



**Europäische
Patent-
organisation**

Verwaltungsrat

**European
Patent
Organisation**

Administrative Council

**Organisation
européenne des
brevets**

Conseil d'administration

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TITLE: **Modernisation of the EPO's external governance**

SUBJECT: Implementation of measures under Basket III – Code of Conduct on the prevention and management of conflicts of interest for the Administrative Council of the European Patent Organisation

SUBMITTED BY: Chairperson of the Administrative Council

ADDRESSEES: Administrative Council (for decision)

MAJORITY: Three-quarters

LEGAL BASIS: Article 33(2)(e) EPC

RECOMMENDATION: The Administrative Council is invited to adopt the proposed Code of Conduct on the prevention and management of conflicts of interest for the Administrative Council of the European Patent Organisation, and the related amendments to its Rules of Procedure (RoP).

SUMMARY: Based on the Council's unanimous favourable opinion given at the March 2024 meeting, this document presents a proposal for the introduction of a Code of Conduct on the prevention and management of conflicts of interest for the Administrative Council and its subsidiary bodies as part of the implementation of a set of measures under Basket III of the roadmap adopted by the Council for the modernisation of the EPO's external governance (CA/C 15/22).

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PART I

1. Introduction

1. In accordance with the roadmap for the modernisation of the EPO's external governance (CA/C 15/22) ("Roadmap"), this document contains a proposal for the introduction of a Code of Conduct for the Administrative Council and its subsidiary bodies on the prevention and management of conflicts of interest.
2. The proposal, which was submitted by the Chairperson of the Council to the members of the Board of the Administrative Council (B28) for discussion in November 2023 and February 2024, received a unanimously favourable opinion from the Council in March 2024. It is now submitted to the Council for decision.

2. Arguments

3. While regulations of conflicts of interest were originally established for civil servants at international organisations, a number of organisations in the recent past have introduced instruments to facilitate the prevention and management of conflicts of interest for the members of their governing bodies.¹ This indicates a clear trend towards enhanced transparency and accountability, while these instruments also reflect the special status of delegations and the rather political nature of the deliberations and decision-making in those governing bodies.
4. Even though there have not been any conflict-of-interest issues in the EPO's governing bodies in the past, the Roadmap proposed to consider following the model of other international organisations, and to implement a code of conduct for the delegation members of the Administrative Council and its subsidiary bodies for the sake of implementing the highest standards of professional ethics and integrity in public administration. Moreover, even though the risk of conflicts of interest arising in the future appears relatively limited, the implementation of the proposed code of conduct would ensure favourable public perception and reputation vis-à-vis its external stakeholders and also emphasise the Organisation's commitment to establishing modern and robust external governance.

¹ Most notably the EUIPO (see Decision No MBBC-21-15 of the Management Board of the European Union Intellectual Property Office of 17 November 2021 adopting rules on the prevention and management of conflicts of interest for the Management Board and the Budget Committee), but also, for example, the Council of Europe which in 2012 introduced a Code of Conduct for members of its Parliamentary Assembly with the aim of promoting and strengthening the transparency, accountability and integrity of Parliamentary Assembly members (RES 1903, 04/10/2012), the European Parliament where a "Code of Conduct for Members of the European Parliament with Respect to Financial Interests and Conflicts of Interest" ((2011/2174(REG)) was inserted into the European Parliament's Rules of Procedure in December 2011, or the ECB, which in 2019 enacted a "Single Code of Conduct" that applies to members of the Governing Council, the Executive Board, the Supervisory Board, the General Council, the Audit Committee, the Ethics Committee and the Administrative Board of Review (2022/C 478/03).

