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SUBJECT: Revision of the Service Regulations – standards of conduct and reform of the internal justice system at the European Patent Office

SUBMITTED BY: President of the European Patent Office

ADDRESSEES: Administrative Council (for decision)

SUMMARY

This document presents a proposal for a comprehensive revision of the Office's legal framework for the standards and rules of conduct for staff, the procedure for investigating cases of alleged misconduct, the disciplinary procedure, and the internal appeals system, thus outlining an integrated overhaul of the Office's internal justice system.

The present proposal clarifies the standards of conduct and formally integrates the fundamental guarantees of investigative procedure – due process, presumption of innocence, proportionality, impartiality, right to assistance and right to remain silent – at the level of the Service Regulations, as well as introducing a comprehensive Ethics and Compliance function that will assist staff members in discerning the expectations regarding their conduct, and raise awareness of issues relating to ethics, anti-fraud, and abuse. The proposal also introduces a commitment for the Office to fight discrimination and harassment, and to protect "whistle-blowers" from any form of retaliation.

Furthermore, this document presents a proposal for the revision of the legal framework governing disciplinary proceedings with a view to enhance the perception of respect of the principles of due process and fairness and introducing the function of an external chair of the Disciplinary Committee to guarantee the independence and professionalism required by the task.

Lastly, the document proposes improvements to the Office's internal appeals system, to ensure its effectiveness and enhance the perception of independence and impartiality. To this end, the current proposal presents a revision of the relevant legal framework and introduces *inter alia* an external chairmanship of the Appeals Committee while maintaining the advantages of a peer-review system with paritary representation.

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PART I

I. STRATEGIC/OPERATIONAL

1. Operational.

II. RECOMMENDATION

2. The Administrative Council is requested to approve the proposed amendments to the Service Regulations presented in this document under three main pillars constituting a comprehensive package:

- **Part A** dealing with the review of the standards of conduct for employees at the European Patent Office and the procedure for investigating non-compliance (**Ethics and Compliance**);
- **Part B** dealing with revised regulations for the composition of the Disciplinary Committee and for disciplinary proceedings (**Disciplinary Reform**);
- **Part C** dealing with revised regulations for the internal appeals procedure (**Internal Appeals Reform**).

III. MAJORITY NEEDED

3. Three-quarters of the votes.

IV. CONTEXT

4. The draft proposal on all three aspects was discussed at the meetings of the Board of the Administrative Council (B28) on 26 April and 23 May 2017. Amendments were discussed and agreed, and suggestions were incorporated into the present document, which in its present form is supported by the B28.

A. REVIEW OF THE GUIDELINES FOR INVESTIGATIONS

5. Art. 20(4) of the current Circular No. 342 (Guidelines for Investigations at the EPO) foresees that the implementation of the regulatory framework be regularly reviewed. To this end, a working group including six representatives of the Central Staff Committee as well as two representatives of the recognised staff union identified and discussed issues to be addressed in the current framework.

6. In the exercise of revising the framework, the working group was assisted by a panel of independent external legal experts on administrative investigations comprised of the President of the Disciplinary Court for attorneys-at-law of the state of Hesse (Germany) and law professor at the University of Frankfurt; the Deputy Head of Fraud Investigations at the European Investment Bank (Luxembourg) and former UK Senior Prosecutor; and the Director of the Office for Inspections and Investigations of the UN World Food Programme (Italy) and former Director, Transparency & Accountability at the GAVI Alliance (Switzerland).
7. The experts confirmed that the current framework and practice are fully in compliance with legal rules and principles, and with recognised best practice in international organisations. However, in order to strengthen the perception of this fact, the experts recommended a number of measures, and expressed their opinion on the changes proposed in this document.
8. The working group further took into consideration feedback from an external quality review of the investigative function conducted in April 2016 by the Ethics Advisor of the International Monetary Fund (IMF) and the Deputy Director for Investigations at the United Nations. In this external review, the assessors concluded that the legal framework and practice of the investigative function was in conformity with the applicable rules and principles. The reviewers also recommended a set of measures to further strengthen the investigative function at the Office, which are addressed with the present proposal.
9. In addition, with regards to the investigative framework at the EPO, the social study conducted by Price Waterhouse Coopers (CA/80/16) confirmed that it *"matches or compares favourably to the other international organisations"*.
10. The Office furthermore conducted an extensive benchmarking study on specific issues in the legal framework and practice of other international organisations and selected member states, further confirming its full compliance with these rules and principles.
11. Lastly, a set of focus group discussions with managers and staff (in separate sessions) from throughout the Office permitted taking on board unfiltered and unmitigated input from staff members at all levels, which largely informed the current proposal.

B. REVIEW OF THE FRAMEWORK FOR DISCIPLINARY PROCEEDINGS

12. As with the investigation framework, the social study confirmed the adequacy of the EPO's framework governing disciplinary proceedings. A survey of seven international organisations conducted by the Office also confirmed these findings of the social study.

13. The Office currently has a comprehensive legal framework governing disciplinary measures which respects the rights of the defendant and which is considered to accord to best practice in international organisations. It offers a guarantee of the principles of due process, fairness and proportionality.
14. While it is noted that the ILOAT has not, in the last ten years, overturned any decision taken following the disciplinary procedure conducted under the legal framework of the Office (reference may be made to the recent judgments in Nos. 3297 and 3430, both affirming decisions to dismiss), it was found that the structure, clarity, and perception of the regulations could be further improved.
15. In focus group discussions, staff and managers identified a number of alleged unclarity and perception issues concerning the current framework for disciplinary procedures which are addressed through the current proposal.
16. In order to address any purported deficiencies, the Office convened a working group, again including six representatives of the Central Staff Committee as well as union representatives, with the aim of revising those points in the existing disciplinary framework that could improve the perception and conduct of the proceedings.
17. After consideration of various models for disciplinary proceedings, the drafting group arrived at the current proposal, which introduces a sound reform largely aligning the current provisions with the EU model while further improving upon the structure and clarity of the rules.

C. REVIEW OF THE INTERNAL APPEALS SYSTEM

18. In 2012, the Administrative Council adopted a reform of the EPO's internal appeals system, which was in part driven by a 133% increase of the number of internal appeals registered during the period 2004-2010 (CA/D 8/12). The reform was based on the introduction of a compulsory pre-litigation step (the so-called management review) allowing the Office to review its decision, the introduction of efficiency measures and empowerment of the Appeals Committee.

19. However, the Central Staff Committee's persistent refusal to contribute to the composition of the Appeals Committee, as well as the subsequent jurisprudence of the ILOAT (see further below at paragraph 22), which has resulted in a considerable albeit partly temporary backlog of appeals before the Appeals Committee, have illustrated the need to further review the composition and procedures of the Appeals Committee.
20. Irrespective of the above, it may be noted that the Appeals Committee since 2012 has worked very efficiently and, combined with the efforts of the Administration, decreased the backlog of appeals by 24% in 2016 (516 pending appeals in December 2016). Also, the compulsory pre-litigation step (management review), which was introduced in 2012, has fulfilled its purpose, settling the dispute in ca. 40-50% of the cases.
21. However, the level of new appeals remains high, with ca. 200 new cases a year. Although this level might be explained by the train of reforms aiming at modernising the EPO's social framework, some particular contributing factors deserve special attention:
- Misuse of the system: It has been observed that a great deal of litigation is directed against regulatory decisions, which as a matter of principle are excluded from the internal appeals system (up to 50% over the last years). This is despite the fact that also the jurisprudence from the ILOAT clearly finds that such decisions are, as a matter of principle, not appealable.
 - Repetitive appellants: A small number of staff and former staff have been noticed to be responsible for the filing of repeated appeals concerning the same subject-matter or/and challenging any decision they consider affects them negatively. E.g. 37 staff members (0.6% of the overall staff) represent 37% of the current backlog of internal appeals.
 - Perception: The social study reported a lack of trust in the internal appeals system.
 - Blockage of the constitution of the Appeals Committee: With Judgments No. 3694 and 3785, the ILOAT stipulated that the Appeals Committee was irregularly constituted and therefore not competent to hear cases after the Central Staff Committee had failed to make appointments in accordance with the Service Regulations. A temporary solution was found when the Administrative Council decided on 15 December 2016 to amend Article 36(2)(a) ServRegs to allow the President to *"take appropriate steps to ensure and make the necessary appointments, by calling for volunteers or drawing lots from among eligible staff members"* (CA/D 18/16).

22. Furthermore, recent ILOAT jurisprudence also highlighted the need to clarify the remit of the respective Appeals Committees under the authority of the Administrative Council and of the President (e.g. Judgment No. 3796).
23. In light of these issues, the Administrative Council and the President jointly decided, during the Administrative Council's 150th meeting held on 14 and 15 December 2016, to review the internal appeals system at the Office (CA/100/16, para. 1.8). With the present proposal, the Office seeks to address the issues identified.

V. ARGUMENTS

A. ETHICS AND COMPLIANCE

24. Like other organisations, the Office is faced with the risk of damage to its resources, finances and reputation in case of fraud, abuse, and other misconduct. In this regard, the Office considers that all staff members will benefit from a further clarification of the legal framework regulating the conduct of staff as well as the prevention, detection and response to any breaches. With the current proposal, the Office aims at ensuring that any investigations relating to potential misconduct continue to be fair and in accordance with all provisions of due process, and that they will be perceived as such.

a) Standards of conduct

25. As an international organisation, the Office is also under an obligation to provide a workplace in which all persons are treated with respect and dignity, embracing the diversity of all staff and stakeholders. With the introduction of a non-discrimination clause (new Article 1a) and a commitment to fighting harassment (new Article 14b), the Office commits itself to protecting its staff from any violation of these basic principles.
26. Other international or European organisations provide for clear, reliable rules for staff conduct that ensure the standards of ethics and integrity. All staff members e.g. of the EU must follow the public-service principles for the EU civil service, whereas employees of UN organisations abide by the Standards for the Conduct of the International Civil Service (2013) enacted by the International Civil Service Commission.

27. With the present proposal, the framework at the EPO regulating staff conduct is clarified and strengthened, providing clearly structured and worded rules and assisting staff in the conduct of their duties (new Service Regulations chapter "Conduct of permanent employees").

b) Ethics and Compliance function

28. Best practice in the field of investigations recognises that investigations can form only one column in a comprehensive integrity and compliance framework. Outreach and awareness-raising on integrity issues help prevent breaches, while proactive assessments in particularly risk-prone areas allow the identification of breaches at early stages.

29. With the new framework, the Office is adopting an integrated, comprehensive framework for promoting ethical conduct and fraud awareness, and for addressing fraud and other misconduct. In order to ensure compliance with the principles and obligations under the regulatory framework of the European Patent Organisation, and to help prevent misconduct which might result in damage to the Organisation, the Office is therefore expanding the mandate of the investigative unit to comprise a full Ethics and Compliance function (new Article 21a).

30. This function is tasked with developing and maintaining a comprehensive compliance programme including the Code of Conduct (new Article 21a and Implementing Rules). The investigative unit with its expanded Ethics and Compliance function will thus be responsible for:

- the promotion of integrity and business ethics throughout the organisation;
- ensuring consistency between the EPO's values, the code of conduct and internal regulations and practices;
- providing safe, adequate and readily available means of reporting alleged misconduct;
- investigating the facts relating to potential misconduct; and
- conducting proactive compliance reviews in particularly risk-prone areas of the Office.

31. Increased staff awareness leads to a better understanding of the rights and obligations, and a heightened sense for integrity risks amongst staff at large. This increased awareness helps prevent fraud and other misconduct, and promotes the prompt and reliable reporting of potential misconduct as well as the addressing of breaches and risks detrimental to staff and to the organisation.
32. Thus, the Office will be able to provide an even more comprehensive service benefiting all EPO staff members and other stakeholders, as well as the organisation overall.

c) Revised investigative procedure

33. Independence, objectivity, due process, and proportionality are basic principles of the investigative procedure at the EPO. In order to anchor these principles and the associated rights of EPO staff members in the Service Regulations, a newly proposed provision regulates the principles of the investigative process, in line with law and practice in international organisations and in the member states.
34. The proposal also introduces the guarantee of protection for whistle-blowers (new Article 21 of the Service Regulations), i.e. for all persons who in good faith report allegations of wrongdoing to the appropriate channels in the Organisation. This provision, aligned closely with Article 22a of the EU Staff Regulations, sets out the basic provisions for the protection of "whistle-blowers", which will be elaborated through detailed provisions in a dedicated policy.
35. The rights and obligations in the investigative processes, which derive from basic principles of international law as well as from general employment rights, are clarified through their prominent and express inclusion in the Service Regulations (new Article 21a(2)). The detailed steps in the investigative process are proposed to be regulated in Implementing Rules for Articles 21 and 21a ServRegs, i.e. at the same level of the Service Regulations under the responsibility of the Council.
36. The new Article 21a incorporates the principles of the investigative process at the Service Regulations level, specifically:
 - due process (Article 21a(2) ServRegs),
 - objectivity (Article 21a(2) ServRegs),
 - impartiality (Article 21a(2) ServRegs),
 - proportionality (Article 21a(2) ServRegs),

- respect for all parties (Article 21a(2) ServRegs),
- presumption of innocence (Article 21a(4) ServRegs),
- right to a defence and to present evidence (Article 21a(4) ServRegs),
- right to remain silent (Article 21a(5) ServRegs),
- protection of good faith "whistle-blowers" (Article 21(4) ServRegs).

