

A code of conduct would be a **basis for consultation and self-reflection** on the obligations of the members of Councils for the Judiciary, taking into consideration the main values that should guide their activities.

A code of conduct reinforces the idea of **accountability** of the Council as a whole and the members of Councils for the Judiciary and underlines their commitment to the citizens that they serve.

Therefore, rules of deontological conduct are an important factor in building and promoting **public confidence in the judiciary** and should contribute to an increase in public trust in this institution and to raise its authority. The image of the Council and the judiciary would be improved. Other objectives of codes of conduct are protecting human rights, upholding the rule of law and preventing and limiting corruption in the judiciary.

Rules of deontological conduct go **beyond the legal obligations** to which members of Councils for the Judiciary are bound.

PRINCIPLES AND RULES OF ACTIVITY AND CONDUCT OF MEMBERS OF COUNCILS FOR THE JUDICIARY

I. SUBSTANTIVE VALUES

1. Integrity

1. The principle of integrity requires members of Councils for the Judiciary to maintain honesty, morality and the highest standard of personal and professional behaviour.

2. Members of Councils for the Judiciary shall fulfil their role in the interest of the judiciary and of society. This duty of integrity applies to their public and personal life.

3. Adherence to this value is essential to maintain public confidence in the independence and impartiality of a member of the Council for the Judiciary and in the institution.

4. Integrity includes the duty of probity and the duty of dignity and honour.

5. The duty of probity leads the members of Councils for the Judiciary to refrain from any tactless or indelicate behaviour (either in formal or in informal professional communication), and not only behaviour contrary to law.

6. Members of Councils for the Judiciary shall ensure that their conduct is in line with the view of reasonable, fair minded and informed persons. They shall not engage in any questionable conduct and their extra-professional behaviour should not undermine the dignity of their position.

7. Members of Councils for the Judiciary shall not use their position to procure any advantages for themselves during or after their mandate. They shall refuse any moral or material advantages for themselves or for those close to them (family, friends, certain colleagues, etc.) while exercising their functions. In the exercise of their mandate, members of Councils for the Judiciary shall not intercede or allow any interference in favour of any person.

8. The duty of dignity and honour requires the members of Council for the Judiciary, through their professional practice and their personal behaviour, to not jeopardise the public image of the Council and the judiciary.

2. Independence

1. Members of Councils for the Judiciary shall perform their duties with complete independence and shall only be bound by the law.

2. They shall be free from circumstances or influences that compromise or may be seen as compromising the fulfilment of these duties, so they can be trusted to carry them without any interference. To this end, members shall maintain independence from any internal or external influence and shall neither seek nor take instructions from any person, institution, body or entity.

3. Members of Councils for the Judiciary should remain independent one from another. The president or any other person effectively heading the institution should carry out an efficient administration and be able to ensure in due time the access of each member to the documents and activities which are included in their competences.

4. Members of Councils for the Judiciary should remain independent from any possible pressure groups both from within the judiciary or external. These groups include, but are not limited to, economic or political powers, media, public opinion and professional organisations.

5. When critics/attacks envisage the Council itself or its members, it is recommendable to have a neutral approach, explanations instead of counterreaction.

3. Impartiality

1. Impartiality and appearance of impartiality are equally important in exercising the competences and duties of members of a Council for the Judiciary, regardless the manner they were elected or appointed, or whether they are judicial, non-judicial or *ex officio* members.
2. Impartiality shall be manifested throughout the process by which decisions are made, in the content of decisions taken by Councils for the Judiciary and in the way these decisions are brought to public knowledge. Members of Councils for the Judiciary should reason every decision they take and, when possible, base them on objective, quantifiable criteria.
3. A member of a Council for the Judiciary should perform his/her duties without favour, bias or prejudice and should therefore be aware of his or her own prejudices.
4. Members shall resign from participating in any proceeding in which they are unable to decide the matter impartially or in which it might appear to a reasonable observer that they are unable to decide the matter impartially.
5. Members of Councils for the Judiciary shall not act or express themselves, through whatever medium, in a manner which adversely affects the public perception of their impartiality.
6. Members of Councils for the Judiciary shall avoid any situation which may give rise to a conflict of interests or which objectively may be perceived as such. A conflict of interest arises where a personal interest could influence the independent performance of a member's duties. Personal interests include, but are not limited to, any potential benefit or advantage to members themselves, their spouses, partners or direct family members.
7. Members shall not be involved in dealing with a case in which they may have an interest that may give rise to a conflict of interest. If they are to hear such a case, they shall notify the president of the Council.
8. Relatives or persons related by affinity within the fourth degree should not be members of the Council for the Judiciary at the same time.

