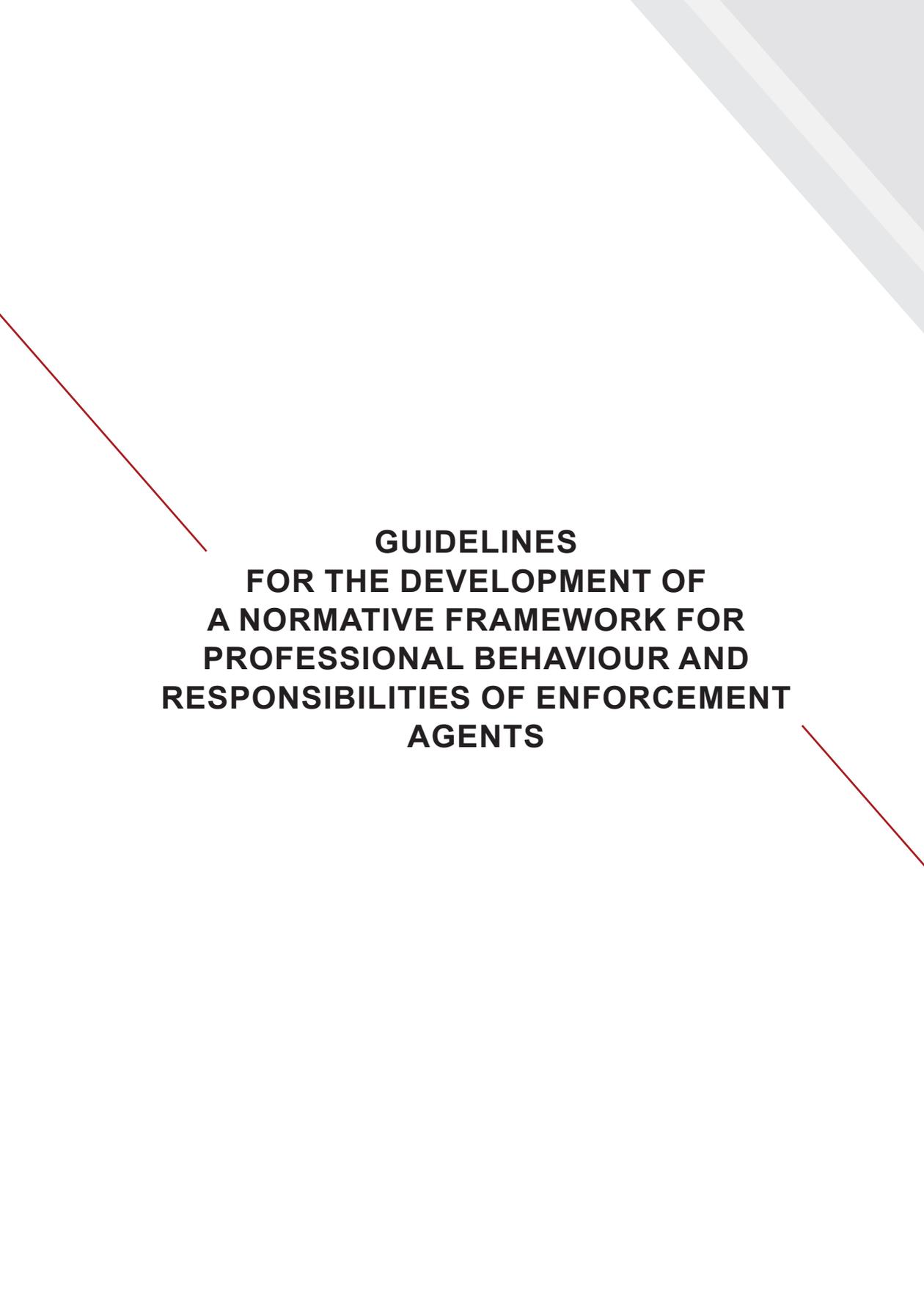




Guidelines

for the development of
a normative framework
for professional behaviour
and responsibilities
of enforcement agents



**GUIDELINES
FOR THE DEVELOPMENT OF
A NORMATIVE FRAMEWORK FOR
PROFESSIONAL BEHAVIOUR AND
RESPONSIBILITIES OF ENFORCEMENT
AGENTS**

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On behalf of the

German Federal Ministry for Economic Cooperation and Development (BMZ)

Introduction

In the field of execution of civil judgments, the various legal systems in the Western Balkan region have followed the development in other countries and have undergone a substantial legal reform. Some legal systems introduced a private (self-employed) system of enforcement agents. With the introduction of the self-employed system a different and more complex system was created. The enforcement agent needs to take into account both his/her formal duties and good management of the office.

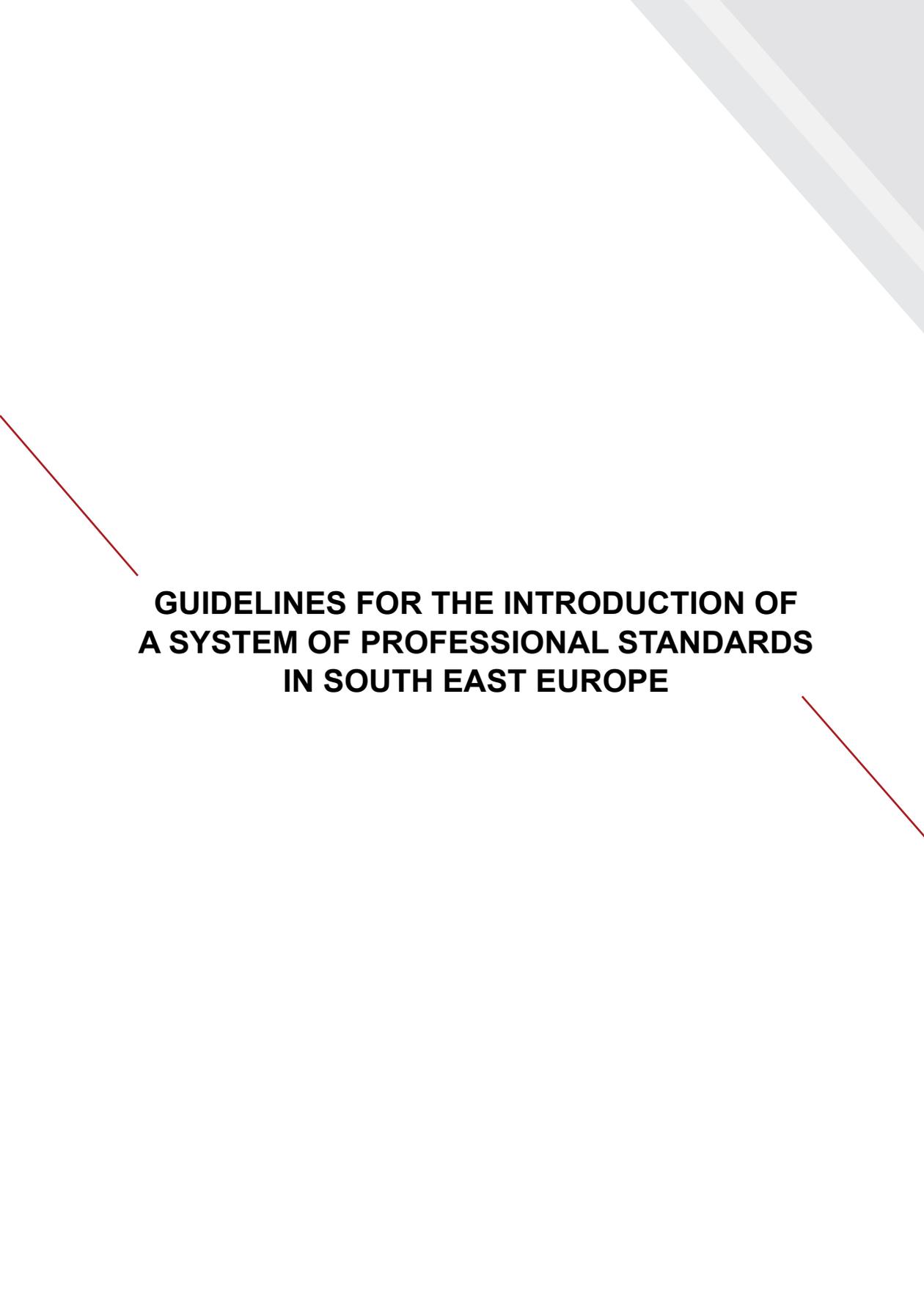
Legislation is based on a system of legal rules governing the organizational, procedural and substantive aspects of an individual enforcement claim. In *procedural terms*, such laws govern the determination and implementation of enforcement, participants in the process, as well as their position in the enforcement process. In *substantive terms*, such laws govern enforceable titles and authentic documents and substantive effects of certain activities taken in the framework of enforcement proceedings or beyond.

During the last decades, it has become a common accepted practice to develop professional (ethical) standards for different groups of (legal) professionals. It is undisputed that such a set of rules is of even bigger importance, wherever professionals, such as enforcement agents, have the state-given right to interfere with the rights (e.g. property rights) of others. The development and promotion of a Code of Ethics and professional standards (together: the standards for professional conduct) are therefore important tools on the way to lift the profession to a higher quality level and bigger acceptance within the society.

Where legislation regulates the formal duties, professional standards and ethical rules focus on the stimulation and guaranteeing of a well-functioning and stable organization of the profession. Professional standards are considered part of the compliance with professional fulfillment of duties and compliance with professional ethics. The professional standards and ethical rules are normative, both regarding the processes and the results. Implementation of the professional standards is compulsory for each enforcement agent.

Both the Code of Ethics and the professional standards define accepted and acceptable behaviour of the profession and promote the standards of practice. This way a framework for professional behavior and responsibilities is created that functions as a benchmark for the enforcement agents to use for self-evaluation. On the other hand, for the supervision authorities the professional standards and Code of Ethics can be used as tool to facilitate the supervision.

This brochure aims to provide the reader with the understanding of the ethical framework for enforcement agents. It provides directions on the functioning of the enforcement agent and the organization of the enforcement agent's office. As such, the brochure can be used as a guidance, a navigation tool, towards the development of a quality management system in a well-organized office, based on the applicable legislative framework, ethical rules and demands from society.



**GUIDELINES FOR THE INTRODUCTION OF
A SYSTEM OF PROFESSIONAL STANDARDS
IN SOUTH EAST EUROPE**

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Abbreviations:

CEPEJ	European Commission for the Efficiency of Justice
CEPEJ guidelines	Guidelines for a better implementation of the existing Council of Europe's Recommendation on Enforcement (European Commission on the Efficiency of Justice, Council of Europe) CEPEJ (2009)11
CMS	Case Management System
COMONEX	UIHJ Global Code on Enforcement; international standards on enforcement
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HRM	Human Resources Management
ICT	Information and Communications Technology
IT	Information Technology
MoJ	Ministry of Justice
UIHJ	Union Internationale des Huissiers de Justice et des Officiers Judiciaires

1. Professional standards

1.1. Compliance with international standards

The enforcement agent's profession becomes more and more complex. The enforcement agent, within the limitations based on law, as an exponent of the State, is vested with the power to perform certain activities of public interest. At the same time, though the activities of the enforcement agent are not entrepreneurial, as a legal professional, the self-employed enforcement agent is responsible to run his office. Society (i.e. State and parties) demand a guarantee that the enforcement agent acts with care, independently and with integrity. Claimants, defendants and courts monitor closely the activities of the enforcement agent. Competition may influence the continuity of the office.

While carrying out his profession, the enforcement agent needs to consider both his/her formal duties and good management of the office. Enforcement legislation and other legislation regulate the formal duties. The professional standards focus on the stimulation and guaranteeing of a well-functioning and stable organization of the profession. The Council of Europe underlined the importance of those professional standards.

In its Recommendation 17/2003 of the Committee of Ministers to member states on enforcement the Council of Europe states that:

“Enforcement agents should be honourable and competent in the performance of their duties and should act, at all times, according to recognised high professional and ethical standards. They should be unbiased in their dealings with the parties and be subject to professional scrutiny and monitoring which may include judicial control.”¹

Also, the European Commission on the Efficiency of Justice (CEPEJ) in its “Guidelines for a better implementation of the existing Council of Europe’s recommendation on enforcement” *is promoting quantitative and qualitative criteria making it possible to identify and/or supervise compliance with the minimum requirement of satisfactory enforcement.*”

According to CEPEJ, the quality of enforcement should be encouraged by the member states which are invited to “*establish European quality standards/criteria*”. Such quality standards should be periodically assessed “*through an independent review system and random on-site inspection*” to measure “*the efficiency of the enforcement services*”.

CEPEJ provides a list of standards which is not exhaustive:

- a) *Clear legal framework of the enforcement proceedings establishing the powers, rights and responsibilities of the parties and third parties;*
- b) *Rapidity, effectiveness and reasonable cost of the proceedings;*
- c) *Respect of all human rights (human dignity, by not depriving the defendant of a minimum standard of mere economic subsistence and by not interfering disproportionately with third parties’ rights, etc.);*
- d) *Compliance with a defined procedure and methods (namely availability of legal remedies to be*

1 Rec 17/2003 under IV.4

- submitted to a court within the meaning of Article 6 of the ECHR);*
- e) Processes which should be documented;*
 - f) Form and content of the documents which should be standardised;*
 - g) Data collection and setting-up of a national statistic system, by taking into account, if possible, the CEPEJ Evaluation Scheme and key data of justice defined by the CEPEJ;*
 - h) Competences of enforcement agents;*
 - i) Performances of enforcement agents;*
 - j) The procedure, on an annual basis:*
 - The number of pending cases;*
 - The number of incoming cases;*
 - The number of executed cases;*
 - The clearance rate;*
 - The time taken to complete the enforcement;*
 - The success rates (recovery of debts, successful evictions, remittance of amounts outstanding, etc.);*
 - The services rendered in the course of the enforcement (attempts at enforcement, time input, decrees, etc.);*
 - The enforcement costs incurred and how they are covered;*
 - The number of complaints and remedies in relation to the number of cases settled.*

Additional to defining quality standards the control over the activities of the enforcement agents is also of importance. CEPEJ 2009 Guidelines define control as follows:

Control of activities means control of the lawfulness of the actions carried out by the enforcement agents. It may be carried out a priori (before the enforcement agents act) or a posteriori (after the enforcement agent acts) by a “disciplinary” authority.²

Such a supervision or control might result, when necessary in disciplinary sanctions:

The authorities responsible for supervision and/or control of enforcement agents have an important role in also guaranteeing the quality of enforcement services. The Member states should ensure that their enforcement activities are assessed on an ongoing basis. This assessment should be performed by a body external to the enforcement authorities (for example, by a professional body). The Member states’ authorities should clearly determine the control procedures to be performed during inspections.