37. 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. Staff members have a duty to co-operate during an investigative process (Article 21a(5)).
38. However, specific stakeholders have expressed a wish to limit this duty, specifically in a scenario in which a staff member could be forced to incriminate himself or close family members. To address these concerns, the current proposal includes a privilege against self-incrimination (Article 21a(5), second sentence), permitting employees to remain silent in such inquiries.
39. In this context it must be noted that the Panel of Experts warned that such a provision might significantly weaken the commitment to combatting fraud and harassment, and would protect perpetrators at the cost of victims. In contrast to criminal proceedings (or certain national disciplinary proceedings), an international organisation has no powers – like those vested in law-enforcement bodies – to obtain the necessary information in the case of a refusal to co-operate. Further, unlike persons subject to criminal proceedings, employees freely enter into their relationship with their employer, which entails duties of care and loyalty, including – also under national law – the duty to co-operate. Indeed, many national courts (e.g. in Germany, the Netherlands and the United Kingdom) have specifically held that a "right to remain silent" is not applicable in employer investigations. For these reasons, international organisations, including UN agencies such as the International Labour Organization, generally do not provide for such a right.
40. However, in order to address the requests for consideration of a privilege against self-incrimination in spite of its potentially problematic implications, the current proposal adopts a provision with the wording agreed by the B28, based on the formulation in the framework of the European Commission's Investigations and Disciplinary Office (IDOC), to allow such a "right to remain silent".

41. Lastly, in the exercise of its investigative role, the department tasked with conducting the investigative process will continue to operate independently from management and other services of the Office. The functional independence of this department in carrying out investigations as laid down in the new Article 21(3) ServRegs. The Board of Auditors will continue to be informed about the investigative activities and have the possibility to request further information.
42. Additionally, the investigative function is subject to regular peer reviews conducted by external independent members of the international investigators conference, who review the functioning and make recommendations, in particular concerning the independence of the department.

B. DISCIPLINARY REFORM

43. A legal framework adequate for disciplinary proceedings and disciplinary measures is essential for enforcing the legal framework applicable at the EPO, to protect the Organisation and its employees and to ensure accountability as well as a working environment embracing integrity, the rule of law, and respect of others.

a) Overview

44. Under the EPO legal framework, the disciplinary authority is shared between the Administrative Council and the President for their respective appointees. While the disciplinary procedure is largely the same irrespective of the appointing authority, different rules apply for the nomination of the Chair and members to the respective Disciplinary Committees.
45. Currently, fundamental principles such as due process, the right to be heard and defend oneself, the right to be assisted, the proportionality of any disciplinary measure imposed, due reasoning and motivation of the measure and means of redress govern the disciplinary procedure.
46. The present document outlines proposed amendments to the regulations governing the disciplinary procedures with the aim to offer more clarity and anchor the said principles in a systematic manner in the Service Regulations. The amendments are broadly based on the EU model, with necessary changes being introduced to ensure consistency with the EPO's legal framework and clarity of structure.
47. The main changes of the current proposal are as follows:
 - Introduction of an external professional chair and alternate chair (new Article 97a(4)(a));

- Professionalisation and increase in effectiveness through introduction of a secretariat to assist the Committee on administrative matters (new Article 98a(1));
- Separation of procedures for incompetence and disciplinary matters (amended Articles 52 and 53);
- Express introduction of the proportionality principle into the Service Regulations for ruling on the severity of misconduct and the sanction imposed (new Article 94a);
- Introduction of wider range of low to mid-intensity disciplinary measures (new Article 94(1));
- Clarification of the structure of the regulations.

b) External professional chairperson and alternate chair

48. To further increase the perception of the Committee's independence, the proposal foresees the appointment of an external, professional chairperson and an alternate chair (new Article 97a(4)(a)), who organise and guide the proceedings and have a casting vote, in line with the EU model. Chairpersons will be renowned experts from the legal field, such as judges from among the highest ranks of the judiciary (such as judges from the ECHR or the ECJ). (Presently at the EPO, the members of the Disciplinary Committee are exclusively active members of staff, drawn by lot for each case, from a list drawn up annually on a paritary basis.)
49. As in the EU's Disciplinary Committee, the four members of the Committee in the proposal are senior staff members (EPO job group 3 or above), with two being appointed by the Central Staff Committee and two by the appointing authority. However, in cases concerning employees lower than job group 3, the Disciplinary Committee is enlarged to include two additional members in the same job group as the staff member concerned, to ensure a representation of peers.
50. The Committee will also be able to work more effectively as it will now, as provided in new Article 98a, be assisted by a secretariat.

c) Procedural clarifications

51. In cases where an employee has acknowledged his misconduct without reservation, the new provisions, as is the case at the EU, allow the Disciplinary Committee's opinion to be restricted to consideration of the appropriate disciplinary measure, with the employee's acknowledgement being taken into account as a mitigating factor for the final measure.
52. The newly introduced Article 94a now clearly formulates the proportionality principle with regards to disciplinary measures, and sets out the factors to be considered to rule on the severity of a case of misconduct.
53. The catalogue of sanctions now includes a wider range of low- to mid-intensity ones, permitting the Committee a wider choice in judging which measure would be appropriate to a given case.

d) Separation of disciplinary proceedings and proceedings for professional incompetence

54. The proposal also provides for the separation of proceedings for professional incompetence and for disciplinary matters (amended Articles 52 and 53). Indeed professional incompetence does not constitute per se misconduct and although it has to be addressed, the Disciplinary Committee does not seem to be the appropriate body to do so. Since the former can more reliably be judged by an EPO colleague rather than an external expert on disciplinary law, the Committee to rule on incompetence is composed purely of internal members.
55. A "Joint Committee on Articles 52 and 53" is therefore introduced as a new body under Article 2 of the Service Regulations. The Committee consists of a Chairman appointed by the President and at least 2 senior staff (in job group 3 or above) appointed on a parity basis. For employees in job group 4 or lower, the Committee is enlarged by two further members (also appointed on a parity basis), from the same job group as the employee concerned.
56. This Committee will also be consulted (in place of the GCC, as is currently the case) in case of dismissal for other reasons (e.g. if the contracting state of which the employee is a national ceases to be party to the Convention, if the employee refuses to be permanently transferred to a country other than that in which he is serving or if an employee declines on two occasions to be reinstated following unpaid leave). Indeed, following Article 38 ServRegs, the GCC is consulted on changes of the conditions of employment, not on individual specific cases. The proposed changes thus eliminate a systemic anomaly and allow for a detailed analysis of the case by a specialised body.

57. The procedure to be followed in cases of dismissal for professional incompetence as well as dismissal for other reasons is also slightly modified, again having regard to the EU model, and introducing additional safeguards for the protection of staff (notice period or equivalent compensation).

C. INTERNAL APPEALS REFORM

a) Overview

58. The present document specifically proposes:

- Clarification of the scope of the internal appeals system, transposing ILOAT case law into written rules, that as a matter of principle only individual decisions are appealable (*inter alia* new Article 108(3) ServRegs). It is further proposed to clarify that the procedure before the Appeals Committee is governed by fair trial principles (new Article 7(1) Implementing Rules);
- Introduction of an external chair and vice-chairs with high calibre profiles (new Article 111 ServRegs) to enhance the perception of independence and impartiality;
- Strengthening of the role and procedural prerogatives of the external chair and presiding members of the Appeals Committee (*inter alia* new Article 111a ServRegs);
- Increase the effectiveness of the internal appeals system through streamlining of existing and codification of new procedural tools: a guided amicable settlement procedure (new Article 6 Implementing Rules); "test-case procedure" to set a precedent for similar appeals (new Article 9b Implementing Rules); consolidation of internal appeals (Article 10 Implementing Rules); and
- New mechanisms to limit abusive procedures, namely a registration fee which may be reimbursed if the appeal is successful (new Article 5(3) Implementing Rules) and the possibility to award procedural costs and/or damages (new Article 9a Implementing Rules).

b) Composition of the Appeals Committee

59. As with the reformed Disciplinary Committee, the proposal maintains the general system of a peer body review and ensures parity representation, while increasing the perception of independence and professionalism of the Appeals Committee. Particularly, it is proposed that the chair and vice-chairs must hold the qualifications required in their respective countries for appointment to high judicial office or be lawyers with experience in the area of employment law.
60. The Appeals Committee is composed of (depending on whether an appeal is against an individual decision taken by the Administrative Council or the President as the competent appointing authority):
- 1 chair and 2 vice-chairs, appointed by the President/Administrative Council;
 - 4 members appointed by the President/Administrative Council;
 - 4 members appointed by the Central Staff Committee.
61. As a rule, the Appeals Committee is proposed to sit in one or more chamber(s), each consisting of a chair or vice-chair, serving as the presiding member, and two members appointed on a parity basis (new Article 111(4) ServRegs). This is expected to increase the efficiency of the Appeals Committee, while also ensuring that it can operate in a flexible manner without the need to differentiate between regular and alternate members.
62. All members of the Appeals Committee continue to be required to be independent in their function and may not accept or seek any instructions from third parties (Article 112(1) ServRegs).

c) Procedural streamlining

63. It is further proposed to include in the Service Regulations and the Implementing Rules existing and new means to further strengthen the Appeals Committee's ability to ensure fair and efficient procedures. These include:
- Possibility to encourage amicable settlements at any stage of the procedure (new Article 6 Implementing Rules). An amicable settlement reached between the parties is binding and the appeal will be regarded as closed. The chair or presiding member of the chamber dealing with an appeal may also serve as a mediator;

- Clarification that the right to be heard does not imply systematically an oral hearing. Instead, hearings take place at the discretion of the Appeals Committee (Article 8 Implementing Rules);
- Possibility to initiate a test-case procedure, which results in an opinion that applies to every appeal in which a similar issue has been raised (new Article 9b Implementing Rules); and
- Possibility to join appeals concerning the same subject-matter or filed by the same appellant, also without the consent of the appellant (Article 10 Implementing Rules).

d) Mechanisms to limit abusive appeals:

64. In order to strengthen the efficiency and effectiveness of the internal appeals procedure, it is proposed to introduce balanced measures to prevent abusive appeals while maintaining access to justice and means of redress. Such measures ensure the respect for the legal framework as well as relevant jurisprudence. They include the introduction of a registration fee of 200 EUR, which is intended to emphasise that the filing of an appeal should be resorted to only if no other forms of dispute settlement are likely to be successful (new Article 5(3) Implementing Rules).
65. Similar to many national courts as well as the ILOAT, the Appeals Committee will be empowered to recommend to the competent appointing authority to award procedural costs and/or damages against a party that is found to have manifestly abused the proceedings (new Article 9a Implementing Rules).

VI. ENTRY INTO FORCE

66. The new regulations will enter into force on 1 July 2017, with transitional provisions in force until 31 December 2017.

VII. FINANCIAL IMPLICATIONS

67. None.

VIII. LEGAL BASIS

- 68. Articles 10(2)(c) and 33(2)(b) of the European Patent Convention.
- 69. Service Regulations for permanent employees of the European Patent Office.
- 70. Conditions of employment for contract staff at the European Patent Office.

IX. DOCUMENTS CITED

- 71. CA/D 8/12, CA/80/16 and CA/D 18/16.

X. RECOMMENDATION FOR PUBLICATION

- 72. Yes.

PART II

Draft

DECISION OF THE ADMINISTRATIVE COUNCIL
of [date of the decision]
amending the provisions relating to standards of
conduct, disciplinary proceedings and the internal
appeals procedure

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,
Having regard to the European Patent Convention, and in particular Articles 10(2)(c) and
33(2)(b) thereof,

Having regard to the Service Regulations for permanent employees of the European
Patent Office (hereinafter referred to as "the Service Regulations"), and in particular
Articles 14 to 25, Article 36, Articles 93 to 105 and Articles 106 to 113 thereof and the
Implementing Rules for Articles 106 to 113 of the Service Regulations (hereinafter referred
to as "the Implementing Rules"),

On a proposal from the President of the European Patent Office, submitted after consulting
the General Consultative Committee,

HAS DECIDED AS FOLLOWS:

I. Amendments to the Service Regulations

Article 1

The following new paragraph 8 shall be added to Article 1 of the Service Regulations:

"(8) With the exception of Article 15, the provisions of Chapter 1 of Title II shall apply to all employees of the Office, regardless of appointing authority or type of employment or of any provisions in the contract of employment."

Article 2

The following new Article 1a shall be added to the Service Regulations:

"Article 1a Non-discrimination

Without prejudice to Article 5, paragraph 1, Article 8, Article 54, Article 62b, Article 71 and Article 72, any discrimination in the application of these Service Regulations based on any ground such as gender, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual identity or orientation shall be prohibited."

