



Advisory Committee

Rules of Procedure of the Advisory Committee of the Unified Patent Court

Luxembourg, 24 February 2022

**DECISION OF THE ADVISORY COMMITTEE OF 24 FEBRUARY 2022 ON THE
RULES OF PROCEDURE OF THE ADVISORY COMMITTEE
OF THE UNIFIED PATENT COURT**

The Advisory Committee,

Having regard to Article 14(4) of the Agreement on a Unified Patent Court,

Has adopted the following Rules of Procedure:

Article 1

Members

1. A proposal under Article 5(1) of the Statute of the Unified Patent Court (hereinafter referred to as the “Statute”) for the appointment of a member of the Advisory Committee (hereinafter referred to as the “Committee”) shall be addressed to the Chairperson of the Administrative Committee along with proof that the candidate fulfils the requirements laid down in Article 14(2) of the Agreement on a Unified Patent Court (hereinafter referred to as the “Agreement”).
2. In order to ensure a broad range of relevant expertise, each Contracting Member State may propose more than one candidate. The Administrative Committee may appoint a member and an alternate member from one Contracting Member State to the Committee.
3. Following their appointment, the Chairperson of the Administrative Committee shall notify the names (*and titles*) of the members and alternate members of the Committee (hereinafter referred to as “members”) to the Contracting Member States.

Article 2

Commencement and end of duties

1. Members shall take up their duties on the date on which they are appointed by the Administrative Committee. Immediately after their appointment, they shall sign a declaration in which they solemnly undertake to act in an independent way and not to accept any instruction from the Contracting Member State having proposed them or from any other body or person.
2. A proposal for renewing a member’s term or for the appointment of a new member shall be presented by a Contracting Member State at least three months before the expiry of the term of the member it proposed. The Secretariat shall notify the Contracting Member State concerned at least six months in advance of such expiry.
3. In the event of a vacancy due to the resignation, death of a member or any other circumstance preventing a member from continuing to perform his duties, the Secretariat shall notify the Contracting Member State that proposed the member accordingly. The Contracting Member State concerned shall propose a new member without delay.

4. Article 1 shall apply *mutatis mutandis* to the proposals put forward under paragraphs 2 and 3.

Article 3

Chairperson

1. The Chairperson of the Committee (hereinafter referred to as the “Chairperson”) elected in accordance with Article 14(5) of the Agreement shall be responsible for the work of the Committee and the exercise of its functions. In fulfilling his duties, the Chairperson shall closely cooperate with the President of the Court of Appeal, the President of the Court of First Instance, and the Chairpersons of the Administrative Committee and the Budget Committee. All the provisions of these Rules of Procedure concerning the Chairperson shall apply *mutatis mutandis* to the Deputy Chairperson and to the *ad hoc* Chairperson referred to in paragraph 5.

2. The Committee shall elect a Deputy Chairperson from among its members for a term of three years. That term of office shall be renewable.

3. The Deputy Chairperson shall *ex officio* replace the Chairperson if he is prevented from carrying out his duties.

4. If the office of Chairperson or Deputy Chairperson falls vacant, the Committee shall at its next meeting elect a new Chairperson or Deputy Chairperson, in accordance with Article 14(5) of the Agreement or paragraph 2. However, if the office of Chairperson or Deputy Chairperson falls vacant due to the expiry of the term of office, the election shall take place at a meeting of the Committee held before the expiry of that term.

5. In the event of neither the Chairperson nor the Deputy Chairperson being able to attend a meeting of the Committee, the meeting shall be opened by the longest serving member or, in the event of equal length of service, by the oldest member, who shall immediately invite the Committee to elect an *ad hoc* Chairperson. The *ad hoc* Chairperson shall then preside over the meeting while the Chairperson and Deputy Chairperson are absent.

Article 4

Secretariat

1. The President of the Court of Appeal shall place a secretariat (for the purposes of the present Rules: the “Secretariat”) at the disposal of the Committee.

2. The Secretariat shall draft the minutes of Committee meetings, be responsible for all organisational aspects of the proceedings of the Committee and advise the Chairperson on organisational matters.

Article 5

Other participants

1. The President of the Court of Appeal and the President of the Court of First Instance may take part in all the deliberations of the Committee, without a right to vote. Unless the Committee decides otherwise in a particular case, they may be assisted by other members of the Presidium and by officials and other servants of the Unified Patent Court (hereinafter referred to as the “Court”).

2. The Committee may invite the Chairperson of any subcommittee, working party or other subsidiary body established by the Committee to attend its meetings for matters of interest to that body.
3. Acting on a proposal from its Chairperson, the Committee may allow persons especially qualified in the matters to be discussed to attend its meetings.

Article 6

Meetings

1. Meetings of the Committee shall be convened by its Chairperson.
2. The Committee shall meet on the initiative of its Chairperson or at the request of at least one-third of the members.
3. Deliberations in the Committee shall be based on an agenda drawn up and adopted in accordance with Article 7.
4. The Chairperson shall give notice of convocation of the Committee's meeting no later than four weeks before the start of the meeting.
5. Where the Committee is to meet at the request of at least one-third of the members, the Chairperson shall convene a meeting, in accordance with paragraph 4, to take place within six weeks of the receipt of that request.
6. Meetings shall normally be held at the seat of the Court of Appeal. They may also be held by videoconference. Upon its request, any member may participate in a meeting by video conference, unless it is rendered impossible by technological barriers.
7. Provided a simple majority of the members does not object, the Chairperson may change the date or place of a meeting of the Committee. Notification of such change shall be given to members no later than three weeks before the original date of the start of the meeting or the revised date, if this date is earlier.
8. Both the member and the alternate member from the same Contracting Member State may participate in a meeting of the Committee at the same time. However, in this case, the alternate member does not have a right to vote.

