

CA/32/09

Orig.: en

Munich, 26.02.2009

SUBJECT: EPO Audit Committee: draft terms of reference

SUBMITTED BY: President of the European Patent Office

ADDRESSEES: Administrative Council (for information)

SUMMARY

The present document is based on consultations between the Office and the Board of Auditors and outlines the proposed terms of reference for an EPO Audit Committee as a subsidiary body of the Administrative Council pursuant to Article 14 of the Rules of Procedure of the Administrative Council of the European Patent Organisation. It is submitted for information. A draft decision will be submitted to the Budget and Finance Committee in May for opinion and to the Administrative Council in June for decision.

I. STRATEGIC / OPERATIONAL

1. Strategic.

II. RECOMMENDATION

2. Not applicable.

III. MAJORITY NEEDED

3. Not applicable.

IV. CONTEXT

4. The present document follows on from CA/140/08 submitted by the President ("Audit Committee: possible models"), CA/148/08 submitted by the Board of Auditors (Audit Committee: possible models: auditors' comments on CA/140/08) and CA/148/08 Add.1 (Audit committee: possible models - auditors' further comments on CA/140/08).

5. During the discussion within the Budget and Finance Committee in October 2008 the Office was invited to reflect further on the question of an Audit Committee in the light of the BFC's remarks and the Board of Auditors' comments in CA/148/08. Along the same lines, the Council confirmed its position in favour of setting up an Audit Committee and noted the intention of the President and the Board of Auditors to reach a joint solution. Accordingly, the present document has been elaborated in close consultation with the Board of Auditors.

V. ARGUMENTS

A. PURPOSE

6. The Audit Committee (hereafter "AuCo"), as a subsidiary specialised body of the Administrative Council, advises the Council, the Budget and Finance Committee, and the President as appropriate, in carrying out their oversight and governance responsibilities in matters relating to risk, internal control and audit process.

B. MISSION

7. The areas and functions for which the AuCo is responsible are described below. These functions are performed on the basis of the reports drawn up by external and internal audit.

8. Risk management

- reviewing the EPO's approach to risk;
- assessing significant risks emerging from particular events or decisions and the response thereto;
- highlighting deficiencies in the internal control system, in particular on the basis of the reports made by external and internal audit;
- assessing the systems established by the EPO to maintain and promote ethics and its anti-fraud policy and to prevent conflicts of interest.

9. Efficiency of Internal Audit:

- evaluating the adequacy of Internal Audit's budget and staffing levels;
- monitoring performance and the quality of internal audit activities.

10. Follow-up of audit activities:

- assessing responsiveness of management to internal and external audit recommendations;
- advising on sensitive issues¹ detected by internal and external auditors;
- fostering synergies between audit activities with due regard to the independence of the external auditors.

C. DUTIES

11. The AuCo gives opinions and make proposals.

¹ With the exception of individual employment law-related cases, which must be dealt with in accordance with the ServRegs and/or the EPC.

12. Opinions:

The AuCo gives its opinion on:

- Internal Audit's medium term plan and annual programme, as well as any related change;
- the Office's risk profile and risk policy, at least annually;
- the Internal Audit Charter and any related proposal for changes;
- specific internal audit reports or recommendations, at the President's request;
- the impact of major changes in the regulatory framework;
- the risks related to major decisions;
- the appointment of the Head of Internal Audit²;
- the transfer or dismissal, as well as any disciplinary measure concerning the Head of Internal Audit and the staff members employed as internal auditors³;
- any matters within its mandate at the President's request.

The AuCo is entitled to give its opinion on:

- particular internal audit reports or recommendations;
- particular issues raised by the Council, the Budget and Finance Committee, the President or the internal or external auditors.

13. Proposals

The AuCo is entitled to make any proposal aimed at improving:

- risk management and the anti-fraud policy;
- the organisation of internal controls;
- the efficiency of audit activities;

² With due respect of the President's competences under Article 10 (2) (f) and (h) EPC.

