

Ethical Charter of the assessors

Resolution on conflicts of interest and deontology

I. Recapitulation of the applicable legal provisions

1. Independence

Article IV. 22(4) CEL provides:

“§4. The assessor-vice-president and the other assessors sitting in a case shall not accept any orders in the decision-making process regarding the tasks the present book, and in particular section 2 of this chapter, confers on them.”

2. Recusal

Article IV. 32 CEL provides:

“The president, the assessor-vice-president or the assessors appointed in a case, the Auditor General and the auditors appointed by him may be recused for the causes set out in article 828 of the Judicial Code.

The person who is aware of a cause recusal relating to his person must abstain. (...)”

The text of article 828 of the (Belgian) Judicial Code is given below:

Any judge may be recused for the following reasons:

(1°) if there is a legitimate suspicion;

(2°) if he or his spouse has a personal interest in the dispute;

(3°) if he or his spouse is related to or related by marriage to the parties or one of the parties in a direct line, (...); or in a collateral line up to the fourth degree; or if the judge is related in the above-mentioned degree to the spouse of one of the parties;

(4°) if the judge, his spouse, their ancestors and descendants or ascending or descending relatives by marriage, have a dispute over a question similar to the one between the parties;

(5°) if they have a legal proceeding in their name before a court where one of the parties is a judge; if they are creditors or debtors of one of the parties;

(6°) if there has been a criminal legal proceeding between them and one of the parties or their spouses, or relatives or relatives by marriage in a direct line;

(7°) if there is a civil procedure between the judge, his spouse, their ancestors and descendants or relatives by marriage in the same line, and one of the parties, and that this legal procedure, if it was brought by the party, has been so prior to the proceeding in which the recusal is proposed; if, this legal proceeding being completed, it was completed within only six months prior to the recusal;

(8°) if the judge is guardian, deputy guardian or trustee, administrator or legal counsel, presumptive heir or donee, master or partner of one of the parties; if he is administrator or commissioner of any institution, company or association, that is party to the case; if one of the parties is his presumptive heir or donee;

(9°) if the judge gave advice, pleaded or wrote about the controversy; if he previously acted as a judge or arbitrator in the case, except if, at the same level of jurisdiction:

1. he took part in a preliminary court decision or a sentence;
2. having adjudicated in default, he has jurisdiction on the case on opposition;
3. having adjudicated on an appeal, he later has jurisdiction on the same case, in united chambers;

(10°) if the judge took part in a first degree court decision, and the case is referred to him on appeal;

(11°) if he testified as a witness; if, since the beginning of the legal proceeding, he has been received by a party at the party's expense or accepted presents from this party;

(12°) if there is a major enmity between him and one of the parties; if there has been, on his part, abuse, insults or threats, verbally or in writing, since the proceeding or within six months prior to the proposed challenge/recusal.

3. Professional secrecy

The assessors are fully aware that under Article IV. 34 CEL they are:

“subject to professional secrecy and shall not disclose, without prejudice to the provisions of sub-section 10 of section 2 and the royal decrees adopted in execution of Article IV.43, paragraph 2, to any person or authority whatsoever, data and confidential information that they learned of as a result of their duties, except when they are called to give evidence in court.

They may use such data and information only for the purposes for which they were collected.”

In this respect, the legislation related to insider trading is also relevant.¹

¹ Article 25, §1, 1°, a) of the Law of 2 August 2002 on the supervision of the financial sector and financial services states: “ It is unlawful for any person (...) who holds information which he knows or ought to know to have a confidential character is inside information (...) to acquire or dispose of, or attempt to acquire or dispose of, on his own account or for the account of others, directly or indirectly, financial instruments containing that information or related financial instruments.” Article

4. Discipline

Article IV. 33 CEL provides:

“The Court of Appeal of Brussels may impose, in a reasoned manner, a warning, a reprimand or an income deduction as a disciplinary sanction (...), to the assessor vice-president, other assessors, (...). The court may also declare them excluded or suspended from their duties.”

5. Incompatibilities

Article IV. 37 (2) and (3) CEL provides:

“§ 2. The function of assessor vice-president or assessor is incompatible with the exercise of a public office conferred by election at another than the local or provincial level, with any paid public office or function of political or administrative nature, except in higher education institutions, with the position of public notary or judicial officer, with the military status or with the position of Minister of a recognised religion.