Article 3

The following new paragraph 1(h) shall be added to Article 2 of the Service Regulations:

"(h) a Joint Committee on Articles 52 and 53"

Article 4

Paragraphs 3 to 6 of Article 2 of the Service Regulations shall read as follows:

"(3) Unless otherwise provided in these Service Regulations, the chairmen and deputy chairmen of the bodies referred to in paragraphs 1(b) to (h) shall be appointed by the President of the Office.

(4) Unless otherwise provided in these Service Regulations, any rules of procedure of the bodies referred to in paragraph 1(b) to (h) shall be adopted by the President of the Office.

(5) The staff shall be represented on the bodies referred to in paragraph 1(b) to (f) and (h).

(6) The President may extend the terms of office of all members of the bodies under paragraph 1(b), (c), (d), (f), (g) and (h) beyond the duration defined in the applicable provisions of these Service Regulations, within the limits of the terms of office of the Staff Committee members."

Article 5

Chapter 1 of Title II of the Service Regulations shall be renamed as follows:

"Chapter 1 Conduct of permanent employees"

Article 6

Article 14 of the Service Regulations shall read as follows:

"Article 14 Standards of conduct

(1) A permanent employee shall conduct himself at all times in a manner befitting his status as an international civil servant, embracing honesty, truthfulness, impartiality and incorruptibility.

(2) A permanent employee shall at all times treat others, inside and outside the European Patent Organisation (hereinafter referred to as "the Organisation"), with professional respect and discretion.

(3) A permanent employee shall abstain from any act and, in particular, any public expression of opinion which may reflect on the dignity of his office or which may pose a risk to or compromise the reputation and interests of the Organisation."

Article 7

Former Article 14 of the Service Regulations shall become Article 14a and read as follows:

"Article 14a General obligations

(1) A permanent employee shall carry out his duties with integrity and loyalty, and conduct himself solely with the interests of the Organisation in mind. He shall neither seek nor take instructions from any government, authority, organisation or person outside the Organisation.

(2) A permanent employee shall not, without the permission of the President of the Office, solicit or accept from any government or from any other source outside the Organisation any honour, decoration, favour, gift or payment of any kind whatsoever, except for services rendered either before his appointment or for military or other national service during a period of assignment to non-active status and in respect of such service.

(3) A permanent employee shall use the assets, funds, property, information and other resources of the Office with due care and for authorised purposes only.

(4) A permanent employee shall not be influenced in the performance of his duties by any extraneous or arbitrary considerations. He may not discriminate or allow personal preferences to unduly influence his professional conduct.

(5) A permanent employee or former employee shall not use his position or authority, or the name, logos or privileges and immunities of the Office or the Organisation, or any information acquired in the course of or in connection with his duties, to unduly obtain benefits for himself or third parties, or for any other inappropriate purpose.

(6) A permanent employee or former employee shall provide to the Office complete and truthful information relating to the performance of his duties or capacity to perform his duties, or to any circumstance which may be relevant for his entitlement to salary or to any allowance, reward, reimbursement, compensation, leave or other benefit. This obligation also applies for information provided to third parties administering emoluments and benefits of the social-security scheme under these Service Regulations, the Pension Scheme Regulations or other applicable regulations."

Article 8

The following new Article 14b shall be added to the Service Regulations:

"Article 14b Harassment

(1) A permanent employee shall contribute to a work environment in which each individual is treated with respect and dignity. A permanent employee or former employee shall refrain from engaging in any act of harassment or sexual harassment.

(2) Harassment is any unwelcome, severe or recurring, verbal, written or physical conduct which has the purpose or effect of humiliating or degrading any person, thereby creating an intimidating, hostile or offensive work environment, or of unreasonably interfering with that person's work or their ability to perform their assigned duties.

Harassment includes, but is not limited to:

- (a) behaviour which is intended to be, or can reasonably be perceived as, inappropriate, offensive, intimidating, or hostile;
- (b) vexatious assignments, requests or changes in duties or responsibilities; or
- (c) severe or persistent criticism which is either unjustified or expressed in such a manner that it harms the dignity of an individual or his reputation.

(3) Sexual harassment is any unwelcome sexual advance or unwelcome verbal, written or physical conduct of a sexual nature that unreasonably interferes with or negatively impacts a person's work or sexual self-determination, or which creates an intimidating, hostile or humiliating working environment.

Sexual harassment includes, but is not limited to:

- (a) unsolicited displays of sexual images or the exhibition of materials of a sexually oriented nature;
- (b) deliberate and unsolicited physical contact of an intimate or sexually suggestive nature;
- (c) unwelcome use of obscene language or gestures, or the telling of obscene jokes;
- (d) unsolicited requests for sexual favours;
- (e) requests for sexual favours explicitly or implicitly linked to access to employment, career development, or to continued employment, remuneration, or other benefit."

Article 9

Paragraph 1 of Article 15 of the Service Regulations shall read as follows:

"(1) When taking up their duties, members of the Boards shall give a solemn undertaking to perform their duties in accordance with the Convention and the principles of procedural law generally recognised in the Contracting States, to act, in taking decisions, without respect of persons, to act solely in the interests of truth and justice, and to maintain strict secrecy concerning the Boards' deliberations. The solemn undertaking shall be given orally before the Enlarged Board of Appeal composed pursuant to Article 22, paragraph 2, first sentence, of the Convention."

Article 10

Article 16 of the Service Regulations shall read as follows:

"Article 16 Incompatible activities

(1) A permanent employee shall neither hold any office nor pursue any activity which is incompatible with the normal execution of his task, including any activity related directly to his function at the Office and performed independently of the latter for any purpose other than educational. In particular, a permanent employee shall not participate directly or indirectly in the preparation or filing of an application for a patent for invention or any equivalent, or in any official proceedings relating to any such application or any resulting patent, whether on his own account or on behalf of others.

(2) A permanent employee shall inform the President of the Office if his spouse is in gainful employment.

(3) Without prejudice to any disciplinary measures that may apply, any permanent employee may be required:

- to terminate within a specified period any activity which is prohibited by paragraph 1;
- to take the necessary steps for terminating within a specified period any employment exercised by his spouse where such employment is in any way connected with the Organisation and proves to be incompatible with that of the employee.

If the activity or employment in question does not cease within the specified period, the employee may be transferred to another post or his services may be terminated in accordance with Article 53."

Article 11

Article 17 of the Service Regulations shall read as follows:

"Article 17 Conflicts of interest

(1) A permanent employee or former employee shall avoid any situation in which personal interests interfere with the performance of his duties or call into question or appear to call into question the integrity, objectivity or impartiality required by his status, to the detriment of the Organisation (conflict of interest).

(2) A permanent employee shall immediately inform his line manager of any potential conflict of interest, and shall take immediate action to resolve any real or apparent conflict of interest that arises.

(3) Any permanent employee who, in the performance of his duties, is called upon to decide on a matter in which he has a conflict of interest such as to impair his independence shall inform the President of the Office.

(4) Paragraphs 2 and 3 shall not apply to members of the Boards, who in such a situation shall inform the President of the Boards of Appeal."

Article 12

Article 18 of the Service Regulations shall read as follows:

"Article 18 Election to public office

(1) A permanent employee intending to run for public office shall inform the appointing authority prior to taking up any activity with a view to becoming a candidate. The appointing authority shall decide, in the light of the interests of the Organisation, whether the permanent employee concerned:

(a) should be required to apply for unpaid leave on personal grounds for a period not exceeding three months, or

(b) should be required to apply for annual leave, or

(c) should be required to apply for authorisation to work part-time in accordance with the applicable provisions, or

(d) may continue to perform his duties as before.

(2) A permanent employee elected or appointed to public office, or holding such office at the time of taking up his duties, shall immediately inform the appointing authority. The appointing authority shall review the administrative status of any permanent employee elected to such office. The appointing authority shall, having regard to the interests of the Organisation, the importance of the office and the duties it entails for the holder, decide whether such employee should continue in active employment or should be granted unpaid leave on personal grounds. In the latter case, the duration of the leave shall be equal to the term for which the employee has been elected."

Article 13

Former Article 19 of the Service Regulations shall become Article 20a, paragraph 1 of which shall read as follows:

"(1) A permanent employee shall, after leaving the service, continue to be bound by the duty to behave with integrity and discretion, in particular as regards the acceptance of certain appointments or benefits."

Article 14

Article 19 of the Service Regulations shall read as follows:

"Article 19 Discretion

- (1) A permanent employee or former employee shall exercise the utmost discretion with regard to all facts and information coming to his knowledge in the course of or in connection with his employment.
- (2) A permanent employee or former employee shall not, without permission from the President of the Office, disclose, on any grounds whatever, information which has come to his knowledge in the course of or in connection with the performance of his duties and which has not already been made public.
- (3) Paragraph 2 shall also apply in legal proceedings. In this case, permission may be refused only where the interests of the Organisation or of a Contracting State so require. It may not, however, be refused if, in the opinion of the court, this would be likely to lead to a miscarriage of justice.
- (4) Paragraph 2 shall not apply to an employee or former employee giving evidence before the Administrative Tribunal of the International Labour Organization in a case concerning an employee or former employee of the Office."

Article 15

Former Article 24 of the Service Regulations shall become Article 20.

Article 16

Former Article 21 of the Service Regulations shall become Article 23.

Article 17

The following new Article 21 shall be added to the Service Regulations:

"Article 21 Misconduct

- (1) Any failure by a permanent employee or former employee to comply with his obligations under these Service Regulations, whether intentionally or through negligence on his part, may constitute misconduct.
- (2) A permanent employee who, in the course of or in connection with his employment, becomes aware of facts which give rise to a presumption of the existence of misconduct shall without delay inform the unit in charge of investigating allegations or indications of misconduct, and shall transmit to it any information of which he is aware from which the existence of the irregularities may be presumed.
- (3) The obligations in paragraph 2 shall not apply to any documents or information privileged under the legal framework of the Organisation; this shall not however affect the right of a permanent employee to report facts which give rise to a presumption of the existence of misconduct.
- (4) No one shall suffer any prejudicial effects as a result of having, in good faith, communicated the information referred to in paragraph 2 or of having co-operated in an investigative process. The Office shall take such measures as required to protect any such person from prejudicial effects. Retaliation against any such person constitutes misconduct as defined in paragraph 1."

Article 18

The following new Article 21a shall be added to the Service Regulations:

"Article 21a Ethics and compliance

- (1) An ethics and compliance function contributes to the promotion of integrity, ethics, and accountability throughout the Office and to preventing, detecting and addressing misconduct. It helps ensure that permanent employees conduct themselves in a manner compliant with the applicable provisions.

- (2) The facts relating to allegations or indications of misconduct shall be investigated 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. The investigation shall seek, establish and analyse all relevant evidence, inculpatory and exculpatory, with all due care and diligence.
- (3) The investigative function shall be exercised independently and free from any undue interference.
- (4) A permanent employee or former 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 or former employee shall co-operate in the investigative process, and shall provide access to all relevant records and documents pertaining to the matter under review.
- (6) A permanent employee or former employee shall make himself available for meetings with the unit in charge of investigating allegations or indications of misconduct, shall provide truthfully, and to the best of his ability and knowledge, all information which may reasonably have a bearing on the case, and answer all pertinent questions. He may, however, remain silent on grounds relating to self-incrimination or to incriminating his spouse, civil union partner, or relatives in the first degree.
- (7) If at the conclusion of the investigative process the unit in charge of investigating allegations or indications of misconduct finds that misconduct has occurred, it shall submit its report to the appointing authority of the permanent employee concerned.
- (8) The investigative process is regulated further in the Implementing Rules.
- (9) A permanent employee or former employee shall maintain the confidentiality of the investigative process in order to protect the interests of all parties and the integrity of the process."

Article 19

Former Article 25 of the Service Regulations shall become Article 22 and read as follows:

"Article 22 Reparation

- (1) Without prejudice to the right of the Organisation to seek reimbursement, reparation, damages or other relief through national authorities or courts, a permanent employee may be required to make good, in whole or in part, any damage suffered by the Organisation caused wilfully by him or as a result of serious negligence on his part in the course of or in connection with the performance of his duties. This shall not apply where the damage results from a decision of a Board of Appeal or the Enlarged Board of Appeal.
- (2) The appointing authority shall take a reasoned decision in this respect, after following the procedure laid down in regard to disciplinary matters.
- (3) A permanent employee shall continue to be bound by the obligation under paragraph 1 after leaving the service."

Article 20

Articles 23 to 32 of the Service Regulations shall be grouped together in a new Chapter 2 under Title II with the following heading:

"Chapter 2 Other rights and obligations of permanent employees"

Article 21

Former Article 23 of the Service Regulations shall become Article 25.

Article 22

Former paragraph 2 of Article 20 of the Service Regulations shall become Article 24 and read as follows:

"Article 24 Publications

A permanent employee or former 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, paragraph 1, of the Implementing Regulations to the Convention."

Article 23

Former Chapter 2 of Title II of the Service Regulations shall be renumbered Chapter 3.