Member states should ensure that the arrangement for monitoring the activities of enforcement agents does not hamper the smooth running of their work.³

² CEPEJ 2009 Guidelines, glossary

³ CEPEJ 2009 Guidelines under 78-79

1.2. Professional standards: the importance of legislation

There is a common accepted practice to develop professional ethical standards in order to serve the dramatic increase in the ethical expectations of the society towards civil servants and entrepreneurs. This, especially, includes (private) enforcement agents as seen in paragraph 1.1. Indeed, such professional standards are of even bigger importance since there is a state-given right to enforcement agents to interfere with the rights (e.g. property rights) of others.

The implementation of professional standards should be obligatory for each enforcement agent. This means that there should be a *clear legal basis* for such implementation. The professional standards are normative, both regarding the processes and the results. At the same time the professional standards offer sufficient freedom of handling for the enforcement agent to decide how his/her office will apply to the professional standards.

Professional standards (standards for professional conduct for private enforcement agents) are important tools to raise the quality of the profession. Together with the Code of Ethics, the professional standards form the framework for professional behaviour and responsibilities. The aim of the Code of Ethics is to define accepted and acceptable behaviours and to promote high standards of practice, to establish a framework for professional behavior and responsibilities and to provide a benchmark for members to use for self-evaluation. In that respect the Code of Ethics should be considered as a part of the ethical framework, together with the professional standards.

1.3. The audit

The professional standards and thus the general meaning of the audit is clear and transparent and comprehensible to the enforcement agents, MoJ and Chamber of enforcement agents.

As is the case with the Code of Ethics, the introduction of professional standards only has use if their implementation in the office is audited on a regular base. It has to be guaranteed that there is a (control) mechanism in place, which is checking the compliance of the private enforcement agents with those rules and which, if necessary, initiates proper measures in case the rules are not respected. On a regular base (every two years) a formal review on compliance with the standards and best practices needs to be done.

The organizing and testing of the regular audit should be the responsibility of an independent entity, the certified auditor. The review and assessment are simply organized and there is a simple procedure. The final responsibility of the audit remains with either the supervisory body or the Chamber of enforcement agents.

Non fulfilment of the requirement to implement the professional standards in the office should result in disciplinary liability.

2. The regulative framework

2.1. The framework

The enforcement agent acts as a public servant and is vested with the power to perform activities of public interest under the enforcement law(s) and other legislation. In exercising those duties, the enforcement agent is the exponent of the state. In such capacity, the enforcement agent is subject to a strict legal framework. Though most legislation does not consider the activity of the enforcement agent as entrepreneurial, it is obvious that the enforcement agent, as a private person, will be influenced by what is happening in society and within a (competitive) enforcement market. The enforcement agent will need to find a balance between those roles.

As mentioned in the previous chapter, in this respect, the professional standards and the Code of Ethics provide two sets of standards aimed to secure the professional quality of service, organization and conduction of good business, development of the skills necessary to run an office and independency and integrity of the enforcement agent.

The set of Professional Standards consists of standards that are based on (legal) norms and best practices⁴:

- ▶ *The norms* define the applicable rules to a (private) enforcement agent who is vested with a special power to enforce court decisions and other enforceable titles. The norms result from the legislative framework.

Their origins are not only from enforcement legislation, but also from other legislation, i.e. tax laws, laws on financial administration or labour law. These legal norms are compulsory and have to be applied by the enforcement agent in his/her office. If not, this is to be considered a disciplinary infringement (and may also result in civil or criminal liability);

- ▶ *The best practices* are promoting the enforcement agent office to best services rendered to litigants. They improve the performance of the office, balancing effective enforcement and public interest while complying with ethical rules.

In the development of the professional standards both the supervisory body (mostly the Ministry of Justice) and the Chamber of enforcement agents are involved. For example:

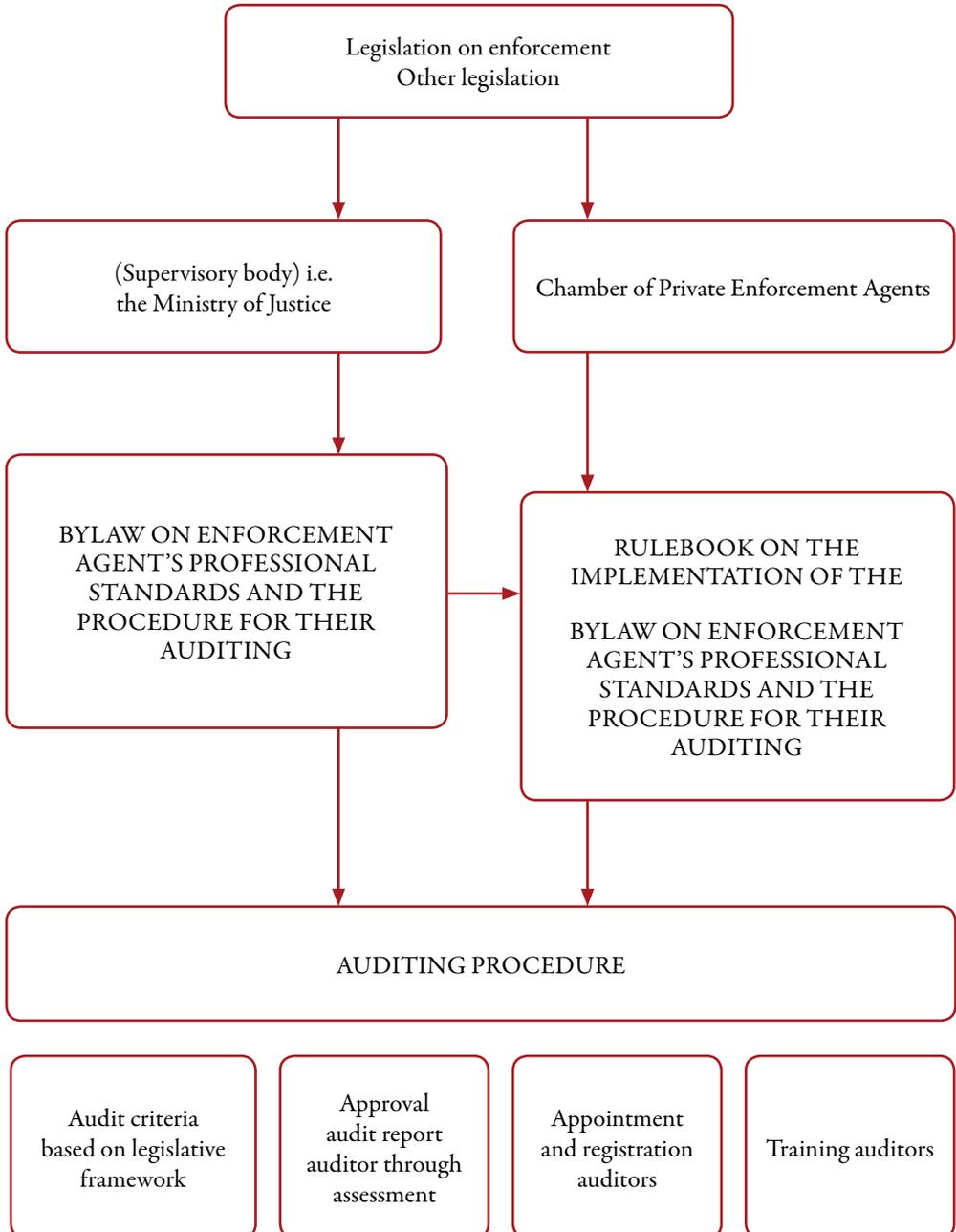
1. The Bylaw on the Enforcement agent's Professional Standards, is developed by the Ministry of Justice.
2. The Rulebook on Auditing the Professional Standards, is developed by the Chamber of enforcement agents.

As mentioned, the Professional Standards are compulsory for each enforcement agent. This way the Professional Standards guarantee a minimum level of quality in each enforcement agent's office.

At the same time the Professional Standards function for an individual enforcement agent as a reference guide how to organise the office, and, on the other hand, for the supervision authorities

⁴ This system is also used in several countries for the development of Corporate Governance Codes.

the standards can be used as a tool to facilitate the supervision).



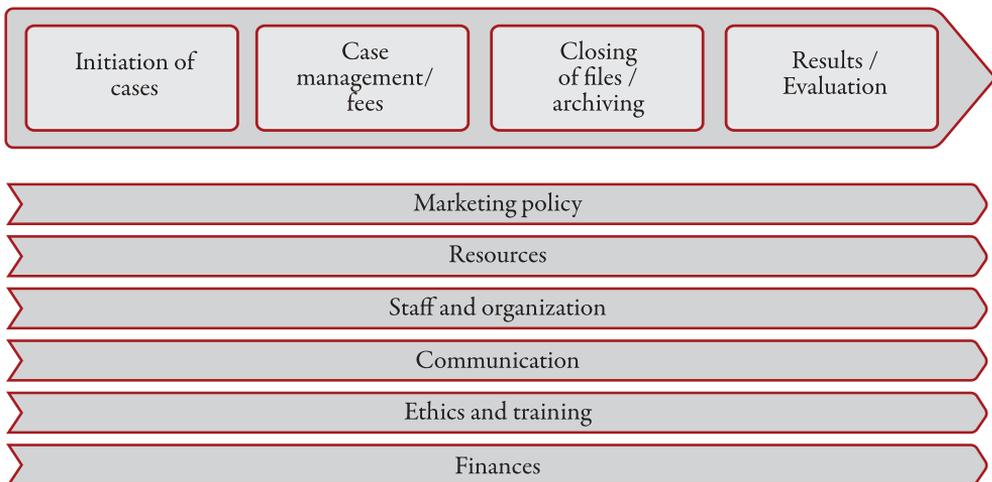
2.2. The scope of a Bylaw on Professional Standards

The professional standards consist of a set of norms as defined by the Bylaw Professional Standards. The standards are set by the Government (i.e. the Minister of Justice), after consultation with Chamber of enforcement agents. They are based on the working processes within the office of the enforcement agent, procedural principles on enforcement and the value of professional ethics.

The enforcement agent will need to conform to these norms. The norms are based on best practices. Best practices mean that the enforcement agent is allowed to deviate from the best practice only in the presence of objective reasons, confirmed by documents and founded motivations.

In this respect, for example in the Netherlands, the method followed is the *“comply or explain”* rule: either the substantive provisions of the norm (professional standard) are followed or the enforcement agent explains confirmed by documents and through a founded motivation why the norm was not followed. In such case the enforcement agent will need to have implemented an acceptable alternative in the office.

The Professional Standards are classified based on the procedures within the enforcement agent’s office and do not only relate to enforcement: Marketing policy; Initiation of cases; Case Management; Closing of files; Results and evaluation; Resources; Staff and organization; Communication; Ethics and training and Finances.



Scheme 2: classification of the professional standards

2.3. Code of Ethics and professional standards

It is obvious there is a close connection between professional standards and the Code of Ethics. In chapter 1 we already mentioned that the professional standards and the Code of Ethics provide two sets of standards aimed to secure the professional quality of service, organization and conduction of good business, development of the skills necessary to run an office and independency and integrity of the enforcement agent.

As we have seen, the CEPEJ Guidelines demand an enforcement agent that is a professional who is impartial, qualified, accountable, available, motivated and efficient. This means the creation of a clear, transparent and detailed vision on the principles guiding the enforcement agent in the profession. In that respect, adequacy and proportionality of enforcement are important international standards.

The scope of a Code of Ethics is to ensure the principles of the rule of law, the respect for human rights and fundamental freedoms, independence, impartiality, objectivity and transparency in professional activities by the enforcement agent, including in relations between the enforcement agent and the private or public law subjects, involved or not involved in the professional activity of the enforcement agent.

Such principles from a Code of Ethics are obligatory to all enforcement agents, without discrimination on any ground such as sex, race, skin colour, language, religion, political or other opinion, national or social origin, national or social background, membership to a national minority, property, birth, age, sexual orientation. Failure to comply with the provisions of the Code of Ethics will result in disciplinary liability of the enforcement agent according to the law.

Enforcement agents should act responsibly regarding the interest of the claimant, while recognising the needs for vulnerable debtors.

The profession of enforcement agent and ethical behavior is not limited to the enforcement activities only. Also, during non-working hours, society may expect from an enforcement agent (representing State authority) a respect for moral standards, behavior in public and respect towards other legal professionals such as judges and lawyers).

These principles, the relevant provisions of enforcement legislation and the legislative framework in general are translated into professional standards. The professional standards aim to provide a set of standards securing the professional and commercial quality of service, conduction of good business, independence and integrity of the enforcement agent, based on the working processes in the office.

2.4. Role of the supervisory body and the Chamber of enforcement agents

It is obvious that the introduction of the system of Professional Standards demands a close cooperation between the two supervisory bodies, the Ministry of Justice and Chamber of enforcement agents.

The organization of the audit of the Professional Standards will have its influence on the legal tasks given by enforcement legislation to both the Ministry and Chamber of enforcement agents in the field of control over the profession. As such the audit may form the basis for such control (in addition to other control mechanisms such as financial control).

Systems differ whether the audits are carried out under the responsibility of the supervisory body

and/or the Chamber of enforcement agents. Audits need to be done on a periodic base (e.g. every two years). Depending on the choice for the auditing system, auditors can be recruited within the profession and trained by the Chamber of enforcement agents and Ministry of Justice (jointly) or outside the profession.

2.5. Professional standards and supervision

When it comes to the audit of professional standards, there are five components that should be audited:

1. Integrity and independency
2. Professionalism
3. (Commercial) quality
4. Continuity of the office
5. Financial issues (included in the previous components)



Scheme 3: supervision and professional standards

When discussing the supervision and control system we need to make a distinction between supervision and control:

- *Supervision of activities* is the process whereby an authority makes observations to the enforcement agent on his or her working methods (scheduling problems, lack of courtesy, etc.); it is a sort of simplified control that does not involve actual examination of a complaint, but the aim of which is to guarantee proper administration of justice.
- *Control of activities* means control of the lawfulness of the actions carried out by enforcement agents.

As we have seen, when looking at the European standards, the monitoring & control system should be transparent and predictable. This means at least:

1. Setting a clear standard to check against,
2. Establishing a comprehensive and clear distribution of roles and responsibilities within the Monitoring & Control system, and
3. Carrying out intensive on-going public awareness efforts to ease understanding and usage of the complaint mechanism by the general public.

In this respect, of course, the Code of Ethics and the Regulation on Professional Standards serve as a reference tool for defining desired conduct and misconduct. Both establish “rules in the grey area” of the law where it lacks explicit regulation; sometimes such professional ethics and ethics emphasize on the fact that they are not set by the law but still require compliance.

