

Code of Conduct for the Members of the Portuguese Court of Auditors

In its Charter of Ethics¹, the Court identified Independence, Integrity, Responsibility and Transparency among core values for the institution and all its members.

Following this Charter of Ethics, and as provided for in articles 19, paragraph 1, and 25, paragraph 6, of Law No. 52/2019, of July 31st, the Court has adopted the Code of Conduct for its Members.

The Members of the Court are magistrates who are equivalent in statute to the Members of the Supreme Court of Justice. Thus, as stems from that statute and the provisions of paragraph 5 of article 19 of said Law No. 52/2019, this Code of Conduct considers and is consistent with the provisions laid down in the Constitution of the Portuguese Republic, in the Organization and Procedural Law of the Portuguese Court of Auditors (LOPTC) and in the Statute of Judicial Magistrates.

The conduct of the Members of the Court, as part of a supreme audit institution, which is integrated in INTOSAI², is also referred to the respective Code of Ethics, as set out in ISSAI 130³.

The constitutional, legislative and ethic framework is a robust axiological support for the standards of conduct for the Members of the Court, which is based upon a necessary balance between requirements inherent to the performance of jurisdictional and financial control duties and the rights of citizenship of the magistrates.

In addition to this framework, there are expectations that society and citizens have as regards the action of this Members of the Court in the context of a democratic Rule of Law.

Ethical conduct has also a significant dimension of perception: to ensure that behaviours are considered ethical behaviours, it does not suffice they are adopted as such. It is also necessary to avoid any doubts that may arise from them to a reasonable, properly informed, objective and good-faith person.

A code of conduct is a reference and clarification framework of expected behaviours in use and with due respect for applicable values and laws, thereby constituting a positive and demanding stimulus for the performance of duties according to accepted standards.

¹ Adopted by Resolution No. 7/2018-PG, of December 14th 2018, available on <https://www.tcontas.pt/pt-pt/Transparencia/Documents/Carta-Etica.pdf>

² INTOSAI: International Organization of Supreme Audit Institutions. Among other missions, INTOSAI approves the ISSAI, International Standards of Supreme Audit Institutions

³ <https://www.issai.org/pronouncements/issai-130-code-of-ethics>

Given that no code is able to predict and solve all ethical issues, we cannot expect to include in any code appropriate positive or negative conducts extensively. Values and principles of action laid down in this Code should guide individual decisions as regards particular issues that need clarification.

The Code of Conduct at issue does neither represent nor can be mistaken for the disciplinary regime, which is exclusively governed by the Law and whose violation would lead to legal sanctions and consequences.

In light of the foregoing, the General Plenary Meeting, by decision of May 15th 2020, has adopted the following Code of Conduct for the Members of the Court.

Article 1

(Scope)

1. This Code of Conduct lays down the values and principles of conduct for the Members of the Court, including retired Members during the performance of their duties.

2. The retired Members of the Court who is not in office must observe, to the extent applicable, the values and principles laid down in articles, 4, paragraphs 2 and 4, article 6, paragraph 3, article 7, 8, paragraph 2, article 9 and 10, paragraphs 2 to 10, of this Code of Conduct.

3. Any retired Members of the Court who leaves office on grounds other than retirement must continue to comply with the principles of protection of reputation of the Court and the principle of non-disclosure of confidential information acquired in the course of their duties.

Article 2

(Values)

1. In the performance of their duties, the Members of the Court must observe and ensure, as core values, independence, impartiality, integrity, responsibility, diligence and transparency.

2. In every activity in which he is recognised as such, the Members of the Court do neither compromise nor undermine the way society perceives those values and the Court credibility and rigour in a democratic Rule of Law.

Article 3

(Independence)

In every activity, in particular in actions to be carried out / developed and in the context of the decisions to be made under their duties in the Court, the Members of the Court shall be bound to act independently and in compliance with the Portuguese Constitution and the Law.

Article 4

(Independence-achieving principles)

1. The Members of the Court must safeguard and ensure that their analyses, assessments and decisions are carried out in compliance with the principles of pursuit of public interest, separation of powers and neutrality, and are not and do not appear to face pressure or interests of any sort, in particular political, financial, administrative, professional or personal.