Article 24

Paragraph 2(a) of Article 36 of the Service Regulations shall read as follows:

"(a) making appointments to the bodies under the Service Regulations or as requested by the President of the Office. Save for the members of the Disciplinary Committees, the Selection Boards and the Joint Committee on Articles 52 and 53, the respective appointments shall be made from among elected Staff Committee members at local or central level. By way of exception, if the Central Staff Committee, despite an invitation to do so, fails to make appointments to these bodies, the President shall take appropriate steps to ensure the necessary appointments, by calling for volunteers or drawing lots from among eligible staff members. If a staff member appointed in accordance with such exceptional procedures fails or refuses to serve on the body to which he has been appointed, the President shall replace him by drawing lots among staff members with managerial responsibilities in job groups 2 to 4."

Article 25

Subparagraph (b) of Article 50 of the Service Regulations shall read as follows:

"(b) dismissal by the appointing authority:

- (i) for professional incompetence under Article 52;
- (ii) as a result of disciplinary measures under Article 94;
- (iii) for any of the reasons set out in Article 53;
- (iv) for the reasons set out in Article 13, paragraph 4(b);"

Article 26

Article 52 of the Service Regulations shall read as follows:

"Article 52 Professional incompetence

- (1) In respect of employees for whom he is the appointing authority, the President shall define procedures to identify, deal with and remedy cases of lack of ability and efficiency in a timely and appropriate fashion.
- (2) If, after the procedures provided for in paragraph 1 have been exhausted, an employee, on the basis of consecutive appraisal reports referred to in Article 47a, still proves incompetent in the performance of his duties, he may for that reason be dismissed, classified in a lower job group with or without downgrading, or downgraded.
- (3) The President shall take such decision after consulting the Joint Committee on Articles 52 and 53, in accordance with the procedure set out in Article 53b.
- (4) The notice period in case of dismissal for incompetence shall be one month per full year of completed service, but shall not be less than three months or greater than nine. It shall commence on the first day of the month following the date of notification of the decision to dismiss the employee. It shall be increased by one month if the dismissed employee's home as defined in Article 60, paragraph 2, is in a country other than that in which he is employed. At the discretion of the appointing authority, dismissal shall take immediate effect, and compensation corresponding to the notice period shall be paid instead."

Article 27

Article 53 of the Service Regulations shall read as follows:

"Article 53 Termination of service for other reasons

- (1) The appointing authority may decide to terminate the service of a permanent employee if:
 - (a) the Contracting State of which the employee is a national ceases to be party to the Convention;
 - (b) the employee refuses to be permanently transferred to a country other than that in which he is serving;
 - (c) in the case of an employee appointed by the Administrative Council in accordance with Article 11, paragraphs 1 and 2, of the Convention, the Administrative Council so decides in the interests of the Organisation;
 - (d) as a result of his own actions, he ceases to fulfil the conditions laid down in Article 8, sub-paragraph (a) or (b); or
 - (e) in the other cases expressly provided for in these Service Regulations.
- (2) Reasoned decisions terminating the service of a permanent employee shall be taken by the appointing authority after hearing the employee concerned.
- (3) Where the appointing authority is the President of the Office, he shall take his decision to terminate the service of a permanent employee for one of the reasons provided for in paragraph 1 after consulting the Joint Committee on Articles 52 and 53 in accordance with the procedure set out in Article 53b, except in the case of Article 13 or Article 46, paragraph 6, or where service has been terminated as a result of a disciplinary measure.
- (4) The notice period in case of termination of service for one of the reasons provided for in paragraph 1 shall be one month per full year of completed service, but shall not be less than one month or greater than five. It shall commence on the first day of the month following the date of notification of the decision to terminate the employee's service. At the discretion of the appointing authority, this decision shall take immediate effect, and compensation corresponding to the notice period shall be paid instead.

(5) An employee whose service is terminated for one of the reasons set out in paragraph 1(a) to (c) shall, upon entry into force of the decision to terminate his service, be entitled to receive the indemnity for loss of job provided for in paragraph 6 unless he was employed in his national administration before his appointment by the Office and is immediately reintegrated into that administration.

(6) The loss of job indemnity shall be one month's basic salary as set out in Annex III, together with, where appropriate, the household and dependant's allowance, multiplied by a coefficient representing the number of years' and fractions of years' service at the Office. The indemnity may not be more than the remuneration payable in respect of 24 months' service or the number of months remaining before the employee reaches the age of 65. The indemnity shall be paid to the employee on the date on which he leaves the Office and shall be calculated on the basis of the remuneration rates in force on that date."

Article 28

The following new Article 53a shall be added to the Service Regulations:

"Article 53a Joint Committee on Articles 52 and 53

- (1) The Joint Committee on Articles 52 and 53 (hereinafter referred to as "the Joint Committee") shall comprise a chair and four members, unless it is enlarged in accordance with paragraph 2. The chair and members may be replaced by their alternates.
- (2) In cases involving an employee in job group 4, 5 or 6, the Joint Committee shall be enlarged by two additional members in active employment in the same job group as the employee concerned.
- (3) The President shall appoint to the Joint Committee the chair and alternate, from among employees in active employment in job group 2 appointed by the President.
- (4) Members and alternates shall be appointed as follows, from among the employees in active employment appointed by the President:
 - (a) from job group 2 in respect of cases concerning employees in job group 2;
 - (b) from job group 2 or 3 in respect of cases concerning employees in job groups 3 to 6.
- (5) The provisions of Article 98, paragraphs 3 to 6, shall apply *mutatis mutandis*."

Article 29

The following new Article 53b shall be added to the Service Regulations:

**"Article 53b
Procedure before the Joint Committee**

- (1) The provisions of Article 98a, Article 99, Article 101 paragraphs 1 to 4 and paragraph 6, and Article 102, paragraphs 1 and 3 shall apply *mutatis mutandis* to the procedure before the Joint Committee.
- (2) The Joint Committee shall, within two months of the date of receipt of the report of the President that initiated the proceedings, transmit its reasoned opinion to the President and to the employee concerned.
- (3) The reasoned opinion of the Joint Committee shall state the measure which it considers appropriate in the light of the facts established.
- (4) The President shall take a reasoned decision within two months of the date of receipt of the Joint Committee's opinion, after hearing the employee concerned. The decision shall indicate the date on which it takes effect."

Article 30

Chapter 4 of Title IV of the Service Regulations shall be renamed as follows:

**"Chapter 4
Unauthorised absence and non-fulfilment of duties"**

Article 31

The following new Article 63a shall be added to the Service Regulations:

"Article 63a Failure or refusal to perform assigned duties

- (1) Where a permanent employee fails or refuses to fulfil his duties under the Convention, its Implementing Regulations, or these Service Regulations, the appointing authority may request in writing that the employee carry out these duties.
- (2) The appointing authority may withhold the salary of a permanent employee if the employee fails or refuses to comply with the written request of the appointing authority under paragraph 1, or with an order confirmed in writing by the immediate superior in accordance with Article 20, paragraph 2. The salary withheld shall be the twentieth part of the employee's basic salary for every day of non-compliance since the date of the written request or order, until such time as the permanent employee fully complies with it.
- (3) A decision of the appointing authority under paragraph 2 taken against an employee shall be recorded in his personal file.
- (4) Application of paragraphs 1 to 3 shall be without prejudice to any disciplinary measures that may apply."

Article 32

Article 93 of the Service Regulations shall read as follows:

"Article 93 Conduct liable to disciplinary measures

- (1) Any misconduct by a permanent employee or former employee as defined in Article 21 paragraph 1 may make him liable to disciplinary action.

- (2) Where the appointing authority becomes aware of evidence or indications of misconduct it may:
- (a) refer the matter to the unit in charge of investigating allegations or indications of misconduct;
 - (b) decide that no case can be made against the employee;
 - (c) decide, even if there is or appears to have been a failure to comply with obligations, that no disciplinary measure shall be taken and, if appropriate, address a caution to the employee;
 - (d) impose a disciplinary measure provided for in Article 94 paragraph 1(a) or (b); or
 - (e) initiate disciplinary proceedings before the Disciplinary Committee."

Article 33

Article 94 of the Service Regulations shall read as follows:

**"Article 94
Disciplinary measures**

- (1) The appointing authority may impose one of the following disciplinary measures on permanent employees and former employees:
- (a) a written warning;
 - (b) a reprimand;
 - (c) deferment of step advancement or promotion for a period of between one and 23 months;
 - (d) relegation in step;

- (e) temporary downgrading for a period of between 15 days and one year;
 - (f) downgrading in the same job group;
 - (g) classification in a lower job group, with or without downgrading;
 - (h) dismissal and/or a reduction in the amount of the severance grant under Article 11 of the Pension Scheme Regulations or of the retirement pension or of the retirement pension for health reasons and, where applicable, of the portion of remuneration owed as a result of participation in the salary savings plan. Any such reduction shall not be more than one third of the sum in question and, as applied to the pension, shall not make its amount less than the minimum laid down in Article 10, paragraph 3, of the Pension Scheme Regulations.
- (2) A single case of misconduct shall not give rise to more than one disciplinary measure.
- (3) No disciplinary measure may be taken unless the employee concerned has been informed of the charges made against him and has had the opportunity to state his case, orally or in writing. The employee may be represented by a person of his choice."

Article 34

The following new Article 94a shall be added to the Service Regulations:

"Article 94a Proportionality of the disciplinary measure

- (1) The disciplinary measure imposed shall be proportionate to the seriousness of the misconduct.
- (2) To determine the seriousness of the misconduct and to decide upon the disciplinary measure to be imposed, account shall be taken in particular of:

- (a) the nature of the misconduct and the circumstances in which it occurred,
- (b) the extent to which the misconduct adversely affects the integrity, reputation or interests of the Organisation,
- (c) the extent to which the misconduct involves intentional actions or negligence,
- (d) the motives for the employee's misconduct,
- (e) the employee's grade and seniority,
- (f) the degree of the employee's personal responsibility,
- (g) the level of the employee's duties and responsibilities,
- (h) whether the misconduct involves repeated action or behaviour,
- (i) the conduct of the employee throughout the course of his career."

Article 35

Former Article 96 of the Service Regulations shall become Article 94b and read as follows:

"Article 94b Reference in personal file

- (1) Any disciplinary measure taken against an employee or former employee shall be recorded in his personal file.
- (2) An employee or former employee against whom a disciplinary measure other than dismissal has been taken may, after three years in the case of a written warning or reprimand or after six years in the case of any other measure, submit a request for the deletion from his personal file of all reference to such measure. The appointing authority may grant this request if the circumstances so justify."

Article 36

Former Article 105 of the Service Regulations shall become Article 95 and read as follows:

**"Article 95
Reopening of proceedings**

Where new facts supported by relevant evidence come to light, disciplinary proceedings may be reopened by the appointing authority on its own initiative or on application by the employee or former employee concerned."

Article 37

Former Article 104 of the Service Regulations shall become Article 95a and read as follows:

**"Article 95a
Costs**

Costs incurred on the initiative of an employee or former employee concerned in the course of disciplinary proceedings, and in particular fees paid to a person chosen to assist the employee or for his defence, shall be borne by the employee where the disciplinary proceedings result in the imposition of one of the measures provided for in Article 94."

Article 38

The following new Article 96 shall be added to the Service Regulations:

**"Article 96
Reparation of damage**

If no case has been made against the employee or former employee, he may request that the damage suffered be made good by giving appropriate publicity to the decision of the appointing authority."

Article 39

Chapter 2 of Title VII of the Service Regulations shall be renamed as follows:

**"Chapter 2
Disciplinary Committees"**

Article 40

Article 97 of the Service Regulations shall read as follows:

**"Article 97
Remit of the Disciplinary Committees**

- (1) Before imposing any of the measures listed under Article 94, paragraphs 1(c) to (h), the appointing authority must refer the matter to a Disciplinary Committee for a reasoned opinion, in accordance with the procedure set out in Chapter 3 of this Title.
- (2) The Disciplinary Committee shall:
 - (a) establish whether misconduct has occurred, having regard to the submissions of the parties;
 - (b) if it is satisfied that misconduct has occurred, determine its seriousness, taking into account Article 94a and, where applicable, Article 100; and
 - (c) deliver a reasoned opinion to the appointing authority in accordance with Article 102."

Article 41

The following new Article 97a shall be added to the Service Regulations:

**"Article 97a
Composition of the Disciplinary Committees**

- (1) Disciplinary Committees shall be established:
 - (a) by the Administrative Council in respect of procedures against senior employees for whom the Administrative Council is the appointing authority; and
 - (b) by the President in respect of all other employees.

- (2) The Disciplinary Committee shall consist of a chair and four members, unless it is enlarged in accordance with paragraph 3. The chair and members may be replaced by alternates.
- (3) In cases involving an employee or former employee in job group 4, 5 or 6, the Disciplinary Committee shall be enlarged by two additional members in active employment in the same job group as the employee subject to disciplinary proceedings.
- (4) The Disciplinary Committee as established under paragraph 1(b) shall be composed:
- (a) of a chair and an alternate chair who possess the qualifications required for appointment to high judicial office or who are lawyers with experience in the area of disciplinary law acquired at national or international level, and who are not Office employees in active employment and have not been Office employees within the past ten years; and
- (b) of members and alternates appointed as follows, from among the employees in active employment appointed by the President:
- (i) from job group 2 in respect of cases concerning employees in job group 2;
- (ii) from job group 2 or 3 in respect of cases concerning employees in job groups 3 to 6."

