



European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

The ENCJ Compendium on Councils for the Judiciary

The ENCJ is the body which unites all Councils for the Judiciary, or similar autonomous bodies, of the EU Member States and represents them in the EU. Central to the mission of the ENCJ is the reinforcement of independent, yet accountable judiciaries in the European Union to guarantee access to fair, independent and impartial courts. To this end, the ENCJ is working systematically to promote and further develop standards and guidelines for the self-governance of the judiciary and the legal and practical arrangements of essential functions such as the appointment, promotion and discipline of judges.

While competences and composition of Councils vary, it is essential that the Councils are enabled to fulfil their mission of guaranteeing an independent, yet accountable judiciary and high-quality justice for all. This position is a summary of the statements, declarations and reports that the ENCJ has adopted on Councils for the Judiciary since its establishment in 2004 with some new standards and recommendations added.

Preamble on the independence of the judiciary

Article 19 TEU, which gives concrete expression to the value of the Rule of Law stated in Article 2 TEU, entrusts the responsibility for ensuring judicial review in the EU legal order not only to the Court of Justice but also to national courts and tribunals since national courts and tribunals may rule on questions concerning the application or interpretation of EU law¹. The very existence of effective judicial review designed to ensure compliance with EU law is of the essence to the Rule of Law. It follows that every Member State must ensure that the bodies which, as ‘courts or tribunals’ within the meaning of EU law, come within its judicial system in the fields covered by that law,

The Court of Justice of the EU, in its judgement of 19 November 2019 C-585/18, C-624/18 and C-625/18

“The participation of a council, in the context of a process for the appointment of judges, may, in principle, be such as to contribute to making that process more objective. However, that is only the case provided, inter alia, that that body is itself sufficiently independent of the legislature and executive and of the authority to which it is required to deliver such an appointment proposal. Taking all of the relevant points of law and fact relating to the circumstances in which the members of that body are appointed.”

“And taking into account the way in which that body exercises its constitutional responsibilities of ensuring the independence of the courts and of the judiciary and its various powers, in particular if it does so in a way which is capable of calling into question its independence in relation to the legislature and the executive.”

¹ CJEU 27.7.18 in case C-64/16, Associação Sindical dos Juízes Portugueses

meet the requirements of effective judicial protection. In order for that protection to be ensured, maintaining such a court or tribunal's independence is essential, as confirmed by the second paragraph of Article 47 of the Charter, which refers to the access to an 'independent' tribunal as one of the requirements linked to the fundamental right to an effective remedy.

A fundamental cornerstone of any democratic society is the principle of the separation of powers which ensures that the judiciary can perform its responsibility to deliver independent quality justice. It is a pre-condition that in exercising the judicial function the judiciary are autonomous from the executive and legislative power. This is necessary to guarantee full protection for the basic rights of the citizen. Self-governance is a prerequisite for achieving and protecting this independence and autonomy.

The appointment of judges, their career paths, disciplinary systems and procedures, structure and organisation of individual offices all combine to define the individual status of the judge and outline the guarantees for their actions providing the conditions for exercising jurisdiction independently. Justice systems must be effective in providing open access to justice for all citizens and the governing bodies (Councils for the Judiciary) that protect that access to justice have to be independent.

Councils for the Judiciary should be independent not only from the executive and legislative powers (external independence) and should be free from undue influence from within the judiciary (internal independence).²

The Council for the Judiciary organisations are in various ways responsible for the support of the judiciary in the independent delivery of justice. Characteristic for all organisations is their autonomy and their independence of the executive and legislative power. Although there are different structures for ensuring judicial independence all Councils nevertheless are governed by the same general principles. Some Councils are competent with regard to career decisions for judges, selection, recruitment and evaluation and disciplinary actions whereas others, in general more recently established Councils, have competencies that include policy and managerial tasks in the fields of efficiency and quality, budget and budgeting procedures.

Self-governance of the judiciary guarantees and contributes to strengthening the independence of the judiciary and the efficient administration of justice.

Each Council for the Judiciary has its origin in the development of its own legal system which is deeply rooted in a historical, cultural and social context but nevertheless all Councils for the Judiciary share common experiences and challenges and are governed by the same general principles.

The ENCJ does not aim to set an "ideal model" of a Council for the Judiciary, but seeks to define common principles for ensuring the independence of Councils for the Judiciary (or one or more independent and autonomous bodies) as well as the effectiveness and efficiency of their activities.

² Added by the General Assembly in Vilnius on 29 October 2021

A. Mission

The ENCJ considers that it is necessary that Councils for the Judiciary should act to strengthen and maintain the Rule of Law, in particular by providing support for judicial independence, accountability and the quality of the judiciary. Councils strive to ensure the maintenance of an open and transparent system of justice for the benefit of all.