5. Following the practice applied throughout the process for the modernisation of the EPO's external governance, the Roadmap suggested that the Chairperson would request the Office to study similar regulatory instruments in force at other international organisations and subsequently draft a proposal. This approach also appeared in line with the feedback received from a number of delegations which was summarised in the Report on the consultation process and potential way forward (CA/C 11/22) and which requested further clarifications regarding the exact scope and possible implications of such a code of conduct for the representatives of the Contracting States.
6. Based on a review of different codes of conduct or similar regulatory instruments in force at the EPO², as well as other international organisations, it can be noted that certain comparable organisations have already enacted codes of conduct for members of their governing bodies,³ and that the codes of conduct already existing at the EPO, such as those for the RFPSS and the Boards of Appeal, have proven to function well. A code of conduct that stipulates core values and principles, as well as the interests to be taken into consideration, can strike the right balance in terms of commitment to transparency and good governance.
7. Against this background, this document proposes, in Part III, a Code of Conduct for the Administrative Council. In its preamble the Code clarifies that it intends to facilitate the prevention and management of conflicts of interest, or potential conflicts of interest, to be observed by the Members of the Council, so as to avoid any conflict between the European Patent Organisation's public duties and the personal interests of the Members. The preamble also recognises that the unique expertise of the Members of the Council is based on prior professional experience, and that having an interest does not in and of itself constitute a conflict of interest. Ultimately, it clarifies that the Code seeks to facilitate the consistent and transparent resolution of situations where potential conflicts of interest may arise, and that it does not seek to be a tool to ban or sanction the holding of interests by Members of the Council.

² A Code of Conduct for members of the Administration of the RFPSS entered into force in March 2023 (RFPSS/SB 6/23), a Code of Conduct for the members of the Boards of Appeal and of the Enlarged Board of Appeal entered into force on 1 July 2022 (CA/D 21/21), and in May 2019 the Supervisory Board of the RFPSS unanimously adopted a Code of Conduct for its external members (RFPSS/SB PV 100).

³ See footnote 1 above.

8. Article 1 of the Code clarifies that the purpose of the Code of Conduct is to avoid conflicts between the duties of Members and their personal interests and that its provisions apply, *mutatis mutandis*, to the advisers or experts assisting Members within the meaning of Article 26(2) EPC and whose names have been communicated to the Council Secretariat in writing in accordance with Article 2(1) RoP.⁴ It also emphasises that the Code applies without prejudice to relevant national legislation on the prevention of conflicts of interest which is applicable to Members. Finally, it also emphasises the *mutatis mutandis* application of the Code of Conduct to the Council's subsidiary bodies and clarifies that the Boards of Appeal Committee (BOAC) and the Supervisory Board of the Reserve Funds for Pensions and Social Security of the European Patent Organisation (RFPSS) may instead adopt and apply their own instruments on the prevention and management of conflicts of interest in line with the specific composition and mandates of these bodies.
9. Article 2 contains a definition of a conflict of interest which refers to a situation where the integrity of a decision, opinion or recommendation of an individual is, or might be perceived to be, actually or potentially compromised by a personal interest held by or entrusted to that individual. In this context, it also clarifies that a relevant personal interest may be of a financial or non-financial nature and may include a private or familial relationship or professional affiliation (including additional employment, appointments or former as well as envisaged employment), or influence through a third party.
10. Article 3, as the instrument's central provision, stipulates values and principles. It provides that all Members shall seek to act with the highest standards of integrity when carrying out their duties and that they should not, in the performance of their duties, deal with a matter in which a conflict of interest would impair, or seem to impair, their integrity. It also clarifies that the representation of interests of a Contracting State may, as such, not be perceived as impairing a Member's integrity.
11. Furthermore, it provides that Members shall not be guided by personal interests and shall abstain from being involved in the taking of a decision on a matter relating to their own interests. It also stipulates that Members shall declare, in good faith, without delay and to the best of their abilities, a conflict of interest to the Chairperson of the Council and adds that the Council Secretariat will assist the Members, advisers and experts, where so requested, in declaring any such conflict of interest.⁵ On the basis of such a declaration, the Chairperson of the Council shall, if and to the extent necessary, make arrangements to resolve the conflict, including the submission of a proposal for a Council decision if needed.