Article 42

Article 98 of the Service Regulations shall read as follows:

"Article 98 Appointment of the Disciplinary Committees

- (1) The chair and alternate chair shall be appointed to the Disciplinary Committee by the appointing authority of the employee or former employee concerned.
- (2) The four members of the Disciplinary Committee as established under Article 97a, paragraph 1(a), shall be appointed by the Administrative Council.

(3) For the Disciplinary Committee as established under Article 97a, paragraph 1(b), the President and the Central Staff Committee shall each appoint two members and at least two alternates.

(4) The chair, the members and the alternates of the Disciplinary Committee as established under Article 97a, paragraph 1(b), shall be appointed for a period of three years. However, the appointing authority may provide for a shorter period for members and their alternates, subject to a minimum of one year.

(5) The two members of the Disciplinary Committee as enlarged in accordance with Article 97a, paragraph 3, shall be appointed in the following manner:

(a) the President shall draw up a list containing, if possible, the names of two or more employees in each job group. The Central Staff Committee shall submit to the President a list drawn up on the same basis;

(b) within ten calendar days of the notification of the report in accordance with Article 99, the chair of the Disciplinary Committee, in the presence of the person concerned, shall draw by lot from the above-mentioned lists the names of the two additional members, one member being drawn from each list. The chair may decide that the secretary appointed under Article 98a, paragraph 1, is to replace him in this procedure. The chair shall notify the employee concerned and the individual members of the Disciplinary Committee of its complete composition.

(6) Within five calendar days of the Disciplinary Committee's establishment, the parties may make a reasoned objection in respect of any of its members, but not of the chair. Within the same time limit, the chair and any members may ask to be excused from duty for legitimate reasons and shall withdraw if a conflict of interests exists. The chair shall decide on the appropriate action in respect of any objection or excuse made. Any vacancies arising shall be filled in accordance with the procedure laid down in the present article."

Article 43

The following new Article 98a shall be added to the Service Regulations:

"Article 98a Functioning of the Disciplinary Committee

(1) The Disciplinary Committee shall be assisted by a secretary appointed by the appointing authority.

(2) The chair and members of the Disciplinary Committee shall be completely independent in the performance of their duties.

- (3) The deliberations and proceedings of the Disciplinary Committee shall be secret.
- (4) The chair of the Disciplinary Committee shall not vote on matters before it, except as regards matters of procedure or where votes are tied.
- (5) The chair shall ensure that the procedural decisions of the Disciplinary Committee are implemented and shall bring all information and documents relating to the case to the attention of each of its members.
- (6) The secretary shall draw up minutes of meetings of the Disciplinary Committee. Witnesses shall sign the minutes recording their evidence."

Article 44

Chapter 3 of Title VII of the Service Regulations shall henceforth commence with Article 99 and be renamed as follows:

"Chapter 3 Disciplinary proceedings before the Disciplinary Committee"

Article 45

Former Article 100 of the Service Regulations shall become Article 99 and read as follows:

"Article 99 Statement of facts and defence

- (1) The appointing authority shall submit a report to the Disciplinary Committee, stating clearly the facts complained of and, where appropriate, the circumstances in which they arose, including any aggravating or extenuating circumstances.
- (2) The report shall be communicated to the employee or former employee concerned and to the chair of the Disciplinary Committee, who shall bring it to the attention of its members.
- (3) On receipt of the report, the employee or former employee concerned shall have the right to obtain his complete personal file and take copies of all documents relevant to the proceedings, including exonerating evidence.

(4) The employee or former employee concerned shall have not less than 15 calendar days from the date of receipt of the report initiating the disciplinary proceedings to prepare a defence.

(5) The employee or former employee concerned may be assisted by a person of his choice."

Article 46

The following new Article 100 shall be added to the Service Regulations:

"Article 100 Acknowledgement of misconduct

(1) If, in the presence of the chair of the Disciplinary Committee, the employee or former employee concerned acknowledges misconduct on his part and accepts unreservedly the report referred to in Article 99, the appointing authority may, in accordance with the principle of proportionality between the misconduct and the measure being considered, withdraw the case from the Disciplinary Committee.

(2) Where a case is thus withdrawn, the chair shall deliver an opinion on the measure considered. Under this procedure the appointing authority may, in addition to the considerations under Article 94a, paragraph 2, take the employee's or former employee's acknowledgement into account as a mitigating factor for the final disciplinary measure.

(3) The employee or former employee concerned shall be informed before acknowledging his misconduct of the possible consequences of such acknowledgement."

Article 47

Article 101 of the Service Regulations shall read as follows:

"Article 101 Examination of the case and hearing

(1) Before the first meeting of the Disciplinary Committee, the chair shall give one of its members the task of preparing a general report on the matter and shall inform the other members accordingly.

- (2) The employee or former employee concerned shall be heard by the Disciplinary Committee; at the hearing, he may submit observations in writing or orally, whether in person or through a representative.
- (3) The parties may propose witnesses. The Disciplinary Committee shall hear only such witnesses as it considers relevant.
- (4) The appointing authority shall be represented before the Disciplinary Committee by employees and/or representatives mandated to this effect.
- (5) The unit in charge of investigating allegations or indications of misconduct shall assist in such proceedings where necessary and shall provide any required additional information and clarification. The Disciplinary Committee may hear investigators in cases where the unit conducted an investigation. They shall be heard as experts.
- (6) If the Disciplinary Committee requires further information concerning the facts complained of or the circumstances in which they arose, it may order an inquiry in which each side can submit its case and reply to the case of the other side."

Article 48

Article 102 of the Service Regulations shall read as follows:

"Article 102 Reasoned opinion

- (1) After consideration of documents submitted and having regard to any statement made orally or in writing and to the results of any inquiry undertaken, the Disciplinary Committee shall, by majority vote, deliver a reasoned opinion.
- (2) The opinion shall set out:
 - (a) the Disciplinary Committee's findings as to whether misconduct has occurred;
 - (b) the Disciplinary Committee's determinations regarding the seriousness of the misconduct, if established, taking into account Article 94a and, where applicable, Article 100; and
 - (c) the Disciplinary Committee's recommendation as to any disciplinary measure to which those facts should give rise, having due regard to the full range of disciplinary measures provided for in Article 94.

- (3) The opinion shall be signed by the chair of the Disciplinary Committee.
- (4) The Disciplinary Committee shall transmit the opinion to the appointing authority and to the employee concerned within two months of the date of receipt of the report of the appointing authority under Article 99, provided that this time limit is commensurate with the complexity of the case. Where an inquiry has been held at the Disciplinary Committee's initiative, the period shall be four months, provided that this is commensurate with the complexity of the case."

Article 49

The following new Article 103 shall be added to the Service Regulations:

**"Article 103
Decisions**

The appointing authority shall take its reasoned decision as provided for in Articles 94 and 94a within two months of receipt of the opinion of the Disciplinary Committee."

Article 50

Articles 104 and 105 of the Service Regulations shall be grouped together in a new Chapter 4 under Title VII with the following heading:

**"Chapter 4
Suspension and parallel criminal proceedings"**

Article 51

The following new Article 104 shall be added to the Service Regulations:

**"Article 104
Suspension**

- (1) If the appointing authority charges an employee with serious misconduct, whether through a failure to honour his professional obligations or through an infringement of the applicable law, it may immediately suspend him for a specified period.

(2) The decision suspending an employee shall state whether the employee is to continue to receive his full remuneration during the period of suspension or what part thereof is to be withheld. The part withheld shall not be more than half the employee's basic salary.

(3) The situation of a suspended employee must be definitively settled by a final decision of the appointing authority within the following period, as from the date on which the suspension takes effect:

(a) six months for those employees whose appointing authority is the President;

(b) twenty-four months for those employees whose appointing authority is the Administrative Council.

If no such decision is taken within the respective period, the employee concerned shall be entitled to receive full remuneration again.

The period for both groups of staff may be extended in exceptional circumstances beyond the respective limits, in particular in case of criminal proceedings within the meaning of Article 105.

(4) Sums withheld under paragraph 2 shall be repaid to the employee if the final decision imposes a disciplinary measure no more severe than a written warning, reprimand or deferment of step advancement or promotion, or if no disciplinary measure is imposed.

Article 52

Former paragraph 5 of Article 95 of the Service Regulations shall become Article 105 and read as follows:

"Article 105 Parallel criminal proceedings

Where the employee is subject to criminal proceedings for the same conduct that gave rise to proceedings under this Title, a final decision shall be taken only after the verdict of the court hearing the case has become final."

Article 53

Paragraph 2 of Article 107 of the Service Regulations shall read as follows:

"(2) The competent appointing authority shall take an individual decision within two months. Where the competent authority is the President of the Office, this period shall start to run on the date of receipt of the request. Where the competent authority is the Administrative Council, this period shall begin on the date on which the request was submitted to the first meeting of the Council after its receipt, taking due account of any specific provisions applicable for the submission of documents to the Council laid down in Article 9 of the Rules of Procedure of the Administrative Council."

Article 54

Article 108 of the Service Regulations shall read as follows:

"Article 108 Procedures for the settlement of disputes

- (1) Any person to whom Article 106 or 107 applies may challenge an individual decision adversely affecting him, or an implied decision of rejection as defined in Article 107, paragraph 3:
- (a) through the review procedure;
 - (b) through the internal appeal procedure;
 - (c) by filing a complaint with the Administrative Tribunal of the International Labour Organization.
- (2) The challenging of the individual decision shall not suspend its execution.
- (3) As a matter of principle, regulatory decisions are not directly challengeable.
- (4) The detailed conditions relating to each of the three consecutive procedures referred to in paragraph 1 are laid down in Articles 109 to 113 and in the Implementing Rules thereto."

Article 55

Paragraphs 2, 3 and 6 of Article 109 of the Service Regulations shall read as follows:

"(2) It shall be submitted within a period of three months to the appointing authority which took the individual decision challenged. This period shall start to run on the date of publication, display or notification of the individual decision challenged. Where the request for review is against an implied decision of rejection within the meaning of Article 107, paragraph 3, it shall start to run on the date of expiry of the period for reply.

(3) Appraisal reports referred to in Article 47a shall be excluded from the review procedure.

[...]

(6) Where the competent authority is the Administrative Council, the decision on the outcome of the review shall be taken within two months as from the date on which the request was submitted to the first meeting of the Council after its receipt, taking due account of any specific provisions applicable for the submission of documents to the Council laid down in Article 9 of the Rules of Procedure of the Administrative Council."

Article 56

Paragraphs 1, 2 and 4 of Article 110 of the Service Regulations shall read as follows:

"Article 110 Internal appeal procedure

(1) An internal appeal shall be lodged within a period of three months, through the Appeals Committee, with the appointing authority which took the individual decision challenged. The period of three months shall start to run on the date of publication, display or notification of the individual decision challenged. Where the internal appeal is against an implied decision of rejection within the meaning of Article 107, paragraph 3, or Article 109, paragraph 7, it shall start to run on the date of expiry of the period for reply.

- (2) The following individual decisions are excluded from the internal appeal procedure:
- (a) individual decisions taken on requests to carry on working after reaching the age of sixty-five under Article 54, paragraph 1;
 - (b) individual decisions taken after consultation of the Disciplinary Committee in accordance with Article 103;
 - (c) individual decisions taken after consultation of the Joint Committee in accordance with Article 53b, paragraph 4;
 - (d) individual decisions taken on requests to perform duties at a location other than the Office's premises pursuant to Article 55a and any implementing instructions thereto;
 - (e) appraisal reports referred to in Article 47a.

[...]

(4) After receipt of the Appeals Committee's reasoned opinion, the competent appointing authority shall take a final decision on the appeal, of which the appellant shall receive a copy. The appointing authority shall in general follow the opinion of the Appeals Committee. If the appointing authority decides not to follow the opinion it shall set out in writing the reasons for deviating from the opinion."

Article 57

Article 111 of the Service Regulations shall read as follows:

"Article 111 Composition of the Appeals Committee

- (1) When dealing with appeals against individual decisions taken by the Administrative Council as the competent appointing authority, the Appeals Committee shall consist of:
- (a) a chair and two vice-chairs appointed by the Administrative Council,
 - (b) four members appointed by the Administrative Council; and
 - (c) four members appointed by the Central Staff Committee from among elected Staff Committee members at local or central level in active employment.

(2) When dealing with appeals against any other individual decision, the Appeals Committee shall consist of:

(a) a chair and two vice-chairs appointed by the President;

(b) four members appointed by the President among employees in active employment; and

(c) four members appointed by the Central Staff Committee from among elected Staff Committee members at local or central level in active employment.

(3) The chairs and vice-chairs shall possess the qualifications required for appointment to high judicial office or be lawyers with experience in the area of employment law acquired at national or international level, who are not Office employees in active employment and have not been Office employees within the past ten years.

(4) For each session, the Appeals Committee shall form, in accordance with its Rules of Procedure, one or multiple chambers, each composed of:

(a) a chair or a vice-chair serving as a presiding member appointed pursuant to paragraph 1(a) or 2(a);

(b) one member appointed pursuant to paragraph 1(b) or 2(b); and

(c) one member appointed pursuant to paragraph 1(c) or 2(c).