II. INSTRUMENTAL VALUES

1. Competence

1. To carry out their duties in a competent, independent and impartial manner, members of Councils for the Judiciary shall acquire, maintain and develop knowledge and skills relevant for these duties.

2. Members of the Councils for the Judiciary are a part of a working community. In this capacity, they should be able to work in a team with colleagues and staff members.
3. Members of Councils for the Judiciary need public communication, negotiation and evaluation skills, according to the competences and duties of their Council. If necessary, they should attend courses for developing soft skills, including topics related to the individual and institutional use of social media.
4. They must possess and develop strategic thinking and skills for a macro approach on topics related to the judiciary.
5. Members of Councils for the Judiciary shall act in accordance with the applicable rules and with due care.

2. Cooperation

1. Members of Councils for the Judiciary are part of an institution which works in the benefit of each judge, of the judiciary and, ultimately, in the benefit of society. To this end, they are bound to cooperate to take the best decisions in the interest of the stakeholders and not of their own.
2. Each member of a Council for the Judiciary should be valued equally and entrusted with specific tasks considering his or her personal and professional qualities.
3. Members of Councils for the Judiciary should strive to avoid divisions in groups (majorities versus minorities) with different visions and opinions within the Council.
4. The president of the Council has a key role in building and maintaining trust and cooperation among the members and ensuring that each member has equal access to information and decision making.
5. Extra-curricular activities are recommended to encourage the members to know each other outside their working environment and build and increase trust among them.

3. Respect

1. Members of Councils for the Judiciary should communicate with due consideration and in a respectful manner with each other and about each other either in formal or in informal circumstances, directly or indirectly.
2. The same principle applies in the relationship with the members of the administrative staff (where it is the case), considering their autonomous sphere of duty and competence.

3. Members of Councils for the Judiciary should seek that the values of respect and listening are shared and observed.
4. A Council for the Judiciary is a team and working in such a team presupposes high listening abilities and acceptance of a diversity of opinions.
5. Conflicts should be avoided, especially in public meetings. If multiple or dissenting opinions are expressed, they should determine a thorough and careful reasoning of the decision.

4. Loyalty

1. Members of Councils for the Judiciary shall comply with their duty of loyalty towards the judiciary and defend judicial independence.
2. Members shall devote themselves to the fulfilment of their mandate. They shall attend the meetings of the plenary and of the committees to which they belong.
3. Members shall make use of the services of officials and other servants of the institution, in particular those allocated to their committees, in a respectful manner.
4. Members shall manage the material resources of the institution in a responsible manner.
5. Members shall refrain from making any statement outside the institution which may harm its reputation. In case of minority or dissenting opinions, they should be expressed publicly and privately in a respectful manner, taking in consideration the loyalty towards the judiciary.
6. When democracy, fundamental freedoms or the Rule of Law are in peril, members of the Councils for the Judiciary must speak out.

5. Transparency

1. Since transparency is an important factor in raising public awareness and improving the effects of the results of the work of Councils for the Judiciary, members of Councils for the Judiciary should act in a transparent manner, reasoning every decision they take and, when possible, based them on objective, quantifiable criteria.
2. When expressing a personal and not an institutional opinion, it is imperative to specify this fact, explaining the reasons for a different view or one which differs from that of the institution they represent. Taking in consideration the feedback of colleagues (within the judiciary, media, society and the Council) is very important.

3. Members of Councils for the Judiciary should report their extra-Council activities related to the performance of their duties as a member of the Council and the report should be posted on the website of the Council.

6 Obligation of reserve and discretion

1. Members of the Councils for the Judiciary shall respect the confidential nature of their work when required by law. They must not disclose information on the private life or protected personal data of the persons with whom they come into contact during their mission or which could damage their interests protected by the law or their reputation. They may not misuse the information of which they have become aware in the performance of their duties.

2. The obligation of reserve and discretion subsists after the termination of the mandate.

IMPLEMENTATION

1. A code of ethics for members of Councils for the Judiciary should be based on self-reflection and consultation. The respect to the ethical norms rests on internal adhesion.

2. Ethical issues and dilemmas shall be identified in due time and consultation, when it is necessary, shall be used as a valuable instrument.

3. The codes of conduct of members of Councils for the Judiciary should advise to include the creation of a committee on ethics to which members can turn for advice on ethical questions. In countries where committees on judicial ethics already exist it is advisable to explore whether they should extend their competences to the members of the Council for the Judiciary.

4. Exchanges of good practices of such committees among the Councils for the Judiciary are recommended.