

**REPORT UNDER ARTICLE 100 SERVREGS
CONCERNING
MS ELISABETH HARDON**

I. Introduction

1. Ms E. Hardon (hereinafter: the defendant) is employed in the Munich duty station of the EPO as an examiner with the main tasks of search and examination. She is currently assigned to Grade G12, step 03, and allocated in the Directorate 1412. The defendant has since June 2014 been Chairwoman of the Local Staff Committee in Munich and is currently exempted at 100% from her examiner duties.

2. The matters the subject of this report are her conduct in
 - 2.1. acting as an accomplice in a campaign to disseminate information and opinions detrimental to the EPO, its proper functioning and its reputation as well as the reputation of its employees;
 - 2.2. threatening colleagues at a meeting on 10.12.2014, and at a subsequent meeting, when she asserted in threatening terms that those volunteering for the posts of members of the [REDACTED] would suffer serious harm (Investigation C-071/2015);
 - 2.3. disregarding (i) the express instruction of her employer and (ii) her concurrent obligation under Art. 4 of Circulars No. 341 and No. 342 to keep confidential the investigation C-071/2015.

II. The General Background

3. The defendant is a Dutch national who joined the Office in 1988 as an examiner at Grade A2.

4. She has, for a number of years, been active in the leadership of the Munich local section of the Locals Staff Committee (LSC) and of a staff trade union ("SUEPO").

5. The background to this report is formed by two recent wider investigations.



6. The first, C-62/2014, was conducted by the Investigative Unit (IU). Its report was submitted to the Administrative Council on 06.03.2015 which initiated and conducted disciplinary case D1/2015. The IU had found C, a member of the Technical Boards of Appeal, guilty of an electronic campaign of unauthorised disclosure and publication of confidential, non-public documents and information as well as of “threatening, insulting, defaming, and libellous and/or racist messages” to politicians, journalists, bloggers and EPO staff.
7. On 12.10.2015, the IU presented the investigation C-62a/2015 reviewing the background of the C-62/2015 case and possible involvement of other parties. Its report found that C had acted with a network of staff and external contacts, including the defendant.
8. The President of the EPO has more recently been provided with a summary of findings in IU report C-62b/2015 (Annex 1), which were forwarded to him given the sensitivity and risks associated with the matter pursuant to Art. 4 (7) Circ. 342. On 17.11.2015, the summary of findings was sent to the defendant for her response (Annex 2). The source of the correspondence between C and the defendant is explained in para. 7-8 of the Summary of findings and is attached herewith (Annex 3).
9. The second investigation, C-071/2015, was conducted by external investigators, the firm Control Risk Group, under the authority of the IU, into allegations against unknown suspects of a campaign of harassment and intimidation against ██████████ ██████████ employed by the EPO at its Hague offices, and from 01.07.2014 an elected member of the Central Staff Committee (CSC).
10. The Control Risk Group prepared a separate report relating to the position of the defendant on this matter (Annex 4).¹ It concerned allegations of harassment relating to her conduct at a meeting of the Munich ██████████ which took place on 10.12.2014.

¹ In view of the recent disclosures of confidential communications on the SUEPO website and external blogs and of the incident mentioned in para. 87 below, the Office has decided to exclude the transcripts of the witness interviews from the present report. These transcripts, which however form an integral part of the case, may be accessed by the defendant and her legal representative in person at any time agreed with the DC secretariat during the period of the disciplinary proceedings without however the possibility of making any copies or photos of it. Similar access will also be granted to the members of the Disciplinary Committee for their deliberations.

III. The Charges

A. The defendant has acted in breach of her obligations of trust and confidence in disclosing internal documents, sensitive discussions and rumours about the EPO and its staff, and particularly in acting as an accomplice to a colleague engaged in a campaign inter alia to destabilise the EPO and who systematically and repeatedly disseminated defamatory, confidential and sensitive information

11. **Statement of Facts:** The first charge arises from investigations C-62, 62a and 62b/2014 conducted by the IU.
12. The defendant has been found to be part of a network, including C, a member of the Technical Boards of Appeal, partaking in an electronic campaign of unauthorised disclosure and publication of confidential, non-public documents and information, and of “threatening, insulting, defaming, and libellous and/or racist messages” to politicians, journalists, bloggers and EPO staff during the years of 2013 and 2014.
13. In the course of the aforementioned investigations, the IU has found that the defendant had corresponded regularly with C using the email account [REDACTED]@gmail.com and her private email account.
14. Their exchanges involved:
 - 14.1. the discussion of various aspects of strategy of SUEPO activities and publications, including efforts to circumvent EPO’s restrictions on mass emails (Annex 5).
 - 14.2. the distribution by C and the defendant of draft circulars to persons other than their intended recipients (Annex 6, as exhibits 45, 51 of C-62a/2015);
 - 14.3. The provision of confidential, non-disclosable documents by SUEPO to the press, and other external non-entitled parties.