2. The Members of the Court must comply with legally established incompatibilities for judicial magistrates, in particular by not performing any other public or private duty of professional nature, other than the cases legally permitted by a special rule.

3. The Members of the Court must reject any political influence or subordination in the course of his/its duties.

4. The Members of the Court must not engage in public party-political activities, in particular electoral campaigns, public demonstrations of party-political opinions, fund raising or other initiatives of similar nature.

5. Neutrality implies that the selection of actions to be carried out, the form of action and the assessments formulated are solely based upon sufficient and relevant evidence and findings, as well as on legal and objective criteria.

Article 5

(Impartiality)

In all their activities, in particular as regards the actions to be carried out / developed and the decisions to be made under their duties in Court, the Members of the Court must act impartially and ensure compliance with the adversarial principle and fair and equitable judgment.

Article 6

(Impartiality-achieving principles)

1. The Members of the Court must comply with and ensure impartiality, by avoiding possible conflicts of interests and starting legal mechanisms of impediment or recusal, as prescribed by law, in particular when, for serious reasons, one could suspect that.

2. In particular, the Members of the Court should neither conduct nor engage in:

- a) inspection activities that concern entities or programmes in which they have been involved in the last five years;
- b) proceedings that concern decisions in which they have participated as plaintiff, proposer or consultant;
- c) actions or decisions relative to entities, programmes or decisions in which there are personal or close person interests or circumstances that may influence or appear to influence their action;
- d) actions or decisions relative to entities, programmes or decisions in which there are people involved with whom they have a relevant close relationship.

3. The Members of the Court must not participate in management and inspection activities of entities subject to the jurisdiction and financial control powers of the Court or in consultative activities, which are reflected in acts susceptible to review by the Court.

4. The Members of the Court must refrain from participating in out-of-court activities that may be considered, by a reasonable, properly informed, objective and well-meaning person, as susceptible of undermining the confidence of citizens in the impartiality of their analyses and decisions.

5. For the purposes of paragraph 2, sub-paragraph c) and d), and without prejudice to the circumstances of each specific case, marriage, non-marital partnership and straight-line family or affinity relationship are considered to be of relevant proximity.

Article 7

(Integrity)

The Members of the Court must adopt high standards of professional, personal and social integrity, acting with honour, honesty, dignity and in compliance with public interest.

Article 8

(Integrity-achieving principles)

1. The Members of the Court must comply with and ensure, in relation to themselves, a social perception of honesty, probity and seriousness, refraining from behaviours that, according to the criterion of a reasonable, properly informed, objective and well-meaning person, may undermine confidence in their capabilities and qualities for the analyses, assessments and decisions they are entrusted with under the powers of financial control and jurisdiction of the Court.

2. The Members of the Court must neither take advantage of their professional statute or prestige nor invoke that capacity in acts of their personal life in order to get undue advantages or preferences for themselves and third parties.

3. The Members of the Court must not use any confidential information to which they have access in the context of control and jurisdiction duties for private, personal or third party's benefit.

Article 9

(Responsibility)

The Members of the Court must stand by a responsible conduct, both institutionally and personally, while having regard to and maintaining the core values and mission of the Court and behaving in order to keep and build trust of *stakeholders* and citizens in the control and jurisdiction powers of the Court.

Article 10

(Responsibility-achieving principles)

1. The Members of the Court must observe and enforce observance, under the actions to be developed and judgments to be made, the duties of correctness, urbanity and respect in their professional relationship with other magistrates, audited entities and all persons involved in proceedings and any representatives, in particular legal agents and with external employees or consultants.

2. The Members of the Court must observe and enforce observance of confidentiality of information to which they have had access in the course of their duties of control and jurisdiction, while prohibiting information to be used outside the context of the respective proceedings or disclosed in noncompliance with applicable

legislation and protecting exclusiveness of their electronic access passwords and access to computer systems and documents.

3. The Members of the Court must use the resources made available to them by the Court reasonably and responsibly.

4. In their social life, the Members of the Court must behave with dignity, correctness and responsibility socially.

5. The Members of the Court must observe the restrictions imposed by the duty of confidentiality in the personal exercise of their freedom of speech and their right of opinion.

