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document from the Working Group

From: Alexandra Forjaz

Sent: Wednesday, **May 22, 2019** 6:58 PM

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Cc: Roberto Righetti; Jane Antoinette Croucher; Alexandra Forjaz; Joachim Michels; Alain Rose; Carmen Schuhmann; Desmond Radford; Harald Leineweber; Michael Sampels; Susett Rolle; Tom De Backer; David de la Torre

Subject: document from the Working Group

Dear members of the Working group,

Please find attached a working document prepared by the members of the Working group appointed by the CSC on Guidelines for implementing Article 52, ServRegs. The document contains the basic ideas we would like to see reflected in the “Implementing Circular”.

We look forward to discussing it in the VICO tomorrow

Best regards,

AF

On behalf of the members of the WG appointed by the CSC

Best regards / Mit freundlichen Grüßen / Sincères salutations

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Circular No. XXX
(1 June 2019)

**Guidelines for the application of Article 52 of the Service Regulations
(Professional Incompetence)**

I. INTRODUCTION

The EPO expects that its employees have the minimum level of competence needed to fulfil their duties.

Although professional competence should be properly assessed during the probationary period for new recruits (Article 13 ServRegs), the situation may exceptionally arise where an employee's ability to perform his duties seriously deteriorates after he has successfully served his probationary period. The procedure for consequently dealing with such a situation is detailed below.

II. PROFESSIONAL INCOMPETENCE PROCEDURE

II.1 Definitions

A) Professional Incompetence

Professional incompetence occurs when a healthy employee is unintentionally unable to perform his duties (Article 52 ServRegs). It must be clearly distinguished from misconduct, which concerns behaviour or conduct (Article 21(1) ServRegs). If an employee is unable to perform all or part of his duties for health reasons, Article 52 ServRegs is not applicable (see Chapter 3 of the Service Regulations).

If an employee is unable to work properly for reasons unrelated to his ability - such as because of a diminishing workload, lack of production means, increase in work expectations, or a closure of work premises - Article 52 ServRegs will not apply.

B) General Requisites for initiating a procedure under Article 52 ServRegs

The prerequisites necessary for initiating a procedure based on incompetence are the following:

- an employee's duties have not substantially changed since being recruited, promoted, or reassigned;
- an employee has had sufficient and adequate technical/professional training for the performance of his duties, including after promotion and reassignment;
- an employee facing difficulties has been placed on an "Improvement Plan" providing him with training to learn and develop skills to help him perform his duties;
- after being placed on said Improvement Plan an employee has had at least three years to demonstrate his abilities;
- during the Improvement Plan period the employee's Reporting Officer has regularly informed him about his level of performance;
- if there is any prospect of an "incompetence procedure" being initiated, the employee has been informed thereof in due time, and has been provided with a reasoned report and any supporting documents relevant to his alleged lack of ability.

In addition, if, after initiation of the “First Phase” of any incompetence procedure (see below), the President takes an Article 52(2) ServRegs decision, then a reasonable time period of at least two further years must pass before any possible further decision under Article 52(2) ServRegs (“Second Phase”) is taken.

C) Support Panel

A Support Panel will be constituted *ad hoc*. It shall consist of the following members:

- the concerned employee's Reporting Officer;
- an expert from the employee's field of competence selected from a pool of experts commonly agreed between the Administration and the CSC; and
- a Staff Representative selected from a list proposed by the CSC.

The Support Panel will have the task of defining, implementing and monitoring the development of a commonly-agreed Improvement Plan.

II.2 Prevention and training

Management should, as far as possible, obviate the need for a procedure under Article 52 ServRegs. This can be done through professional support measures, provided as part of the dialogue between the employee and his Reporting Officer.

In this framework, adequate training should guarantee that any employee maintains and improves his technical and professional skills so that he may properly perform his duties.

II.3 Improvement plan – Article 52(1) ServRegs

To fulfil the procedures referred to in Article 52(1) ServRegs, the President may decide that a Support Panel, as defined above, initiate an Improvement Plan under Article 52(1) ServRegs. The President must state his reasons for such a decision, which must be based on at least one final appraisal report. The employee, in said final appraisal report, must have been appraised with the lowest possible overall assessment grading, and the final appraisal report must explicitly indicate that the employee has lost the ability to perform his duties.

The Support Panel will design a bespoke Improvement Plan, which shall include:

- an analysis of the sufficiency and adequacy of the employee's training;
- objective(s) to be met by the employee;
- action(s) to be taken by all parties;
- criteria for success; and
- a monitoring schedule.

The Improvement Plan may also include the following: professional guidance, coaching, training or a change of duties. Time resources and a corresponding workload reduction should be made available in order for there to be successful progress within the Improvement Plan. The measures should be maintained for as long as necessary.

The Improvement Plan must be signed by all members of the Support Panel. Comments from the concerned employee shall be recorded. Upon completion of the Improvement Plan, the Support Panel will issue a report, taking into account all circumstances of the individual case. The report will be signed by all members of the Support Panel, and will be added to the personal file of the employee concerned.

II.4 First Phase of the formal procedure - Article 52(2) ServRegs

If the aforementioned Improvement Plan, lasting at least three years, proves unsuccessful, because for each of the years of the Improvement Plan the employee receives appraisal reports with the lowest overall assessment grading, and with each appraisal report explicitly indicating that the employee has lost the ability to perform his duties, then the President may decide to initiate a professional incompetence procedure under Article 52(2) ServRegs. The reasons for such a decision must be based on both the Support Panel's report as well as the employee's final appraisal reports.

The President, after consulting the Joint Committee on Articles 52 and 53 (Article 52(3) ServRegs), shall then take a decision. The President may decide that an employee be downgraded according to Article 52(2) ServRegs, which is defined as being downgraded to the next lower grade.

If the President takes such a decision, the employee will be subject to a new Improvement Plan according to Section II.3 above.

II.5 Second Phase of the formal procedure - Article 52(2) ServRegs

Following the completion of the First Phase, and if a second Improvement Plan, lasting at least two years, is also unsuccessful as detailed in Section II.4 above, then the President may decide to initiate a new professional incompetence procedure in accordance with Article 52(2) ServRegs.

The employee may then be dismissed, classified in a lower job group with or without downgrading, or downgraded. The reasons for such a decision must be based on the Support Panel's report on the outcome of the second Improvement Plan, as well as the employee's final appraisal reports, each of which must be graded with the lowest overall assessment grading, and must explicitly indicate that the employee has lost the ability to perform his duties.

III. ENTRY INTO FORCE

This circular will enter into force on 1 June 2019.

IV. TRANSITIONAL MEASURES

Potential initiation of improvement plans from year 2020 at the earliest.

First phase of the formal procedures from year 2023 at the earliest

Second phase of the formal procedures from year 2025 at the earliest.