15. As appears in the attached , the IU established that the defendant committed misconduct in that she

(1) actively cooperated with the campaign conducted by C against the EPO, members of the Administrative Council, and individual EPO staff members.

Specifically, the evidence demonstrates that she:

- discussed with C the strategy for his campaign and provided instructions to him;
- provided C, on at least one occasion, with non-public contact details for all delegates of the Administrative Council, which C used to send anonymous defamatory email messages;
- was in personal contact with at least one blogger habitually attacking the EPO, Mr. FM of FOSS Patents, which resulted in the publication on FOSS Patents of attacks regarding alleged corruption of delegates of the Administrative Council;
- was informed of individual anonymous defamatory emails sent by C, including messages alleging “high-level corruption at the European Patent Office” sent to at least 22 members of the national Swedish Parliament, 27 members of the national Norwegian Parliament, 27 members of the national Finnish Parliament, 7 members of the national Danish Parliament, and 3 members of the Icelandic parliament;
- was in contact with external IP lawyer IS from Düsseldorf and provided information to him which he used to attack the EPO and the Vice President of DG3 regarding their alleged lack of independence of DG3, with C providing confidential documents from the non-public section of an ongoing EBoA case (R8/13) to Mr. IS.

2) failed to cooperate with the investigative procedure, inter alia refusing to appear at an interview to which she had been invited by the IU.

16. On 15.10.2015, the Administrative Council pursuant to Art. 23(1) EPC proposed to the Enlarged Board of Appeal the removal of C from office. C remains suspended in the meantime.

17. The defendant was notified of certain allegations by the Investigation Unit on 09.11.2015 (Annex 7), and was invited to an interview on 11.11.2015.

18. However, she failed to appear on 11.11.2015 at the interview although she had acknowledged receipt of the notification (Annex 8).
19. **Framework: Article 5 (1) ServRegs** sets out the standards required of the employees of the Office being "*the highest standard of ability, efficiency and integrity*", thus prohibiting harassment and any actions violating a person's dignity. Maintenance of such standards is wholly incompatible with actions of harassment or intimidation or calculated to intimidate fellow employees. Similarly, maintenance of these standards is incompatible with any actions which could be said to violate a person's dignity.
20. Pursuant to **Article 14 (1) ServRegs**, a permanent employee shall carry out his duties and conduct himself solely with the interests of the European Patent Organisation in mind.
21. **Article 20(1) ServRegs** obliges permanent members of staff to exercise the greatest discretion with regard to all facts and information coming to their knowledge in the course of their duties. The unauthorised disclosure or publication thereof is prohibited.
22. By **Article 20(2) ServRegs** a permanent employee shall not, whether alone or together with others, publish or cause to be published, without the permission of the President of the Office, any matter dealing with the work of the Organisation. Permission shall be refused only where the proposed publication is liable to prejudice the interests of the Organisation. Permission for publication of a work by a member of a Board may only be refused with the agreement of the authority referred to in Rule 12(1) of the Implementing Regulations to the EPC 2003.
23. As provided in **Article 93 (1) ServRegs**, any failure by a permanent employee to comply with his obligations under these Service Regulations, whether intentionally or through negligence on his part, shall make him liable to disciplinary action.
24. **Considerations:** It emerges from the facts above that the defendant has: assisted and/or cooperated with another staff member in misconduct comprising
 - a. systematic and repeated dissemination of information contrary to her employee's duties of confidentiality, to the detriment of the European Patent Organisation, as

well as of the reputation of members of the Administrative Council, the President of the European Patent Office, the Vice-President of DG4, and others;

- b. communication with various members of news outlets, throughout 2013 and 2014, disclosing without authorization non-public information related to the EPO, and causing a corresponding risk of damage to the public image of the European Patent Organisation, as well as to the personal reputation of members of the Administrative Council, the President of the European Patent Office, the Vice-President of DG4, and others.