⁴ Therefore, under this provision the scope of the Code covers the entirety of delegations within the meaning of Article 2(2) RoP. This means, on the other hand, that it does not include persons whose names have not been communicated to the Council Secretariat to indicate that they will form part of the respective delegation (Article 2(1) AC RoP). Consequently, experts and assistants supporting delegations (e.g. by preparing or contributing to files in a ministry or at a national office), but without becoming part of them, fall outside the scope of the proposed Code of Conduct.

⁵ The proposed Code of Conduct does not, however, require delegations to submit, on a regular or systematic basis, so-called "blank" declarations (i.e. to declare that no conflict of interest exists).

12. Article 3 concludes with procedural provisions, firstly regarding a conflict of interest of the Chairperson and/or the Deputy Chairperson, and secondly by clarifying that the Council Secretariat will keep confidential records of any declared conflicts of interest (as well as arrangements for resolving conflicts of interest) so as to enable the Council to demonstrate, if necessary, that any such conflicts have been appropriately identified and managed.⁶ Access to such confidential records will only be provided to Members of the Council upon request and subject to the demonstration of a legitimate interest.⁷ An example of such legitimate interest could be the wish to verify that a certain decision taken by the Council was not affected by any conflict of interest.
13. Article 4 provides for a process regarding omissions. To this end, it first sets out that where the Chairperson has been made aware of information that has been omitted in, or is not consistent with, a declaration made by a Member, such information shall be preliminarily assessed by the Chairperson, who will then inform the Council accordingly. Where the preliminary assessment by the Chairperson suggests that such an omission or inconsistency concerns a conflict of interest that should have been declared, the Chairperson of the Council shall seek additional information from the Member concerned. In response, the Member shall update the missing information or rectify an incorrect declaration. Upon completion of the update/rectification, the conflict of interest declared shall be managed in accordance with the present Code.
14. Article 4(3) provides that, in cases where a Member has been involved in a decision-making procedure of the Council without having declared a conflict of interest, the Council may undertake remedial actions, in particular a review or revocation of that decision if the conflict of interest seriously affected, or created the impression of having seriously affected, the decision.
15. Lastly, Article 4(4) clarifies that the paragraphs 1-3 apply, *mutatis mutandis*, to omitted or inconsistent information relating to conflicts of interest concerning the Chairperson and/or Deputy Chairperson.
16. In order to accommodate the proposed Code of Conduct in the EPO's institutional legal framework, a new Article 10a ("Code of Conduct") needs to be inserted into the RoP. The proposed Article 10a provides that Members, advisers and experts shall act in accordance with a Code of Conduct on the prevention and management of conflicts of interest, which is established by a decision of the Council.
17. Moreover, it is proposed to amend Article 14(5) RoP so that the Code of Conduct will apply, *mutatis mutandis*, to the Council's subsidiary bodies too (see para 8).

⁶ These confidential records will be retained by the Council Secretariat in accordance with the rules on retaining Council documents under the EPO's Retention Policy.

⁷ Unlike, for example, the rules on the prevention and management of conflicts of interest for the Management Board and the Budget Committee at the EUIPO, the proposed Code of Conduct does not foresee any publication of declared interests. The reasons for this are that the Council agreed to a Code of Conduct that focuses on preventing and addressing any potential conflict of interest without creating unnecessary administrative burdens such as a general/regular declaration requirement (see footnote 5 above) and the fact that declarations about such actual or potential conflicts of interest will inevitably involve sensitive personal data and information that need to be appropriately protected.