Note that this document does not specifically address issues concerning prosecutors considering the wide variety of the organisation prosecution services in Europe. This does not prevent the standards and recommendations set forth in this document also applying to Councils for the Judiciary safeguarding the independence of both judges and prosecutors³.

B. Legal framework

The independence of the Judiciary must either be regulated in the constitution of the state or by equivalent entrenched protections. These arrangements are designed to ensure that changes cannot be made without full democratic consideration and more than a simple majority of the legislature.

C. Composition and Structure

The Council can be composed either exclusively of members of the judiciary or members and non-members of the judiciary⁴. The most successful models appear to be those with representation from a combination of judges elected by their peers and members elected /or appointed from the ranks of legal, academic or civil society, with broad powers sufficient to promote both judicial independence and accountability. This is seen as the most appropriate pathway to promoting and guaranteeing the real independence of the Judiciary by rendering the Council free from any political interference and serves to reinforce its autonomy.

In addition, the membership of lay members reinforces the accountability and openness to civil society of Councils⁵.

When the composition is mixed, the Council should be composed of a majority of members of the judiciary, but not less than 50 %⁶

In any case (whether there is a mixed composition or not) the judicial members of the Council (however appointed) must act as the representatives of the entire judiciary.⁷

³ These Councils are the Councils in Belgium, Bulgaria, France, Italy and Romania. The ECHR has underlined in *Kövesi vs Romania* 3594/19, that the principle of the independence of prosecutors is a key element for the maintenance of judicial independence

⁴ [ENCJ Declaration of Budapest 2008](#)

⁵ ENCJ report on Councils for the Judiciary 2010-2011

⁶ *Idem*

⁷ *Idem*

In the composition of all panels of the Council, a majority⁸ of judicial members should be guaranteed.⁹

Presidency of Councils¹⁰

Adhering to the legal traditions of a particular country, the President of the Judicial Council should be appointed in a manner that ensures hers/his impartiality and independence from the legislature and executive and should ensure the absence of undue influence from within the judiciary.

Different traditions exist in Europe. If the Presidency is not an ex-officio position and the President is elected from among the members by the members, a rotating presidency is viewed as a good institute. In case of a rotating presidency, the term of the President should not be too short. A rotating presidency does not imply that each member of the Council should serve a mandate as president.

In systems with an ex-officio presidency this recommendation could apply to the vice-president or the representative of the Council.

Judicial Members

The Council should be composed of a majority¹¹ of members of the judiciary chosen by their peers, guaranteeing the widest possible representation of courts, instances, levels and regions, as well as diversity of gender.¹²

In this case the ex-officio judicial members of the Councils should not be seen as being part of the majority¹³ that should be chosen by their peers.¹⁴

To maintain this important structure ENCJ recognises that mechanisms for choosing judicial members¹⁵ must guarantee that there is no interference by other powers - the appointment must be left, directly or indirectly, to the judges, using democratic methods that ensure a “pluralist” nature of the council representation and ample legitimisation in relation to the body of judges.

⁸ A majority, but not less than 50%

⁹ Added by the General Assembly in Vilnius on 29 October 2021

¹⁰ ¹⁰ Added by the General Assembly in Vilnius on 29 October 2021

¹¹ Idem

¹² ¹² Added by the General Assembly in Vilnius on 29 October 2021

¹³ A majority, but not less than 50%

¹⁴ ¹⁴ Added by the General Assembly in Vilnius on 29 October 2021

¹⁵ In case of a Council representing judges and prosecutors, please read magistrates.

Non-judicial members

The composition of Councils for the Judiciary and equivalent bodies should include non-judicial members, reflecting the diversity of society,¹⁶

The process of selection, election or appointment of non-judicial members should be merit based and transparent. Where non-judicial members are appointed by parliamentary bodies, it is desirable that their selection be subject to the achievement of particular qualified majorities, in order to avoid political influence.

Non-judicial members should meet the same standards of integrity, independence and impartiality as judges, but non-judicial members should not be politicians or include the Minister of Justice. Non-judicial members of Judicial Councils and other relevant bodies should not be involved in politics for a reasonable period of time before and after their mandate as member of a Judicial Council or other relevant body.

Certain persons should always be ineligible for appointment as non-judicial members. In particular:

- Judges, even if retired,
- Persons convicted of criminal offences or who are or have been bankrupt, or who are otherwise disqualified from public office,
- Members of Parliament (including former Members), and Members of government (including previous governments).¹⁷

Non-judicial members should have the same status and voting rights as judicial members.

