



**Europäische
Patent-
organisation**

Verwaltungsrat

**European
Patent
Organisation**

Administrative Council

**Organisation
européenne des
brevets**

Conseil d'administration

CA/68/21

Orig.: de, en, fr

Munich, 26.11.2021

SUBJECT: Approval of the Code of Conduct for Members of the Boards of Appeal and of the Enlarged Board of Appeal

SUBMITTED BY: President of the Boards of Appeal

ADDRESSEES: Administrative Council (for decision)

SUMMARY

The President of the Boards of Appeal proposes that the Administrative Council approve the Code of Conduct for Members of the Boards of Appeal and of the Enlarged Board of Appeal adopted by the Presidium of the Boards of Appeal, which is set out in the Annex to this document.

This document has been drawn up in agreement with the Presidium of the Boards of Appeal. Part I contains explanatory notes to the above-mentioned Code of Conduct.

This document has been issued in electronic form only.

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PART I

I. STRATEGIC/OPERATIONAL

1. Strategic.

II. RECOMMENDATION

2. It is proposed that the Administrative Council approve the Code of Conduct for Members of the Boards of Appeal and of the Enlarged Board of Appeal (Code of Conduct) adopted by the Presidium of the Boards of Appeal, which is set out in the Annex to this document.

III. MAJORITY NEEDED

3. Simple.

IV. CONTEXT

4. As part of the structural reform of the Boards of Appeal (see CA/43/16 Rev.1 and CA/D 6/16), the Administrative Council enacted Rule 12b(3)(b) EPC, which states that the Presidium of the Boards of Appeal shall:

"adopt, without prejudice to regulations adopted in accordance with Article 10, paragraph 2(c), and Article 33, paragraph 2(b), a Code of Conduct for the members and Chairmen of the Boards of Appeal and of the Enlarged Board of Appeal, which shall be subject to the approval of the Administrative Council".

5. According to this provision, it is, thus, for the Presidium of the Boards of Appeal to adopt a Code of Conduct, and it is for the Administrative Council to approve the Code of Conduct for it to enter into force.
6. The Presidium of the Boards of Appeal adopted the Code of Conduct on 23 November 2021. Now this Code of Conduct is submitted to the Administrative Council for its approval.

V. ARGUMENTS

A. DEVELOPMENT OF THE CODE OF CONDUCT IN THE BOARDS OF APPEAL

7. After receiving advice of the Presidium of the Boards of Appeal in a meeting on 4 September 2017, the President of the Boards of Appeal (PBoA) created the working group "Aspects of Internal Justice" in October 2017. The working group was composed of a Chair of a board of appeal, Members of the boards of appeal (including one nominated by the Presidium of the Boards of Appeal) and lawyers from the Legal Research Service of the BoA. One of the tasks of this working group was to write a first draft of the Code of Conduct in preparation for discussions in the Presidium of the Boards of Appeal.

8. The Working Group reviewed the [Code of Conduct of the CJEU](#)¹, the [Bangalore Principles of Judicial Conduct 2002](#)², the [Code of Conduct of the German Constitutional Court](#)³ and the [Judicial Ethics Report 2009-2010](#)⁴ by the [European Network of Councils for the Judiciary \(ENCJ\)](#). Other codes of conduct for non-judicial staff were also taken into account⁵. The resulting draft was brought to the Presidium of the Boards of Appeal in October 2019.
9. Since then, the Presidium of the Boards of Appeal has discussed different draft versions of the Code of Conduct and also considered Codes of Conduct of other courts and further documents – see also the documents mentioned in the explanatory notes to the Code of Conduct. The topic of the Code of Conduct was extensively discussed, in particular at the meetings of the Presidium of the Boards of Appeal on 25 October 2019, on 20 July 2020, on 2 December 2020, on 23 April 2021 and on 21 July 2021. In preparation of, and during the meeting on 21 July 2021, a clear majority of the Presidium of the Boards of Appeal expressed its support for a draft corresponding in essence to the version later adopted.
10. Considering that the Code of Conduct concerns key principles for the Boards of Appeal (BoA), including the independence of the board Members, and having regard to Rule 12c(1), first sentence, EPC and Article 4(2)(a) of CA/D 7/16, the PBoA submitted the above-mentioned draft of a Code of Conduct (see BOAC/10/21) to the Boards of Appeal Committee (BOAC) for its opinion. The BOAC gave a unanimous favourable opinion (see BOAC/11/21, point 31).
11. Comments made by the BOAC were incorporated into the final version, which also contains a few editorial improvements. On 23 November 2021, the Presidium of the Boards of Appeal adopted the Code of Conduct, as set out in the Annex to this document.

