



# Code of Ethics of the Financial Courts<sup>1</sup>

(Version of May 28<sup>th</sup> 2019)

## Preamble

1. The tasks of the Financial Courts and their role at a national and international level shall lead them to respect the obligations of impartiality and independence resulting from national principles, the European Convention on Human Rights and the principles and values set out in the Code of Ethics of the International Organization of Supreme Audit Institutions (INTOSAI).
2. The ethical requirement is present from the beginning of the Financial Courts by the obligation to take an oath. The Code of Ethics that was adopted by the Courts in 2006 gave this dimension a formal status. Act No. 2016-483 of April 20<sup>th</sup> 2016 regarding to the ethics, as well the rights and obligations of public servants<sup>2</sup> enshrines the existence of such a Code specifying the values and principles that shall inspire conduct in Financial Courts.
3. The purpose of these values and principles is to ensure that magistrates and other persons in Financial Courts fulfil their functions independently, impartially, neutrally, with due respect for the principle of secularism, with dignity, integrity and probity, and in such a way as to prevent any legitimate doubt in this respect.
4. Respect for these values and principles shall be an essential element of the image and reputation of Financial Courts and, as such, a condition of their credibility and trust. It therefore inspires all the behaviour of the magistrates and persons concerned in anything that is likely to directly or indirectly affect their professional activity and undermine the credibility of the Courts themselves.
5. For the magistrates and the persons mentioned in article 15 of the Act of April 20<sup>th</sup> 2016 as well as for the other categories of persons who shall take it, the oath constitutes an essential

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<sup>1</sup> Only the French version shall be regarded as binding. French legal concepts are translated into English for information only and not as legal advice. The concepts expressed in English may not exactly reflect or correspond to similar concepts existing under the laws of the jurisdictions of the readers.

<sup>2</sup> Act n°2016-483 of April 20<sup>th</sup> 2016 regarding to the ethics, rights and obligations of civil servants was published on April 21<sup>st</sup> 2016 (J.O. n°0094 of April 21<sup>st</sup> 2016). The Law includes several procedural provisions, such as the possibility to assign first and last instance disputes to administrative Courts of appeal or the implementation of a summary proceeding with a three judges' panel. The Law authorizes the government to legislate by means of executive orders on important statutory measures regarding the members of administrative and financial Courts.

personal commitment. It call upon individual responsibility to ensure a respect for ethics. Most of the ethical commitments are summarized and contained in the wording of the oath, which requires keeping the proceedings secret and behaving with dignity and loyalty.

6. Ethics shall not be confused with the disciplinary function. The provisions of this Code are benchmarks aimed at providing magistrates and other persons concerned with assistance in resolving ethical issues and in clarifying the choices they may face when performing their duties.

They are also intended to show other institutions and the public that these same people, in return for the important prerogatives they have, shall act in accordance with fundamental values guaranteeing the legitimacy of their action.

7. The Advisory Board of the Cour des Comptes and the Advisory Board of the Chambres Régionales et Territoriales des Comptes<sup>3</sup> (CRTCs) have been consulted on this Code, in accordance with the Financial Courts Code, which provides for their consultation on any general or individual ethical question.

### **Staff concerned**

8. In accordance with the Financial Courts Code, this Code applies to magistrates, chief auditors and senior auditors in extraordinary service as well as external rapporteurs to the Cour des Comptes and magistrates and rapporteurs to the Chambres Régionales et Territoriales des Comptes. These provisions command the conduct of magistrates when they perform activities outside the jurisdiction, as well as that of the honorary magistrates in the context of the officies entrusted to them in the Financial Courts. The expert advisers assisting the Cour des comptes in evaluating public policies are subject to the same obligations in accordance with the Financial Courts Code.

Because the oath is final, magistrates and other categories of personnel who take it may not be relieved of it.

## **VALUES AND GENERAL PRINCIPLES**

9. The fundamental principles of independence and impartiality require that, on every occasion, everyone shall self-determine freely, without prejudice of any kind, or willingness to foster a particular interest and without yielding to any pressure.

### **Independence**

10. The independence of the Financial Courts presupposes that the magistrates and other persons concerned by the obligations of the Code are not subject and shall not appear to

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<sup>3</sup> Literally meaning 'Court of Accounts' and 'Regional and Territorial Chambers of Accounts'.

be subject to any subordination of any kind whatsoever. They shall take care to avoid any situation which hinders or could appear to hinder their freedom of investigation within the framework of professional standards or the freedom of formation and expression of their opinions in deliberations. The only limit to this freedom lies in respect for collegial decisions.

### **Impartiality, neutrality, secularism**

#### Impartiality

11. The persons concerned by the Code shall ensure, in their professional and private conduct, that they are not in a situation that could undermine or appear to undermine the impartiality and neutrality of the Court to which they belong.
12. The impartiality of the members of the Deliberative College imply that their opinion has been formed without prejudice or bias.
13. In carrying out their duties, the persons concerned by the Code shall ensure that the parties, the persons implicated and third parties can express themselves. They shall analyze and give an objective account of the arguments and opinions expressed.