Participation of the Minister for Justice in the Council for the Judiciary

The presence of the Minister for Justice as a member of the Council for the Judiciary is not considered appropriate as it clearly entails the risk of the executive power affecting the debates and choices made by the judicial order and may effectively constrain the frankness of debate and discussions. This risk of having the Minister for Justice as a member of the Council outweighs the possible theoretical advantage of having the Minister present to carry out a joint evaluation of problems arising from the functioning of the judicial system, and matters of common interest¹⁸.

¹⁶ ENCJ Project Minimum Standards for non-judicial members in judicial governance The exact number and proportions of judicial and non-judicial members depends on the type of body. In particular:- In Judicial Councils, judges should constitute a majority, but not more than 2/3 of members. Therefore, non-judicial members should constitute at least 1/3 of members. In other relevant bodies, non-judicial members should participate in any selection procedure regarding the appointment and promotion of judges (and prosecutors if applicable) at all levels of seniority.

¹⁷ ENCJ Project Minimum Standards for non-judicial members in judicial governance – 2015-2016

¹⁸ ENCJ Project on Councils for the Judiciary 2010-2011 and ENCJ Project Minimum Standards for non-judicial members in judicial governance – 2015-2016

D. The mandate of Council members

Functioning of the Council¹⁹

A full-time membership (for at least a number of members) could assist the Council to work as a professional and effective organisation. It could strengthen its independence, avoid conflicts of interest, improve its image and as such would assist the Council in fulfilling its mission.

Irrespective of whether the members of the Judicial Council serve as full-time members or part-time members, they should be allocated enough time and be properly resourced to fulfil the position.²⁰

Term of mandate²¹

It is important that a fixed term of mandate is provided and that a member of the Judicial Council is guaranteed security of tenure during the term of office. This ensures their independence but also the continuity of the working processes within the Judicial Council.

The mandate of Council members should be neither too short or too long.

A short mandate could hinder the Council in fulfilling its mission. On the other hand, a long mandate, especially in case of full-time membership could create a perception of detachment from the judiciary.

When the legal arrangements provide for a consecutive mandate²², the conditions for renewal should be provided for by law and should be limited to two mandates to avoid detachment of the judiciary or the perception that the Council is ruled by a clique of the same judges.

Security of tenure²³

Judicial members appointed to the Council for the Judiciary should be protected with the same guarantees as those granted to judges exercising jurisdictional functions, including the conditions of service, security of tenure, immunities and the right to a fair hearing and legal remedies in case of discipline, suspension and removal. Non-judicial members of the Council should have equivalent protection.

In cases of selection or appointment of the members of the Judicial Council by the legislator or the executive, the term of the mandates of the nominator (legislator or executive) and the nominee (member of the Council) should be different or at least not start at the same time,

¹⁹ ¹⁹ Added by the General Assembly in Vilnius on 29 October 2021

²⁰ ²⁰ Added by the General Assembly in Vilnius on 29 October 2021

²¹ ²¹ Added by the General Assembly in Vilnius on 29 October 2021

²² Risks may occur related to the independence of council members when seeking re-election. This applies to judicial and non-judicial members.

²³ Added by the General Assembly in Vilnius on 29 October 2021

in order to safeguard the independence of the Council and protect it from any or any perceived political influence represented by the majority of the selection/appointing body. No renewal of the Council's members should take place following parliamentary elections.

Institutional continuity and efficiency of the Council may be improved if not all terms of office expire simultaneously.

Changes to the legal framework for the operation of judicial councils should not lead to the early termination of the mandates of persons elected under the previous framework, except when the change of the legal framework aims to reinforce the independence of the council's composition to bring it in line with European Standards.²⁴

Incompatibilities²⁵

It is for each Member of the Council (both judicial and non-judicial) to assess whether to accept a function or continue in a position that may jeopardise his/her (perceived) independence and impartiality. This would be particularly important if a conflict of interest could arise or a concentration of powers in the hands of a single person or a small group of people could occur.

E. Competences and Duties

Competences

A Council for the Judiciary should have the appropriate mechanisms and procedures in order to defend judicial independence effectively²⁶.

All or part of the following tasks should fall under the authority of a Council for the Judiciary or of one or more independent and autonomous bodies²⁷:

- the appointment and the promotion of judges
- the training of judges
- the discipline and judicial ethics
- the administration of the courts
- the finances of the judiciary
- the performance management of the judiciary
- the processing of complaints from litigants
- the protection of the image of justice
- the formulation of opinions on judicial policies of the State
- setting up a system for evaluating the judicial system
- drafting or proposing legislation concerning the administration of the judiciary/ the judiciary and/or courts

²⁴ Such reforms could otherwise be used as a justification for replacement of the judicial council in place with a new one with a certain political influence.