B. EXPLANATORY NOTES TO THE PROVISIONS OF THE CODE OF CONDUCT

12. In the following sections short explanations to the provisions of the Code of Conduct are provided. Sources of inspiration for the provisions are mentioned and, where relevant, the text clarifies certain provisions of the Code of Conduct.

¹ 2016/C 483/01, Official Journal, Volume 59, 23 December 2016.

² The Bangalore Principles of Judicial Conduct 2002 (The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002), available at https://www.un.org/ruleoflaw/files/Bangalore_principles.pdf.

³ https://www.bundesverfassungsgericht.de/EN/Richter/Verhaltensleitlinie/Verhaltensleitlinien_node.html.

⁴ Available at <https://www.encj.eu/images/stories/pdf/ethics/judicialethicsdeontologiefinal.pdf>.

⁵ The [OECD Code of Conduct for Officials](#), the [Principles of Conduct for staff of the International Labour Organisation](#), the [Code of Conduct of the Board Officials of the World Bank Group](#).

a) Article 1 – Framework

13. Article 1 is a clarifying provision explaining the framework for the Code of Conduct. As laid down in Rule 12b(3)(b) EPC, the Code of Conduct is without prejudice to regulations adopted in accordance with Article 10(2)(c) and Article 33(2)(b) of the EPC.
14. According to Article 10(2)(c) EPC the President of the EPO "may submit to the Administrative Council any proposal for amending this Convention, for general regulations, or for decisions which come within the competence of the Administrative Council". According to Article 33(2)(b), "[t]he Administrative Council shall be competent, in conformity with this Convention, to adopt or amend: [...] the Service Regulations for permanent employees and the conditions of employment of other employees of the European Patent Office [...]". The Service Regulations for permanent and other employees of the European Patent Office (ServRegs) contain higher ranking provisions, which will prevail in case of conflict with the provisions of the Code of Conduct (see CA/43/16 Rev. 1, Annex 1, point 15).
15. Article 1 highlights the importance of two core provisions of the ServRegs. Article 1(4) ServRegs⁶ protects the independence of Members of the boards of appeal, while Article 93 ServRegs⁷ defines the conduct which may lead to disciplinary measures. This framework is confirmed by Article 1 of the Code of Conduct.

b) Article 2 – Scope

16. Article 2 sets out that the Code of Conduct will be applicable to board Members, including Chairs, of the boards of appeal.
17. Members appointed under Article 11(5) EPC (i.e. external Members of the Enlarged Board of Appeal) are included in the term "Member" and thus the Code of Conduct will apply to them. However, in view of the particular status of these board Members, the Code of Conduct provides a small number of exceptions for them.

⁶ Article 1 – Field of application (...)

(4) "These Service Regulations shall apply to the members, including the chairmen, of the Boards of Appeal and of the Enlarged Board of Appeal and to the President of the Boards of Appeal (hereinafter referred to as "members of the Boards") in so far as they are not prejudicial to their independence".

⁷ Article 93 – Conduct liable to disciplinary measures

(1) Any misconduct by an 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.

