



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Project: Code of conduct for Councils for the Judiciary

1. Goals of the project:

While most judiciaries already have a code of ethics for the judges, the nature of the rules, principles and their scope of application differ among countries.

In the ENCJ compendium on Councils for the Judiciary that was adopted in October 2021 the following recommendation was added:

ENCJ recommends that Councils for the Judiciary develop standards of professional behaviour and ethical conduct for their members (both judicial and non-judicial) in a similar way as is done for judges.

At the Extraordinary General Assembly in Vilnius the matter was discussed in breakout groups.

Issues put forward were:

- Most judiciaries already have a code of ethics for the judges.
- It was felt that all members of Councils for the Judiciary should be guided by the same rules. Therefore, it would be good to develop codes of conduct to cover also the lay members and to establish obligations that apply after the expiration of the Council members' mandate. There should be uniformity of main values.
- The importance of the need to codify rules should be examined into different aspects especially whether it should be soft law or hard law. If we could find common grounds of European standards that would be accepted as a basis for such a document that would in itself be an important symbolic and practical consequence.
- Some important topics that could be addressed by such a Code of conduct are the impartiality, the integrity, the internal independence and the confidentiality. The code of ethics/conduct should not be seen as a regulation but a range of values, principles, standards or good practices for members acting within the Councils.

The participants found that the ENCJ could set up a working group, to map the existing practices and instruments that are already in place in some Councils for the Judiciary, elaborate a questionnaire, further circulate the questionnaire to the Councils, and finally to work on the collected information.

The aim of this project is to develop a document that could be used by Councils to draft a code of conduct that would contain values, principles, standards or good practices for members acting within the Councils for the Judiciary.

2. Methodology:

To start with, the existing practices and instruments that are already in place in Councils for the judiciary were identified. For this purpose, a questionnaire was developed and circulated among the ENCJ Members and Observers.

The questionnaire comprised questions on the existing codes of conduct/ ethical rules, internal regulations and principles applicable in Councils for the Judiciary, the rationale for having a code of conduct and finally, what could be the content of such a code (considering the Councils for the Judiciaries' specific competencies).

Based on the information provided, the project team studied which rules, principles and obligations should be applicable to members of the Judicial Councils. The large majority of the respondent countries (with one exception) answered that there is a need for a Code of conduct for members of judicial councils.

This set of rules need to apply equally to judicial and non-judicial members and also touch upon obligations that apply after the expiration of the Council members' mandate.

Finally, the project team will draft a document (*model code of conduct*) setting out the main principles that could be part of a code of conduct for members of the Council for the Judiciary and present it to the ENCJ General Assembly.

In the first year, an intermediate report is presented in the General Assembly, comprising the answers of members and observers to the questionnaire and possible further steps toward achieving the final deliverable.

3. Expected results:

- To identify existing practices and instruments that are already in place in the ENCJ Members and observers Councils;
- To draft common principles standards that would be a basis for a code

4. Timeline

February/March 2022	Remote meeting – drafting of questionnaire
April 2022	ENCJ Members to reply to questionnaire
May 2022	Project meeting to discuss the information received and discussion on main principles (TBC)
June 2022	Presentation of intermediate results to General Assembly
Autumn 2022	Project meeting
Spring 2023	Final project meeting
June 2023	Presentation and Adoption of the <i>model Code of conduct</i> (TBC)

5. Project team

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6. Questionnaire

1. Do you have a code of conduct, ethical rules or any other internal regulations and principles (in this matter) applicable for your judicial council? In your answer, please refer to any provisions in your laws on judiciary related to such rules for judicial and non-judicial members of your council.
2. What do you think the *rationale* for having a code of conduct for members of a judicial council should be?
3. In your opinion, what could be the content of such a code? Please take into consideration the specific attributions of your council for the judiciary.

7. Summary of the answers

1. **Do you have a code of conduct, ethical rules or any other internal regulations and principles (in this matter) applicable for your judicial council? In your answer, please refer to any provisions in your laws on judiciary related to such rules for judicial and non-judicial members of your council.**

Summary:

- ***The existence of ethical rules applicable to members of Councils or similar bodies***

The responses to the questionnaire show that, with rare exceptions, all members of the Councils or similar bodies are subject to ethical rules.

In the majority of cases, these are rules resulting exclusively from their profession (e.g., judges) without any specific provisions related to their status as Council members.

In some cases, specific ethical rules related to Council membership exist in addition to the rules of their profession.

However, some non-judicial Council members are not subject to ethical rules when no specific provisions exist for them.

- ***Sources of ethical rules***

Ethical rules originate from a wide variety of sources: the Constitution, laws, decrees, case law, codes of ethics, internal rules of the Council; some countries have rules that originate from several of these sources combined.

- ***The content of ethical rules***

There are widely shared fundamental ethical principles inspired by the rules applicable to the legal professions. There are also provisions relating to the conditions for exercising the mandate of Council members and to their status.