(5) A chair may decide to form an enlarged chamber consisting of the chair, two members appointed pursuant to paragraph 1(b) or 2(b), and two members appointed pursuant to paragraph 1(c) or 2(c). A vice-chair shall take part in the proceedings of the enlarged chamber only if the chair is not able to act.

(6) The Appeals Committee shall act in the same composition throughout the proceedings, except in justified cases.

(7) The chairs and vice-chairs shall be appointed for a renewable term of three years. The term of office of members shall be two years and they may be reappointed.

(8) The President of the Office shall provide the staff necessary for the Appeals Committee to carry out its functions. Such staff, together with the chairs, vice-chairs and members of the Committee, shall be bound to secrecy."

Article 58

The following new Article 111a shall be added to the Service Regulations:

"Article 111a Functioning of the Appeals Committee

- (1) The chair or presiding member of the chamber dealing with the appeal shall take any procedural decisions, including on the application of the summary procedure pursuant to Article 9 of the Implementing Rules.
- (2) Subject to Articles 106 to 113 and their Implementing Rules, the Appeals Committee shall establish its own Rules of Procedure, which shall be subject to approval by the competent appointing authority."

Article 59

Article 112 of the Service Regulations shall read as follows:

"Article 112 Independence and impartiality of the Appeals Committee

- (1) The chair, vice-chair and members of the Appeals Committee shall act independently and impartially in the execution of their task. They shall neither seek nor accept any instructions.
- (2) The chair, vice-chair and members of the Appeals Committee shall not take part in a case in which they have a potential conflict of interest, notably if they have a personal interest in the case, if they have previously been involved as representatives of one of the parties, or if they participated in preparing the decision under appeal.
- (3) The chair and vice-chairs shall decide whether a conflict of interest exists. If the conflict of interest concerns the chair or a vice-chair, that person shall not take part in the decision."

Article 60

Article 113 of the Service Regulations shall read as follows:

"Article 113

Complaints to the Administrative Tribunal of the International Labour Organization

- (1) A complaint may be filed with the Administrative Tribunal of the International Labour Organization in accordance with the conditions set forth in the Statute and Rules of the Tribunal.
- (2) A complaint may be filed with the Tribunal only when the individual decision contested is final and all internal means of redress are either excluded or otherwise exhausted.
- (3) A complaint may be not be filed with the Tribunal if the appeal has been closed in accordance with the amicable settlement procedure provided for in the Implementing Rules for Articles 106 to 113."

II. Amendments to the Implementing Rules

Article 61

Article 1 of the Implementing Rules shall read as follows:

"Article 1 Acknowledgement of receipt

The person requesting an individual decision to be taken shall be informed of the date of receipt of his request."

Article 62

Paragraph 1 of Article 2 of the Implementing Rules shall read as follows:

"(1) The request for review shall be dated and submitted in writing in one of the three official languages of the Office. It shall identify the individual decision challenged."

Article 63

Article 3 of the Implementing Rules shall read as follows:

"Article 3 Procedure

(1) Only employees who, by virtue of the duties they perform, legitimately need to be involved may take part in the review. The person requesting the review of an individual decision may be assisted by an employee of his choice throughout the review procedure. All such persons shall be bound to secrecy.

(2) For individual decisions taken by the President of the Office, he shall ensure that the individual decision challenged is reviewed at the appropriate level within the same hierarchical line as that from which the individual decision originates. Such level shall at the minimum be job group 3.

(3) For individual decisions taken by the Administrative Council, Article 18 of its Rules of Procedure shall apply."

Article 64

Paragraphs 1 and 3 of Article 4 of the Implementing Rules shall read as follows:

"(1) The internal appeal shall be lodged in electronic form in one of the three official languages of the Office.

[...]

(3) The internal appeal shall identify the individual decision challenged and include:

(a) a summary of the grounds for appeal;

(b) the relief claimed."

Article 65

Articles 5 and 6 of the Implementing Rules shall be deleted.

Article 66

Former Article 7 of the Implementing Rules shall become Article 5 and read as follows:

"Article 5 Registration of the internal appeal

- (1) Upon receipt of an internal appeal, the Appeals Committee shall inform the competent appointing authority without delay.
- (2) The Appeals Committee shall register the internal appeal under an appeal number and inform the appellant accordingly within one month from the date of receipt of the appeal.
- (3) Upon filing an appeal, the appellant shall pay a registration fee of EUR 200, which the Appeals Committee may recommend be refunded, in part or in full, if the appeal is successful."

Article 67

The following new Article 6 shall be added to the Implementing Rules:

"Article 6 Amicable settlement

- (1) Once the appeal has been registered, the chair or presiding member of the chamber dealing with the appeal may invite the parties to seek an amicable settlement of the matter giving rise to the appeal.
- (2) The chair or presiding member of the chamber dealing with the appeal shall encourage and actively facilitate an amicable settlement. He may also act as a mediator.
- (3) The proceedings before the Appeals Committee may be suspended for a limited time period during the settlement process.

- (4) The settlement discussions shall be confidential and without prejudice to the parties' arguments in the contentious proceedings. No written or oral communication and no offer or concession made in the framework of the attempt to secure a settlement may be referred to or relied on in the contentious proceedings.
- (5) If the parties have agreed to a settlement, the settlement is binding on both parties and the appeal shall be regarded as closed.
- (6) The Appeals Committee remains competent to deal with claims for the validity, application or execution of a settlement and may make recommendations to the competent appointing authority that further internal means of redress are excluded for a challenge of the settlement."

Article 68

Former Article 8 of the Implementing Rules shall become Article 7 and read as follows:

"Article 7 Internal appeal procedure

- (1) The procedure before the Appeals Committee shall be governed by fair-trial principles, including the right to be heard within a reasonable time.
- (2) Only those persons who, by virtue of the duties they perform, legitimately need to be involved may take part in the internal appeal procedure. Such persons shall be bound to secrecy.
- (3) The Appeals Committee may at any time request from either party any information which it deems necessary and appropriate for the examination of the case.
- (4) It shall in particular invite the parties to file their observations and may set time limits for doing so. The number of submissions shall be limited to two for each party, including the internal appeal. The chair or presiding member of the chamber dealing with the appeal may, of his own motion or on the application of either party, order the submission of a further written statement and set the time limit for such submission.

- (5) The parties shall be informed of any document or new fact presented during the proceedings.
- (6) The parties may be represented or assisted by persons of their choice.
- (7) The Committee's proceedings shall take place in camera.
- (8) If a document introduced into the proceedings is available only in a language which is not one of the three official languages, the appellant may submit a reasoned request for its translation into one of those languages. The chair or presiding member of the chamber dealing with the appeal shall decide on such requests.
- (9) Any costs incurred by the appellant in the course of the appeal proceedings, in particular fees payable to a person chosen from outside the Organisation to represent or assist him, shall be borne by him, unless the competent appointing authority decides otherwise."

Article 69

The following new Article 8 shall be added to the Implementing Rules:

"Article 8 Hearings

- (1) The chair or presiding member of the chamber dealing with the appeal may decide to hold hearings, for example at the request of a party. In particular, the Appeals Committee may hold a hearing where the written documentation is not sufficient or where a hearing might be decisive for forming an opinion.
- (2) The parties have a right to propose witnesses. The Appeals Committee may hear such witnesses as it considers necessary.
- (3) Participants in a hearing may use any of the three official languages of the Office."

Article 70

Paragraphs 1 and 2 of Article 9 of the Implementing Rules shall read as follows:

"(1) If the Appeals Committee considers an appeal to be manifestly irreceivable or manifestly unfounded, it may decide to apply a summary procedure without any hearing. Such decision shall be adopted by a majority.

(2) An internal appeal may be considered to be manifestly irreceivable *inter alia* if it:

(a) is not submitted by a person referred to in Article 106, paragraph 1, of the Service Regulations or rightful claimant on his behalf;

(b) does not challenge an individual decision within the meaning of Article 108 of the Service Regulations;

(c) is submitted outside the time limits foreseen in Article 110, paragraph 1, of the Service Regulations;

(d) challenges a decision having the authority of res judicata or a final decision within the meaning of Article 110, paragraph 4, of the Service Regulations;

(e) challenges an individual decision which should have been subject to the review procedure pursuant to Article 109, paragraph 1, of the Service Regulations;

(f) challenges a decision which cannot be challenged through the internal appeal procedure pursuant to Article 110, paragraph 2, of the Service Regulations."

Article 71

The following new Article 9a shall be added to the Implementing Rules:

"Article 9a Abusive internal appeals

Where the Appeals Committee determines that a party has manifestly abused the proceedings before it, it may recommend to the competent appointing authority to award procedural costs and/or damages against that party."

Article 72

The following new Article 9b shall be added to the Implementing Rules:

"Article 9b Test-case procedure

- (1) The chair or presiding member of the chamber dealing with the appeal may, of his own motion or at the request of a party and in accordance with the Rules of Procedure of the Appeals Committee, initiate a test-case procedure.
- (2) Before initiating a test-case procedure, the Appeals Committee shall first seek the views of the parties on the suitability of processing the appeal in accordance with that procedure.
- (3) The opinion adopted by the Appeals Committee at the end of the test-case procedure shall constitute its opinion pursuant to Article 13 and shall apply to every appeal in which a similar issue has been raised.
- (4) Information about the initiation of a test-case procedure and the adoption of the resulting opinion shall be published by the Appeals Committee."

Article 73

Article 10 of the Implementing Rules shall read as follows:

"Article 10 Consolidation of internal appeals

The chair or presiding member of the chamber dealing with the appeal may decide to:

- (a) consolidate several appeals filed by different appellants concerning the same subject-matter and deal with them in a single hearing and opinion;
- (b) consolidate several appeals filed by the same appellant and deal with them in a single hearing and in a single opinion."

Article 74

Article 11 of the Implementing Rules shall read as follows:

"Article 11 Suspension of internal appeal proceedings

- (1) Either party may at any time submit a written and reasoned request for the suspension of the internal appeal proceedings. The other party must be given the opportunity to comment on such a request.
- (2) The chair or presiding member of the chamber dealing with the appeal shall decide on the request, in the light of the reasons given in the request and any comments received from the other party."

Article 75

Paragraphs 2 and 3 of Article 13 of the Implementing Rules shall be amended and shall read as follows:

- "(2) The opinion of the Appeals Committee shall be adopted by a majority, and shall be signed by the chair or presiding member of the chamber dealing with the appeal.
- (3) When the Appeals Committee sits in an enlarged composition pursuant to Article 111, paragraph 5, of the Service Regulations, the chair or presiding member of the chamber dealing with the appeal shall not have the right to vote save on procedural questions or in case of equality of votes."

Article 76

The heading of Article 14 of the Implementing Rules shall read as follows:

"Article 14 Final decision at the conclusion of internal appeal proceedings"

III. New Implementing Rules for Articles 21, 21a and 93, paragraph 2, of the Service Regulations for permanent employees of the European Patent Office

Article 77

The Implementing Rules for Articles 21, 21a and 93, paragraph 2, of the Service Regulations for permanent employees of the European Patent Office included in Annex 1 to this decision are adopted.

IV. Amendments to other regulations

Article 78

Article 12 of the conditions for employment of contract staff of the European Patent Office shall read as follows:

"Article 12 Disciplinary measures

Any failure by a contract staff member to comply with his obligations under these conditions of employment may make him liable to disciplinary action. Title VII of the Service Regulations shall apply *mutatis mutandis*."

Article 79

Paragraph 1 of Article 12 of the specimen contract concerning the appointment of vice-presidents shall read as follows:

"(1) Mr (Ms)..... hereby declares that he (she) has no other commitment, and is not bound by any other agreement, ban or restriction of any kind, that would prevent him (her) from exercising his (her) functions as Vice-President of the European Patent Office in full, with due regard to the obligations stipulated in Chapter 1 of Title II of the Service Regulations."

Article 80

Paragraph 2 of Article 5 of the regulation on the appointment and conditions of employment of members of the Enlarged Board of Appeal appointed under Article 11, paragraph 5, of the European Patent Convention shall read as follows:

"(2) Article 14, Article 14a, paragraph 1, Article 14b, Article 16, paragraph 1, Article 17, Article 19, paragraphs 1 and 3, and Article 28 of the Service Regulations shall apply *mutatis mutandis* to a member of the Enlarged Board. Article 15 of the Service Regulations shall apply, with the proviso that the member shall give the solemn undertaking in writing."

Article 81

Subparagraph (ii) of Article 11 of the Pension Scheme Regulations of the European Patent Office shall read as follows:

"(ii) a severance grant equal to one month and a half of his last salary multiplied by the number of reckonable years of service credited within the meaning of Article 6, without prejudice to the reduction provided for in Article 94, paragraph 1(h), of the Service Regulations for permanent employees of the Office; [...]"

Article 82

Subparagraph (ii) of Article 11 of the New Pension Scheme Regulations of the European Patent Office shall read as follows:

"(ii) a severance grant equal to one month and a half of the salary mentioned in Article 10, paragraph 1, multiplied by the number of reckonable years of service credited within the meaning of Article 6, without prejudice to the reduction provided for in Article 94, paragraph 1(h), of the Service Regulations; [...]"