18. The wording “and includes standards to be upheld by Members” takes account of the fact that the Code of Conduct includes ethical standards but also aspects concerning standards set down in the EPC (e.g. Art. 23 and Art. 24 EPC) or the ServRegs.

c) Article 3 – Principles

19. Article 3 names the principles guiding the Code of Conduct. The basis of this is that board Members have complete independence while conducting their judicial duties. The independence of board Members safeguards the right to fair proceedings; board Members exercise their judicial duties taking account of further principles such as integrity, impartiality, loyalty, diligence and discretion, which are reflected in the provisions of the Code of Conduct.

d) Article 4 – Independence and integrity

20. To take account of the core principle of judicial independence, Article 4 builds on existing provisions and documents from courts and judicial institutions. For instance, Value 1 of the Bangalore Principles of Judicial Conduct 2002 (in particular Value 1.1), the [Guide to Judicial Conduct \(2019\) of the UK Supreme Court](#) (in particular point 3.3) [and Opinion no. 3 of the Consultative Council of European Judges](#) (in particular point 33).

e) Article 5 – Impartiality

21. Article 5 addresses the impartiality of board Members. Value 2 (in particular 2.1 and 2.2) and Value 5 (in particular 5.1) of the Bangalore Principles of Judicial Conduct 2002 as well as the [Judicial Ethics Report 2009-2010](#) (in particular the section "Equality of treatment") were the basis for this provision.
22. Article 5(4) aims to foster inclusive behaviour and diversity.

f) Article 6 – Loyalty and diligence

23. The text of Article 6 was based on Value 6 (in particular 6.5 and 6.6) of the Bangalore Principles of Judicial Conduct 2002 and the [Judicial Ethics Report 2009-2010](#) (in particular the section "Loyalty").
24. Article 6(3) uses the words "endeavouring to maintain order and decorum in all proceedings" since board Members can only ensure that their own conduct maintains the decorum of proceedings. However, the decorum of proceedings may also be affected by other factors, such as the behaviour of parties, representatives and accompanying persons, as well as members of the public, over which board Members have limited control. Therefore, concerning the conduct of non-board members, board Members can only endeavour to maintain the decorum of the proceedings; they cannot ensure that the decorum of the proceedings will be maintained.

g) Article 7 – Discretion

25. Article 7 addresses the question of discretion with regard to judicial duties. The core of this principle concerns the secrecy of deliberations (Article 7(1)). However, discretion, which encompasses other features than just secrecy, is necessary with regard to any further information acquired in relation to the exercise of judicial functions. It is inspired by the [Resolution on Judicial Ethics](#) of the European Court of Human Rights (in particular its point "V. Discretion").

h) Article 8 – External activities

26. External activities are the focus of Article 8. The concept of external activities concerns activities carried out on the initiative of Members. For the purposes of Article 8, activities carried out by Members on behalf of the BoA or the European Patent Academy (e.g. holding a presentation at the annual Case Law Conference) are not external activities.
27. Article 8(1), (2) and (3) lay down the general principles concerning external activities.
28. Article 8(4), first sentence, clarifies that certain external activities of board Members, that do not involve any payment to the board Members, need to be communicated to the PBoA. An express authorisation for non-paid external activities is only needed in the case of publications related to the work in the BoA, which are addressed under Article 8(5).
29. Article 8(4), second sentence, concerns paid external activities of any kind. Thus, it includes external activities not directly related to the work of board Members in the BoA. For example, giving a paid lecture at a university is an activity that will normally require the authorisation of the PBoA. If the activity of lecturing by the Member complies with the principles laid down in Article 8(1), (2) and (3), it will be authorised by the PBoA. If, however, a board Member would like to act as the dean of a faculty or the vice-chancellor of a university, being responsible for managing the entire faculty or university, it is likely that these activities will not be authorised by the PBoA. Moreover, some paid activities, like occasionally selling a used book, do not need to be communicated to the PBoA and are not subject to an authorisation, for they are "purely non-commercial private" activities. "Purely non-commercial private activities" may also, exceptionally, involve larger amounts of money. For instance, if board Members sell their own used car or their own apartment, such an activity is a "purely non-commercial private" activity, which does not need any prior authorisation.