These regulations both are mandatory for and enforceable against each and every enforcement agent. For this to be possible the regulations appliance to the regulations is monitored by both the supervisory body and the Chamber of enforcement agents.

In general, the roles and responsibilities in the monitoring and control system are a responsibility of both the Chamber of enforcement agents (intern supervision) and the external supervisory body (i.e. Ministry of Justice).

When it comes to the professional standards the statutory and internal rules governing the professional standards, its auditing and the audit criteria are publicly available.

Besides enforcement legislation, their powers are regulated in the regulation on auditing of the Professional Standards. Co-ordination is essential and can be realised through information sharing, joint planning and joint policy making between representatives of the two monitoring bodies.

2.6. Implementation of the professional standards in the office

Implementation of the professional standards is obligatory, both regarding the processes and the results. At the same time the professional standards are not too restrictive; professional standards still enable the enforcement agent to act as a private person and to decide how to manage the office.

Rec 17/2003 considers the enforcement agent as a “*person authorised by the state to carry out enforcement but who are not necessarily employed by the state*”⁵ It is important to realize that it is the enforcement agent who is given the authorization. Consequently, it is also the enforcement agent who is responsible and who can be held liable for the actions and integrity of his/her employees (see in this respect also article 33 Code of Ethics).

The quality of the services of the enforcement agent largely depends on the (professional) level of performance of these employees. In this respect, the enforcement agent is responsible that the staff also observes the legal and ethical requirements regarding the profession. Further the staff will need to be informed on the office internal rules and the creditor’s requirements.

This means that the enforcement agent will familiarize all employees with the quality policy (professional standards), its objectives and the accomplishment of those objectives. The enforcement agent will be responsible for the control if such objectives are met through defining, assigning and measuring each process.

5 Rec 17/2003 under 50 (explanatory memorandum)

3. Professional standards: proposal for a regulative framework

Points of discussion with regard to the drafting of a Bylaw Professional standards:

1. *Promotion policy*

- How far the enforcement agent is allowed to share information about his office with general public?
- Is the enforcement agent entitled to make publicity and to promote his office?
- Which promotional documents can be used by the enforcement agent (e.g. only the promotional documents from the Chamber of enforcement agents, own promotional documents)?
- Is the enforcement agent allowed to advertise on any media or sponsor any event?
- Is the enforcement agent allowed to use substantive comparison with other enforcement agents in public communication?
- What is considered publicity? Does this include the presentation of basic data about birth, education, scientific and expert development, published works, specialisation in certain areas of law or enforcement, knowledge of foreign languages, social and professional functions?

2. *Acquisition*

- Is the enforcement agent allowed to take over financial risk of a case (e.g. agreements based on constructions such as buying of claims)?
- Is the enforcement agent allowed to give a discount on the enforcement fees or give exception on the payment of enforcement fees by the creditor in case the enforcement case was unsuccessful?

3. *Use of a website*

- Is the enforcement agent allowed to have a website?
- Does such website need to meet certain requirements regarding contents/ information? For example, informative and neutral (e.g. office's location, working hours, working days, and office's activities but without any references to any clients/creditors)?
- Does the Chamber of enforcement agents have to give approval for the contents of the website?
- Can creditors have access to their cases through the website?

4. *Agreements with creditors*

- Are business or working arrangements with claimants done in written?
- Do offers or agreements with claimants contain the following issues:
 - Description of the activities;
 - Intended results;
 - Working arrangements, including evaluation moments;
 - Business conditions, including at least pricing and payment method and time, duration of the contract or validity of the offer;
 - Cost and reimbursement risk;
 - All contracts and tenders will be registered.
 - The enforcement agent informs the creditor in advance about the cost and risk of an assignment.

5. *Accessibility*

- Do you use a capacity planning within the office? (service planning means that the use of staff and resources is connected to the existing volume of cases and the volume of cases to be expected?)
- Do you inform the creditor periodically on the status of pending cases?
- Is communication with parties done in understandable language?
- Is the office opened during at least 5 days per week during regular working hours?
- Is a reception counter available during working days and working hours?

6. *Independency of the enforcement agent*

- How will the enforcement agent ensure a balanced creditor portfolio, guaranteeing financial independency as much as possible (e.g. good understanding of the distribution of turnover per creditor; can there be restrictions with regard to the number of cases an enforcement agent can handle from one single creditor)?
- Is there an evaluation on a regular base for each creditor (e.g. in case > 15% of turnover is coming from one enforcement agent: does the enforcement agent make a written evaluation how independency will be safeguarded)?
- Is the enforcement agent allowed to participate in a company that buys claims or is the enforcement agent allowed to buy claims himself?
- With regard to the activities the enforcement agent is performing in addition to his professional activities: should there be an obligation of the enforcement agent to inform the Chamber of enforcement agents such the additional activities? Should the Chamber of enforcement agents keep a register on such activities?

7. *Integrity*

- In deciding on the enforcement measures or receiving a request for certain enforcement actions: do you act consistent and do you balance the interests of the claimant and defendant equally?
- How is the efficiency of a certain enforcement measure considered?
- How is the artificial increase of the costs of the enforcement procedure for the debtor avoided?
- Do you give priority to reaching an agreement between parties?
- In case you receive a proposal for an agreement: do you submit such a proposal to the claimant?
- Do you respond on any settlement proposal done?
- Do you have internal procedure to guarantee that payments are processed within the deadlines as provided by the law?
- Do you have internal procedure to guarantee that any overpayments are returned in the shortest possible time, taking into consideration legal provisions?

8. *Initiation of cases*

- Is the enforcement agent obliged to inform the creditor in advance on the costs and risks of an enforcement case?
- Is the enforcement agent obliged to inform the debtor in advance on the costs of an enforcement case?
- Is there an obligation of the enforcement agent to safeguard (human) capacity of the office in case of receiving multiple cases?

9. *Case management*

- Is the case information at the disposal for the employees within the office?
- Is there one file per case?
- Do files have a standard structure?
- Are paper and electronic files consistent (A file can be partly in hardcopy and partly digital. In practice this means that in the digital file a reference needs to be made to the hardcopy part in case these documents are not scanned. In case all documents are scanned (and are in the digital file) there is consistency.
- Is there a systematic basis for classification of files?
- Are employees familiar with the classification system, the structure of a file and the codes used?
- How are working arrangements with claimants recorded? Is there an action plan per claimant?
- Are the action plan and files accessible to the employee?

- Do you inform the claimant in case in a file a situation arises that differs from the action plan?
- Are changes and annotations processed in the file? Is it clear which employee made the change or annotation?
- Is the status of a file known at any time?
- In case employees have access to the file how are the privacy protected data protected?
- In case the claimants or third persons have access to the files: how are privacy protected data protected?
- On what (periodic) base is the creditor informed on the status of a case and the costs of actions?
- Do you keep record of the decisions of the disciplinary committee and communicate those decisions with your staff?
- Upon outsourcing of activities in the enforcement process and/or using third persons in the enforcement process (e.g. locksmith or the employees of a moving company), do you check the integrity and security of those persons?

10. *Closing of files*

- Do you have deadlines within your office for closing a file upon receipt of the final payment?
- On the invoice: are the enforcement expenditures specified?
- Do you provide a specified invoice where costs and taxes (e.g. VAT) are listed separately?
- In your office: what period between the receipts of the final payment in a case, the closing of the case and the remittance of funds do you use?
- Do you have an internal procedure for annulment of enforcement measures upon receipt of the final payment or if the enforcement document is annulled, amended, revoked, invalidated or in other manner rendered ineffective as referred to in article 66 Law on Enforcement Procedure?
- In case of correlative obligations one of which is related to the payment of an amount, do you withhold the final payment until fulfilment of the other obligation?
- Do you have deadlines within your office for closing a file for another reason than settlement?
- Before sending the invoice: do you have a check:
 - (1) what expenses are charged to the claimant and (when applicable), how your own expenses are deducted from the (partial) amount to be paid;
 - (2) the arithmetic accuracy and the correct application of fees and disbursements and
 - (3) that disbursements are charged only if there is a corresponding invoice of the third person, or if statutory rates apply?

11. *Archiving*

- Before transmitting the file to the archive do you verify:
 - The correct amount is paid in time to the entitled party;
 - It is clear how your costs are deducted from the amount to be paid to the creditor;
 - Invoices have been checked for arithmetic accuracy and the correct application of fees and disbursements
 - Costs of third persons are charged only if there is a corresponding invoice of such third person, or if statutory rates apply.
- Is the archive well-organized, updated and transparent?
- Do you have an archive for paper files?
- Do you have an archive for digital files?
- Is the archiving system organised in such a way to simply retrieve a file from the archive?
- Is the archiving system protected against unauthorized use?
- How do you safeguard loss or damage of files?
- Are the files archived for the period as established by the normative framework?
- Are the files destroyed after the retention period or do you have a policy which documents and / or data are retained for a longer period?

12. *Compliance*

- How do you guarantee compliance with provisions on data protection?
- Do you ensure that the authorities responsible for auditing, supervision and/or control will have access to the objects, data, and other archival material of the office; bank accounts; management over stored objects and money placed as security; receipts for money collected as enforcement agent's reward or fee, as well as take all other relevant information?
- Do you ensure that reports and data as requested by the controlling authorities, based on the law, bylaws of the Ministry or acts of the Chamber of enforcement agents, are send in timely manner?
- Do you ensure that the payments to the professional body and tax authority are done fully and in a timely manner?

13. *Continuity of the office*

- Did you develop a policy vision with regard to your office?
- Is this policy vision evaluated and updated periodically? If so with what frequency?
- Do you adopt an annual business plan (measures envisaged in the field of marketing and acquisition, contracting, case management, settlement, results and evaluation, resources and staff and organization)?

- Does the business plan include a turnover and profit forecast?
- Do you adopt an annual budget (investment plan, a cash-flow forecast and a financial budget)?

14. *Insight in the performance of the office*

- Do you have insight in the performance of your office?
- Do you use indicators such as: turnover, data and prognoses on profit; registration of complaints?
- Do you have Insight in case performance on a periodic base?
- For information on the performance of cases do you use indicators such as:
 - The number of pending cases,
 - The number of incoming cases,
 - The number of executed cases,
 - The clearance rate,
 - Backlog in file processing,
 - The time taken to complete the enforcement,
 - The success rates (recovery of debts, successful evictions, remittance of amounts outstanding, etc.),
 - The services rendered in the course of the enforcement (attempts at enforcement, time input, decrees, etc.),
 - The enforcement costs incurred and how they are covered,
 - The number of complaints and remedies in relation to the number of cases settled.
- Do you periodically evaluate the case load with claimants?
- Do you periodically evaluate the business with third persons (enforcement agent's creditors, suppliers, external assistance in the enforcement process)?

15. *Finances*

- Are the records and accounts of your office automated in such a way as to safeguard their reliability and continuity?
- Do the records and accounts also include all corresponding documents?
- Do you have an overview of all financial rights and obligations?
- Are the financial facts of each case recorded without delay in the (sub) account(s) and the case management system?
- Are the records and accounts organised in such a way that the reporting can be done in conformity with the rules and reporting formats set by the Chamber of enforcement agents and the Ministry (e.g. regarding the method, type of data and frequency of reporting)?
- Are the financial facts of each case recorded without delay in the case management system so that the financial rights and obligations are known within the office at all time?

- Are these records reconciled periodically with the accounts from the financial administration?
- Are all funds paid within the enforcement or security proceedings deposited on the appropriate bank account?
- The enforcement agent has a system for controlling cash payments
- Are the records and accounts organised and kept in such a way as to enable the enforcement agent to keep careful custody of money received on behalf of claimants and to pass such money, collected by the enforcement agent correctly and in time (taking into account the rightful calculation of fees)?
- Are wrongly paid amounts transferred into the correct account without delay?
- Is the number of the special account stated on the enforcement acts and other outgoing documents?
- Do you ensure filing of the private financial records?
- Do you submit the financial report within X months after expiry of every financial year?
- Do you supply (financial) data on a regular base?
- Do you use certain reporting templates?

16. Risk management

- How did you organize the internal payment organization/ does this include a system of control for outgoing payments?
- Do you have sufficient coverage of the risk of professional liability (is the coverage of the liability insurance in line with the number of cases and the value of such cases)?
- Do you periodically evaluate an imbalance in the claimant portfolio (see also under Independency of the enforcement agent)?

17. Automization

- Have you set up a system for periodic back up and internal and external restore procedures of the IT system? What does this mean periodic?
- Do you have a service contract for critical systems (case management system and financial system) in the office? What is the response time?
- Have you taken measures to protect from unauthorized access to the systems and data and to protect the confidentiality and integrity of data?
- How do you guarantee the proper functioning of the applications used in primary processes?
- Are the hardware and software, the IT-systems, the backup procedures well documented?
- Did you set rules in the office with regard to the use of the IT system and the use/access to the internet by the staff?

- Do you have an adequate virus protection to prevent unauthorised outside interference or access?
- Are the reliability and risks of the IT system evaluated on a periodic base?
- Do you have rules in the office to avoid that data submitted to parties is in breach of the rules on data protection rules?

18. *Duties, responsibilities and competences in the office*

- Do you have for each function within the office, the duties, responsibilities and competences laid down?
- Is every employee aware of the duties, responsibilities and competences of the other staff members?
- Do you ensure to debtors and others clarity on the duties, responsibilities and competences of an employee?
- In case of deployment of a deputy enforcement agent, do you ensure that the status of the deputy enforcement agent is clear towards parties.

19. *Staff and Organization*

- Are workplaces for the staff adequately arranged?
- Can you safeguard the working places of the staff (e.g. protection of reception staff)?
- Is legal literature and/or legislation accessible for the staff?
- Do you have a plan for the professional development of employees (training; mentorship)?
- On a regular base: do you hold performance interviews with employees?

20. *Communication*

- Do you check the address prior to commencement of enforcement?
- Do you actively inform the creditor and debtor on the rights (including the possibility of objection or appeal, legal assistance) and obligations (including consequences of inaction)?

21. *Training and professionalism*

- Do you comply with the obligations regarding continuous training in conformity with the rules as set by law and the Chamber of enforcement agents?
- How do you ensure the professional knowledge for the persons working in your office?

22. *Ethics*

- How do you guarantee that each employee is acting in accordance with the prevailing ethical standards?
- Do you keep yourself properly informed on the decisions of the Disciplinary Committee?
- Do you implement those decisions in the file management system?
- Do you consider that ethical behavior relates both within and outside the working environment?

23. *Internal complaint procedure*

- Do you have an internal complaint procedure that describes the receipt, settlement and registration of complaints within the office?
- Are all employees known with the broad outlines of the complaint procedure?
- Do you confirm the receipt of the complaint? If so, do you have a set period for such confirmation?
- Do you have a set period for responding on a complaint?
- Do you periodically evaluate the complaints received?