#### Neutrality and secularity

14. In their professional activity, the persons concerned shall refrain from any manifestation or behavior that could reflect a political, philosophical or confessional affiliation. In the context of their political, philosophical or confessional activities, they shall not emphasize their belonging to the institution or their collaboration in the work of the institution.

In the spirit of this rule, and with regard to the resulting personal investment, these same persons, as long as they are candidates for a national election, or for the European Parliament, or have responsibilities in an official campaign team, are invited to ask to be placed in a position of non-active status for the duration of the official campaign. The same applies to local elections when they may lead to the persons concerned taking positions and media exposure that may undermine the principle of neutrality.

### **PREVENTING CONFLICT OF INTERESTS**

15. In order to prevent conflicts of interest and in compliance with the provisions of the Financial Courts Code in this area, the persons concerned by the Code shall refrain from taking part in investigations or deliberations concerning an organisation in which they hold, or have held in the previous five years, any interest that would compromise their independence, impartiality or neutrality.

They shall not get involved in any way on an organisation or a service where they have exercised responsibilities during the last five years.

16. They shall refrain from intervening in favour of a third party, even on a friendly basis, if the situation is similar to a conflict of interest.
17. In the assessment of their interests and the risks of being placed in a situation of conflict of interest, the persons concerned by the Code shall consider that the notion of private interest means a benefit for themselves or for their close entourage.

## **PRINCIPLES OF CONDUCT**

18. The principles of dignity and loyalty that result from both the oath and the need not to undermine the image and reputation of the institution result in principles of conduct.

### **Dignity, integrity and probity**

#### Dignity

19. The persons concerned by this Code shall carry out their duties with dignity, in accordance with the oath. They shall behave righteously and refrain from any act contrary to honour.

#### Integrity and probity

20. Integrity and probity shall inspire the professional practice of the persons concerned by the Code and their conduct in their other activities.
21. These same persons shall not derive any advantage from their official position. They shall neither solicit nor accept from anyone, in the course of their duties, for themselves or for third parties, any advantage that may influence or cast doubt on the independence or impartiality of their decisions, their honesty or the way they perform their duties. They shall not solicit honours for themselves.
22. They shall accept, neither directly nor indirectly, gifts and liberality when performing or at the opportunity of their duties. Only low-value gifts, which are part of the official protocol of an official visit or exchange, may be accepted.
23. Invitations may only be accepted if they are not of such value, frequency or intent as to influence or appear to influence the independent and impartial exercise of functions.
24. The same persons shall not place themselves or let themselves be placed in a position likely to compel them to give back, in the exercise of their functions, a favour or a counterpart to a natural or legal person.

### **Discretion and secrecy**

25. The persons concerned by the Code shall respect the professional secrecy, which concerns in particular the investigations and the deliberations. The secret shall be absolute and shall know no modulation, division or derogation. The secrecy of the deliberations implies that the persons concerned by the Code shall abstain in all circumstances from letting known their personal opinion and that of the members of the deliberative College. They shall respect the secrets protected by the law.
26. These same persons shall respect in all their activities an obligation of professional discretion. They shall abstain, in particular, from communicating any documents or information of a confidential nature or of which the publicity belongs only to the Court to which they belong. They shall observe the most complete discretion with regard to any information and any data that they may know directly or indirectly thanks to their present or past functions and which can only be normally known by virtue of the powers granted to Financial Courts. They shall take all necessary steps to preserve the confidentiality of the professional information exchanged.
27. These various obligations shall apply to all means and media of communication.

### **Professional relationships**

28. The persons concerned by this Code, when they are called upon to take part in deliberations, shall always behave towards their colleagues in such a manner as to guarantee that the deliberations will remain serene and the collegiality will function well. They shall adopt a more general behaviour of respect towards everyone, including when communicating through social networks, even private ones.

### **Relations with the controlled persons**

29. They shall constantly take care to adopt a listening attitude during interviews and checks, without ever showing any personal feelings of sympathy or antipathy towards the people they meet while fulfilling their missions. They shall refrain from using, in their words and writings, terms that could be perceived as inappropriate or hurtful.

### **Public expression or likely to become so**

30. Magistrates and other persons concerned by the Code shall have, like any other official, freedom of opinion, freedom to join a political party, trade union or association.

The duty of confidentiality shall be assessed in respect of trade union or associative responsibilities when their purpose is the defence of professional interests.

31. These same persons shall ensure in any public expression, or likely to become public, to respect their duty of reserve and loyalty, and not to undermine the nature or the dignity of the office they hold. They shall likewise avoid any attack on the independence, impartiality and neutrality of Financial Courts or again their image and reputation. They refrain from

taking part in any controversy, which, by its diffusion and with regard to its purpose and its nature, would be likely to undermine the institution.