6. The Members of the Court must exercise their right of speech, opinion and civic participation responsibly, while considering and managing possible risks to their independence, impartiality, neutrality and dignity, to the image and reputation of the Court or to the respective perception. To this extent, they must act prudently and moderately and refrain from interventions that contribute to undermine public confidence in their capabilities for the performance of duties or the institutional trust of the Court.

7. The Members of the Court only engage in activities outside their formal responsibilities that are compatible with their statute and with their professional duties as well as with the image and reputation of the Court.

8. The participation of the Members of the Court in social networks must observe the same principles, in particular the principle of prudence, and must avoid identifying themselves as Member of the Court, except in the professional context.

9. Any participation as a Member of the Court must always clarify, and draw a distinction between the information of the Court's action and their personal opinions.

10. The institutional relations with the media are ensured by the President of the Court or anyone he appoints. In other relations with the media, the Members of the Court must observe the principles referred to in paragraphs 6 and 7.

Article 11

(Diligence)

The Member of the Court must strive to perform their duties diligently, competently, rigorously and efficiently.

Article 12

(Diligence-achieving principles)

1. The Member of the Court must contribute to the Court's good performance, qualitatively and quantitatively, by ensuring that the actions they carry out and the judgments they make are performed and decided with the necessary quality and expertise, in accordance with applicable laws and regulations and within a reasonable period of time.

2. The Member of the Court must always keep updated knowledge, skills and personal qualities, which are required for performing their duties with merit.

Article 13

(Transparency)

The Members of the Court must act transparently, by facilitating public scrutiny about the observance of the principles of independence, impartiality and integrity, without prejudice to the right of reserve of their private life and their personal and family safety.

Article 14

(Transparency-achieving principles)

1. In weighing up the allocation of Members of the Court to chambers or areas and incidents of impediment, withdrawal or recusal, they will fill in a declaration, to be deposited in the Court's Standing Committee, indicating:

- a) External activities exercised by them in the last five years;
- b) Other relevant facts or interests, in particular of financial nature, related to public or private entities that may be subject to the jurisdiction and financial control powers of the Court, to which they are or have related in the last five years.

2. The declaration mentioned in the previous paragraph must be updated when justifiable changes take place.

3. The declaration mentioned in paragraph 1 does not preclude the duty of reporting any other facts, acts, activities or interests by the Members, in particular financial interests, which are anticipated to be subject to a conflict of interests when:

- a) they are aware that the problem may arise as regards any specific proceeding in which they are about to take part as *rapporteurs* or assistants; or
- b) the respective allocation to any specific chamber or area is decided.

Article 15

(Gifts and hospitality)

1. To fully achieve the values mentioned before, and in compliance with their statute, they must not seek or accept any gifts related to the performance of their duties of control and jurisdiction, in particular material goods, services, travel, accommodation, meals and advantages, including those that have the potential to be interpreted as such by a reasonable, properly informed, objective and well-meaning person.

2. Institutional gifts that are not related to the performance of their control or jurisdiction duties can be accepted:

- a) under justified circumstances of courtesy, in particular when representing the Court in other comparable institutions;
- b) where the refusal may be considered by the offeror as lack of interinstitutional respect.

3. In the situations referred to in the preceding paragraph, institutional gifts may only be accepted as long as their value, frequency or intent do not interfere or seem to interfere with the independent and impartial performance of their duties.

4. The General Plenary must define acceptance, delivery and destination criteria as regards the gifts mentioned above, taking into account their nature and relevance, and designate the person responsible for entry and definition of subsequent procedures.

5. For the purposes of the previous paragraph, they must inform about the gifts referred to in paragraph 2, within fifteen days as from they were received.

Article 16

(Application of the Code)

The General Plenary must ensure the application and update of this Code, and may for the purpose assign tasks to one or some of its members, in particular for the purposes of the previous article.

Article 17

(Entry into force)

This Code of Conduct enters into force on the date of publication in the Portuguese Official Journal (*Diário da República*), and is also disclosed on the Court's internet webpage.