V. Entry into force and transitional provisions

Article 83

(1) The Disciplinary Committee established pursuant to the provisions applicable prior to 1 July 2017 ("Former Disciplinary Committee") shall deal with any cases submitted to it prior to 1 July 2017 or before the Disciplinary Committee established pursuant to Article 98 of the Service Regulations as amended by the present decision ("New Disciplinary Committee") is operational, but no later than 31 December 2017. During this transitional period, the Former Disciplinary Committee shall continue to apply the disciplinary procedure in force prior to 1 July 2017.

(2) Professional incompetence procedures for which the proposal under Article 52, paragraph 2, of the Service Regulations applicable prior to 1 July 2017 has been submitted to the competent committee on or before 30 June 2017 shall continue to be dealt with following the procedure applicable prior to 1 July 2017 and by the committee thereby convened.

(3) The New Disciplinary Committee shall be deemed operational when its chair has been appointed in accordance with Article 98 of the Service Regulations as amended by the present decision and has taken up his functions.

Article 84

(1) The Appeals Committee established pursuant to the provisions applicable prior to 1 July 2017 ("Former Appeals Committee") shall continue to function in its current composition until the Appeals Committee established pursuant to Article 111 of the Service Regulations as amended by the present decision ("New Appeals Committee") is operational. During this transitional period, the Former Appeals Committee shall continue to apply the appeals procedure in force prior to 1 July 2017.

(2) Irrespective of when the New Appeals Committee becomes operational, the Former Appeals Committee shall continue to deal in its current composition with any appeals on which it has already deliberated. Such appeals shall be dealt with in accordance with the appeals procedure in force prior to 1 July 2017.

(3) All other internal appeals shall be dealt with by the New Appeals Committee and in accordance with the appeals procedure introduced by the present decision.

(4) The Former Appeals Committee shall be dissolved once it has delivered its last opinion.

(5) The New Appeals Committee shall be deemed operational when its chair has been appointed in accordance with Article 111 of the Service Regulations as amended by the present decision and has taken up his functions.

Article 85

The President of the Office shall take appropriate measures to ensure a smooth transition to the new system. He shall in particular review the remainder of the regulatory framework of the Office and make such changes as are necessary as a result of the present decision, in particular corrections of references to provisions amended by the present decision.

Article 86

This decision shall enter into force on 1 July 2017.

Done at Munich, [date of decision]

For the Administrative Council
The Chairman

Jesper KONGSTAD

**IMPLEMENTING RULES FOR ARTICLES 21, 21A AND 93, PARAGRAPH 2, OF THE
SERVICE REGULATIONS FOR PERMANENT EMPLOYEES OF THE EUROPEAN
PATENT OFFICE**

COMPLIANCE AND ACCOUNTABILITY

Part I – Introduction

The European Patent Office (hereinafter referred to as "the Office") is committed to developing and fostering a culture of integrity, ethics, and accountability, and to preventing, detecting and addressing misconduct and abuse.

The Office ensures compliance with its rules through an Ethics and Compliance function which maintains and upholds the Office's compliance programme and Code of Conduct, providing outreach to all stakeholders, and raising their awareness on matters relating to integrity. This function provides secure, reliable and accessible means for submitting allegations or indications of fraud, harassment, and other misconduct, and proactively addresses risks of fraud, corruption, abuse and other non-compliance.

All employees of the Office are responsible for their conduct in the performance of their duties, in accordance with the provisions of the Service Regulations and in the spirit of the values of the Organisation as embedded in the Code of Conduct. Former employees continue to be bound by these principles and by specific obligations, as provided for in the Service Regulations. Other persons undertaking work in or on behalf of the Office are bound to similar standards by their contractual obligations.

In cases of possible misconduct, an investigative process may be carried out to establish the underlying facts on the basis of which the appointing authority can come to a reasoned assessment regarding the initiation of disciplinary proceedings or other corrective measures.

The guidelines in these Implementing Rules set out the procedure for the conduct of investigations under Article 21a of the Service Regulations and the associated rights and obligations. They establish the principles and procedures to be applied with respect to the initiation, conduct and outcome of this fact-finding procedure, and ensure the transparency of the process. They also serve as a guide for investigators in the conduct of such investigations, and lay down rules about the investigative process and the roles, rights and obligations of the participants.

Part II – General provisions

Article 1 Field of application

- (1) These Implementing Rules shall apply to all persons covered by Article 1 of the Service Regulations, including former employees of the Office.
- (2) The procedure laid down in these Implementing Rules, and the associated rights and obligations, shall also apply to all persons who are not covered by paragraph 1 but who undertake work in or on behalf of the Office. Where direct application to such persons is not possible, the Office will seek to apply by contractual agreement the rights and obligations set out in these Implementing Rules.

Article 2 Definitions

For the purposes of the procedure established in these Implementing Rules, the following definitions shall apply:

- (1) An "allegation" is an assertion of misconduct based on one or more specific and identifiable incidents.
- (2) An "indication of misconduct" is a set of data or information suggesting the *prima facie* likelihood of an occurrence of misconduct, based on one or more specific and identifiable incidents.
- (3) A "complainant" is any person raising an allegation.
- (4) A "subject" is any person who is alleged or indicated to have engaged in misconduct.
- (5) "Investigative process" means the totality of the fact-finding procedures within the scope of these Implementing Rules, including the receipt and recording of complaints, the initial review, the preliminary evaluation, the investigation and the report on findings.
- (6) "Parties" means all persons involved in the investigative process as complainants, subjects or witnesses.

(7) "Evidence" is any type of proof which may reasonably be expected to establish or disprove a fact material to the case.

(8) "Retaliation" means any direct or indirect detrimental action threatened or taken because an individual engaged in an activity protected by these Implementing Rules.

(9) "Investigative unit" means the unit in charge of investigating allegations or indications of misconduct, as referred to in Article 21, paragraph 2, Article 21a and Article 93, paragraph 2(a) of the Service Regulations.

Article 3

Principles in the conduct of an investigative process

(1) Investigators shall demonstrate respect for the parties in an investigative process at all times.

(2) The investigative process shall be carried out objectively, independently, impartially and free of undue interference, in accordance with the principles of due process and proportionality and any applicable provisions. No one shall unduly influence the investigative unit in any way.

(3) Investigators shall seek to obtain and take into account all evidence which may reasonably be expected to have a bearing on the case.

(4) In the conduct of the investigative process, due respect shall be given, where applicable, to the proper functioning and independence of the Boards of Appeal and Enlarged Board of Appeal as provided for in the European Patent Convention.

(5) In the event of a real or apparent conflict of interest, the assigned investigators shall inform the line manager overseeing the investigative unit, who shall decide whether to replace the investigator or investigators concerned for this particular investigative process. This decision shall be documented in writing, and shall be part of the record of the investigative process.

(6) Alleged misconduct by or an unresolved conflict of interest of an investigator shall be reported to the line manager overseeing the investigative unit or to the President.

Article 4 Confidentiality

(1) 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 these Implementing Rules, 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.

(2) The confidentiality of the fact-finding procedure shall be observed by the members of the investigative unit and by all others involved in the investigative process.

(3) In order to protect the integrity of the investigative process and the parties involved in it, notifications made by the investigative unit to any party or parties involved in the process shall not, in general, include the names of any of the other parties involved.

(4) Investigators shall maintain and keep secure an adequate record of the investigative process and the information collected.

(5) The unauthorised disclosure, whether by intent or negligence, of information pertaining to the investigative process or the identity of any person involved in the investigative process may constitute misconduct.

(6) The investigative unit shall inform all parties involved of the strict obligation to maintain the confidentiality of the process.

(7) The investigative unit shall inform the President of the Office of any ongoing investigative processes in cases involving a threat to the operations or governance of the Office or a considerable risk to the reputation of the Office.

(8) In order to explain their absence from work, parties may inform their line manager that they are to be interviewed by the investigative unit, but they may not disclose any information related to the investigative process or the allegation or indication of misconduct under review.

(9) All parties involved in the investigative process shall continue to be bound by the obligations in this Article after they have left the service or the contractual relationship has ended.

(10) Nothing in this Article shall be construed to prevent any persons covered in Article 1 of these Implementing Rules from availing themselves of their rights to seek legal remedy as provided for under Title VIII of the Service Regulations.

Article 5 Reporting misconduct

(1) Allegations or indications of misconduct shall be reported to the investigative unit direct.

(2) Where it establishes that a person who has in good faith reported an allegation or indication of misconduct is at risk of being subjected to some form of retaliation, the investigative unit shall take all reasonable measures to protect that person.

(3) The investigative unit shall periodically inform complainants about the progress of the investigation, unless it considers that providing such information would jeopardise the process, the interests of the Office or the rights of parties involved in the process.

(4) The raising of allegations of misconduct which are knowingly false or which are made with a reckless disregard as to whether they are true or false is prohibited and constitutes misconduct. The same applies to the giving of testimony or evidence.

(5) Complainants shall, however, at all stages of the investigative process inform the investigative unit of further facts or circumstances which may be relevant for the investigative process as soon as they become aware of them.

Article 6 Presumption of innocence and the right to defend oneself

(1) Subjects shall be presumed to be innocent throughout the investigative process and until such time as their appointing authority has taken a decision on whether misconduct has occurred.

(2) They shall have the right to defend themselves against the allegations or indications of misconduct. This includes the right to present any evidence, including the right to propose witnesses, in their favour.

Article 7

Duty to co-operate

(1) All persons covered by these Implementing Rules shall co-operate in the investigative process, in accordance with the applicable provisions.

(2) This obligation includes being available for meetings with the investigators, providing truthfully, and to the best of one's ability and knowledge, all information which may reasonably be expected to have a bearing on the case, and answering all pertinent questions. It also includes the requirement to provide access to all relevant records belonging or pertaining to the Office, or stored in the Office or on devices belonging to or provided by the Office, including those stored electronically.

(3) A person covered by these Implementing Rules may, however, remain silent on grounds relating to self-incrimination or to incriminating a spouse, civil union partner, or a relative in the first degree.

(4) The destruction or manipulation of evidence, or attempts to destroy or manipulate it, the interference with or intimidation of witnesses or potential witnesses and the misleading of investigators by any party are prohibited and may constitute misconduct, as may failure to co-operate without legal justification.

(5) If any party to an investigative process claims that they are unable to attend any interview as provided for in Article 17 of these Implementing Rules, or to otherwise fully co-operate in the investigative process, for medical reasons, the investigative unit may request that their ability to understand and answer questions in the context of an administrative procedure be independently assessed in accordance with Article 26, paragraph 2, of the Service Regulations.

Article 8
Advice and support during the investigative process

- (1) Complainants and subjects may at any time seek advice and support from a colleague of their choice, who may be a staff representative, who is not connected to the matter. In this case, the complainant or subject shall inform the investigative unit accordingly.
 - (2) All parties may also seek advice from:
 - (i) members of their immediate family;
 - (ii) health professionals; and
 - (iii) at no cost to the Office, an external lawyer of their choice who is not connected to the matter directly or indirectly.
- In these cases, they do not have to inform the investigative unit.
- (3) A person is not eligible to provide advice and support if doing so might expose them to the risk of a conflict of interest.
 - (4) The sharing of information pertaining to the investigative process and to the allegation or indication of misconduct under review is permitted for the purposes of seeking advice and support under this Article.
 - (5) Where such advice is sought, the persons consulted shall keep the matter confidential. The investigative unit may ask the persons consulted to sign a declaration of confidentiality.
 - (6) Any party sharing information under this Article must take, and upon request demonstrate, all reasonable measures to ensure the confidentiality of the fact-finding procedure.

Part III

The investigative process

Article 9

Overview

- (1) The investigative process is an administrative fact-finding procedure. The purpose of an investigation is to establish whether there is sufficient evidence to support an allegation or indication of misconduct, and if so, to identify the person or persons responsible.
- (2) The investigative process begins with the registration of the case and is comprised of three stages: an initial review, a preliminary evaluation and a formal investigation.
- (3) Once the investigative process has been completed, if the investigative unit concludes that there is sufficient evidence to support the allegation or indication of misconduct, the case is referred to the respective appointing authority for decision.
- (4) Under normal circumstances, the investigative process shall be completed within twelve months after receipt of the allegation. In cases of an allegation of harassment, the investigative process shall, under normal circumstances, be completed within six months after receipt of the allegations.

Article 10

Registration and initial review

- (1) Allegations or indications of misconduct are registered as such if they meet the following cumulative criteria. They must:
 - (i) fall within the field of application as laid down in Article 1 of these Implementing Rules;
 - (ii) comply with Article 2, paragraph 2, of these Implementing Rules;
 - (iii) not be obviously immaterial;
 - (iv) not be clearly of a vexatious nature;
 - (v) not be the subject of a final decision or judgment under the rules and regulations of the Organisation; and
 - (vi) not be time-barred pursuant to Article 19 of these Implementing Rules.