25. By her own conduct, notably by her assistance to and cooperation with C, the defendant has fundamentally undermined the trust of the Office, has broken her duty to abide by the strict obligations of discretion, confidentiality and loyalty which are critical, not merely for her performance of her employee's duties, but also for the safeguarding of the integrity and reputation of her employer.

26. This conclusion is supported, moreover, by:

26.1. her failure, at any stage, to alert her employer or otherwise seek to prevent the disclosure and publications of C.

26.2. her failure to comply with reasonable requests to assist the Investigation Unit, and to cooperate with her employer pursuant to Article 8 of circular 342.

27. Indeed, her failure to appear in an interview with the IU on 11.11.2015 according to the ILOAT J. No. 63 could by itself justify a dismissal. This case highlights the duty of an international civil servant to attend a pre-disciplinary procedure "to explain himself".

'B. Having been informed of the action taken by complainant, the Director-General, in a cable dated 31 March 1961, terminated his assignment and summoned him to come and explain himself in Paris. The administration tried to facilitate the trip in many ways: ...This had no effect.

It is also obvious that by his mere refusal to come to Paris in response to the orders of the Director-General he justified the sanction imposed upon him.

On this point too his dereliction of duty is patent. He rebelled against the authority of the Director-General instead of submitting to it as was his duty under Staff

Regulation No. 1.2. ...It was therefore knowingly that he failed to comply with his instructions. A most serious view must be taken of his behaviour...'

B. Harassment against other staff representatives / serious misconduct in the form of threats (see report C-071/15)

28. **Statement of Facts:** The investigation C-071/2015 was initially conducted on allegations of harassment against another staff member and former elected staff representative on Central Staff Committee (CSC), [REDACTED]
29. The investigation concluded that [REDACTED] suffered harassment in the sense of Circular No. 341 in the form of *"a series [of incidents] stretching over five months that had a significant negative impact on him"*. These incidents included verbal attacks, his isolation from the group of staff representation and public discrediting in the workplace as well as dissemination of false and wholly untrue rumours amongst colleagues concerning alleged sexual abuse of minors amounting to defamation. The matters which provoked the above incidents were triggered by [REDACTED] maintenance of a position inconsistent with the majority view of SUEPO, in particular his abstention from the vote of the General Consultative Committee (GCC) on the new [REDACTED] (Annex 9).
30. The investigators identified manifest incidents of harassment but did not reach conclusions as to the particular persons responsible for the said acts. A separate investigation on these matters was recommended.
31. Following said harassment, [REDACTED] finally resigned from the CSC in December 2014 but according to him, he continued to feel uncomfortable at work (Annex 10).
32. On the specific allegations concerning the defendant, and bearing in mind the conclusions of the harassment against [REDACTED] the IU concluded in its report on the following findings.
33. In a meeting of the [REDACTED] which took place in Munich on 10.12.2014 the members of the [REDACTED] discussed the question of volunteering for the posts of members of the [REDACTED]

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██████████ in view of the CSC's refusal to appoint officially four members as every year and the President's open invitation to do so individually.

34. During the discussion different opinions were expressed and the atmosphere was tense.
35. The defendant's position was that representatives should not volunteer. At a certain point the defendant used the example of the harassment against ██████████ to illustrate the consequences that might befall those who finally decide to volunteer.
36. According to witnesses the wording used by the defendant for this purpose, although it could not be reproduced verbatim, was that those who were considering volunteering would be targeted by "snipers" as had been ██████████
37. When asked again on another occasion for clarifications, the defendant repeated the term "snipers" in connection to the name of ██████████
38. In fact, in that second meeting, the defendant was reported not only to have repeated the term "snipers", but she used additionally a shooting gesture by extending an index finger and cocked thumb.
39. The defendant has inter alia admitted the following²:
 - a) That she indeed used the term "snipers" in connection with the harassment case of ██████████, notably in relation to "*anonymous attacks or threats*" against him.
 - b) That there was no real misunderstanding about the word "snipers".
40. The defendant denied however discussing the matter on a later occasion with the three volunteers. However, all three of them recalled raising the matter with her on another day. The defendant did not correct the impression she had given.
41. The perceptions of the addressees on the statement were expressed as follow:
 - a) ██████████ "*... die Vorsitzende hat uns gedroht ...*";³ [the Chair threatened us]

² All references to statements of the defendant and the witnesses correspond to the pages of the transcripts attached to report of the external company (cf. footnote 1).

³ p. 54.