4. Tools for self-evaluation

4.1. Implementation of the professional standards in the office

The aim of this self-evaluation is *not* to simply tick off the items. The self-evaluation should force the enforcement agent to have a look at the processes within the office: blind spots will be noticed and ingrained practices will be evaluated. The self-evaluation should be considered an invitation to the enforcement agent to have a critical look at office practices and where necessary to improve those practices.

At the same time the self-evaluation can be used as a tool to monitor compliance to the professional standards. After all implementation of those professional standards is compulsory for each enforcement agent's office.

Thirdly this self-evaluation can be used as a tool for the yearly business plan.

Once the professional standards are set *as a set of norms* through a regulation, they need to be implemented in the office of the enforcement agent. The norms are based on best practices. Best practices mean that the enforcement agent is allowed to deviate from the best practice, providing the enforcement agent can substantiate such a deviation, to what extent and why.

In this respect the method followed could be described as the "*comply or explain*" rule: either the substantive provisions of the norm are followed by the enforcement agent or the enforcement agent explains (*motivated*) why the norm was not followed and will indicate an *acceptable* alternative provision.

As with the audit, the self-evaluation of the best practice (*norm*) results in two different options:

1. The enforcement agent complies with the best practice (norm)
2. The enforcement agent does not comply with the best practice (norm)

Ad 1: The enforcement agent complies with the best practice (norm)

Do not underestimate the self-evaluation or take a conclusion that you comply with the best practice too quickly!

We suggest that you will argument how and why compliance with the best practice is achieved.

Compliance with the norm means:

- There is full compliance with all the criteria of the norm
- The norm is fully implemented in the office and is generally used.

The norm is *not* implemented in case only part of the office uses the norm or the norm is used only on an incidental (ad hoc) basis.

- The requirements of representativeness, proof and verification are met

In all other cases the conclusion from the self-evaluation will be that the enforcement agent did not meet the norm.

Also, the auditor will audit “does not meet the norm”. (In case of a deviation of the norm the auditor will also have to provide a verifiable motivation.)

Ad 2: The enforcement agent does not comply with the best practice (norm)

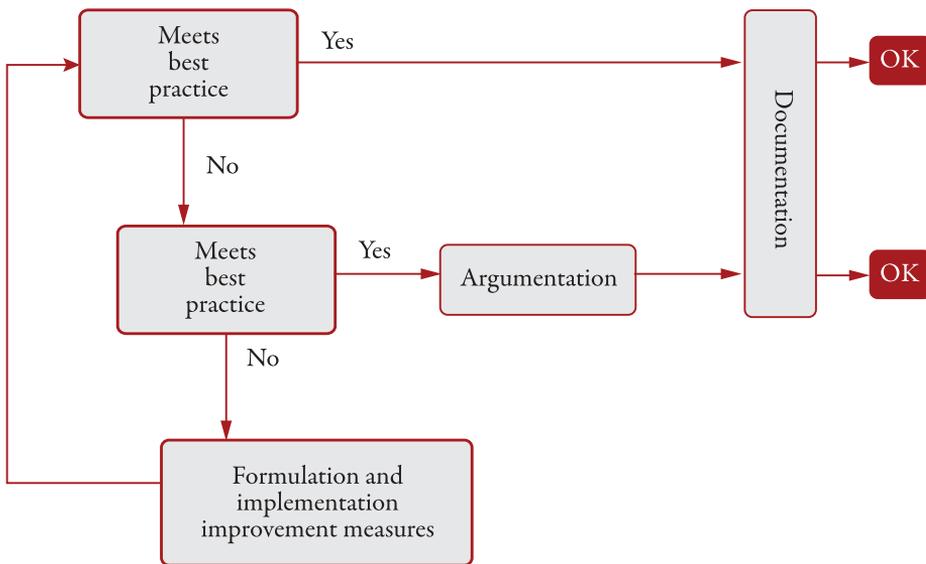
In that case the enforcement agent will have to formulate and implement an improvement measure.

The enforcement agent is allowed to deviate from the norm, providing the enforcement agent can substantiate such a deviation, to what extent and why.

In this respect the method followed is the “comply or explain” rule: either the substantive provisions of the norm as set in Bylaw Professional Standards are followed or the enforcement agent motivates why the norm was not followed and will indicate an acceptable alternative provision.

The responsibility lies with the enforcement agent! The enforcement agent is allowed to deviate from the norm (best practice), providing the enforcement agent can substantiate such a deviation, to what extent and why.

Be aware that such deviation should imply an acceptable alternative!



The process of self-evaluation should not just focus on the outcomes. The self-evaluation process itself is also of importance. *Carrying out such self-evaluation means that information needs to be gathered and monitored and that employees are involved in the evaluation process.*

Cooperation with staff will result in a more transparent (and critical) view to the office, a better understanding and an improved internal cooperation.

It is therefore of importance also to have the employees involved in the self-evaluation!

4.2. The organization of self-evaluation in the office

How to organize the self-evaluation in the office?

Here we have mentioned the different steps in the self-evaluation process:

1. Establishment of an internal working group
2. Joint discussion on the professional standards
3. Inventory of the implementation of the professional standards in the office
4. Discussion and evaluation
5. Presentation

Ad 1: Establishment of an internal working group

The first phase is the establishment of the internal working group who will carry out the evaluation.

Preferably such working group should be staffed with employees in different functions within the office.

Ad 2: Joint discussion on the professional standards

As a second step the members of the working group will jointly discuss the contents of the professional standards.

Based on these discussions the working group will define the goals, working method and planning of the self-evaluation.

Work will be distributed among the members of the working group.

Ad 3: Inventory

Based on the processes in the office as mentioned in the Bylaw Professional Standards, an inventory is made per best practice:

- Working methods and documents are inventoried;
- A clarification is written on the findings;
- Comments are made on the missing parts;
- An overview is made on the compliance or non-compliance with the standards for professional conduct;

Ad 4: Discussion and evaluation

The outcomes of the inventory are discussed with the members of the working group. In case there is non-compliance with the best practice the argumentation for compliance with the best practice is discussed. In case there is non-compliance without a justified argumentation, the improvement measures are discussed.

All outcomes are summarized in an evaluation report.

Ad 5: Presentation

Phase 5 is the presentation of the outcomes of the self-evaluation to the management (team) and other staff members.

The self-evaluation is not a 100% guarantee for the outcomes of the audit! However, the auditor may use the results of the self-evaluation as a basic document. The self-evaluation already contains information on the office that needs to be audited, necessary documents are already inventoried and internal discussions have already been performed.

4.3. Measures for improvement

In case the best practice is not met, a measure for improvement needs to be formulated.

Sometimes such a measure is simple. However, measures of improvement may also be complicated. Let us take as an example following professional standard:

The enforcement agent guarantees the continuity of the office by securing sufficient earning capacity for a structural coverage of expenses, necessary investments and to allocate reserves.

In case such planning is not used, the measure for improvement is to develop a roadmap towards such a planning, which might include e.g. (the development and use of) budgets.

Even in case the office complies with best practices, the result of the self-evaluation may be that points of improvement are identified. We suggest that you add those points to the list of measures for improvement.

However:

- Avoid that the list of measures for improvement becomes too long;
- Set priorities: those measures that are necessary to comply with the standards for professional conduct should be given priority!

Regarding the measures for improvement it is important:

- That the measures are formulated as concrete as possible;
- That the measures are not complete without appointing a person who is responsible for the implementation of the measure and the target date.

The measures for improvement can be collected on an action list.

This action list can be used as a document to measure progress in the implementation of the measures for improvement. The action list can be used as a reference in internal meetings. Major measures for improvement should be implemented in the annual planning.

5. Professional standards: proposal for auditing

5.1. Auditing of professional standards within the overall monitoring and control system

Audit on the implementation of the professional standards could become one of the key elements in the monitoring and control system. It is obvious that the introduction of such standards facilitates the work of the monitoring and control authorities.

However, there are more reasons for the introduction of such standards.

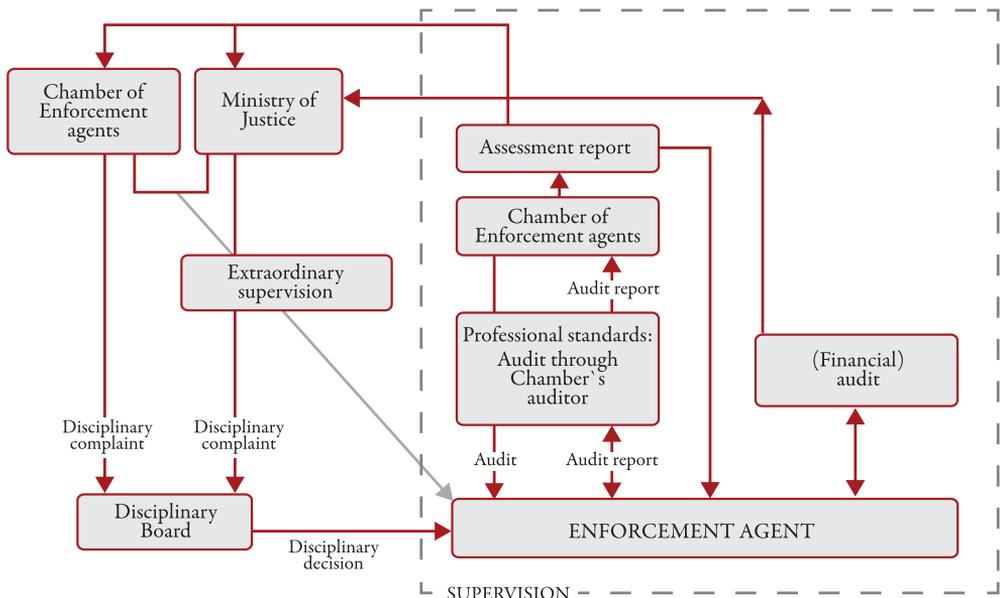
As an exponent of the State, the enforcement agent is vested with an exclusive power to perform enforcement. Introduction of professional standards enables the legislator to guarantee a minimum level of quality in each enforcement agent's office.

As a legal professional, the enforcement agent is responsible for the management of the office.

Public power, the performance of formal tasks and management of the office may be conflicting interests. The professional standards aim to provide a set of standards securing the professional (and managerial) quality of service, conduction of good business, independence and integrity of the enforcement agent. As such the professional standards, can be used as the driver of (managerial) profitability, efficiency and effectiveness within the office rather than a burden on the office.

The implementation of those standards in the office is obligatory.

Here is an example how the system of professional standards could be implemented in the overall monitoring and control system (based on the system as it is presently operational in the Netherlands):



5.2. The auditor

The audit based on the professional standards is part of the overall monitoring and control system. Stringent financial and case related supervision remains also necessary.

Taking into consideration the impact of the introduction of professional standards on the office of each enforcement agent, a solid legislative framework is important. Auditing of the implementation of the professional standards should be considered a tool for regular supervision.

The auditor

The audit of the implementation of professional standards can be organized in different ways:

1. An external auditor performs the audit. For example, in the Netherlands, external auditors are certified by the Chamber of enforcement agents to perform the periodic audits. The review and assessment are simply organized and there is a simple procedure. The external auditor reports to the enforcement agent, the Chamber of enforcement agents and the Ministry of Justice;
2. The auditors are part of the internal monitoring mechanism (i.e. the Chamber of enforcement agents). This means that colleague enforcement agents (certified by the Chamber of enforcement agents) are performing the audits;
3. The audits are part of the external monitoring mechanism. In such case the audit is the responsibility of the Ministry of Justice.

No matter the choice for a certain system, it is important that only those persons that have a certificate of recognition are authorised to carry out an audit of the professional standards. It means that a register needs to be available in which these persons are registered.

Auditors should meet certain requirements:

- a) Proven knowledge of the legislative framework on enforcement and enforcement agents;
- b) Proven knowledge of the regulative framework regarding the professional standards, the auditing procedures and the system of 'comply or explain' used therein;
- c) Proven knowledge of the legal and organizational structure and management and procedures in the office of an enforcement agent;

Professional qualification of auditors also means that they need to keep their knowledge updated through (for example) obligatory periodical training in order to maintain the knowledge on the enforcement process, developments within the enforcement system and regarding enforcement agents on an adequate level necessary for the audits.

5.3. The auditing procedure

Since implementation of the professional standards is compulsory for each enforcement agent, this means that each enforcement agent will need to have a positive audit report. For example, in the Netherlands, a positive audit report is valid for 2 years. The enforcement agent is responsible for a periodic and timely audit so that at all times a positive audit report is available.

The auditing procedure should be regulated in a Regulation on the auditing of the Professional Standards.

The audit report is drawn up in compliance with the relevant regulative framework. In the audit report, the auditor will explicitly report on the way the professional standards have been audited.

The following steps are to be taken in the audit process:

1. Confirmation of the valid audit criteria, including possible instructions

2. Settlement of the scope of the audit with the enforcement agent

- a Aim of the audit: an audit as referred to in RBA, resulting in the audit report;
- b In case of a partnership of enforcement agents: which enforcement agents are involved in the audit;
- c In case of a partnership of enforcement agents: which enforcement agents are actually audited;

3. Preparation of the audit

4. Carrying out the audit

- 4.1. Collection of the relevant information regarding the implementation of the various standards (norms and best practices) in the office.
- 4.2. Interviews with the enforcement agent and staff as a compulsory part of every audit.
- 4.3. Determination whether, in the opinion of the auditor the standards are implemented in the office.

The enforcement agent is entitled to correct any deviations and to implement the norm/ best practice with due rapidity.

- 4.4. Review by the auditor of the results of his findings with the enforcement agent:
 - The points of discussion are to be listed in the audit report;
 - In case of dissenting opinions, all relevant opinions are registered;
 - In case of unforeseen incidents, other uncertainties or obstacles, the auditor will register those in the audit report.