30. Article 8(5) lays down the applicable rules concerning publications by board Members that are related to their work in the BoA. While an express authorisation by the PBoA is needed, this authorisation can only be refused if the Presidium of the Boards of Appeal agrees. Publications not related to the work in the BoA do not fall within the scope of Article 8(5). However, if such an unrelated publication is remunerated – also by means of copyright – (e.g. a novel), these are dealt with under Article 8(4), second sentence. Therefore, unremunerated and unrelated publications do not need prior authorisation by the PBoA; they fall within Article 8(4), first sentence.
31. Article 8(6) provides an exception for board Members appointed under Article 11(5) EPC. As their primary activities lie outside of the BoA, the decision on authorising external activities – and its specific conditions – are better dealt with by the institutions (normally national courts) in which they spend their regular working time. However, the external activities of board Members appointed under Article 11(5) EPC shall also be in line with the general principles of Articles 8(1), (2) and (3).
- i) Article 9 – Application of the Code of Conduct and Advisory Committee**
32. Article 9 was based on Article 10 of the [Code of Conduct of the CJEU](#) as well as the concept laid down in the preamble of the Bangalore Principles of Judicial Conduct 2002⁸.
33. According to Article 1 of the Act of Delegation ([OJ EPO 2018, A63](#)), the PBoA exercises supervisory authority over Members and may propose to the Administrative Council disciplinary action against Members. Therefore, the PBoA shall be responsible for ensuring the proper application of the Code of Conduct. To assist the PBoA in the proper application of the Code of Conduct, an Advisory Committee⁹ is created under Article 9(1).

⁸ The final paragraph of the preamble of the Bangalore Principles of Judicial Conduct 2002 reads: "THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. **These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge**"(emphasis added).

⁹ The current Advisory Committee under the Code of Conduct of 1995 will be dissolved. See the explanations relating to Article 12.

34. Under Article 9(2), if the PBoA has sufficient indications to conclude that a Member failed to comply with their obligations under the Code of Conduct, the PBoA shall request an opinion from the Advisory Committee. If the PBoA takes the view that the non-compliance by a board Member with the Code of Conduct concerns a minor point and the PBoA does not envisage starting any formal proceedings, the PBoA may, for example, invite the board Member for a conversation, in which it can be explained to the Member that a different conduct would have been more appropriate.
35. Article 9(3) allows board Members to request an opinion from the Advisory Committee before engaging in an external activity.
36. Article 9(4) provides for the confidentiality of requests. However, it does not address the question of the confidentiality of an anonymised version of the opinion. The internal publication in the BoA of an anonymised version of the opinion may be addressed in the Rules of Procedure of the Advisory Committee.
37. Article 9(5), (7) and (8) address the composition of the Advisory Committee in the different procedures before it. When dealing with requests under paragraph 2, it is of key importance for the perception of independence and impartiality of the Advisory Committee – and also to prevent any perception of this body being subject to corporatism – that a majority of the panel members be board Members appointed under Article 11(5) EPC. This represents a safeguard for board Members and for the BoA as an institution.
38. Article 9(6) addresses the competence of the Advisory Committee to adopt its own Rules of Procedure and to designate its Chair. A simple majority is sufficient for electing the Chair of the Advisory Committee and adopting its Rules of Procedure. Meetings for electing the Chair and/or enacting the Rules of Procedure – and amendments thereto – may be conducted in person or by videoconference.
39. Article 9(9) lays down the principle that the procedure before the Advisory Committee is a written procedure. Opinions are adopted by a majority vote. The Rules of Procedure may allow dissenting views to be expressed.
40. Article 9(10) addresses the framework concerning the proceedings before the Advisory Committee. Disciplinary action can only be started based on the obligations arising from the ServRegs within the meaning of Articles 21(1) and 93(1) thereof. An infringement of the Code of Conduct, which does not amount to an infringement of the ServRegs is not grounds for starting disciplinary proceedings. In case of non-compliance with these obligations arising under the ServRegs, disciplinary proceedings may be started, and disciplinary measures may be taken independently of the procedure before the Advisory Committee.