- (2) If an allegation or indication meets the above criteria, the investigative unit shall carry out an initial review to assess whether it falls within its remit and whether the alleged conduct, if proven, would amount to misconduct. It shall not include any fact-finding, or any assessment of the credibility of the allegation. It shall not prejudice the outcome of any future investigations.
- (3) The investigative unit may also initiate an investigative process of its own motion, based on indications of misconduct obtained in a proactive compliance review or investigative process.
- (4) At the end of the initial review, the investigative unit may:
- (i) close the investigative process if it finds that the allegations or indications of misconduct do not fall within its remit or that the alleged conduct, if proven, would not amount to misconduct, and if appropriate refer the matter to other units within the Office;
 - (ii) exceptionally defer the process pending clarification of key facts which are outside the sphere of influence of the Office; or
 - (iii) initiate a preliminary evaluation as defined in Article 11 of these Implementing Rules.
- (5) The investigative unit shall inform the complainant in writing of its choice under paragraph 4. If the subject was informed of the investigative process, the investigative unit shall also inform him in writing. If the President was informed of the allegation or indication of misconduct, the investigative unit shall also inform him of this choice.
- (6) Under normal circumstances, the initial review shall be completed no later than three months from the date of receipt of the allegation or indication of misconduct.

Article 11 **Preliminary evaluation**

- (1) The preliminary evaluation involves collecting, preserving and securing basic evidence and assessing this evidence to determine whether an investigation into the allegation or indication of misconduct is warranted.
- (2) To that end, the investigative unit shall:

- (i) establish the basic facts and secure basic evidence,
 - (ii) evaluate the credibility, materiality and verifiability of the complaint, and
 - (iii) identify any inconsistencies or outstanding questions.
- (3) At the end of the preliminary evaluation, the investigative unit may:
- (i) close the investigative process if, on the balance of probability, the allegation or indication of misconduct is without merit, is not supported by the facts, or clearly cannot be substantiated by the evidence obtainable. If new or previously unknown relevant evidence becomes available, the investigative unit may re-open the process;
 - (ii) refer the matter to other units within the Office;
 - (iii) defer the investigative process pending further clarification of key facts which are outside of the sphere of influence of the Office; or
 - (iv) initiate an investigation as defined in Article 12 of these Implementing Rules.
- (4) In the case of paragraph 3(i) to (iii), the investigative unit shall inform the complainant in writing of its choice. If the President was informed of the allegation or indication of misconduct, the investigative unit shall also inform him of this choice.
- (5) The subject shall not normally be notified of the findings unless he - or any other person - was made aware of the fact that allegations or indications of misconduct against him were being evaluated. Other parties involved may be informed about the outcome if such information is deemed necessary to protect the reputation of the subject, or at the specific request of the subject.
- (6) Under normal circumstances, the preliminary evaluation shall be completed no later than four months after the date of receipt of the allegation or indication of misconduct.
- (7) Where an investigation as defined in Article 12 of these Implementing Rules is initiated against a member of the Boards of Appeal or Enlarged Board of Appeal, the investigative unit shall inform the President of the Boards of Appeal.

Article 12 Investigation

- (1) The investigation shall include the collection and analysis of all available pertinent information and evidence.
- (2) Investigations shall be conducted promptly so as to preserve relevant information and documentation and prevent the continuation of the alleged misconduct or the occurrence of further incidents.
- (3) At any time during the investigation, the investigative unit may exceptionally decide to defer the process pending further clarification of key facts which are outside the sphere of influence of the Office.

Article 13 Use of outside investigators

- (1) The investigative unit may at any time request assistance from other units. These other units shall be bound by the same procedural rules and obligations as the investigative unit.
- (2) If the circumstances so warrant, the investigative unit may decide to assign external experts to assist in or to carry out the investigative process in part or in full. External investigators shall be bound by the same procedural rules as the investigative unit and shall work under the authority of the investigative unit.

Article 14 Protective and interim measures

- (1) At any time during the investigative process, the investigative unit may recommend that the President of the Office take interim measures to safeguard the investigation or to protect a party to the investigation.

- (2) When deciding on such measures, due account shall be taken of the legitimate concerns and interests of all the parties and the Organisation, the nature of the harm or potential harm to the complainant or witness, the degree to which delay may worsen the harm done or result in the harm becoming irreparable, and the seriousness of the matter. Such measures shall be temporary and may include, but are not limited to, suspension, restriction of access to Office premises, documents or resources, or transfer or re-assignment of one or more of the parties.
- (3) Where interim measures are taken, the duration of the measures, which shall not exceed six months, shall be laid down in the decision. If, after the end of this period, the President of the Office considers that the circumstances requiring the interim measures still persist, further interim measures may be taken, up to a total duration of eighteen months.
- (4) If interim measures are taken in accordance with this Article against a person appointed by the Administrative Council, the President shall immediately inform the chairman of the Administrative Council.
- (5) If interim measures are in force at the conclusion of the investigative process, these measures shall be lifted no later than two months following the conclusion of the process, unless the appointing authority, within this two-month period, decides otherwise due to the circumstances of the matter, in particular the seriousness of the allegations or indications of misconduct and the potential risk to persons or to the interests of the Organisation.
- (6) Interim measures shall not be of a punitive nature, nor shall they prejudice the outcome of the investigative process in any way.
- (7) The investigative unit may decide, for reasons of protection of the parties, not to disclose the name of a complainant or witness. In such a case, a finding of misconduct cannot be based directly on testimony provided by this complainant or witness, and must be independently substantiated by other evidence.

Article 15
Notification of allegations or indications of misconduct

- (1) The investigative unit shall inform the subject of the allegations or indications of misconduct, and of his rights and obligations under these Implementing Rules, in writing as soon as it is practicable to do so without jeopardising the investigation or the rights of the complainant or witnesses. Such notification shall occur no later than at the beginning of his interview as the subject in accordance with Article 17 of these Implementing Rules.
- (2) Line managers and other parties shall not normally be informed of the allegations or indications of misconduct. They may be contacted and questioned by the investigative unit in accordance with Article 17 of these Implementing Rules.
- (3) If the investigative process is closed without the issuance of a final report pursuant to Article 18 of these Implementing Rules, the subject shall only be informed of the investigative process or the closure of the investigative process if he has a specific legal interest, for example if he was informed of the allegations or indications of misconduct.
- (4) At the specific request of the subject, the investigative unit shall inform other parties about the outcome of the investigative process, insofar as this is in the legitimate interests of the subject.

Article 16
Gathering of evidence

- (1) The investigative unit may seek and collect all relevant evidence, including physical and electronic documents and records, physical items, witness statements and other pertinent information in accordance with the applicable provisions.
- (2) The investigative unit may, in accordance with the applicable rules and procedures, secure, access and search all resources and documents which may reasonably be expected to have a bearing on the case, including desks, offices, computers, mobile electronic devices, physical and electronic documents and data, and physical and electronic mail, and review the records of all communications effected or made possible through means and devices owned or provided by the Office.

- (3) In determining the means and aims of obtaining evidence, due account shall be taken of the principles of proportionality and data protection, and the evidence sought shall be obtained by the least intrusive means possible.
- (4) Whenever the office space of a person working in or for the Office is accessed or searched, an observer who is not in any way connected to the matter under investigation shall be present.
- (5) The investigative unit shall document all its evidence-gathering activities.
- (6) With regard to accessing evidence located outside the Office premises, the investigative unit must abide by all the applicable provisions of local law. In such cases, it may seek assistance from the relevant local authorities.

Article 17 **Interviews**

- (1) At any time in the investigative process, the investigative unit may, at its discretion, interview persons who may have information relevant to the investigation.
- (2) A person may be interviewed on more than one occasion during the course of an investigation, and shall be obliged to co-operate pursuant to Article 7 above.
- (3) Invitations to interview shall be issued in writing. The invitation shall inform the interviewee of his rights and obligations under these Implementing Rules. It shall be sent sufficiently in advance of the interview to allow the interviewee time for preparation, unless the circumstances of the case suggest that the integrity of the investigative process, or any parties thereto, may be put at risk in case of such advance invitation.
- (4) Interviews shall be conducted in one of the official languages of the European Patent Organisation, where possible in the preferred official language of the interviewee. Interviewees may reply in their preferred official language.
- (5) If, during the course of an interview with a witness or complainant, it becomes apparent that the interviewee may become the subject of the investigative process or of a new investigative process, the interview shall be stopped, or suspended until such time as the interviewee has been duly notified of any allegations or indications of misconduct against him pursuant to Article 16 of these Implementing Rules.

- (6) Notwithstanding the obligation to attend an interview at the invitation of the investigative unit, interviewees may remain silent on grounds relating to self-incrimination or to incriminating a spouse, civil union partner, or a relative in the first degree.
- (7) Interviews shall be conducted by at least two investigators.
- (8) The complainant and the subject may be accompanied during interviews by an Office employee of their choice as an observer. This employee may be neither a member of the investigative unit nor in any way connected to the matter under investigation, and must be readily available to attend.
- (9) Any observer accompanying an interviewee shall maintain the confidentiality of the process and shall not interrupt or interfere in the interview or investigative process. The presence of such an accompanying person shall not relieve the person being interviewed of his obligation to give his full co-operation.
- (10) If an observer interrupts or interferes in an interview, the investigators may, after due warning, exclude the observer from the interview and proceed without him.
- (11) During or after the interview, a record of the interview shall be prepared in the language or languages in which the interview was held. The interviewee shall be given a reasonable opportunity to review the record. The record shall be signed by all interview participants. Alternatively, the investigators may prepare an audio recording of the interview. The recording shall be transcribed and the transcription made available to the interviewee for information and comment.

Article 18

Report on the findings

- (1) Where the subject has been informed of the allegations or indications of misconduct, he shall, at the conclusion of the investigation, be provided with a written summary of the findings.
- (2) The subject shall have the opportunity to respond in writing to the findings within a period of at least seven working days. The deadline set may be extended at the discretion of the investigative unit following a reasoned request of the subject.

- (3) All responses shall be duly considered. The investigative unit may amend its findings based on these responses. The subject shall be notified of any such amendments.
- (4) The investigative unit shall then submit a written report on the findings of the investigation (hereinafter referred to as "the report") to the President:
 - (i) if it finds that misconduct has occurred; or
 - (ii) if the President had been informed about the investigative process pursuant to Article 4, paragraph 7, of these Implementing Rules.
- (5) Where the subject's appointing authority is the Administrative Council and it is found that misconduct has occurred, the report shall be submitted to the chairman of the Council, with a copy to the President. Where the subject is a member of the Boards of Appeal or Enlarged Board of Appeal, the investigative unit shall inform the President of the Boards of Appeal of the findings.
- (6) The report shall include:
 - (i) an analysis of the relevant facts;
 - (ii) the conclusions of the investigative unit, based on a preponderance of the evidence.
- (7) The investigative unit shall attach to the report:
 - (i) all relevant evidence, including witness statements;
 - (ii) the full response and comments of the subject and, where applicable, the complainant.
- (8) Upon submission of the report, the complainant shall be notified of the outcome of the investigative process. Such notification shall not include any information capable of revealing the identity of witnesses or third parties connected with the process.
- (9) The subject shall receive a copy of the report if and when, on the basis of the report, disciplinary proceedings are initiated.
- (10) The investigative unit may, upon request, send an anonymised version of the report to the Board of Auditors.

(11) The report does not constitute a decision within the meaning of Article 108, paragraph 1, of the Service Regulations. This shall in no way prejudice the right of an employee to have recourse to the available means of redress against any decision taken on the basis of the report as provided for in Title VIII of the Service Regulations.

(12) If, based on its findings and conclusions, the investigative unit considers it opportune to make recommendations on corrective measures which do not directly concern the subject, it may do so in a separate document.

Article 19 Statute of limitations

(1) Allegations of misconduct shall be filed in writing within six months of the date of the last incident of alleged misconduct, or the date on which the complainant became aware of it or could reasonably be expected to have become aware of it.

(2) The investigative unit may decline to initiate an investigative process if, at the time of receipt of the complaint, the period provided for in paragraph 1 has elapsed or if more than three years have passed since the last alleged incident of misconduct.

Article 20 Referral to national authorities

(1) At any time during the investigative process, the investigative unit may, in view of the nature of the allegations or indications of misconduct and the interests of the parties or the Organisation, refer the matter, with the approval of the President, to the competent national authorities in whole or in part.

(2) In such cases, the investigative unit may share its findings, the evidence gathered and any other pertinent information with the national authorities as appropriate.

Article 21 Retaining of records

(1) The investigative unit shall retain all records pertaining to

(i) the initial review and preliminary evaluation for three years after the conclusion of the respective stage of the investigative process where it does not proceed to the investigation stage;

(ii) an investigation for seven years after its conclusion.

(2) The Office shall retain, for a period of ten years following its submission, any report which concludes that misconduct has occurred.

(3) The Office shall retain such documentation beyond the time frames specified in paragraphs 1 and 2 where

(i) the matter is subject to litigation; or

(ii) there is a reasonable expectation that the matter will become subject to litigation.

Article 22

Final provisions

(1) These Implementing Rules shall enter into force on 1 July 2017 and shall apply to any investigative process initiated on or after that date. They supersede Circular No. 342 as from that date.

(2) The investigative unit shall submit an annual report on its activities to the President of the Office and to the Board of Auditors.