5. Drafting of the audit report and formulation of recommendations

The audit report, based on a template as attached to the RBA, has the following contents:

- 5.1. Summary of the findings and conclusion;
- 5.2. The enforcement agent or partnership of enforcement agents who was audited:
 - Mode of operations;
 - Enforcement agents;

- Trainee enforcement agents;
- 5.3. Scope of the audit:
- Who were involved in the audit;
 - Arguments for the choice who to involve in the audit;
 - Date of audit and other relevant data and details;
- 5.4. Auditor:
- This might include trainee-auditors involved;
- 5.5. Description of the auditing process:
- Approach of the audit;
 - Who were interviewed as part of the audit;
 - Overview of documents and systems that have been studied within the context of the audit;
 - Incidents, uncertainties and / or obstacles that could undermine the findings and / or the reliability of the recommendations and conclusion
- 5.6. Deviations of the norms or best practices:
- Any deviations are mentioned per norm/ best practice;
 - The auditor reports the enforcement agent's explanation of the deviation and whether such deviation is allowed;
- 5.7. Comments:
- This will include the measures to correct any deviations as referred to in paragraph 5 of this article;
 - The measures will be mentioned per norm/ best practice;
- 5.8. The points of discussion and dissenting opinions;
- 5.9. Statement regarding the confidentiality of the data;
- 5.10. Distribution list of the audit report;
- 5.11. Signature of the auditor and the enforcement agent

6. Forwarding of the audit report to the Board of the Chamber of enforcement agents or Ministry of Justice⁶

- Within 4 weeks after date of signing the audit report by auditor and enforcement agent

7. Confirmation of receipt sent by the Chamber of enforcement agents or the Ministry of Justice

⁶ Depending on who will be responsible for the organization of the audit

8. Assessment of the audit report by the Board of the Chamber of enforcement agents or Ministry of Justice on following items:

The Board of the Chamber of enforcement agents or the Ministry of Justice assess the audit report on 6 points:

- a Verifiability of the completeness and correctness of the data of the enforcement agent's office and the auditor;
- b Completeness of the audit report;
- c Working methodology of the auditor as described in the audit report and its compliance with the regulatory framework on professional standards;
- d Completeness, representativeness and accuracy;
- e Motivation with regard to deviations of the norms and best practices;
- f Comments of the auditor regarding the audit.

9. Decision of the Chamber of enforcement agents or Ministry of Justice on the assessment

The Chamber of enforcement agents or Ministry of Justice may take different decisions:

- a. Decide on a positive assessment in case:
 - (1) The audit report meets all the best practices;
 - (2) According to the audit report, the enforcement agent does not comply with all best practices but does comply with all norms since the enforcement agent has a justified reason to deviate from the best practices in a manner that according to the audit report and the Chamber of enforcement agents or Ministry of Justice is comparable with such best practice.
 - o Forwarded to the enforcement agent with reference to the audit report;
 - o Copy sent to the Ministry of Justice or Chamber of enforcement agents.
- b. Decides no positive audit can be issued:

9B.1. The audit, in the opinion of the Board of the Chamber of enforcement agents or Ministry, does not meet the requirements in respect of point 8 under a to f.

Board informs the enforcement agent by motivated letter.

In this case the board, at its discretion and after consultation of the enforcement agent may request the enforcement agent to do a second audit in order to obtain a positive assessment report.

9B.2. The Board requests the auditor to carry out an additional audit.

Assessment is forwarded to the enforcement agent with reference to the audit report.

10. Objection

The possibility of objection needs to be introduced. Objection is possible against:

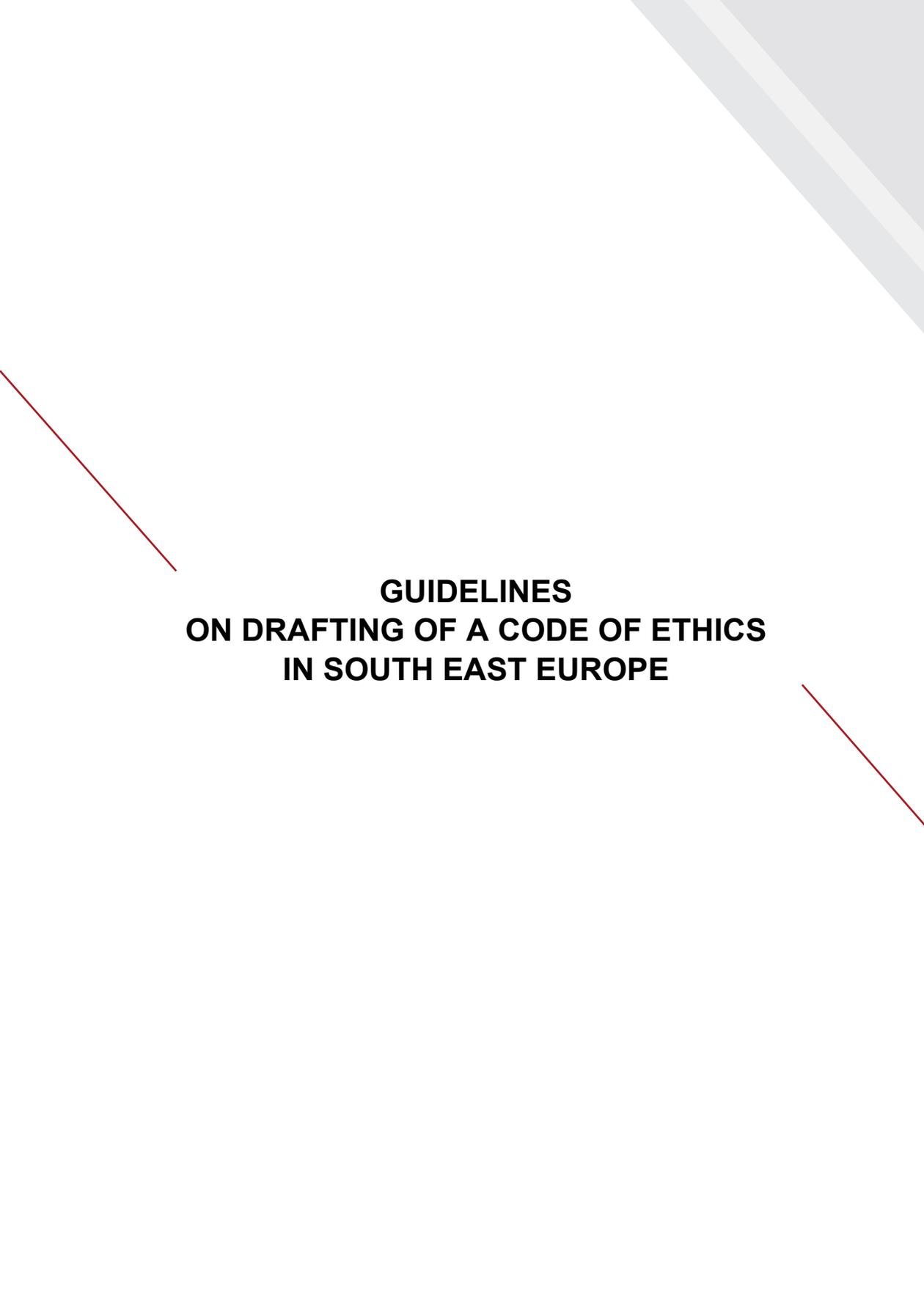
- The refusal of a positive assessment report;
- The opinion of the Board of the Chamber of enforcement agents or Ministry on the audit report of the auditor (including the revocation of a subsequent given positive assessment report).

Body to rule over the objection: this will depend on which body is responsible for the audit.

The objection can be filed within 6 weeks from the date the assessment report or the opinion was sent to the enforcement agent.

Minister may decide that the assessment report can be considered positive.

11. Annual reporting obligation board of Chamber of enforcement agents of enforcement agents or Ministry to the General Assembly of the Chamber of enforcement agents on the activities performed .



**GUIDELINES
ON DRAFTING OF A CODE OF ETHICS
IN SOUTH EAST EUROPE**

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Abbreviations:

CEPEJ	European Commission for the Efficiency of Justice
CEPEJ guidelines	Guidelines for a better implementation of the existing Council of Europe's Recommendation on Enforcement (European Commission on the Efficiency of Justice, Council of Europe) CEPEJ (2009)11
CMS	Case Management System
COMONEX	UIHJ Global Code on Enforcement ; international standards on enforcement
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HRM	Human Resources Management
ICT	Information and Communications Technology
IT	Information Technology
Moj	Ministry of Justice
UIHJ	Union Internationale des Huissiers de Justice et des Officiers Judiciaires

1. Compliance with international standards

1.1. The status of the enforcement agent

The right to have a judgment enforced is an integral part of the right to have access to court, as is the right to have proceedings within a reasonable time. Consequently, the judgments of the ECtHR can be used to assess enforcement procedures and practices. Since 1997, the *Hornsby v Greece case*, a number of judgments of the ECtHR has described violations of the ECHR in the field of enforcement. As indicated: the ECtHR cases are also interesting as an indicator for the state of affairs in the field of the development of rule of law and judiciary. Specifically, on those subjects where the enforcement law does not meet European standards, the ECtHR points out where the states should modernize. Comparing different countries, it will become clear where the common defects, if any, are in national enforcement law.

The international standards of the Council of Europe, as mentioned in Rec 16/2003 and Rec 17/2003 contain merely the same principles as the case law of the ECtHR, to which it expressly refers. Stating that enforcement procedures should be as effective and efficient as possible, the Recommendations outline ideas, which might be followed by the states that wish to improve the effectiveness of enforcement procedures and practices. In 2009 The Council of Europe's European Commission on the Efficiency of Justice (CEPEJ), elaborated Guidelines for effective application of these existing Council of Europe standards.

While discussing ethics and disciplinary proceedings over self-employed enforcement agents, it is important to realize that such rules for ethical behavior, or disciplinary liability should not only refer to enforcement case related issues but should refer to *all* (business) processes within the office of a private enforcement agent.

Enforcement agent

Rec 17/2003⁷ defines the enforcement agent:

Enforcement agent means a person authorized by the state to carry out the enforcement process irrespective of whether that person is employed by the state or not;

So, enforcement agent is a generic term. Neither the Council of Europe, nor CEPEJ, has taken a formal position on the professional and institutional status of enforcement agents:

*Where states make use of enforcement agents to carry out the enforcement process, they should comply with the principles contained in this recommendation.*⁸

*Enforcement agents' status, role, responsibilities and powers should be prescribed by law in order to bring as much certainty and transparency to the enforcement process as possible. States should be free to determine the professional status of enforcement agents.*⁹

7 Rec 17/2003 under 1B

8 Rec 17/2003 under IV.1

9 Rec 17/2003 under IV.2

Similar provisions can also be found in CEPEJ 2009 Guidelines and COMONEX:

*Enforcement agents' status should be clearly defined so as to offer potential parties to enforcement procedures a professional who is impartial, qualified, accountable, available, motivated and efficient.*¹⁰

*Only a judicial officer or an enforcement agent authorized by the state may conduct an enforcement procedure in accordance with national law.*¹¹

The persons instructed with enforcement must be made subject to regulations governing their professional status which guarantee the quality of the enforcement by demanding a high level of legal qualification.

*Judicial officers and enforcement agents must be required to comply with obligations regarding initial training and lifelong training.*¹²

The practices of enforcement agents need to be well regulated. It is important that the quality of enforcement is guaranteed. Although enforcement agents act upon the instigation of claimants, they should at all times act within the law.

States should bear in mind their responsibilities to properly regulate the practices of enforcement agents subject to appropriate levels of monitoring and scrutiny (e.g. Ombudsperson) and to the possibility of judicial control.

Activities of enforcement agents

Enforcement agents should be responsible for the conduct of enforcement within their competences as defined by national law. CEPEJ 2009 Guidelines recommend that enforcement agents is given sole competence for:¹³

- *Enforcement of judicial decisions and other enforceable titles or documents,*
- *Implementation of all the enforcement procedures provided for by the law of the state in which they operate.*

CEPEJ 2009 Guidelines suggests that enforcement agents is given authorization to perform secondary activities:

The professional status must allow judicial officers and enforcement agents to pursue secondary activities that are compatible with their position.

*In particular, they must be capable of being authorized to proceed with the amicable collection of debts.*¹⁴

10 CEPEJ 2009 Guidelines under 31

11 COMONEX article 16

12 COMONEX article 18

13 CEPEJ 2009 Guidelines under 33

14 COMONEX article 21

Enforcement agents may also be authorized to perform secondary activities compatible with their role, tending to safeguard and secure recognition of parties' rights and aimed at expediting the judicial process or reducing the workload of the courts.¹⁵

Such activities may be, among others:

- debt recovery;
- voluntary sale of moveable or immoveable property at public auction;
- seizure of goods;
- recording and reporting of evidence;
- serving as court ushers;
- provision of legal advice;
- bankruptcy procedures;
- performing tasks assigned to them by the courts;
- representing parties in the courts;
- drawing up private deeds and documents;
- teaching.

Obligations of enforcement agents

In general enforcement agents should be obliged to perform their role whenever they are legally required to do so, unless there is a justified reason not to carry out enforcement:

Enforcement agents should be obliged to perform their role whenever they are legally required to do so except in cases of impediment or where they are related by blood or marriage to a party. Enforcement agents should be precluded from being assigned disputed rights or actions in cases with which they are dealing.¹⁶

This refers to the enforcement agent acting as a civil servant, but also the self-employed enforcement agent.

In case enforcement agents are active as self-employed professionals, they should be obliged to open a non-attachable account specifically intended for depositing funds collected on behalf of clients. The word “non-attachable” indicates that the enforcement agent is not the “owner” of this bank account and the money deposited on this bank account. Rights arising from the account are vested in the rightful claimants jointly.

Another obligation is the requirement to take out professional and civil liability insurance.

Where enforcement agents are independent professionals, they should be obliged to open a non-attachable account specifically intended for depositing funds collected on behalf of clients. This account should be subject to inspection. They should also be required to take out professional and civil liability insurance. Enforcement agents should benefit from social insurance cover.¹⁷

15 CEPEJ 2009 Guidelines under 34

16 CEPEJ 2009 Guidelines under 35

17 CEPEJ 2009 Guidelines under 36

1.2. Ethics and professional conduct

The profile of enforcement agents is further explored in Rec 17/2003, principle IV.4. It is obvious that the enforcement agent is considered to have a high profile as a person authorized by the state who, at all times, should act in an appropriate (competent) manner in accordance with recognized high professional and ethical standards that are fitting to the profession. States are to ensure that enforcement agents are honourable and competent in their duties.