- b) ██████████ "So ██████████ was put under pressure and withdraw at the end. And, for me, saying that you will be under pressure and you will not be able to stay as a staff representative. This was my interpretation of the sentence. ... [question: Directed at you] Yeah, of course."⁴.
- c) ██████████ 'it was rather, well, one person was already put under pressure so much that he chose to resign so – and the same thing might happen to you as well'.⁵
42. The third witness pointed out that the other two addressees "were not very happy. I think they were upset because they- maybe they took it more seriously than I did ... they had heard more things that had happened to ██████████; it must have been terrible... ."
43. The above statement qualifies as a verbal act of intimidation against the three colleagues, whereas at least for the case of ██████████ who considered this statement as a threat, it further qualifies as an act of harassment in the sense of Circular No. 341.
44. The investigators further concluded that:
- a) The defendant knew more about ██████████ and the fierce opposition he experienced in the CSC than she said in the interview.
- b) Given these contrasting statements there was indeed a deterrent intention in the statement, whether as a warning or a threat, even though this was subsequently down-played.
45. **Framework** : The obligation upon an employee, by **Article 14 (1) ServRegs**, is to carry out her duties and conduct herself solely with the interests of the European Patent Organisation in mind prohibits, by implication, harassment, actions violating a staff's dignity, threats of unlawful acts of serious professional harm and unlawful acts/reprisals damaging the Office's working climate.
46. Similarly, **Article 5 (1) ServRegs** in setting out the standards required of the employees of the Office as being "*the highest standard of ... integrity*", clearly precludes the deployment of threats.

4 p. 87-88.

5 p. 126.

47. The EPO has specifically adopted a circular on the prevention of harassment and the resolution of conflicts (**Circular No. 341**). It defines harassment as:

„ any unwelcome verbal, written or physical conduct which has the purpose or effect of humiliating or degrading a protected person, thereby creating an intimidating, hostile or offensive work environment, or of unreasonably interfering with a protected person’s work or their ability to perform their assigned duties. Harassment may be a one-off incident or a series of incidents. Even mildly offensive behaviour can rise to the level of harassment if repeated. A single incident can constitute harassment if it is so severe that it has a negative impact on the overall working environment. Harassment can include, but is not limited to:

(a) Severe or recurring behaviour which is intended to be, or can reasonably be perceived, as inappropriate, offensive, intimidating, hostile, abusive, demeaning, malicious or insulting;”

48. Furthermore, the status of acting in a staff representation capacity offers no immunity for misconduct, or exemption from the defendant’s obligation to comply with the terms of her employment.

49. Staff representatives remain at all times bound by their obligations of integrity.

50. As stated in **ILOAT J. No. 54**, consideration 6, the freedom associated with the activities in the staff representation is enjoyed by the protected person: “on the sole condition that he respect the obligations incumbent upon him as an official of the Organisation and those incumbent upon international officials generally”.

51. **ILOAT J. No. 87**, consideration 2 is clear on this aspect. The Tribunal found (emphasis added) that as a nominee of the Staff Committee a defendant: “*also had special obligations, such as the obligation to act solely in the defence of the interests of the staff and the strict duty not to abuse these rights by using methods or expressions incompatible with the decorum appropriate both to his status as a civil servant and to the functions entrusted to him by his colleagues.* Outright refusal to perform the core duties of a nominee is clearly incompatible with the obligations of the staff member of the EPO and his responsibilities for the discharge of the duties entrusted to him”.

52. According to the ILOAT J. No. 969, threats, coupled with a failure to apologise may amount to a severe aggravating circumstance rendering the specific incident of misconduct sufficient by itself to justify on its own the proposed disciplinary sanction of at least dismissal from service.
53. **Consideration:** The defendant's statement, expressed and received in the specific context ("harassment of ██████████") and with the specific term ("snipers"), could leave little room for misinterpretation as to its meaning and the message it bore.
54. The deployment of threats of unlawful reprisals in the form of "snipers" during a strategic debate on staff representation is inimical to the preservation of a safe working climate. Its impact is not significantly mitigated by considerations of whether the speaker herself proposes to conduct reprisals by way of victimising those threatened, or whether she intimates that such revenge is to be extracted by others.
55. The Office would like to emphasise the following points:
- a) The fact that ██████████ was being targeted with various, unidentifiable attacks by reason of his political choices was common knowledge amongst the members of the ██████████ and not only.
 - b) The defendant's statement was expressed only 10 days after ██████████ resigned from the CSC and made public the reasons for this decision. Therefore this paradigm was very fresh in the minds of the addressees.
 - c) As regards the definition of the terms "sniper", according to Wikipedia (Annex 11), sniper is a marksman or qualified specialist who operates alone, in a pair, or with a sniper team to maintain close visual contact with the enemy and engage targets from concealed positions or distances exceeding the detection capabilities of enemy personnel.⁶ According to the New Oxford Dictionary (Annex 12), sniper is a person shooting at someone from a hiding place, especially accurately and at a long range. Sniping also connotes sly or petty verbal attacks.
56. The meaning of the defendant's statement in this context is plain: she refers to targeted attacks by unidentifiable colleagues to the volunteers' reputation and professional livelihood.