The answers by Member State classified thematically¹:

- ***The existence of ethical rules specific to membership of the Council or a similar body***

Several Councils or similar bodies have specific rules applicable to their members in this capacity, in addition to the rules specific to the judicial professions of these members, where applicable.

This is the case in **Belgium, Denmark, Finland, France, Italy (Presidential Council for administrative justice), Latvia** and **Slovakia**.

- ***The existence of ethical rules applicable to members of the judicial professions belonging to the Council or a similar body***

All the answers mention that the members of the judicial professions (judges or prosecutors, where applicable) belonging to the Councils are subject to the ethical rules of their professions which also apply when they act within the Council or assimilated body concerned (**Belgium, Bulgaria, Croatia, Finland, France, Greece [Council for administrative justice], Hungary, Ireland, Italy [Council for the judiciary and Presidential Council for administrative justice], Latvia, Lithuania, Montenegro, Norway, Portugal, Romania, Slovakia, Slovenia, Spain**).

- ***The application of ethical rules to members of Councils or similar bodies not belonging to the judicial professions and not belonging to Councils subject to specific ethical rules***

As not all the answers specify the composition of the Councils, it is sometimes impossible to determine whether [or not] members of non-judicial professions are subject to ethical rules.

However, according to the information collected for Councils not composed exclusively of judges and not subject to specific ethical rules:

- **Finland** emphasized that many of the rules applicable to judicial members of the Council also apply to non-judicial members ;
- **Portugal** specified that the Statute of the Portuguese Judges extended the ethical rules to lay members ;
- In the case of **Slovakia**, the membership of a non-judicial member of the Council is subject to the condition of moral rectitude of the candidate;
- **Slovenia** stated that non-judge members of the Council are subject to the ethical rules of their professions;
- **Spain** specified that the ethical principles applicable to judges were extended to non-judge members of the Council in 2019;
- According to the answers obtained, unless there is an obvious error, several states indicated the existence of non-judicial Council members who are not subject to specific ethical rules (**Croatia, Montenegro, Romania**).

Sources of ethical rules

Lithuania is the only country to mention the **Constitution** as one of the sources of applicable ethical rules.

The **law** is quoted as the source of ethical rules specific to the Council or similar bodies, where such rules exist, by **Belgium, Denmark, Finland, France, Latvia** and **Slovakia**. This law is sometimes the subject of implementing decrees (**France**).

¹ Subject to possible misinterpretation of the answers used or insufficient details provided in these answers.

The **law** is also quoted as the source of ethical rules for judges and prosecutors by several member states (**Finland, France, Hungary, Ireland, Lithuania, Portugal, Romania**).

A **code of ethics** for the members of the Council exists in **Belgium** and **Italy** (for the Presidential Council of administrative justice).

Codes of ethics or compendiums of principles of judicial ethics applicable to judges (and prosecutors, if any) are very common (**Bulgaria, Croatia, France, Greece, [administrative justice], Ireland, Italy, Hungary, Latvia, Lithuania, Montenegro, Norway, Romania, Slovakia, Slovenia, Spain**). Judges may also be subject to ethical rules more generally applicable to all civil servants (**Finland**).

Rules of procedure of the Council or provisions made within the Council may lay down ethical rules applicable to members (**Belgium, Italy, Spain**).

Case law and decisions of internal ethics committees as a source of ethics were quoted by **Lithuania**.

It is common for ethical rules applicable to Council members to emanate from several normative sources.

- ***The content of existing ethical rules***

Regarding the differences in the degree of precision of the answers provided, it is particularly difficult to be exhaustive in this presentation. It therefore seems preferable to present a summary of the content of these rules.

As stated earlier, the rules set out, on the one hand, fundamental ethical principles inspired by those applicable to judges (and prosecutors, where applicable) and, on the other hand, rules relating to the status of Council members.

The fundamental ethical principles quoted include the following: independence, impartiality, integrity and probity, loyalty, dignity, respect for professional secrecy and deliberations, competence, courtesy, fairness and transparency.

The principle of impartiality involves withdrawing, if necessary, and avoiding any conflict of interest.

Generally speaking, the requirement of high moral standards, exemplary behavior and professional conscience underlie the fulfillment of the mandate of a Council member.

Other ethical rules derive from the conditions under which Council members may serve and vary from case to case: they result from the length of the term of office, whether or not it can be renewed, the conditions for resignation, and the incompatibilities between membership of the Council and the exercise of other functions.

Certain existing provisions require Council members to fill declarations of interest and assets prior to taking office and to update them during and at the end of their term of office.