3. Financial implications

18. Not applicable

4. Documents cited

19. CA/C 11/22, CA/C 15/22.

PART II

Draft

DECISION OF THE ADMINISTRATIVE COUNCIL
of [date of decision] inserting a new Article 10a into, and
amending Article 14, of its Rules of Procedure

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,
Having regard to the European Patent Convention, and in particular Article 33(2)(e) thereof,
HAS DECIDED AS FOLLOWS:

Article 1

The following new Article 10a is inserted into the Rules of Procedure of the Administrative Council:

"Article 10a Code of Conduct

Members, advisers and experts (Article 2(2)) shall act in accordance with a Code of Conduct on the prevention and management of conflicts of interest. The Code of Conduct shall be established by a decision of the Council."

Article 2

Paragraph 5 of Article 14 of the Rules of Procedure of the Administrative Council is amended to read as follows:

"(5) Article 1, paragraph 4, Articles 2 and 4, paragraph 4, and Articles 6, 7, 8, 10, 10a, 11, 12a, 13, 15a, 16 and 17 shall apply, where possible, to subsidiary bodies *mutatis mutandis*."

Article 3

This decision enters into force on [date of decision].

Done at Munich, [date of decision]

For the Administrative Council
The Chairperson

Josef KRATOCHVÍL

PART III

Draft

DECISION OF THE ADMINISTRATIVE COUNCIL
of [date of decision] introducing a Code of Conduct on the
prevention and management of conflicts of interest for the
Administrative Council of the European Patent
Organisation

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, and in particular Article 10a thereof,

Whereas this Code of Conduct should facilitate the prevention and management of conflicts of interest, or potential conflicts of interest, to be observed by the Members of the Council, as well as experts and advisers who may assist the Members, so as to avoid any conflict between the European Patent Organisation's public duties and the personal interests of the Members and advisers or experts,

Whereas this Code of Conduct recognises that the unique expertise of the Members of the Council as well as their experts and advisers is based on prior professional experience, and that having an interest does not in and of itself constitute a conflict of interest,

Whereas this Code of Conduct acknowledges that the exchange of views relating to public interests in the Council helps the European Patent Organisation to create public value in the remit of its mission,

Whereas this Code of Conduct recognises that a declaration in good faith of any conflict of interest is the individual responsibility of the Members of the Council as well as their experts and advisers,

Whereas this Code of Conduct does not seek to be a tool to ban or sanction the holding of interests by Members of the Council or their experts and advisers, but rather to facilitate, in a transparent and consistent manner, the resolution of situations where potential conflicts may arise, thus ensuring the highest standards of public administration, professional ethics, and integrity,

HAS DECIDED AS FOLLOWS:

Article 1

Purpose and scope

- (1) The purpose of this Code of Conduct is to avoid conflicts between the duties of representatives and alternative representatives appointed by each Contracting State ("Members") and their personal interests.
- (2) The provisions of this Code of Conduct apply, *mutatis mutandis*, to the advisers or experts assisting Members within the meaning of Article 26(2) EPC and whose names have been communicated to the Council Secretariat in writing in accordance with Article 2(1) of the Rules of Procedure of the Administrative Council.
- (3) The Code of Conduct applies without prejudice to national legislation in the Contracting States in the field of prevention of conflicts of interests which is applicable to Members.
- (4) In accordance with Article 14(5) of the Rules of Procedure of the Administrative Council the Code of Conduct shall apply, where possible, to the Council's subsidiary bodies *mutatis mutandis*. The Boards of Appeal Committee and the Supervisory Board of the Reserve Funds for Pension and Social Security of the European Patent Organisation may instead adopt and apply their own instruments on the prevention and management of conflicts of interest.

Article 2

Conflict of interest

- (1) A conflict of interest refers to a situation where the integrity of a decision, opinion or recommendation of an individual is, or might be perceived to be, actually or potentially compromised by a personal interest held by or entrusted to that individual.
- (2) A relevant personal interest may be of a financial or non-financial nature and may include a private or familial relationship or professional affiliation (including additional employment, appointments or former as well as envisaged employment), or influence through a third party.
- (3) A private or familial relationship includes parents, children, spouses, legally recognised partners, as well as any other family members who are dependent on a Member.