⁶ <https://en.wikipedia.org/wiki/Sniper>.



57. The intensity and seriousness of the statement is obviously strengthened by the fact that the similar attempts of “anonymous harassment” against ██████████ had been successful.
58. There was, and has been no apology or insight by the defendant in this respect. The suggestion that her conduct is mitigated by the fact that it did not successfully deter all volunteers from standing is nothing to the point.
59. In deploying such a threat in order to try to persuade her colleagues not to stand for the ██████████, she failed to comply with her obligations of integrity, breached her colleagues’ right to protection from harassment, and breached her obligation to conduct herself in accordance with the best interests of her employer.
60. As appears from the IU's report, the defendant made an oral statement on two occasions, indicating that those who volunteer for the ██████████ would be targeted by “snipers” like they did with ██████████. On the second occasion this oral statement was actually illustrated with a shooting gesture.
61. This statement was directed to the three members of the ██████████ in Munich who had announced that they were contemplating to volunteer for the ██████████ function, as invited by the President. Present during the first meeting were ██████████ and ██████████, while at the second one ██████████ and ██████████.
62. She thereby not merely threatened / injured the dignity of her colleagues, but sought to impair their ability to fulfil their functions as elected representatives on behalf of other employees in furthering employer-employee dialogue.
63. The fact of an initial “sniper” warning has been admitted by the defendant and is considered as proven beyond any doubt.
64. As concluded by the IU, even if the defendant was not suggesting that she would instigate or condone such action herself, it remains the fact two of the witnesses perceived her statement as more than a mere warning and became concerned about the consequences to them if they decided to volunteer for the ██████████.

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65. Furthermore, it is noted that the defendant made the specific statement with intent, she was fully aware of the content and meaning of this statement, and was aiming to dissuade the other members of the [REDACTED] from volunteering for the [REDACTED]
66. In her defence, the defendant relies upon the following arguments:
- a) That the deliberations of the [REDACTED] are confidential and privileged.
 - b) That a single incident cannot qualify as harassment.
 - c) That the understanding of the term “snipers” is a “sterile exercise since none of the persons present was an English native speaker”.
 - d) That she meant the statement as a warning and not as a threat.
 - e) That in any case it appears that the statement was not strong enough to dissuade them from volunteering for the [REDACTED]
67. These arguments do nothing at all to remove or mitigate the defendant’s liability for the following reasons:
- a) The statement was made at the premises of the Office and amongst permanent employees of the Office who remain equally protected by the ServRegs and Circular No. 341 at all times, regardless of their function or area of activity. Likewise, all staff remain bound by the ServRegs and Circular No. 341 also during their activity as staff representatives. It constitutes an unwarranted intrusion against the rights of the employees. They may not be infringed by verbal acts of aggression and intimidation in the workplace.
 - b) At least as regards [REDACTED] the defendant’s statement also had a negative impact on the overall working environment for her, as required by the test of Art. 2 (2) of Circular No. 341, notably on her tasks and function as elected staff representative in the [REDACTED] and attempted to cause her a conflict between her wish for survival as staff representative and EPO employee and her conscious, free choices as an independent staff representative.
 - c) The term “snipers” has a clear and unambiguous meaning in English as well as in other languages and an average person would not have any doubt as to its definition. The defendant speaks fluent English which is also her preferred language. No one amongst the witnesses appears to have had any doubt about the exact meaning of the term.
68. Finally, the addressees’ political courage cannot acquit the offender from her disciplinary liability.



