

CA/52/16 Rev. 1

Orig.: en

Munich, 23.09.2016

SUBJECT: Revision of Service Regulations - Standards of conduct and administrative fact findings

SUBMITTED BY: President of the European Patent Office

ADDRESSEES: Administrative Council (for decision)

SUMMARY

This document replaces CA/52/16 dated 09.06.2016. The amendments are indicated by grey hatching.

Like other organisations, the EPO is faced with the risk of damage to its resources, finances and reputation in the case of fraud and other misconduct. The President of the Office, having the overall responsibility for the well-functioning of the Office (Article 10 EPC), in order to fill a long standing vacuum, defined regulations for a fact-finding procedure in Circular 342 "Guidelines for investigation at the EPO" which entered into force on 1st January 2013. After three years of experience and practice, a periodical review was conducted, leading to some proposals to further strengthen this essential function for the Office, which are presented in this document. It is proposed in particular to integrate some important principles at the level of the Service Regulations.

D. RIGHTS AND OBLIGATIONS IN THE INVESTIGATIVE PROCESS

25. Under the current framework of Circular No. 342, the investigative process is carried out in accordance with the following principles:

- independence and freedom from any undue interference;
- objectivity and impartiality;
- proportionality;
- due process;
- presumption of innocence;
- right of all parties to present evidence in their favour; and
- respect for all parties.

26. The new Article 21a incorporates these principles at the Service Regulation level. In turn, the obligations of staff in the investigative process are clarified in line with the legal situation in member states and other international organisations.

27. Staff members have a duty to cooperate during an investigative process (Article 21a(5)). Differently from criminal procedure (or national disciplinary procedure in some cases), an international organisation has no powers of police or similar law enforcement bodies in order to obtain the necessary evidence in the case of a refusal to cooperate. Further, contrary to subjects in criminal procedure, employees freely enter the relationship with their employer, which entails duties of care and loyalty, including – also under national law – the duty to cooperate. The European Court for Human Rights, as indeed many national courts, has specifically held that a "right to remain silent" is not applicable in disciplinary matters, let alone pre-disciplinary fact findings. For these reasons, no international organisation, including UN agencies and the International Labour Organisation, provide for such a right. The Panel of Experts in the working group discussions specifically warned that such a provision would significantly weaken the organisation's commitment to combat fraud, and severely limit its ability to address harassment."

Article 14

A new Article 21a of the Service Regulations shall read as follows:

"Article 21a Ethics and compliance

- (1) An ethics and compliance function contributes to the promotion of integrity and ethical business conduct throughout the Office. It helps ensure that permanent employees conduct themselves in a manner compliant with the applicable provisions.
- (2) To this end, the facts relating to allegations or indications of misconduct are reviewed objectively, impartially and in accordance with the principles of proportionality, due process, data protection and respect for all parties, and with all the applicable provisions.
- (3) The investigative function shall be exercised independently and free from any undue interference.
- (4) A permanent employee shall be presumed to be innocent throughout the investigative process, and shall have the right to present evidence in his favour.
- (5) A permanent employee shall co-operate in the investigative process, in accordance with the applicable provisions, and shall maintain the confidentiality of the investigative process in order to protect the interests of all parties and the integrity of the process. A permanent employee shall continue to be bound by this obligation after leaving the service.
- (6) Where a permanent employee ~~any person~~ provides to the investigative unit self-incriminatory information during the investigative process which might leave him open to prosecution under national law, such information shall be shared with the national authorities only if the person concerned specifically authorises the sharing, or in cases in which the sharing of such information is absolutely necessary to prevent the risk of any damage to persons, or any grave damage to property."