³ With due respect of the President's competences under Article 10 (2) (f) and (h) EPC.

- the management response to issues raised by auditors.

14. Reporting

- The AuCo addresses its opinions and proposals as a rule to the President, the originator of the request and, if this is deemed necessary, to the BFC and the Council.
- The AuCo delivers at least annually a report of its activities to the BFC and the Council. The report mentions any specific topics not yet resolved.
- All opinions, proposals and reports are in writing.

D. AUTHORITY

15. In order to fulfil its responsibilities, the AuCo has the power to:

- invite any EPO senior manager⁴ to discuss an item, subject to the authorisation of the President ;
- have access to internal and external audit reports;
- request any relevant information within its mandate, including updates on any litigation cases, investigations, cases of fraud, special payments and decisions taken by the President after disciplinary proceedings.

16. The AuCo exchanges information and views with the Board of Auditors, in particular concerning risks and controls.

E. COMPOSITION

17. The AuCo is composed of four members who are experienced in audit matters, preferably with a knowledge of the practices followed by other international organisations. The AuCo members are preferably selected from among the senior officials of the public internal audit services of the member states.

18. All AuCo members are proposed by the member states and appointed by the Council in agreement with the President. Their mandate is limited to three years and is renewable only once.

⁴ Grade A6 or A7.

19. The members of the AuCo reflect the highest standard of integrity and do not seek or receive any instructions from a national government. They are not allowed to hold any position or engage in any activity which could impair their independence. All members are required to sign a declaration of independence (Annex). They are not eligible to hold any position in the Organisation for five years following expiry of their mandate.
20. Current or former members of the Office or the Council and its bodies and those holding a position at national patent offices (or subordinate to them) are excluded in view of the required level of independence and role clarity.
21. The members of the AuCo select a chairperson from among the membership. The chair has the casting vote.

F. MEETINGS

22. The AuCo meets on a quarterly basis for one to two days in one of the EPO buildings.
23. The quorum necessary for the validity of meetings is three members.
24. Deputies are not allowed. In cases of *force majeure* the valid opinion of an absent member can be obtained in writing.
25. The Board of Auditors may attend AuCo meetings as observers.
26. The President has the right to attend⁵.
27. The Head of Internal Audit attends, unless the AuCo decides otherwise.
28. The results of each meeting are recorded. The minutes are confidential.

G. ADMINISTRATIVE AND FINANCIAL ARRANGEMENTS

29. The AuCo secretariat, responsible for logistic and administrative support, is provided by the Council Secretariat.
30. Each member of the AuCo is reimbursed travel and subsistence expenses in accordance with the respective provisions set out in the Rules of Procedure.
31. Additionally a daily fee is allocated on the basis of A7⁶ daily basic salary.

⁵ As foreseen in Article 14(3) Rules of Procedure.

⁶ Step 8, as indicated in the net salary table - Germany (Annex III ServRegs)

VI. ALTERNATIVES

32. No alternative is foreseen, since this was already excluded by the Council at its 115th meeting in October 2008 (CA/129/08, point 12.5).

VII. FINANCIAL IMPLICATIONS

33. The expected financial impact is estimated at EUR 100 000 per year.

VIII. LEGAL BASIS

34. Article 33 paragraph 2(e) EPC in conjunction with Article 14(1) Rules of Procedure of the Administrative Council of the European Patent Organisation.

IX. DOCUMENTS CITED

35. CA/140/08, CA/148/08, CA/148/08 Add. 1, CA/129/08.

ANNEX 1

CONFLICTS OF INTEREST

I undertake to act as a member of the AuCo solely in the interests of the European Patent Organisation. If, when delivering an opinion or making a proposal as a member of the AuCo, the state and/or administration and/or organisation from which I originate has a particular interest, which is different from that of the European Patent Organisation, I will inform the Chairman of the Administrative Council and abstain from any participation in the AuCo's decision.