²⁵ ²⁵ Added by the General Assembly in Vilnius on 29 October 2021

²⁶ Question in the ENCJ Survey 2017 and 2019 - added by the General Assembly in Vilnius on 29 October 2021

²⁷ ENCJ Budapest declaration 2008.

Judicial reform - It is essential that the judiciary, Councils for the Judiciary and in particular judges and prosecutors be involved at each stage of development and implementation of reform plans (including digitisation). This is to ensure the independence of the judiciary and that reforms are effective and instil confidence.

Affirmative duties of Councils for the Judiciary

As the CJEU holds in its decision of 19 November 2019, besides the Councils for the Judiciary needing to be sufficiently independent of the legislature and executive taking all of the relevant points of law and fact relating to the circumstances in which the members of that body are appointed into account, it is also necessary to take into account **the way in which that body exercises its constitutional responsibilities of ensuring the independence of the courts and of the judiciary and its various powers**, in particular if it does so in a way which is capable of calling into question its independence in relation to the legislature and the executive.

Relations with other State Powers

The Councils must create, maintain and demand mutually respectful relations with other State Powers.

Councils for the Judiciary should seek a continuous dialogue with the other branches of power by developing communication channels with the representatives of all the other branches. All state powers should support each other carrying out their functions, and all should restrain from interfering with the competence of others. Since state powers shall cooperate on an equal basis the communication should be based on mutual respect, and each party shall give only constructive criticism.

Transparency and accountability

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.²⁸

Councils should in discharging their responsibilities:

- Ensure transparency in the way in which the Council discharges all its functions.²⁹
- Provide sufficient information to the public and the media, to ensure the accurate perception of the administration of justice by the public.³⁰
- Report regularly on how it has discharged its functions.³¹
- Encourage the promotion of high-quality performance of all aspects of the work of the judiciary.

²⁸ ENCJ Budapest declaration 2008.

²⁹ [Declaration of Bucharest 2009](#)

³⁰ idem

³¹ idem

- Provide written, reasoned decisions on appointment and promotion to each candidate - if Councils are responsible for the selection, appointment and promotion of judges.³²
- Be accountable for their activities by submitting periodic and public reports which transparently show the principles on which they perform their functions and the outcomes from activities.
- Initiate and lead a process of positive change with a view to promoting an independent, accountable and high-quality judiciary, so enabling judiciaries to optimize the timely, impartial and effective delivery of justice for the benefit of all.³³
- Promote that the judiciary takes action to ensure that the general public understands the central importance of justice to democracy and to the wellbeing and prosperity of the state. This can be achieved by education and outreach initiatives.
- Promote that the judiciary adopt a focused communication strategy to engage pro-actively with the media and the public.
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Cooperation and Solidarity

Cooperation³⁴

The ENCJ activities are inspired and shaped by the principles and values of the European Union itself, as defined in the Treaty on European Union (TEU)³⁵. Among those, the respect for democracy and Rule of Law is of focal importance³⁶. Article 4(3) TEU lays down the principle of sincere cooperation, according to which the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

In the same spirit, Member States' Councils for the Judiciary shall aspire to create close working links within the ENCJ, fostering information exchange and actively seeking cooperation, in order to contribute to stability of democratic institutions and the Rule of Law in the EU.

Solidarity

Councils for the Judiciary should support any judiciary which is under attack and do all they can to persuade the executive and legislature to support the action which they are taking in this regard. The prudent convention that judges should remain silent on matters of political controversy should not apply when the integrity and independence of the judiciary is threatened. There is now a collective duty on the European judiciary to state clearly and cogently its opposition to proposals from government which tend to undermine the independence of individual judges or Councils for the Judiciary³⁷.

³² [Recommendations from ENCJ workshop on the appointment of judges, Madrid 2018](#)

³³ ENCJ Lisbon Declaration 2018

³⁴ Added by the General Assembly in Vilnius on 29 October 2021

³⁵ [Consolidated Version of the Treaty on European Union \[2008\] OJ C115/13.](#)

³⁶ Article 2 TEU states that, among other principles, Union is founded on the values of respect for democracy, equality and the rule of law.

³⁷ ENCJ Paris Declaration 2017

F. Resources, funding and status

To guarantee that the Council can act independently a Council for the Judiciary must manage its budget impartially from the executive power. Councils for the Judiciary must have adequate financial and administrative resources to properly carry out their function. The Council must have the power and capacity to negotiate and organise its own budget effectively and, in this regard, to participate in consultation or representation procedures at local and national level as well as the right to engage in formal dialogue with the legislative and the executive in relation to the allocation of resources necessary for the administration of justice.

Legal personality, or equivalent arrangements, assist the Councils in managing their resources and budget and should therefore be granted.³⁸

³⁸ Added by the General Assembly in Vilnius on 29 October 2021

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