Enforcement agents should be honourable and competent in the performance of their duties and should act, at all times, according to recognized high professional and ethical standards. They should be unbiased in their dealings with the parties and be subject to professional scrutiny and monitoring which may include judicial control.¹⁸

States must take measures to define the rules of the professional ethics of enforcement agents and judicial officers.¹⁹

Enforcement agents will need to find the balance between the interests of the claimant, while recognizing and responding to the needs of vulnerable defendants. CEPEJ 2009 Guidelines in this respect remark:

Enforcement agents should be subject to clearly stated rules of ethics and conduct, which could be set out in professional codes of conduct. These codes of conduct should inter alia contain professional standards regarding:

- o information to be given to parties by enforcement agents concerning the enforcement procedure (grounds of action, transparency and clarity of costs, etc.)*
- o the rules governing the formulation of notices to parties (enforcement agents' social role, duty of advice, etc.)*
- o professional ethics (behaviour, professional secrecy, ethical criteria governing the choice of actions, etc.)*
- o smooth enforcement (predictability and proportionality of costs and lead-times, co-operation between enforcement services, etc.)*
- o procedural flexibility (autonomy of enforcement agents, etc.)²⁰*

18 Rec 17/2003 under IV.4

19 COMONEX article 19

20 CEPEJ 2009 Guidelines under 38

1.3. Disciplinary procedures and sanctions

Rec 17/2003, principle IV.6 recommends that appropriate proceedings are used to ensure that an enforcement agent who is alleged to have abused his/her position is subject to disciplinary, civil and/or criminal proceedings:

Enforcement agents alleged to have abused their position should be subject to disciplinary, civil and/or criminal proceedings, providing appropriate sanctions where abuse has taken place.²¹

Also, CEPEJ 2009 Guidelines and COMONEX make reference to the violation of any rules by the enforcement agent:

Breaches of laws, regulations or rules of ethics committed by enforcement agents, even outside the scope of their professional activities, should expose them to disciplinary sanctions, without prejudice to eventual civil and criminal sanctions.²²

A disciplinary procedure that complies with the rules of fair process before an independent organ that decides in adversarial proceedings must be installed.

The disciplinary sanctions must be defined and be proportional to the gravity of the errors committed.

The disciplinary decision may be appealed.²³

In order to avoid a conflict of interest and to be transparent, an independent authority should carry out the disciplinary procedures:

Disciplinary procedures should be carried out by an independent authority. Member states should consider introducing a system for the prior filtering of cases which are filed merely as delaying tactics.²⁴

As in other proceedings an explicit list of sanctions should be drawn up, setting out a scale of disciplinary measures according to the seriousness of the offence (the principle of proportionality between the breach and the sanction should be observed):

An explicit list of sanctions should be drawn up, setting out a scale of disciplinary measures according to the seriousness of the offence. Disbarment or “striking off” should concern only the most serious offences (the principle of proportionality between the breach and the sanction should be observed).²⁵

21 Rec 17/2003 under IV.6

22 CEPEJ 2009 Guidelines under 80

23 COMONEX article 20

24 CEPEJ 2009 Guidelines under 81

25 CEPEJ 2009 Guidelines under 82

1.4. Ethical behavior, supervision and disciplinary proceedings

With regard to the competences of enforcement agents Rec 17/2003 emphasizes the importance of a well-functioning system of monitoring and control.

Enforcement agents' status, role, responsibilities and powers should be prescribed by law in order to bring as much certainty and transparency to the enforcement process as possible. States should be free to determine the professional status of enforcement agents.²⁶

Enforcement agents should be honourable and competent in the performance of their duties and should act, at all times, according to recognised high professional and ethical standards. They should be unbiased in their dealings with the parties and be subject to professional scrutiny and monitoring which may include judicial control.²⁷

The powers and responsibilities of enforcement agents should be clearly defined and delineated in relation to those of the judge.²⁸

From these recommendations, it is obvious that the legislator has an important role in the establishment of the working environment of the enforcement agent. CEPEJ 2009 Guidelines comes with concrete suggestions, such as defining certain quality standards:²⁹

In order to undertake quality control of enforcement proceedings, each Member State should establish European quality standards/criteria aiming at assessing annually, through an independent review system and random on-site inspection, the efficiency of the enforcement services.

Additional to defining quality standards the control over the activities of the enforcement agents is also of importance. CEPEJ 2009 Guidelines define control as follows:

Control of activities means control of the lawfulness of the actions carried out by the enforcement agents. It may be carried out a priori (before the enforcement agents act) or a posteriori (after the enforcement agent acts) by a "disciplinary" authority.³⁰

Such a supervision or control might result, when necessary in disciplinary sanctions. Preferable the assessment is performed by a body outside the profession:

The authorities responsible for supervision and/or control of enforcement agents have an important role in also guaranteeing the quality of enforcement services. The Member states should ensure that their enforcement activities are assessed on an ongoing basis. This assessment should be performed by a body external to the enforcement authorities (for example, by a professional body) The Member states' authorities should clearly determine the control procedures to be performed during inspections.³¹

26 Rec 17/2003 under IV.2

27 Rec 17/2003 under IV.4

28 Rec 17/2003 under IV.5

29 CEPEJ 2009 Guidelines under 75

30 CEPEJ 2009 Guidelines, glossary

31 CEPEJ 2009 Guidelines under 78

Member states should ensure that the arrangement for monitoring the activities of enforcement agents does not hamper the smooth running of their work.³²

1.5. Organization of the profession

CEPEJ 2009 Guidelines emphasize on the importance to establish a professional organization:

With a view to good administration of justice, it is desirable that enforcement agents should be organized in a professional body representing all members of the profession, thereby facilitating their collective representation and the gathering of information.

Within member states which have established professional organizations of enforcement agents, membership of this representative body should be compulsory.³³

32 CEPEJ 2009 Guidelines under 79

33 CEPEJ 2009 Guidelines under 29 and 30

2. Code of ethics

2.1. Professional ethical standards

The development of professional ethical standards has become a common practice.

“A profession’s ethical standard must be compatible with civil society’s common morality, but at the same time go beyond this common morality in the way that it has to interpret those general rules for the specific details of the work of a particular occupational group. The very exercise of developing a code is in itself worthwhile; it forces a large number of people to think through in a fresh way their mission and the important obligations they have as a group and as individuals with respect to society as a whole. At the same time, it can be observed, that ethical regulations, tailor-made for a specific profession, are able to “...enhance the sense of community among members, of belonging to a group with common values and a common mission.”³⁴

It is undisputed that such a set of rules is of even bigger importance, wherever professionals have the state-given right to interfere with the rights (e.g. property rights) of others. The development and promotion of a Code of Ethics for enforcement agents is therefore an important tool on the way to lift the profession to higher standards and bigger acceptance within the population.

As we have seen in the previous chapter, also the Code of Ethics recommendations and CEPEJ Guidelines make obvious reference to the need to develop binding ethical guidelines.

The enforcement agent is able to perform certain actions, based on his/her training and appointment that the general public cannot. The enforcement agent is delegated a certain state power. This means that it is important to lay down how this power and authority is used in service to the creditor, the debtor and society. In order to preserve exploitation of the creditor or the debtor and to preserve the integrity of the profession, enforcement agents should lay down Codes of conduct for themselves, either via the respective (private) sector itself, or via the national government. The codes of conduct should draw standards of conduct to ensure that every enforcement agent meets those standards, by disciplining if they do not meet those standards³⁴ or do not practice accordingly.

A major reason for the development of such Codes is the fact that the enforcement agent has a complete monopoly on civil enforcement. To avoid private justice and to maintain the public’s trust in the profession it is important that the performance of the duties of the enforcement agent is well observed and that an independent disciplinary committee can impose sanctions.

At the same time, one has to be aware that professional behavior/ethics encompasses a much greater part of the professional’s life. *“If a professional is to have ethics then that person needs to adopt that conduct in all of his dealings.”³⁵*

Together with the professional standards (quality norms), the Code of Ethics form the framework for professional behaviour and responsibilities. The aim of the Code of Ethics is to define accepted and acceptable behaviours and to promote high standards of practice, to establish a framework for professional behavior and responsibilities and to provide a benchmark for members to use for self-evaluation.

³⁴ Kultgen J, 1988. Ethics and Professionalism. Philadelphia; University of Pennsylvania Press. pp. 212-213.

³⁵ Wikipedia on Professional ethics

2.2. Organization of ethical standards in Europe

Unless mentioned differently, the data in this paragraph are based on a questionnaire from UIHJ, the International Union of enforcement agents.

Within Europe out of 28 countries that answered the UIHJ questionnaire:

- 27 countries (96.43%) have a Code of Ethics:
 - Germany, England and Wales, Belgium, Bulgaria, Scotland, Spain, Estonia, Finland, France, Georgia, Greece, Hungary, Italy, Latvia, Lithuania, Luxemburg, North Macedonia, Moldova, Netherlands, Norway, Portugal, Romania, Russian Federation, Slovakia, Sweden, Swiss (canton Genève), Czech Republic
- Only one country did not have a Code of Ethics:
 - Slovenia.

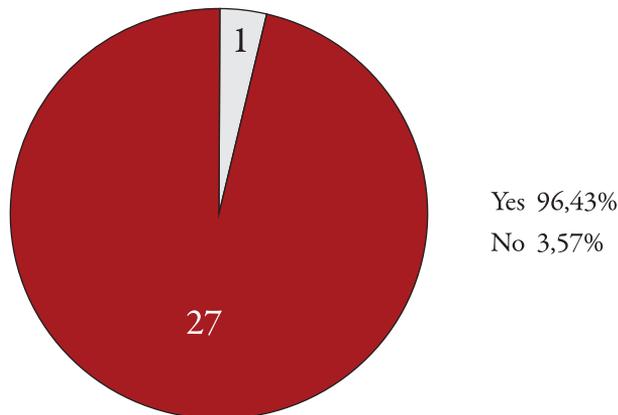


Table 1: Number of countries with a Code of Ethics

In most European countries the deontological rules are specific for the enforcement agent. In those countries where the rules are not specific enforcement related the rules apply either to all legal professionals (Luxemburg, Finland) or are connected to the status of the enforcement agent as a civil servant. In that case the ethical rules for civil servants apply (Sweden).

Within Europe from 27 countries that confirmed the use of profession related ethical rules, 23 countries (85.19%) use specific enforcement agent related rules:

- Germany, England and Wales, Belgium, Bulgaria, Scotland, Spain, Estonia, France, Georgia, Greece, Hungary, Italy, Latvia, Lithuania, North Macedonia, Moldova, Netherlands, Portugal, Romania, Russian Federation, Slovakia, Swiss (canton Genève), Czech Republic
- 4 Countries do not:
 - Finland, Luxemburg, Norway, Sweden

In most countries the Rules of Ethics are established by either the profession or the profession in close cooperation with the authorities:

Who is in charge establishing the Rules of Ethics:	Europe %
The profession	56,52
The authorities	13,04
The profession and cooperation with authorities	21,74
Other	8,7

Table 2: Who is in charge to establish the Rules of Ethics

The following table shows us the broad number of issues regulated in the Code of Ethics:

What is regulated in the Code of Ethics	Europe %
The independency of the judicial officer	77,78
The objectivity of the judicial officer	85,19
The probity of the judicial officer	85,19
The obligation to strictly comply to the existing law	77,78
The competence of the judicial officer	62,96
The relations between the judicial officer and creditors and/or his clients	70,37
The relations between the judicial officer and debtors	70,37
The relations between the judicial officer and third parties	66,67
The relations between the judicial officer and the public	59,26
The obligation of advice towards citizens in the framework of the activities of the judicial officer	37,04
The relations between judicial officers	59,26
The relations between the judicial officer and judges	40,74
The relations between the judicial officer and adjacent professions (lawyers, solicitors, notaries, ...)	29,63
The relations between the judicial officer and the authorities	44,44
The behaviour of the judicial officer in his personal life	40,74
The appearance of the premises used for professional purposes by the judicial officer	37,04
Disciplinary rules concerning judicial officers	51,85
Disciplinary sanctions and/or proceedings against judicial officers	37,04
Professional secrecy	70,37
The documents and/or the signals concerning the justification of the quality of the judicial officer	22,22
Measures relating to the professional accountancy of the judicial officer	37,04

What is regulated in the Code of Ethics	Europe %
Measures relating to the possibility or the interdiction for the judicial to prospect and/or canvass	29,63
Measures relating to the content of the professional website of the judicial officer	14,81
The relations between the judicial officer and his staff	33,33
Challenging the liability of the judicial officer	22,22
The possibility or not for the judicial officer to exert his activities	37,04
The organs of deontology	29,63

Table 3: What is regulated in the Rules of Ethics

2.3. The structure of the Code of Ethics

How could a Code of Ethics be drafted? Here is a proposal, based on the above mentioned outcomes of the UIHJ questionnaire and study of various Codes of Ethics:

1. GENERAL PROVISIONS

- 1 Subject of the Code of Ethics
- 2 Principles of the Code of Ethics
- 3 Application of the provisions of the Code of Ethics
- 4 Definitions

2. PRINCIPLES CONNECTED WITH ENFORCEMENT

- 5 Independency
- 6 Integrity
- 7 Professionalism
- 8 Impartiality and equal treatment
- 9 Effectiveness and efficiency
- 10 Respect for the Law and Regulative Framework
- 11 Duty to Act
- 12 Order of Disposal
- 13 Adequacy and Proportionality of enforcement
- 14 Publicity of work
- 15 Access to data and data processing

- 16 Confidentiality
- 17 Incompatibility of Office
- 18 Conflicts of Interests
- 19 Prohibition of Advertisement
- 20 Costs of Proceedings, Performance Fees and Reimbursements of Expenses
- 21 Financial Operations
- 22 Organization of the office

3. TREATMENT OF OTHER ENFORCEMENT AGENTS, PARTICIPANTS IN PROCEEDINGS AND THIRD PARTIES

- 23 Relations with Parties and Participants in the Enforcement Procedure
- 24 Relations with Creditors
- 25 Provision of data and notification of parties and participants

4. BEHAVIOR OF THE ENFORCEMENT AGENT IN THE PUBLIC

- 26 Behavior of the enforcement agent
- 27 Relationship with court and lawyers
- 28 Relations with Third Parties and Institutions
- 29 Relations with Media and Media Appearances
- 30 Participation in public events
- 31 Inadmissible Practices
- 32 Use of Identification Cards

5. SOLIDARITY OF ENFORCEMENT AGENTS

- 33 Relations with Other Enforcement Agents
- 34 Unfair Competition
- 35 Common debtors in enforcement proceedings
- 36 Deputies and staff of the enforcement agent
- 37 Interaction between the enforcement Agent and the Competent Bodies
- 38 Relationship with the Chamber of enforcement agents
- 39 Obligations of the Representatives of the CPEA's Bodies

6. MECHANISMS FOR IMPLEMENTATION AND IMPROVEMENT OF THE CODE OF ETHICS

40 Professional Ethics Commission to the Chamber of enforcement agents

41 Tasks of the Professional Ethics Commission

42 Mediation, Reconciliation and Arbitration through the Professional Ethics Commission

43 professional standards

44 Disciplinary responsibility

7. FINAL PROVISION

45 Final provision

2.4. The structure of the Code of Ethics in detail

1. GENERAL PROVISIONS

1 Subject of the Code of Ethics

What is the subject of the Code of Ethics? In general, one could state: the ensurance of the principles of the rule of law, the respect for human rights and fundamental freedoms, independence, impartiality, objectivity and transparency in professional activities by the enforcement agent. This is effected by clearly specifying the mandatory standards of conduct for enforcement agents. Such standards should also include the relations between the enforcement agent and private or public law subjects, who are involved or not involved in the professional activity of the law subjects.