j) Article 10 – Freedom of Expression

41. Article 10 is inspired by Value 4.6 of the Bangalore Principles of Judicial Conduct 2002 and the [Judicial Ethics Report 2009-2010](#) (in particular the subsection "in public life" of the section "Reserve and Discretion").

k) Article 11 – Duties of the Members after ceasing to hold office

42. Article 11 concerns duties of the Members after leaving the BoA¹⁰. Provisions relating to duties after ceasing to hold office are common in judicial codes of conduct (see e.g. Article 9 of the [Code of Conduct of the CJEU](#)). The extent of the duties laid down in Article 11 corresponds to the standards laid down in Article 20a ServRegs¹¹. These provisions play an important role in safeguarding the public perception of independence of Members, as stated in the Communiqué 5/2018 of the PBoA: "Taking up an occupational activity may lead to a conflict with the integrity of the EPO's appeal system if it could adversely affect the public perception of the Member's independence and impartiality during his or her term of office as a board Member".

¹⁰ If a Member ceases to hold office as a Member of the BoA, but continues to be employed by the EPO, the periods set out in Article 11 begin from the moment the Member leaves office at the BoA. The time of leaving the EPO is irrelevant in this regard. If the relevant periods have expired by the time the former Member leaves the EPO, the corresponding duties become non-applicable.

¹¹ Article 20a – Obligations after termination of service:

- (1) An 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.
- (2) A member of the Boards or former member of the Boards intending to engage in an occupational activity, whether gainful or not, within two years of leaving the service shall inform the Administrative Council thereof. If that activity is related to the work he carried out during the last three years of his service and could lead to a conflict with the integrity of the EPO's appeal system, the Administrative Council may, having regard to his interests and to those of the EPO's appeal system, either forbid him from undertaking it or give its approval subject to any conditions it thinks fit.
- (3) The Administrative Council shall notify its decision within two months of the date on which the information 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.
- (4) The decision under paragraph 3 shall be taken after consultation of the Boards of Appeal Committee.
- (5) If no decision has been notified by the end of the period prescribed in paragraph 3, this shall be deemed to constitute implicit acceptance.
- (6) Paragraphs 2 to 5 above shall cease to apply to former members of the Boards who have served five years or less one year after termination of their service.
- (7) The Administrative Council may lay down further terms and conditions for the application of this Article, in particular with respect to the form and content of the information to be provided under paragraph 2.

43. Article 11 is also applicable to Members appointed under Article 11(5) EPC, as is Article 8(1) to (3). These Members are subject to the same guiding principles, as set out in these provisions, as Members appointed under Article 11(3) EPC. However, only for Members appointed under Article 11(3) EPC is permission from the Administrative Council or from the PBoA required for performing an activity under Article 8 or Article 11. Unlike in Article 8, in which an express limitation of the scope concerning Members appointed under Article 11(5) EPC is set out in the text of Article 8(6), it is not necessary to lay down such limitation in the text of Article 11. It should be noted that Article 11 contains no provisions about permission being requested for any such activities; these are covered by other regulations – i.e. Article 20a(3) ServRegs, document CA/63/17 and Communiqué 5/2018 of the PBoA –, which are not applicable to Members appointed under Article 11(5) EPC. Thus, these Members – unlike Members appointed under Article 11(3) EPC – do not need to file a request for permission in regard to their after-service activities, and are, in particular, not subject to the workflow established in document CA/63/17.
44. The application of Article 11 to Members appointed under Article 11(5) EPC means that they shall observe the principles set out in Article 11, i.e. comply with the duty to behave with integrity and discretion and, for a limited period of time, observe certain restrictions in their after-service activities. Examples of activities within this limited period of time which would not be suitable for a former Member having been appointed under Article 11(5) EPC would be to work on a case directly and clearly connected with a case decided by the Enlarged Board of Appeal with the participation of the former Member in question or to make written or oral submissions to the Enlarged Board of Appeal.