2. What do you think the *rationale* for having a code of conduct for members of a judicial council should be?

A possible preamble

Rules that already exist for the specific activity of judges are *not sufficient* to guide the exercise of duties by the judicial council. Regardless the existence of ethical rules concerning the statute of judges (and prosecutors when applicable), the position and *the statute of a member of a Council is different from his statute as a judge*. A member of the Council take part, not in a judicial, but in an

administrative institution. Therefore, all the way of their action totally differs from that one they must carry on in Courts. (The High Council for the Judiciary of Portugal)

The ethical obligations of the members of a judicial council 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 judicial council* while performing their statutory functions and exercising in free time from the performance of their direct functions. *Should be guidelines/best practice/principles on the decision-making*. Should inform the public about the standards of conduct that can be expected from the members of a judicial council (Supreme Judicial Council for Administrative Justice of Greece, Conseil Supérieur de la Magistrature – France, Teisėjų Taryba - The Judicial Council of Lithuania, Tieslietu padome – Latvia, Sodni svet - The Judicial Council of the Republic of Slovenia)

The conduct and responsibility of the members of the judicial council must be higher than the degree of conduct and responsibility of other judges. (Državno sudbeno vijeće - State Judicial Council of Croatia).

The Code of Conduct could *supplement the stipulations of laws*, degrees and rules of procedure. (Domstolsverket - National Courts Administration of Finland).

Such code should identify *moral and social norms which constitute the ideal and practical patrimony entrusted to the individual conscience of the members*, lay and professional, of the Council, although the respect of the norms rests on the spontaneous adhesion of each of them. All the members must have *moral and professional qualities* which allow them to protect judicial legitimacy in general terms. (Consiglio di presidenza della giustizia amministrativa - CPGA Italy, Súdna rada Slovenskej republiky – Slovakia)

A model code of ethics *would equally ensure the application of ethical rules to all members of the same judicial council*, including lay members who are not subject to any particular ethical rules in the context of their functions exercised (inside and) outside the Council. (Conseil Supérieur de la Magistrature – France, Sodni svet - The Judicial Council of the Republic of Slovenia, The High Council for the Judiciary of Portugal, Consiliul Superior al Magistraturii - Romania)

A code of conduct would be *a basis for consultation and self-reflection* on the obligations of the members of judicial councils taking in consideration the main values that should guide their activities. (Conseil Supérieur de la Justice / Hoge Raad voor de Justitie - High Council of Justice of Belgium)

A code of conduct reinforces the idea of *accountability of the members of a council for the judiciary* and underlines their commitment with the citizenship to which they serve. (Consejo general del Poder Judicial – Spain)

The rules of ethical conduct of members of judicial councils are an important factor in *building and promoting public confidence in the judiciary*. (VSS Bulgaria - Supreme Judicial Council of Bulgaria, Conseil Supérieur de la Magistrature – France, Supreme Judicial Council for Administrative Justice of Greece, Courts' Service of Ireland)

A code of conduct for members of the judicial councils would *increase public trust in this institution*, to raise its authority. *The image of the Council* would be improved. (Teisėjų Taryba - The Judicial Council of Lithuania, Consejo general del Poder Judicial – Spain)

Other objectives of the code are: *protecting human rights, upholding the rule of law; preventing and limiting corruption in the judiciary.* (VSS Bulgaria - Supreme Judicial Council of Bulgaria)

3. **In your opinion, what could be the content of such a code? Please take into consideration the specific attributions of your council for the judiciary.**

The answers of the judicial councils to this specific question comprise a set of values as follows:

- ✓ independence
- ✓ impartiality
- ✓ integrity
- ✓ equality
- ✓ accountability
- ✓ commitment
- ✓ competence
- ✓ confidentiality
- ✓ cooperation
- ✓ correctness
- ✓ decency
- ✓ dignity
- ✓ diligence
- ✓ discretion
- ✓ expertise
- ✓ honor
- ✓ loyalty
- ✓ prevention of conflicts of interest
- ✓ promoting law supremacy
- ✓ propriety
- ✓ respect
- ✓ responsibility
- ✓ transparency

Taking in consideration the answers provided by the judicial councils, the content of the Code of conduct for members of the judicial councils could be:

1. **A preamble** referring to the necessity, scope and objectives of the code – based on the answers of the judicial councils to question no. 2.
2. **Principles and rules of activity and conduct of the members of the judicial councils** – taking in consideration the *values* enumerated in the answers to question no. 3, the *competences and duties* of the judicial councils from the Compendium on Councils for the Judiciary adopted by the General Assembly of ENCJ in Vilnius on 29th of October 2021 and the answers to questions no. 1 and 3.
3. **Implementation** – procedural elements of assessment of the (un)ethical conduct of a member of the judicial council, possible sanctions and the right to appeal against a decision related to breach of ethical conduct by a member of the judicial council.

Because of the differences between legal systems, the topic of implementation should be addressed carefully and maybe the focus should be more on self-reflection and consultation. Exchanges of good practices among the councils by translating and posting on the site of ENCJ the recommendations related to the application of the ethical rules are also possible and advisable.

8. Relevant materials and annexes

- [European Charter for a Code of Conduct for national inspection services](#)
- [Code of ethics of the european public prosecutors office and european delegated prosecutors](#)
- [Code of conduct for Members and former Members of the Court of Justice of the European Union](#)
- [Code of Conduct for the Members and former Members of the Court of Auditors of the EU](#)