It is important explicitly state the obligation for enforcement agents (and their staff!) to respect this Code of Ethics. The Code of Ethics should be enforceable against all enforcement agents, without discrimination on any ground such as sex, race, skin colour, language, religion, political or other opinion, national or social origin, national or social background, membership to a national minority, property, birth, age, sexual orientation.

Finally, a link needs to be made between the Code of Ethics and disciplinary liability of the enforcement agent.

2 Principles of the Code of Ethics

Major principles in the Code of Ethics are the principles of respect for the law, honesty, impartiality, integrity, effectiveness, perseverance, transparency and equal treatment of the participants in the enforcement process, keeping the professional secret and independence. These principles are worked out in detail in the Code of Ethics.

3 Application of the provisions of the Code of Ethics

The Code of Ethics should be compulsory for any enforcement agent and deputy enforcement agent. In addition, the enforcement agent is responsible for implementation and application of the Code of Ethics within the office.

4 Definitions

Definitions that are important for the good understanding of the Code of Ethics. For example:

- a. Activities:* means the activities as performed by the enforcement agent or performed under his/her responsibility and as referred to in the Law on bailiffs, the Enforcement Code of Ethics or any other law;
- b. Justiciable:* either the creditor, the debtor or the third party;
- c. Assignment:* the request and agreement to undertake certain activities, including the connected price arrangements;
- d. Client:* the party who commissioned the enforcement agent to perform certain activities;
- e. Case:* the individualised assignment;
- f. Professional standards:* the complete set of professional norms for enforcement agents as set by the Ministry of Justice and / or the Chamber of enforcement agents.

2. PRINCIPLES CONNECTED WITH ENFORCEMENT

5 Independency

This principle obliges the enforcement agent to refrain from any behavior, action or fact, and to avoid circumstances and / or objective or subjective factors, likely to affect his/her impartiality or independence. The enforcement agent is not allowed to be put under personal, financial or any other kind of dependency.

6 Integrity

Enforcement agents need to act with personal and professional integrity and authority, guided solely by the interests of parties to enforcement proceedings and duties prescribed the law and other general enactments. This means that the enforcement agent is not influenced by private interests, social relationships, and political and public pressure.

7 Professionalism

Activities need to be performed professionally. Their tasks not to be performed in accordance with the law and other general enactments.

This also means that the enforcement agent will need to continuously advance professional skills. The enforcement agent is also responsible that persons working in the office (staff and in the capacity of deputy or assistant enforcement agents) possess the knowledge and skills to guarantee a good performance of their tasks.

8 Impartiality and equal treatment

Enforcement agents and their staff treat equally and impartially all persons on whose behalf or for whose benefit they are acting (creditors) and the persons against whom they are acting (debtors).

Enforcement agent refrain from prejudice or partiality. The enforcement is organized and conducted irrespective of race, religion, nationality, ethnical background, gender, sexual orientation, social or financial status of the participants in the proceedings.

9 Effectiveness and efficiency

Enforcement agents perform their activities with due diligence: they act promptly and decisively and fulfill their duties within the legal deadlines. In case the law does not provide a deadline, activities are performed within a reasonable time, with respect for the person and rights of the parties to the proceedings and third parties.

They ensure effective and cost-effective performance (in the manner incurring the least expenses in the circumstances of the case) and fulfilment of their obligations within the powers and duties entrusted to them.

10 Respect for the Law and regulative framework

In undertaking actions, enforcement agents abide the Constitution, laws and other general enactments. They refrain from:

- a. Employing means not prescribed by the law;
- b. Saying they will or actually undertaking actions not allowed under the law;
- c. Applying impermissible coercion against or misleading the parties to the proceedings or other parties;
- d. Exercising physical violence as a compulsion method;
- e. Abusing their titles and status to achieve their personal interests or other interests not prescribed by the law.

The enforcement agent is liable for the work of their trainees, assistants and other staff.

In case the enforcement agents become aware of any illegal actions while performing their activities they notify the competent state authorities they learn of whilst performing their activities.

11 Duty to Act

In line with international standards (CEPEJ Guideline 35, see chapter 1), enforcement agents should not refuse to act on a case. Only exceptionally the enforcement agent may refuse to act on a case (in which case the enforcement agent will inform the creditor):

- in the event there are grounds for their exclusion or recusal vis-à-vis the participants in the proceedings;
- in the event of a conflict of interests or other situation that raises reasonable doubts on the professional independence and impartiality;
- in the event the enforcement agent is related to a party by blood or marriage;
- in the event the creditor demands an unlawful act;
- in the event the enforcement agent has such large caseloads that it will be impossible to complete the case on time.

12 Order of Disposal

The enforcement agent disposes of cases in the order in which they received them, unless particular circumstances of a case exist. Particular circumstances are for example: the law that stipulates the urgency of certain cases, urgent action is required to prevent the use of force or the infliction of considerable damage.

13 Adequacy and Proportionality of enforcement

The adequacy and proportionality of enforcement has different aspects (also mentioned in international standards such as the CEPEJ Guidelines):

- *With regard to the position of parties:* the enforcement agent shall consider the legal protection of persons, in unequal position (see also CEPEJ Guideline 7: Enforcement should strike a balance between the needs of the claimant and the rights of the defendant);
- *Adequacy:* actions of the enforcement agent should focus on the enforcement of the pecuniary and non-pecuniary claims. Any actions, not aimed at realization of this purpose are forbidden;
- *The enforcement method:* choice for such enforcement method that responds to maximum degree to the enforcement purposes and is most appropriate and effective (also: CEPEJ Guideline 54). This means taking into consideration the calculation of the duration, the expenses and the impact of the enforcement to the parties' social and economic sphere;
- *Proportionality of costs and time limits:* (Also CEPEJ Guidelines 38 and 40): predictability and proportionality of costs. The enforcement actions to be undertaken are in compliance with all data and circumstances regarding the case, including the amount of the claim, the nature of the enforcement action, the debtor's behavior in the course of proceedings and the adequacy of the security available for the case.

The ultimate cost of enforcement should be in due proportion to the remedy sought (also CEPEJ Guideline 56).

14 Publicity of work

Enforcement agents shall make available information on their performance and actions:

- Towards the creditor (CEPEJ Guideline 73): upon satisfaction of the claim, the creditor is informed. The creditor is informed on the type of enforcement action envisaged and the likely resulting costs (CEPEJ Guideline 50 and 53);
- Towards the debtor: (CEPEJ Guidelines 72): informing the debtor as to the extent of his liability during the enforcement process. Informing the debtor on the costs of enforcement (CEPEJ Guideline 50);
- Towards general public (CEPEJ Guideline 65 and 76): publication of performance data;
- Towards the Chamber of enforcement agents and supervisory body and disciplinary committee: as part of the supervision and control of the enforcement activities .

15 Access to data and data processing

The enforcement agent ensures the safety of the documents they obtain whilst performing their activities and ensures that unauthorised persons cannot access them without the knowledge and consent of the people they regard.

16 Confidentiality

Collection and processing of personal data is only allowed for the purposes of the enforcement procedure.

Confidential information is such information which, if published, would jeopardise or violate any rights of the enforcement debtors enshrined in the Constitution or the law.

Confidential information obtained in the course of performing their activities is treated with confidentiality, as a professional secret, unless the use or publication of such information is provided by Law.

The staff of the office is fully and promptly notified of the duty to maintain the confidentiality of confidential information.

The duty of confidentiality also applies after the termination of professional activity.

17 Incompatibility of Office

Enforcement agents refrain from performing jobs and discharging offices incompatible with enforcement and security activities. This relates, for example to the discharge of a public office or a managerial or supervisory position in a company, engagement in the security sector, legal practice or in another judicial profession.

This principle further refers from the obligation of the enforcement agent to refrain from performing other activities incompatible with or potentially detrimental to the enforcement agent profession, pursuant to the enactment adopted by the Chamber of enforcement agents.

Most countries make an exception for scientific, professional, artistic, sports and educational activities.

18 Conflicts of Interests

A conflict of interests means any circumstance or combination of circumstances, where a reasonable doubt arises that the personal interest of the enforcement agent or related persons may influence his/her impartiality when exercising his/her official duties. It also applies to proceedings in which they or their deputies or assistants have property or other interests.

Most countries in that respect in their Code of Ethics refer to persons who are lineally consanguineous kin of the enforcement agents of any degree, collaterally consanguineous kin of the enforcement agents to the fourth degree, their guardians, adoptive parents or adopted children, spouses or civil partners, or who are in-laws of the enforcement agents to the second degree regardless of the status of the marriage, or who are living with the enforcement agents in the same household.

Enforcement agents should notify the parties to the proceedings on an actual or potential conflict of interests during enforcement proceedings.

19 Prohibition of Advertisement

Most countries limit (or completely forbid) advertising by an individual enforcement agent. Exceptions could be made for informational publications in official forms, envelopes, business cards.

Also, the content of websites made have certain restrictions, e.g. to information about an enforcement agent, contact details and provided services only.

This principle further should refer to offering services or attain creditors.

20 Costs of Proceedings, Performance Fees and Reimbursements of Expenses

Enforcement agents are not allowed to contract or charge performance fees or seek reimbursement of expenses other than those prescribed by the fee schedule or regulation of fees (neither fee or charge more nor less than the amounts prescribed by the regulation on fees).

Creditors are informed in advance of the costs that are certain to arise. In the costs will be higher, the enforcement agent notifies the enforcement creditor thereof before they undertake the actions (this is in line with CEPEJ Guideline 53).

It is the responsibility of the enforcement agent to take all reasonable and necessary steps in enforcement and to decide which enforcement action is most appropriate. Where costs are considered irrelevant or wrongfully incurred these costs should be borne by the enforcement agent (CEPEJ Guideline 57).

21 Financial Operations

Money received is transferred to appropriate accounts in accordance with the law and other regulations.

Enforcement agents maintain designated accounts for funds paid within enforcement (also CEPEJ Guideline 36) and separate accounts for their performance fees and reimbursement of their expenses.

22 Organization of the office

This principle refers to the appearance of the office, the interior and the signs on the offices of enforcement agents. It should reflect the importance and reputation of the profession.

3. TREATMENT OF OTHER ENFORCEMENT AGENTS, PARTICIPANTS IN PROCEEDINGS AND THIRD PARTIES

23 Relations with Parties and Participants in the Enforcement Procedure

Participants in enforcement proceedings are treated cordially and respectfully.

The enforcement agent respects the debtors' rights and dignity, the court and its judgments.

In the relations with the parties and the participants in the enforcement procedure the enforcement agent avoids any manifestation of familiarity, arrogance, offensive and humiliating attitude. The enforcement agent abstains from appraisals and estimations regarding the parties and the participants in the enforcement procedure.

24 Relations with Creditors

All creditors are treated equally and are provided with timely and effective enforcement. The creditor is informed on a regular base on the progress in the enforcement case.

25 Provision of data and notification of parties and participants

When necessary, the enforcement agent informs, clearly and precisely, to the parties and the other participants in the enforcement procedure the legal consequences from the enforcement actions.

Parties will not be misled by the enforcement agent regarding his/her authorities, qualification, experience and abilities.

There is an equal access to information regarding the cases, including the information about the sales of belongings.

4. BEHAVIOR OF THE ENFORCEMENT AGENT IN THE PUBLIC

26 Behavior of the enforcement agent

The enforcement agent abstains from visiting places, contacts and participation in organizations, casting suspicion on his/her honesty and prejudicing his/her good name and the prestige of the profession. (For example: a Belgian enforcement agent is not allowed to visit a casino).

The enforcement agent is not allowed any manifestation of indecent behavior. The enforcement agent shall not use the profession's authority to achieve his own interests.

27 Relationship with court and lawyers

In relation with the courts, prosecution, lawyers and public authorities, the enforcement agent is obliged to show a respectful and loyal behavior, but at the same time performs his duties conscientiously and without reluctance.

28 Relations with Third Parties and Institutions

The enforcement agent shall establish his/her relations with any third parties and institutions on the basis of mutual respect, deference and mutual aid. The enforcement agent behaves in a manner, strengthening the profession's authority.

In case an enforcement agent is elected or appointed by governing bodies, he cannot use prerogatives of the function to influence the enforcement proceedings and/or to obtain advantages or exclusivity, unforeseen by the legal framework.

29 Relations with Media and Media Appearances

Official information to the media regarding the activity of the Chamber of enforcement agents is disseminated by those persons within the Chamber of enforcement agents who are explicitly authorised to that purpose.

Upon rendering interviews, representations or other media activities, the enforcement agent observes the oath taken and the legal requirements for keeping the professional secret.

30 Participation in public events

The enforcement agent is not allowed to participate in public activities in the event such action might lower the profession's prestige.

The enforcement agent abstains from actions at public places, as well as media appearances and statements, which may lower the prestige of and compromise another enforcement agent, participants in the enforcement procedure, state authority or institution.

Professional and personal conflicts and disputes arisen between enforcement agents, brought to the knowledge of the public and settled not in the manner provided by law and the Code of Ethics, are considered a breach of the professional ethics.

31 Inadmissible Practices

The enforcement agent or the staff are not allowed to accept from parties or participants in civil proceedings or enforcement proceedings, brought before him/her either personally, or through third parties, any benefits undue, including presents, pecuniary loans, gifts, donations, services, , engagements in any other civil proceedings or enforcement proceedings, work promises, advices, rendered to his/her relatives, and which raise doubt for his/her independency and impartiality.

Neither the enforcement agent nor the staff are allowed to participate as purchasers in any public sales of effects and real properties, announced by the same enforcement agent.

32 Use of Identification Cards

The enforcement agent establishes identity by presenting the official card. This ID card is not to be used under any circumstances other than official duties.

5. SOLIDARITY OF ENFORCEMENT AGENTS

33 Relations with Other Enforcement Agents

The enforcement agent is governed by the principles of loyalty, respect and correctness in the relations with his/her colleague. Behavior which prejudices their dignity and rights is not tolerated. The enforcement agent shall not lower the prestige of or discredits the professional activity of his/her colleagues by actions, critical statements or offensive estimations.

The enforcement agent provides effective support to colleagues in the profession, including the application of this Code of Ethics and responds favourably to their request for advice and helps them in difficult situations, within his/her possibilities, in particular by addressing the problems of ethics.

Disputes of professional nature between enforcement agents, are solved amicably. Before initiating judicial proceedings against a colleague, which arises from a conflict of interests, the enforcement agent informs the Chamber of enforcement agents to settle the dispute amicably.

34 Unfair Competition

This provision relates to self-employed enforcement agents.