§ 3. The paragraphs 1 and 2 may not be derogated from:

(...)

2° than when it comes to the performance of duties of a member of the Board of Examiners;

3° than when it comes to participation in a commission, board or advisory committee, provided that the number of tasks or functions is limited to two and the duties or functions are not remunerated.

These exemptions are granted by the President or, if the application concerns the President, by the President of the Court of Appeal of Brussels.”

Article IV. 38, first paragraph CEL, provides:

“The president, the assessor vice-president or assessors sitting in a case, the auditor general, the directors of economic and legal studies and the members of the staff of the Belgian Competition Authority, as well as any person working under their authority, may not assume the defense of the parties, either orally or in writing, or give them consultations.”

25, §3, 1° of the same Act specifies that this prohibition applies to acts which affect financial instruments admitted to trading on a Belgian regulated market. Article 2, 14° of the Act of 2 August 2002, moreover, states that privileged information represents *“any information that has not been made public, has a clear character and is related to, directly or indirectly, one or more issuers of financial instruments or to one or more financial instruments and which, if made public, would be likely to significantly influence the course of financial instruments or related financial instruments, (...).”*

6. Sanctions

Article XV. 70 CEL provides:

“Infringements of the provisions of this Code shall be punished with a penalty ranging from level 1 to level 6.

(...)

The penalty of level 2 consists of a penal fine from 26 to 10.000 euro.

(...)

The penalty of level 5 consists of a penal fine from 250 to 100.000 euro and imprisonment from one month to one year, or one of these penalties only.

(...)”

Article XV. 80 CEL provides:

“Any infringement of Articles IV. 13 and IV. 14 is punished by a sanction of level 2. Any infringement of the decree referred to under Article IV.15 is punished by a sanction of level 5.

The use or disclosure, for purposes other than the purposes of Book IV and Articles 101 and 102 TFEU, of documents or information obtained under the provisions of Book IV, is punished by a sanction of level 5.

An infringement of Articles IV. 34 and IV. 35 is also punished by a sanction of level 5.”

II. Resolution on Conflicts of Interest

1. The concept of a conflict of interest

Assessors perform their duties independently and in a manner avoiding any conflict of interest.

2. Duty of disclosure

An assessor who is called to sit on the College shall notify the President of the existence of interests, relationships or matters of which he has reasonable knowledge and which may have an impact on or may give rise to reasonable doubts as to his independence. For illustrative purposes, apart from the cases of recusal under Article 828 of the Judicial Code, the assessors decided to inform the President of the Authority of the following circumstances and cases:

- (1) Either himself, the undertaking, the company, the institution, administration or association to which the assessor belongs, or a company which he himself, or a member of his institution, administration, or association counsels or defends currently on competition law;
 - is a party to the case brought before the Competition College or in a proceeding before a court or another administrative authority for the same purpose; or
 - has a dispute identical to that discussed by the Competition College.
- (2) If personal relationships (marital, family, business or patrimonial relationships) between the assessor and one of the directors or executives of a company that is party to the proceedings before the Competition College or which can reasonably be expected to lodge a request for intervention;
- (3) If, within three years before the appointment request, the assessor worked for a company that is a party to the proceedings before the Competition College;
- (4) If the assessor plans to work for a company that is a party to the proceedings before the Competition College.

The President will make a decision based on this information.

3. Specific procedure for leniency applications

Assessors invited to sit in a College called to decide on an application for leniency under Article IV. 46 § 1, 2nd paragraph of the Code of Economic Law, which by virtue of their professional rules may not accept the task without informing their colleagues of the identity of the leniency applicants and the companies likely to be the object of instructions following the application, shall inform the President of this fact and can be considered to have a conflict of interest.

4. Abstention to intervene after decisions

Assessors do not participate in any quality, in appeals or in civil/criminal proceedings in cases in which they were called to sit, unless they sit as a judge or arbitrator if the rules applicable to judges and arbitrators allow it.

III. Resolution on the duty of judicial self-restraint

Regardless of their submission to professional secrecy (Article IV.34 CEL, reproduced above), the assessors shall refrain from commenting on any case in which they sit or have seated as well as from publishing on such case unless authorised by the president.

The duty of discretion covers in particular:

- the contents of the case files dealt with by the Authority;
- the content of hearings, meetings and deliberations; and
- exchanges between the Competition College and other competition authorities.