I) Article 12 – Entry into force

45. The Code of Conduct can only enter into force after adoption by the Presidium of the Boards of Appeal and approval by the Administrative Council. Article 12 sets out 1 July 2022 for the entry into force of the Code of Conduct, as some preparatory work following its approval by the Administrative Council are still needed.
46. When the Code of Conduct, as approved by the Council, enters into force, it will replace the Code of Conduct of 1995 (CA/105/95), which was not officially approved by the Administrative Council and only covers outside activities of Members of the boards of appeal. With the entry into force of the new Code of Conduct and, consequently, the Code of Conduct of 1995 being set aside, the Advisory Committee established in CA/105/95 will be dissolved, either on the entry into force of the new Code of Conduct, or in case an opinion is pending before it, once it renders its last opinion.
47. After the approval by the Administrative Council and before the entry into force of the Code of Conduct, appointments to the new Advisory Committee may be made. Its preparatory work concerning its Rules of Procedure may also start before the entry into force of the provisions of the new Code of Conduct.

VI. LEGAL BASIS

48. Rule 12b(3)(b) EPC.

VII. DOCUMENTS CITED

49. CA/105/95, CA/43/16 Rev. 1, CA/D 6/16, CA/D 7/16, CA/63/17, BOAC/10/21, BOAC/11/21.

VIII. RECOMMENDATION FOR PUBLICATION

50. Yes.

PART II

Draft

DECISION OF THE ADMINISTRATIVE COUNCIL
of [date of decision] approving the Code of Conduct
for Members of the Boards of Appeal and of the
Enlarged Board of Appeal

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the European Patent Convention, and in particular Article 23,
paragraph 3 thereof,

Having regard to the Implementing Regulations to the European Patent Convention, and in
particular Rule 12b, paragraph 3(b) thereof,

Having regard to the Code of Conduct for Members of the Boards of Appeal and of the
Enlarged Board of Appeal, adopted by the Presidium of the Boards of Appeal on 23
November 2021 under Rule 12b, paragraph 3(b) of the Implementing Regulations to the
European Patent Convention,

HAS DECIDED AS FOLLOWS:

Article 1

The Code of Conduct for Members of the Boards of Appeal and of the Enlarged Board of
Appeal, as shown in the Annex to this decision, is hereby approved.

Article 2

This decision shall enter into force on 1 July 2022.

Done at Munich, [date of decision]

For the Administrative Council
The Chairperson

Josef KRATOCHVÍL

ANNEX

THE PRESIDUM OF THE BOARDS OF APPEAL OF THE EUROPEAN PATENT OFFICE,

CONSIDERING that under Article 23, paragraph 3, of the European Patent Convention (EPC) Members* shall in their decisions not be bound by any instructions and shall comply only with the provisions of the EPC,

CONSIDERING that under principles of procedural law generally recognised in the Contracting States everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law,

CONSIDERING the importance of public confidence in the independence of the judiciary and the rule of law,

HAVING REGARD to the solemn undertaking of Members to perform their duties in accordance with the EPC 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,

HAVING REGARD to the declaration of the Administrative Council and the President of the Office to adhere to general legal principles and human rights, and to their full endorsement of the separation of powers and the judicial independence of the Boards of Appeal,

HAVING REGARD to the organisational autonomy of the Boards of Appeal Unit as confirmed by the structural reform of the Boards of Appeal,

ON A PROPOSAL from the President of the Boards of Appeal, submitted after consulting the Boards of Appeal Committee,

* All terms and pronouns referring to persons in this Code of Conduct apply irrespective of gender.