C. Unauthorised disclosure of strictly confidential information relating to the Investigation Unit Case C-071/15

69. **Statement of Facts:** On 04.09.2015 the Head of IU, ██████████ invited the defendant to an interview (Annex 13). The defendant was informed that the interview would concern allegations of harassment against her and received a notification in this regard. The defendant was also informed that she could be accompanied at the interview by an Office employee of her choice.
70. It is emphasised that the said invitation ended with the following remark: *“As indicated in the attached notification, pursuant to Art. 4 of Circ. No. 341 and 342 we have to inform you of the obligation to maintain strict confidentiality on the matter, including the present communication”*.
71. The attached notification also included the express statement (para. 9): *“Art. 4 of Circulars No. 341 and No. 342 provides that you may discuss this matter with: (i) staff representatives; (ii) at no expense to the EPO, a legal counsel; (iii) a health professional; and (iv) family members. (...) We further draw your attention to the fact that disciplinary action may be taken against you if you, or any of the abovementioned persons, by intent or negligence violate the obligation to confidentiality”*.
72. In fact the said notification contained also copies of the applicable provisions.
73. Despite the above, on 08.09.2015 the attached publication appeared on the website www.suepo.org (Annex 14). This website, registered under the name of the defendant (Annex 15), is publicly open to the staff through intranet as well as to all public on the internet.
74. On 09.09.2015 a further copy appeared on the website www.techrights.com (Annex 16).
75. On 10.09.2015 the Office informed the defendant of this incident and requested her comments noting that this seemed to amount to a breach of Art. 5, 14 and 20 ServRegs as well as of Article 4 of Circulars No. 341 and 342 (Annex 17).

76. On 11.09.2015, another staff member, ██████████ sent from her EPO e-mail account the attached e-mail (Annex 18). This e-mail, which included the administration's letter to the defendant dated 10.09.2015, was sent to all members of her directorate 1361 with VP 1, the Staff Committee in TH as well as ██████████ and ██████████ copy.
77. On 18.09.2015 the Office received a reply sent by Ms Zegveld on behalf of the defendant denying any liability for breach of confidentiality and claiming inter alia that it was the defendant's right as staff representative to inform all staff about the investigation being conducted against her (Annex 19).
78. On 08.10.2015 a further letter was sent on behalf of the defendant to the Chairman of the Administrative Council (Annex 20) where, referring to the investigation C-71, she claimed inter alia that:
- b) *"there is a reasonable explanation for some conduct in question (although it is denied that any such conducted occurred in [her] case), the impugned behaviour cannot be characterised as harassment (Judgement No. 2524 of the AT-ILO)";*
 - c) *"a single incident can only constitute harassment if it is so severe that it has a negative impact on the overall working environment".*
79. With the same letter, copied also to several external entities who have no relation whatsoever to the Office and including a copy of the original notification to the defendant, the defendant requested the Administrative Council to initiate an independent investigation for institutional harassment against her.
80. It is noted that this letter was also published on internet on the websites of Fosspatents (Annex 21) with a further link on IPKat (Annex 22) while parts of it were published in SUEPO flyers as well (Annex 23).
81. After consideration of the above defence submissions, the Office referred the case to the defendant on 27.10.2015 for her final defence (Annex 24). Although the defendant received the letter on 30.10.2015, she failed to comply with the 10-day deadline allegedly due to unavailability of her legal representative (Annex 25).

82. The defendant informed the Office of her lawyer's unavailability only on the last day of the 10-day deadline provided to her, and without submitting any proof. The Office decided not to extend the above deadline (Annex 26).
83. On 16.11.2015, the website of SUEPO gave to the public a copy of the confidential letter from Principal Director 4.3. to the defendant dated 27.10.2015 (Annex 27).
84. Lastly, on 17.11.2015, the defendant sent to the members of the ██████ in Munich and to ██████ a copy of the final outcome of the investigation C-071/2015 as disclosed to her, and only to her, by the IU (Annex 28) on a confidential basis.
85. The defendant had previously disregarded the express confidentiality attaching to 5 (five) different official documents addressed exclusively to her by the IU or the administration and indicated explicitly to be confidential.
86. The confidentiality of these 5 documents has been breached on at least 8 occasions, namely:
- a) On 08.09.2015 – on www.suepo.org.
 - b) On 09.09.2015 – on www.techrights.com.
 - c) On or about 11.09.2015 – in an e-mail sent by another staff member and elected staff representative who could have no other access to this document other than through the defendant.
 - d) On 08.10.2015 – in a letter addressed to the Chairman of the AC and copied to SUEPO Central, the Dutch delegate and three UN Special Rapporteurs.
 - e) On 13.10.2014 – on another website freely accessible on the internet.
 - f) On 15.10.2014 – in a SUEPO flyer distributed in the Office.
 - g) On 16.11.2015 – again on www.suepo.org.
 - h) On 17.11.2015 – in an e-mail addressed to the members of the ██████ and the ██████
87. By the further e-mail sent by the defendant on 17.11.2015 to all the other members of the Munich ██████, including those who had not been involved in any capacity whatsoever with the said investigation, and to ██████ she has demonstrated again the intentional

disregard of the confidentiality requirements which form a necessary part of her employment with the EPO. This further breach amounts to:

- a) a particularly serious violation of confidentiality, thereby making all persons subject to the confidential investigation, and providing evidence to easily identifiable;
- b) an act of intimidation towards those witnesses which risks jeopardising their protected status and welfare;
- c) an act which risks prejudicing the integrity of the investigation at its very final stage.

88. **Framework:** Art. 4 (1) Circular No. 341, provides that all persons covered by this Circular shall treat allegations of harassment with strict confidentiality. For the purposes of this Circular, this means that information shall be shared on a need-to-know basis only, in accordance with the applicable regulations and general principles of law. For example, she may share such information with her legal counsel, her health professionals and family.
89. **Art. 4 (1) Circular No. 342**, provides that in order to protect the integrity of the investigative process and the parties involved in it, all information about the investigative process or gained in connection with it shall be treated with strict confidentiality. For the purposes of this Circular, this means that information shall be shared on a need-to-know basis only, in accordance with the applicable regulations and general principles of law.
90. In **ILOAT J. No. 3364** the Tribunal declined to order reinstatement of a dismissed employee who had disclosed confidential information (concerning a disciplinary sanction issued against another employee) in the context of appeal proceedings. The Tribunal found (at consideration 27) that the complainant's breach of confidentiality had undermined the necessary relationship of trust between the staff member and the organisation such that his continued employment was inadvisable. Indicative reference is also made to **ILOAT J. No. 2271** (cons. 7).
91. **Consideration:** It is reasonable to infer that the Claimant herself chose to publish both the letter provided to her in confidence, and the confidential details of the harassment allegation. Not only was she the sole custodian of the correspondence, but she has been provided with successive opportunities to be heard and to provide an explanation for the disclosure but has failed to provide any reasonable and lawful excuse.

92. The said documents have been made widely available to a number of unauthorised persons, both inside and outside of the Office, and to the public.
93. These actions were clearly in breach of Art 20 ServRegs as well as of Art. 4 of Circulars No. 341 and 342. More widely, the defendant has again breached the loyalty and integrity requirements under Art. 5 and 14 ServRegs.
94. Furthermore, it is noted that the defendant has committed the said breaches **intentionally**.
95. In her defence, the defendant has brought forward, through her legal advisor, the following arguments:
- a) That marking a communication as “confidential” does not necessarily mean that it is so.
 - b) That the defendant was entitled as a staff representative to disclose to staff that she is being investigated by the Office.
 - c) That in any case the Office has provided no evidence that the defendant disclosed the e-mail concerning the investigation.
96. These arguments are also quite inadequate to remove or even mitigate the defendant’s liability.
97. Indeed, her explanations in fact demonstrate a flagrant disregard for the terms of her employment contract.
98. As explained already in the Office’s letter to the defendant on 27.10.2015, a staff member involved in an investigative process cannot unilaterally and without obtaining an official authorisation remove the fundamental rule of integrity and confidentiality laid down in Art. 20 and 93 et seq. ServRegs and Art. 4 of Circulars 341 and 342 which are equally applicable to each staff member.
99. The importance of the confidentiality principle in the context of an investigative process was clearly emphasised by an express notice. The defendant was warned that any unauthorised disclosure may constitute disciplinary misconduct and with explicit reference to the applicable provisions. This is the first such incident of unilateral disclosure to third parties by an employee under investigation known to the Office.

100. Furthermore, contrary to the defendant's assertions, the investigation process is not of a public character. The confidentiality of the investigative process protects the integrity of the investigative process itself, inter alia by allowing it to be carried out by the investigators objectively, independently, impartially and free of any undue interference. It is also noted that the rights of the complainant and/or protected person also include the right to confidentiality and privacy and protection from any intimidation and retaliation. This protection also applies to the investigators.
101. By means of the unauthorised disclosure the defendant risked prejudicing the important interests of colleagues. She disclosed inter alia the name and telephone number of the Head of the Investigative Unit, who immediately after publication received anonymous intimidating phone messages.
102. In addition, by publishing a confidential document indicating the investigation case number and by mentioning that the victim of harassment is a staff member and a former staff representative, the defendant rendered identifiable to the large public the person of [REDACTED] as the victim of the harassment which led him to his resignation. This could cause further relevant damage to this person, possibly also endangering his well-being.
103. Lastly, it is noted that the defendant has never denied being the one who forwarded the said communications to SUEPO and to the other two external websites neither had she put forward any other credible explanation for this result.