32. Except in the case of professional necessity, they shall not mention outside the institution the modalities and content of the investigations they are conducting or of which they are aware, or the deliberations in which they have participated. They shall avoid any comment on the internal life of Financial Courts.
33. In the messages they send on social networks or non-professional mail, they shall not mention that they are members of the Financial Courts. They shall abstain from taking part in any controversy, which, by its dissemination and because of its object or its character, would be likely to reflect on the institution.
34. In their public expression or likely to become public, they observe a general principle of prudence, which includes both discernment in the themes discussed and the media used, and appropriate vigilance in the choice of circumstances and the moderation in content and form.
35. In the use of digital social media and in the absence of a guarantee of the confidentiality and security of access and content on these media, they take particular care to respect the general principle of prudence. They do not mention their membership in Financial Courts or in the messages they send, or in their identification, except to inform, in the interest of transparency, their profile on social media with a professional vocation.
36. When speaking publicly about the publications of the Financial Courts, the persons concerned by the Code shall respect the message delivered in these publications and shall avoid critical comments that do not come in support of a scientific or academic reflection.
37. In the case of teaching activities, publication in academic, scientific, legal, technical or financial journals, or expression in symposia or seminars of the same kind, it is possible for them to avail themselves of their status within the Financial Courts, which shall imply an adequate moderation in their comments, whatever the medium. In a more general way, they take into account, in these activities, the risk of reproduction and diffusion by third parties of all or part of their comments.
38. When they wish to speak in a general-purpose medium in the performance of their duties or as a member of the Financial Courts, they shall first seek the agreement of the competent authority. In other cases, they shall take all the necessary steps to dissociate their speech from their status as members of the Financial Courts.
39. The presidents of chambre régionale et territoriale des comptes may express themselves as such on the subjects within their competence.
40. When magistrates are entrusted with a mission outside the Financial Courts, they are authorized, within this mission, to mention that they are members of the Courts; however, it is desirable that they specify their remarks and views do not bind these Courts.

## ANCILLARY ACTIVITIES TO FINANCIAL COURTS FUNCTIONS

41. Pursuant to Article 25 septies of the amended Act of July 13<sup>th</sup> 1983<sup>4</sup>, the persons concerned by the Code shall devote all of their professional activities to the tasks entrusted to them and may not, except as provided by law, exercise professionally a lucrative activity of any kind whatsoever.
42. In the exercise of an ancillary activity, the persons concerned by this Code shall comply with the provisions of Decree No. 2017-105 of January 27<sup>th</sup> 2017<sup>5</sup>. These activities, whether compensated or not, shall be respectful of the dignity of being a member of the Financial Courts. They shall be compatible with the normal exercise of the functions and not harm the reputation of the institution. Compensation from ancillary activities shall be limited to a reasonable amount.
43. For this purpose, and without prejudice to the provisions of paragraph 43, the persons concerned shall first let know their Chamber President or, if they are not assigned to a chamber, to the hierarchical authority to which they belong, paid or unpaid external activities accomplished by them on an occasional or recurring basis.
44. They shall respect the authorization procedures established by the First President and, in the case of the relevant members of the Prosecutor's Office, by the General Prosecutor. The opinion of the College of Ethics may be requested by the persons concerned and by competent authorities.
45. Activities of a scientific, literary or artistic nature and in particular the production of works of the mind are free. However, the persons concerned shall respect, including in this context, their duty of confidentiality, the dignity that suits their duties and their duty of loyalty.
46. Persons engaged in ancillary activities shall refrain from taking part in the proceedings and deliberations on the cases of which they have knowledge as such.
47. The persons concerned by the Code who exercise executive functions within local and regional authorities shall examine whether these responsibilities are compatible with the exercise of the functions within the jurisdiction and shall request to be placed on non-active status or to fulfil their functions on a part-time basis.

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<sup>4</sup> Article 25 septies of Act No. 83-634 of July 13<sup>rd</sup> 1983 concerning the rights and obligations of civil servants, as amended by Article 7 of Act No. 2016-483 of April 20<sup>th</sup> 2016 relating to the ethics, rights and obligations of civil servants. Pursuant to this article, civil servants who undertake an activity, even if very modest, are required to seek written permission to undertake a secondary activity from their manager, limited in time.

<sup>5</sup> Decree no. 2017-105 of January 27<sup>th</sup> 2017 is relative the exercise of private activities by public officials and certain contractual agents of private law having ceased their duties, overlapping activities and the public service ethics commission.

## **ACTIVITIES CARRIED OUT BY MAGISTRATES OUTSIDE FINANCIAL COURTS**

48. The nature of activities carried out by magistrates outside Financial Courts shall be compatible with their status, allow them to respect the oath they have taken, and not detract from the image and reputation of the institution.

## **THE COLLEGE OF ETHICS**

49. The College of Ethics established by the law of April 20th, 2016 also fulfils the function of the deontologist referent instituted by the same law. The college shall be consulted through its president.

50. The College shall not intervene in disciplinary proceedings.

51. When the question asked to the College concerns an individual situation, they shall inform the person concerned and send him a copy of their answer.

52. The College sends an annual report to the First President and the General Prosecutor. This report is presented to the Advisory Board of the Cour des Comptes and the Advisory Board of the CRTCs.

53. The College may, on its own initiative and based on its experience, issue recommendations specifying or supplementing this Code or make any proposal for change that it deems appropriate.