***HAS ADOPTED, in accordance with Rule 12b, paragraph 3(b), of the
Implementing Regulations to the EPC,
the following***

**CODE OF CONDUCT
FOR THE MEMBERS
OF THE BOARDS OF APPEAL
AND OF THE ENLARGED BOARD OF APPEAL**

**Article 1
Framework**

This Code of Conduct is without prejudice to regulations adopted in accordance with Article 10, paragraph 2(c), and Article 33, paragraph 2(b), EPC, in particular Article 1, paragraph 4, and Article 93 of the Service Regulations for permanent employees and other employees of the European Patent Office.

**Article 2
Scope**

This Code of Conduct applies to Members including Chairs of the Boards of Appeal and of the Enlarged Board of Appeal of the European Patent Office (hereafter "Members") and includes standards to be upheld by Members.

**Article 3
Principles**

Members have complete independence in the exercise of their judicial duties, and perform them with integrity, impartiality, loyalty, diligence and discretion, in accordance with the provisions set out in this Code of Conduct.

Article 4

Independence and integrity

(1) Members shall perform their duties with complete independence and integrity, without taking account of any personal or national interest. They shall exercise their judicial function independently on the basis of their own assessment of the facts and understanding of the law, without regard to any extraneous influences, inducements, pressures, threats or interference, direct or indirect.

(2) Members shall neither seek nor follow any instructions, neither from the organs of the European Patent Organisation and their representatives, nor from the governments of the Contracting States or any other private or public entities or persons.

(3) Members shall not accept gifts or favours of any kind which call into question their independence.

(4) When acting or expressing themselves through whatever medium or when taking part in any political activity, Members will refrain from conduct which would undermine the public perception of their independence and integrity.

Article 5

Impartiality

(1) Members shall perform their duties impartially without favour, bias or prejudice.

(2) Without prejudice to Article 24 EPC, they shall not be involved in dealing with a case in which they have any personal interest.

(3) Members shall conduct themselves, both in and out of the Boards of Appeal, in a manner which maintains the confidence of the public and the parties in their impartiality. Accordingly, when acting or expressing themselves, through whatever medium, they conduct themselves in a manner which does not adversely affect the public perception of their impartiality.

(4) Members shall treat all persons who appear before them equally. They are aware of and respect diversity in society.

Article 6

Loyalty and diligence

- (1) Members shall be loyal to the rule of law in accordance with the solemn undertaking to perform their duties in accordance with the EPC and the principles of procedural law generally recognised in the Contracting States. Accordingly, Members will exercise the powers entrusted to them within the limits of the EPC.
- (2) Members perform all judicial duties diligently, fairly, efficiently, and without undue delay.
- (3) Members shall treat parties, representatives, witnesses and others with whom they deal in an official capacity with dignity and respect while endeavouring to maintain order and decorum in all proceedings.

Article 7

Discretion

- (1) Members shall preserve the secrecy of the deliberations.
- (2) Members shall exercise the utmost discretion with regard to all information acquired in relation to their judicial function.

Article 8

External activities

- (1) Members may engage in external activities only if they are compatible with their judicial duties arising under this Code of Conduct.
- (2) Members may participate in external activities relating, inter alia, to the dissemination of European patent law and to dialogue with national and international courts or tribunals. In this respect, Members may participate in teaching activities and publications, conferences, seminars or symposia and in organisations and associations representing the interests of judges.
- (3) If Members assume duties in the legal, cultural, artistic, social, sporting or charitable fields or in teaching or research establishments, they shall undertake not to engage in any managerial or administrative activities which might compromise their independence or which might give rise to a conflict of interest.

(4) Members who wish to engage in an external activity which is related to their judicial function or which may affect the performance of their judicial duties shall, prior to undertaking the activity, inform the President of the Boards of Appeal thereof. Any external activities for which payment of any kind is made shall be subject to the prior approval of the President of the Boards of Appeal, unless these relate to purely non-commercial private activities.

