

CA/55/11

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Munich, 20.05.2011

SUBJECT: Disbanding the Audit Committee

SUBMITTED BY: President of the European Patent Office

ADDRESSEES: 1. Budget and Finance Committee (for opinion)
2. Administrative Council (for decision)

SUMMARY

The present document proposes that the Administrative Council's June 2009 decision establishing an Audit Committee (CA/D 9/09) be repealed for reasons of efficiency.

Its Part I gives the reasons for this proposal; Part II contains a draft decision.

The General Advisory Committee was informed before the meeting of the Administrative Council.

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PART I

I. STRATEGIC/OPERATIONAL

1. Strategic.

II. RECOMMENDATION

2. That the Council repeal CA/D 9/09 by adopting the draft decision in Part II below.

III. MAJORITY NEEDED

3. Simple.

IV. CONTEXT

4. At its 118th (June 2009) meeting, on the basis of CA/33/09 Rev. 1 submitted by the President, the Administrative Council adopted decision CA/D 9/09 setting up an Audit Committee as a subsidiary body under Article 14(1) of the Council's rules of procedure.
5. For the reasons set out below, however, the President considers that keeping the Audit Committee in place is not conducive to the smooth functioning of the Organisation. He therefore proposes that CA/D 9/09 be repealed.

V. ARGUMENTS

6. Under Article 1 of CA/D 9/09, the tasks of the Audit Committee are to

"... advise on

- (a) Risk management,
- (b) Efficiency of internal audit and synergy with external audit,
- (c) Follow-up of audit activities,

in accordance with this decision and with due regard to the task and independence of the Board of Auditors."

They are set out in more detail in Articles 5 and 6 of CA/D 9/09.

7. These tasks can be and are effectively carried out by the Office's Internal Audit unit and by the Organisation's Board of Auditors.
8. Internal Audit: this unit is a principal directorate reporting directly to the President and is separate from the Office's operational areas. Its mission is defined in the Internal Audit Charter as follows:

"... to provide independent, objective assurance services designed to add value and improve the compliance, performance and quality of the Office's operations. It helps the organisation accomplish its objectives by bringing a systematic, disciplined approach to appraise and improve the effectiveness of risk management, control, and governance processes." Its scope "... encompasses the examination and appraisal of the adequacy and effectiveness of the Office's systems of internal control and the quality of performance in carrying out assigned responsibilities".

This is similarly set out in more detail in the above charter.

9. Furthermore, the President intends to submit a draft Council decision which would enshrine Internal Audit's functions in the EPO's Financial Regulations. Under that draft decision, those functions would include conducting assessments and reporting to the President, thus assisting him in carrying out its duties under Article 10 EPC.
10. Board of Auditors: under Article 49 EPC, the Organisation's accounts and balance sheet "shall be examined by auditors whose independence is beyond doubt ...". Articles 71 to 80 FinRegs expand on Article 49 EPC, with Article 76 FinRegs defining the scope of the Board's audit as follows:

"(1) The Board shall carry out its activities in accordance with Article 49 of the Convention, the Financial Regulations and professional auditing standards.

(2) The audit ... shall establish in particular whether:

- (a) the terms of the budget and other budgetary provisions have been adhered to;
- (b) the annual accounts as defined in Article 69 have been properly substantiated and all transactions properly recorded;

(c) securities and cash on deposit and in hand accord with the amounts in the cash accounts;

(d) procedures are efficient and economical and whether work could be performed more efficiently with fewer staff or other resources, or in other ways.

(3) The Administrative Council may, on a limited scale, ask the Board to carry out specific investigations or reviews."

The three independent external auditors are appointed by the Administrative Council for five-year terms, and together constitute the "Board of Auditors" (BoA).

11. It is thus explicitly foreseen that the BoA establishes whether procedures are efficient and economical, and may be asked by the Council to carry out specific investigations (Article 76(2)(d) and(3) FinRegs), and also that its report "shall ascertain whether the financial management of the Office is sound" (Article 79 FinRegs).
12. Furthermore, under Article 77(3) FinRegs the BoA "shall receive the annual internal audit programme and all reports of the internal audit department of the Office".
13. Thus, the BoA assesses and reports to the Council on the issues listed in Articles 1, 5(1) and 6 of CA/D 9/09, thereby enabling it to carry out its supervisory duties under Articles 4(3) EPC and 49(4) EPC.
14. Moreover, the BoA's annual report contains an "Opinion on Management" (see e.g. CA/20/10, Section IV), and the Office regularly reports on its follow-up to the BoA's recommendations. In addition, the Council can request specific investigations and reviews (see point 11 above).
15. In view of the above, it is clear that the Audit Committee's tasks overlap with those already carried out internally by Internal Audit, reporting to the President, or externally by the BoA, reporting to the Council, and that the BoA is systematically informed of the work carried out by Internal Audit.

VI. LEGAL BASIS

16. Article 33(2)(e) EPC in conjunction with Article 14(1) of the Council's rules of procedure.

VII. DOCUMENTS CITED

17. CA/D 9/09, CA/33/09 Rev. 1, CA/20/10.

PART II

Draft

DECISION OF THE ADMINISTRATIVE COUNCIL
of [date of decision]
on the Audit Committee

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the European Patent Convention and in particular Article 33(2)(e) thereof,

Having regard to the Rules of Procedure of the Administrative Council of the European Patent Organisation and in particular Article 14(1) thereof,

Having regard to decision CA/D 9/09 establishing an Audit Committee of the Administrative Council,

Having regard to the opinion of the Budget and Finance Committee,

On a proposal from and in agreement with the President of the European Patent Office, the General Advisory Committee having been informed,

HAS DECIDED AS FOLLOWS:

Article 1

Decision CA/D 9/09 establishing an Audit Committee of the Administrative Council is hereby repealed, and the appointments of the committee's members are therefore terminated.

This decision shall enter into force on [date of decision].

Done at The Hague, [date of decision]

For the Administrative Council
The Chairman

Jesper KONGSTAD