V. Conclusion – aggravating circumstances

104. **D3/2015:** In the context of an earlier disciplinary procedure, the defendant was found guilty of harassment of another colleague. She admitted to sending to a group of staff members an e-mail which suggested that a B-grade colleague, who had attempted to help a member staff who had sadly committed suicide, bore responsibility for his death. The family of the deceased staff member had expressly thanked the Office for the attempts to assist their relative, not least through the help of the victim of the harassment. The responsible doctor also determined that, as a direct result of your accusation, the victim



suffered severe damage to his health and found him unable to continue his good work in the EPO. The victim has since that time been on invalidity for occupational reasons.

105. At the interview held during the investigation for that case the defendant admitted that her e-mail was “*sloppy*” and that she had expected that the victim would feel highly offended by her statement.
106. On 25.02.2014 the defendant received the disciplinary measure from the Office of downgrading to grade A3, step 13, pursuant to Art. 93 (2) (e) ServRegs. It is noted that at the time of that misconduct, the defendant was not holding any office as an elected staff representative.
107. On this occasion, the defendant was reminded that the capacity of union member or staff representative does not exempt her from her obligation to comply with the fundamental statutory obligations under the EPC and the ServRegs.
108. **Furthermore:** the defendant engaged in the conduct outlined above, despite several other clear reminders of possible disciplinary consequences of her general conduct towards the Office and individual staff members including disclosure of disciplinary information concerning other staff members or internal information to external authorities (Annex 29a-d). The defendant has however persisted.
109. As a long-standing staff representative the defendant owed particular duties of care and an obligation of confidentiality with regard to other employees. This was especially so with regard to colleagues with a political mandate, equal to her own, who sought to exercise the democratic mandate of staff representation. The actions described above actually took place at a time of wider discussion and sensitivity concerning the fundamentals of employees’ working relationships. In this context, the matters described above took on a particularly serious colour, and were capable of, and in fact caused, significant damage within the EPO as well as externally.
110. The defendant’s acts strike at the core of her employer’s reputation and functioning, notably the preservation of an office culture safeguarding the welfare of employees, as well



as at the heart of the relationship of trust and confidence between the defendant and her employer.

111. **Lastly**, the Office emphasises the defendant's lack of cooperation, when reasonably requested to disclose the names of those to whom she had forwarded the confidential communications with a view to mitigate any damage already done. The Office considers that the defendant's behaviour amounts to a continuous and persistent refusal to remediate the situation.

112. In fact, the latest incident described in para. 87 above leaves no room as to the defendant's conscious aim to maximise the harm to the procedure and all colleagues involved.

VI. Proportionate disciplinary measure

113. The defendant's behaviour amounts to serious gross misconduct violating the standards required under Articles 5 (1) ServRegs and her duty to refrain from any statements damaging the dignity of her colleagues. The defendant's behaviour is also in breach of Article 14 (1) ServRegs, which requires an employee to carry out his duties and conduct himself solely with the interests of the Office in mind.

114. The Office earnestly sought to remediate the situation but has now exhausted all means and must accept that the employment relationship with the defendant is no longer sustainable.

115. The Office relies upon the serious nature of the offence and the defendant's persistent refusal to mitigate any of the damage caused. Each of the present charges, if taken separately, would justify the most severe disciplinary measure under Article 93 (2) (f) ServRegs.

116. The Office reserves all its rights under inter alia Article 101 (2) ServRegs to call witnesses to the hearing before the Disciplinary Committee and/or submit further evidence as well as to bring forward any other procedural or substantive requests including any further relevant incidents that may occur in the meantime and were not known to the Office by the time of signature of the present report.



117. The present report is also submitted without prejudice to any claims against the defendant under inter alia Art. 25 and 28 ServRegs.
118. The Disciplinary Committee is respectfully invited to deliver a reasoned opinion in accordance with Article 102 (1) ServRegs as regards the facts described above.

Munich, 17.11.2015



Principal Director Human Resources