(5) Publications by Members under Article 24 of the Service Regulations for permanent and other employees shall be subject to the prior permission of the President of the Boards of Appeal. Permission may only be refused with the agreement of the Presidium of the Boards of Appeal. The copyright royalties arising from publications, for which permission has been given, do not require additional approval under paragraph 4.

(6) Paragraphs 4 and 5 of this Article shall not apply to Members of the Enlarged Board of Appeal appointed under Article 11, paragraph 5, EPC.

Article 9

Application of the Code of Conduct and Advisory Committee

(1) The President of the Boards of Appeal, assisted by the Advisory Committee, shall be responsible for ensuring the proper application of this Code of Conduct.

(2) If the President of the Boards of Appeal is of the considered view that a Member has failed to comply with this Code of Conduct, a reasoned opinion as to whether or not this is the case shall be requested from the Advisory Committee.

(3) A Member who wishes to engage in an external activity may request a reasoned opinion from the Advisory Committee as to whether or not this would be appropriate.

(4) Requests for a reasoned opinion of the Advisory Committee shall be treated with confidentiality. Before giving its opinion, the Advisory Committee shall provide the Member concerned and the President of the Boards of Appeal with the opportunity to comment. The opinion shall be made available to the Member concerned and the President of the Boards of Appeal.

(5) The Advisory Committee shall consist of seven Members. Three members of the Advisory Committee shall be appointed by the President of the Boards of Appeal from among the Members of the Enlarged Board of Appeal appointed under Article 11, paragraph 5, EPC. Four Members of the Advisory Committee shall be appointed by the Presidium of the Boards of Appeal from among the Members of the Boards of Appeal, including at least one Chair. For each Committee member, an alternate is designated according to the same rules. The Members of the Advisory Committee shall be appointed for a term of two years and may be re-appointed.

(6) The Advisory Committee shall adopt its Rules of Procedure and shall designate its Chair.

(7) When dealing with requests under paragraph 2, the Advisory Committee shall act in a five-member panel. The panel shall be composed of the three Members appointed from among the Members of the Enlarged Board of Appeal appointed under Article 11, paragraph 5, EPC, with one of them acting as the Chair in the proceedings, and two Members appointed by the Presidium of the Boards of Appeal, including at least one Chair.

(8) When dealing with requests under paragraph 3, the Advisory Committee shall act in a three-member panel. The panel shall be composed of three Members appointed by the Presidium of the Boards of Appeal, including at least one Chair.

(9) The procedure before the Advisory Committee shall be a written procedure. Opinions shall be adopted by a majority vote.

(10) Failure to comply with this Code of Conduct may only make a Member liable to disciplinary action if the conduct in question also constitutes a failure to comply with obligations under the Service Regulations for permanent and other employees of the European Patent Office within the meaning of Article 21, paragraph 1, and Article 93, paragraph 1, thereof. Paragraph 2 is without prejudice to the initiation or conduct of any disciplinary proceedings under the Service Regulations for permanent and other employees of the European Patent Office.

Article 10 Freedom of Expression

(1) Members shall exercise their freedom of expression and freedom of association and assembly in such a manner as to preserve the dignity of their judicial office and the impartiality and independence of the Boards of Appeal.

(2) Members shall exercise restraint when faced with public criticism of cases in which they are or were involved themselves. They shall primarily express their opinion in the reasoning of their decisions.

Article 11

Duties of the Members after ceasing to hold office

After ceasing to hold office, Members shall continue to be bound by their duty to behave with integrity and discretion. Within two years of leaving the service, they shall not take up an occupational activity, which is related to the work they carried out during the last three years of their service and which may adversely affect the public perception of their independence and impartiality during their term of office as Members. For Members who have served only five years or less, the aforementioned two-year period is reduced to one year after leaving the service.

Article 12

Entry into force

This Code of Conduct shall enter into force on 1 July 2022. It shall replace the Code of Conduct contained in document CA/105/95.

Done at Haar on 23 November 2021

For the Presidium of the Boards of Appeal
The Chair



Carl JOSEFSSON