Article 3

Values and principles

- (1) All Members shall seek to act with the highest standards of integrity when carrying out their duties.
- (2) Members should not, in the performance of their duties, deal with a matter in which a conflict of interest would impair, or seem to impair, their integrity.
- (3) The representation of interests of a Contracting State shall not, as such, be perceived as impairing a Member's integrity.
- (4) Members shall not be guided by personal interests and shall abstain from being involved in taking a decision on a matter relating to their own interests.

- (5) All Members shall declare, in good faith, without delay and to the best of their abilities, a conflict of interest to the Chairperson. The Council Secretariat shall assist the Members in identifying and declaring a conflict of interest.
- (6) On the basis of such a declaration, the Chairperson shall, if and to the extent necessary, make arrangements to resolve the conflict, including the submission of a proposal for a Council decision if needed.
- (7) A conflict of interest of the Chairperson shall be declared to the Deputy Chairperson. A conflict of interest concerning both the Chairperson and the Deputy Chairperson shall be declared to the longest serving Member or, in the event of equal length of service, to the oldest Member of the Council. Paragraph 6 shall apply, *mutatis mutandis*, to such declarations too.
- (8) The Council Secretariat shall keep confidential records of any declaration of a conflict of interest, as well as the arrangements for resolving such conflicts, so as to enable the Council to demonstrate, if necessary, that such conflicts have been appropriately identified and managed. Access to these confidential records shall only be provided to Members of the Council upon request and subject to the demonstration of a legitimate interest.

Article 4

Process regarding omissions or inconsistent information

- (1) Where the Chairperson has been made aware of information that has been omitted in, or is not consistent with, a declaration made by a Member, such information shall be preliminarily assessed by the Chairperson. Where the preliminary assessment by the Chairperson suggests that such an omission or inconsistency concerns a conflict of interest that should have been declared, the Chairperson shall seek additional information from the Member concerned.
- (2) The Member shall update the missing information or rectify an incorrect declaration. Upon completion of the update or rectification, Article 3(6) and (8) and, when appropriate, paragraph (3) of this Article shall apply.
- (3) In cases where a Member has been involved in a decision-making procedure of the Council without having declared a conflict of interest, or having omitted or provided inconsistent information, the Council may undertake remedial actions, in particular a review or revocation of that decision if the conflict of interest seriously affected, or created the impression of having seriously affected, the decision.
- (4) Paragraphs 1 to 3 shall apply, *mutatis mutandis*, to omitted or inconsistent information relating to conflicts of interest under Article 3(7).

Annex 1 Comparison between existing and new text

Existing text	New text
	Article 10a – Code of Conduct
	Members, advisers and experts (Article 2(2)) shall act in accordance with a Code of Conduct on the prevention and management of conflicts of interest. The Code of Conduct shall be established by a decision of the Council.
Article 14 – Committees, working parties and other subsidiary bodies	Article 14 – Committees, working parties and other subsidiary bodies
(1) The Council may establish committees, working parties or other subsidiary bodies to advise it on particular questions.	[unchanged]
(2) Unless provided otherwise in this article, each subsidiary body shall establish its own procedure on a proposal from its chairperson.	[unchanged]
(3) The President of the European Patent Office shall have the right to attend, or be represented at, any meeting of a subsidiary body.	[unchanged]
(4) Documents submitted to a subsidiary body and reports on its deliberations shall be drawn up in English, French and German.	[unchanged]
(5) Article 1, paragraph 4, Articles 2 and 4, paragraph 4, and Articles 6, 7, 8, 10, 11, 12a, 13, 15a, 16 and 17 shall apply, where possible, to subsidiary bodies <i>mutatis mutandis</i> .	(5) Article 1, paragraph 4, Articles 2 and 4, paragraph 4, and Articles 6, 7, 8, 10, 10a, 11, 12a, 13, 15a, 16 and 17 shall apply, where possible, to subsidiary bodies <i>mutatis mutandis</i> .