What is unfair competition: the performance of professional activities by any acts or acts contrary to the law and/or regulations, including the Code of Ethics or professional activity, by the enforcement agent or his staff.

Unfair competition can happen in different ways. Some examples:

- With regard to the fees: providing any part of the enforcement fees, to a creditor or

persons, related to such creditor; offering enforcement activities, free of charge or for lower charges on the part of the enforcement agent;

- An enforcement agent's office opening outside the territory of the enforcement agent's practice area, provided by Law;
- Disapprove public statements about other court officers / offices;
- Criticism of colleagues in public or private, on the preparation and quality of their performance, except in the cases of assessment of the level of preparation and control of the enforcement agent;
- The refusal or evasion to receive an enforcement document, for which he/she is competent under mandatory legal rules;
- Recruitment of educated and trained personnel to another office of the enforcement agent;
- Superiority of one enforcement agent over another through acts which aims to attract creditors and increase the income of his office to the detriment of another enforcement agent, based on comparisons or emphasizing the exclusivity of its own office, enforcement agent's personality, office employees or the name and number of creditors of the office.

35 Common debtors in enforcement proceedings

In the event of a common debtor, the enforcement agents shall co-operate with a view to the process' lawful conduct.

36 Deputies and staff of the enforcement agent

The enforcement agent respects the dignity and work of his/her deputies and staff. On a regular base, the enforcement agent controls the work of his/her deputies and staff. The enforcement agent, is held responsible for the violations of the professional ethics, caused by such staff.

37 Interaction between the enforcement Agent and the Competent Bodies

The enforcement renders assistance to the competent bodies carrying out the supervision, monitoring and control under the Law and the regulations based on legislation, including the Code of Ethics and other Chamber of enforcement agents regulations.

The enforcement agent provides within the terms as set by the competent bodies the information, required, as well as copies of relevant enforceable documents, files and other documents, required under a law or regulation to those competent bodies.

38 Relationship with the Chamber of enforcement agents

The enforcement agent should refrain from any act or illegal action and / or contrary to the professional association (Chamber of enforcement agents) to which he belongs, which may

affect public order and good morals or dignity of the profession of the enforcement agent and the image of which professional organization. This refers both during the exercise of professional activities and outside of such the professional activity.

The enforcement agent should render assistance to and support the work of the Chamber of enforcement agents's bodies. The resolutions and acts, passed by the Chamber of enforcement agents's bodies are implemented by the enforcement agent, unless their contents is contrary to the law, the Chamber of enforcement agents's Rules, and good professional practices.

The enforcement agent participates in the national forums, organized by the Chamber of enforcement agents, except in cases, when unforeseen and urgent tasks hinder his/her participation.

39 Obligations of the Representatives of the Chamber of private enforcement agents' Bodies

The representatives of the Chamber of enforcement agents's bodies act in accordance with the tasks assigned to them. Actions infringing the provisions and purposes of the Law and the Code of Ethics are inadmissible.

6. MECHANISMS FOR IMPLEMENTATION AND IMPROVEMENT OF THE CODE OF ETHICS

40 Professional Ethics Commission to the Chamber of enforcement agents

In some countries a Professional Ethics Commission is established within the Chamber of enforcement agents. This Commission is engaged with the implementation, interpretation and improvement of the Code of Ethics.

41 Tasks of the Professional Ethics Commission

For example, in Bulgaria, the Professional Ethics Commission has the following powers:

- a. Collecting, classifying, analyzing and summarizing information about the work and behavior of the enforcement agents, purposing to update and improve the application of the Code of Ethics.
- b. Summarizing the existing professional practices by conducting interviews.
- c. Making suggestions for improvement of the Code of Ethics on the grounds of the identified practices of the enforcement agents and the amendments made in the legal, organization, social and economic framework of the profession.
- d. Preparing annual report on its activity and submitting it to the Chamber of enforcement agents's Board;

42 Mediation, Reconciliation and Arbitration through the Professional Ethics Commission

In countries with a Professional Ethics Commission, its members may act as a mediator, agent or arbitrator for settling disputes between two or more enforcement agents upon their written mutual consent, filed in the Chamber of enforcement agents's Board.

43 Professional standards

The link between the Code of Ethics and the professional standards: both are a set of norms for enforcement agents covering the case management and business processes within the office. The enforcement agent guarantees the implementation of the professional standards in the office; non-implementation is a disciplinary offense.

44 Disciplinary responsibility

The non-observance of the rules of the Code of Ethics by the enforcement agent is ground for disciplinary responsibility.

7. FINAL PROVISION

45 Final provision

When does the Code of Ethics go into force?

Compulsory for all enforcement agents

3. Disciplinary proceedings

3.1. Ethics and disciplinary proceedings

As we have seen in chapter 1, both the recommendations of the Council of Europe and the CEPEJ 2009 Guidelines demand an enforcement agent that is a legal professional who acts impartial, is qualified, accountable, available, motivated and efficient. For example, in its Recommendation 17/2003 the Council of Europe states that:

“Enforcement agents should be honourable and competent in the performance of their duties and should act, at all times, according to recognised high professional and ethical standards. They should be unbiased in their dealings with the parties and be subject to professional scrutiny and monitoring which may include judicial control.”³⁶

It is the Code of Ethics that connects the principles related to the activities in the enforcement process, the role of the private enforcement agent towards the participants in the enforcement proceedings and towards colleagues, the public behavior of the enforcement agent and the entrepreneurship of the private enforcement agent.

The Code of Ethics defines accepted and acceptable behaviour of the enforcement agent’s profession and promotes the standards of practice. This way a framework for professional behavior and responsibilities is created that functions as a benchmark for the enforcement agents how to behave.

As such the Code of Ethics is an important reference in the supervision over the profession. The ethical framework will also function as a control mechanism, checking the compliance of enforcement agents with ethical norms and, if necessary, initiate proper (disciplinary) measures in case the norms are not respected.

A proper control mechanism and disciplinary proceedings guarantee proper law implementation and trust of the population in the system at the same time. A well-defined system of check and balances is the best way to prevent and to combat corruption.

The private enforcement agent has disciplinary liability if upon exerting the activities, the agent infringes the provisions of law and other regulations and infringes the prestige of the profession of private enforcement agent. Also, activities carried out outside professional activities can be subject of disciplinary proceedings. See in this respect CEPEJ 2009 Guideline 80:

Breaches of laws, regulations or rules of ethics committed by enforcement agents, even outside the scope of their professional activities, should expose them to disciplinary sanctions, without prejudice to eventual civil and criminal sanctions.

36 Rec 17/2003 under IV.4

3.2. Organization of disciplinary proceedings in and outside Europe

With regard to disciplinary proceedings from 47 countries worldwide, 44 countries (93,62%) have the system that also entails disciplinary rules on the profession of enforcement agent (exception: Germany).

Are these disciplinary rules assembled in one document? Here we notice various answers: not all countries seem to have a unique Code or regulation for disciplinary proceedings. The 27 countries that were questioned in Europe:

- 20 countries (74,07%) have a Code for disciplinary proceedings:
 - England and Wales, Belgium, Spain, Estonia, Finland, Georgia, Greece, Hungary, Italy, Latvia, North Macedonia, Moldova, Netherlands, Norway, Portugal, Russian Federation, Slovakia, Sweden, Swiss (canton Genève), Czech Republic
- 7 countries do not have a unique document with disciplinary rules
 - Bulgaria, Scotland, France, Lithuania, Luxemburg, Romania, Slovenia.

In most countries the disciplinary rules are specific to the profession of enforcement agent: worldwide 81,82%.

In Europe from the 27 countries mentioned Finland, Italy, Luxemburg, Norway, Slovenia and Sweden do not have rules specific for the profession.

With the exception of Luxemburg and Slovenia this relates to countries in which the judicial officer as acting as a civil servant. As was the case with the Code of Ethics, also with regard to the disciplinary rules the disciplinary rules in that case apply to the legal professions (Luxemburg, Norway, Slovenia) or civil servants (Italy, Sweden).

Interesting and in line with international standards, the disciplinary rules not only refer to the professional rules but may also refer to non-professional behavior.

	Worldwide*	Africa	Europe
A violation to professional, ethical and/or deontological rules	37	15	20
A violation to the law relating to the professional exercise	35	14	19
A violation to the law relating to non-professional facts	20	11	9
A violation of probity, honor or tactfulness relating to professional facts	29	11	17
A violation of probity, honor or tactfulness relating to non-professional facts	19	10	9

* in number of countries

Table 4: What is regulated in the disciplinary rules

With regard to the sanctions, most countries have a level of sanctions (worldwide 85%, in Africa 100% and in Europe 82,61%). The three countries in Europe (Finland, Norway and Russia) all have a civil servant-based system. In Scotland the level of sanctioning, despite criticism from the profession, is limited to the lowest classification of sanctions only.

Sanctions worldwide (38 out of 42 countries or 90.48%) also include suspension of the judicial officers. In Africa 100% have such power.

In Europe 21 (from 24 countries, 87.5%) have such power:

- o England and Wales, Belgium, Bulgaria, Scotland, Spain, Finland, France, Georgia, Greece, Hungary, Italy, Lithuania, North Macedonia, Moldova, Norway, Netherlands, Portugal, Romania, Slovenia, Slovakia, Sweden, Swiss (canton Genève), Czech Republic

3 Countries do not have such power:

- o Estonia, Latvia, Russian Federation.

A similar trend can be seen regarding permanent dismissal: worldwide 39 (of 41 countries, 95,12%) countries as part of a disciplinary sanction the judicial officer can be dismissed.

In Europe 23 (from 24 countries, 95.83%) have such power:

- o England and Wales, Belgium, Scotland, Spain, Finland, France, Georgia, Greece, Hungary, Italy, Latvia, Lithuania, Luxemburg, North Macedonia, Moldova, Norway, Netherlands, Portugal, Romania, Russian Federation, Slovenia, Slovakia, Sweden, Swiss (canton Genève), Czech Republic
- o Only exception is Bulgaria.

With regard to the jurisdiction in disciplinary proceedings we see a mixed view:

	Worldwide*	Europe
No	10	4
The common competent jurisdictions	13	7
A special jurisdiction	8	5
A special entity	4	3
The profession, under the form of a special branch (a Chamber of enforcement agents of discipline for instance), for all the sanctions that can be pronounced	17	11
The profession, under the form of a special branch (a Chamber of enforcement agents of discipline for instance), for part of the sanctions that can be pronounced	6	3
Other (please specify):	5	3

* Number of countries; different answers were possible

Table 5: jurisdiction in disciplinary proceedings

In some countries there are certain restrictions regarding the appeal of the disciplinary sanction. Only two (European) countries do not enable the judicial officer to challenge a disciplinary sanction: Norway (civil servant-based system) and Czech Republic (self-employed system):

	Worldwide*	Europe
Yes	80,49	79,17
No	7,32	8,33
For certain sanctions only	12,2	12,5

Table 6: restrictions to disciplinary sanctions

3.3. The development of rules for disciplinary proceedings

Are disciplinary norms about a rule of law, or about practice and customs that can be the sources of this rule of law?

In general, it is no longer disputed that disciplinary rules are rules of law, of which the legal framework is recognised, first by the functioning of the general internal principles of justice, and secondly by direct enforcement of the principles of ECHR.

A disciplinary rule is essentially a law that lays down rules that have to be respected and that imposes sanctions when these are violated.

Consequently, disciplinary rules have a judicial character, and a disciplinary measure can be pronounced as a sanction that, based on the internal law, is imposed by a disciplinary committee, due to a violation of a deontological standard, next to the criminal, civil or legal sanctions that can be imposed for this deontological mistake. From this it also follows that internal legislation has to give a certain legal power to a disciplinary committee to impose a disciplinary sanction. Such disciplinary committee is an independent body.

Independent body

Disciplinary proceedings should be in accordance with art 6 ECHR. The rule according to which the court has to be independent and impartial, is a general principle of legality, that bears on all legal bodies, and thus also on disciplinary courts. See for example *Le Compte I* of the ECtHR concerning the medical practitioners *Le Compte, Van Leuven and De Meyere against the Belgian State*³⁷ stated that article 6 ECtHR does apply if the dispute dealt with by a disciplinary judge concerns private interest, such as the right to work.

Consequently, disciplinary proceedings need to meet certain requirements such as: independency, accessibility, efficiency, transparency, predictability, reasonable time and the right on defense.

37 *Le Compte v. Belgium*, ECtHR 23 June 1981

Substantive disciplinary rules and principle of legality

Article 7 par 1 ECHR: no punishment without a law.³⁸ However: disciplinary rules hardly lend themselves for concretely written rules and standards (in contrast to civil and criminal law): disciplinary rules deal with behaviour that have to be reconciled with the honour and dignity of the profession. It means that in disciplinary cases the principle of legality does not apply: all disciplinary proceedings shall be determined in accordance with the law, the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.

This not necessarily means that the behavior is explicitly described in the law or code of conduct, according to the ECtHR in the case Oleksandr Volkov v. Ukraine³⁹:

“176. These qualifications, imposing limits on the requirement of precision of statutes, are particularly relevant to the area of disciplinary law. Indeed, [...] the Court has held that it would scarcely be possible to draw up rules describing different types of conduct in detail. It may therefore be necessary for the authorities to formulate such rules more broadly [...]”

178. Therefore, in the context of disciplinary law, there should be a reasonable approach in assessing statutory precision, as it is a matter of objective necessity that the actus reus of such offences should be worded in general language. Otherwise, the statute may not deal with the issue comprehensively and will require constant review and updating according to the numerous new circumstances arising in practice. It follows that a description of an offence in a statute, based on a list of specific behaviours but aimed at general and uncountable application, does not provide a guarantee for addressing properly the matter of the foreseeability of the law. The other factors affecting the quality of legal regulation and the adequacy of the legal protection against arbitrariness should be identified and examined.”

A clear guidance on what is considered ethical and unethical behavior is necessary. ECtHR in the same case Oleksandr v. Ukraine:

“185. Accordingly, the absence of any guidelines and practice establishing a consistent and restrictive interpretation of the offence of “breach of oath” and the lack of appropriate legal safeguards resulted in the relevant provisions of domestic law being unforeseeable as to their effects. Against this background, it could well be assumed that almost any misbehaviour by a judge occurring at any time during his or her career could be interpreted, if desired by a disciplinary body, as a sufficient factual basis for a disciplinary charge of “breach of oath” and lead to his or her removal from office.”

38 “no one can be sentenced for an action or omission, that was not an offence according to a national or international law at the time the action or omission took place. Neither will a more severe punishment be imposed than the one that applied at the time the offence was committed.”

39 Oleksandr Volkov v. Ukraine, application 21722/11; 9 January 2013