Article 7

Agenda and working documents

1. A provisional agenda shall be drawn up by the Chairperson and shall be transmitted to members along with the convocation of the meeting not less than four weeks before the start of the meeting.
2. Any member, the President of the Court of Appeal, the President of the Court of First Instance or the Chairperson of the Administrative Committee may request any additional question to be included on the agenda by submitting it to the Chairperson within seven calendar days from the receipt of the provisional agenda.
3. When the Committee is to meet at the request of one third of the members, questions to be included on the provisional agenda shall be submitted to the Chairperson at the time of the request for a meeting.

4. Questions submitted after the time-limits specified in paragraphs 2 and 3 may be included on the provisional agenda at the discretion of the Chairperson.
5. The agenda shall be adopted at the beginning of each meeting.
6. With the agreement of the Committee, urgent questions may be added to the agenda at any time before the end of the meeting, and items on the agenda may be deleted or carried over to a subsequent meeting.
7. Working documents shall be made available to members no later than two weeks before the start of a meeting.
8. If any necessary working document is transmitted to the members outside the time-limit specified in paragraph 7, no decision shall be taken on the question to which it relates, unless the Committee decides otherwise by unanimous vote.

Article 8

Voting

1. The Committee shall aim to reach consensus.
2. If it is not possible to attain consensus, the Committee shall adopt its decisions by a two third majority of the members present and voting, except where these Rules provide otherwise.
3. The presence of a majority of the members is required to enable the Committee to vote. When the vote is taken, the Chairperson, with the Secretariat's assistance, shall check that there is a quorum. In the absence of a quorum, the Chairperson may close the meeting and convene another as soon as possible.
4. Votes shall be taken by show of hands. Votes may be taken electronically, regardless of whether or not the vote is taken by secret ballot.
5. Notwithstanding paragraph 4, the vote shall be taken by secret ballot
 - (a) for the election of the Chairperson, the Deputy Chairperson and the *ad hoc* Chairperson;
 - (b) at the request of any member.
6. For each decision adopted by the Committee, figures for the vote cast shall be recorded. A statement of the views of the minority shall be entered in the minutes along with the decision if the minority so requests. The Chairperson may authorise a member to speak briefly in explanation of a vote he has cast.
7. On a proposal from the Chairperson, the Committee may take a vote by written procedure in accordance with paragraphs 8 to 13.
8. If a vote is to be taken by written procedure, an alternate member may only vote if the member from the same Contracting Member State is prevented from exercising its right to vote.
9. If a vote is to be taken by written procedure, the Chairperson shall communicate the wording of the proposal at issue to the members. At the same time, the Chairperson shall invite the members to inform him, within seven calendar days,

(a) whether they agree to use the written procedure, and

(b) whether they approve the proposal.

10. A proposal submitted for voting by written procedure may not be amended; it shall be approved or rejected in its entirety.

11. The proposal shall be deemed to be adopted if

(a) no member has objected to the use of the written procedure, and

(b) the members have approved the proposal at issue by the majority required.

12. If a proposal submitted for voting by written procedure is not adopted in accordance with paragraph 11, it may be included in the provisional agenda of the Committee's next meeting.

13. The Chairperson shall maintain a list of decisions taken by written procedure. At the beginning of each meeting of the Committee, the Chairperson shall inform the participants of any decisions taken by written procedure since the last meeting.

Article 9

Proceedings

The Chairperson shall conduct the proceedings, giving priority to members wishing to propose a procedural motion or to raise a preliminary matter. At any time during the proceedings, members may raise objections to the Chairperson's conduct of proceedings. If the Chairperson does not uphold the objection, any member may call for an immediate decision by the Committee.

Article 10

Rules on the preparation of the appointment of judges

1. The Committee, in line with Article 3(2) of the Statute, lays down the rules in this Article on the procedures for establishing an opinion on the candidates' suitability to perform the duties of a judge of the Court, including a list of the most suitable candidates.

2. The Committee shall organize proceedings in the most efficient way. The suitability of candidates who have applied for a vacancy shall be assessed on the basis of their written applications and supporting documents and on the basis of oral interviews. Only those candidates who have been short-listed for that purpose shall be interviewed orally. The Committee shall adopt said shortlist.

3. The Committee shall set up one or more panels, each consisting of at least three members of the Committee to carry out interviews with the candidates on the shortlist adopted by the Committee in accordance with paragraph (2). The Committee shall appoint one member of each panel as chairperson.

4. The Committee shall decide on the location(s) of the interviews and whether the interview can be held by video conference.

5. The interviews shall be conducted in one or more of the official languages of the European Patent Office.

6. After the interviews, each panel shall evaluate the candidates it interviewed, rank them in order of suitability and forward this ranking to the Committee. Based on the rankings of the panels, the Committee shall draw up a list of the most suitable candidates.
7. The list of the most suitable candidates shall include at least twice as many candidates as there are vacancies, ranked after their qualification. Reasons for the opinion given by the Committee shall be stated. The statement of reasons shall set out the principal grounds on which the Committee's opinion is based.
8. The opinion on the most suitable candidates for the position of a technically qualified judge shall state the field(s) of technology the candidate is able to cover.
9. The opinion on the most suitable candidates shall also indicate the proven language skills of the candidates.

Article 11

Languages of the Committee and interpretation in its meetings

1. The languages used in the deliberations of the Committee shall be English, French and German. The Committee may, by consensus, decide that only one or two of these languages is / are used in the deliberations of the Committee.
 2. The Committee may, by consensus, decide on which of the three languages specified in paragraph 1, the documents of the Committee are drawn up. In case the documents are not drawn up in all the three languages specified in paragraph 1, at the request of any member, the Court shall provide translation into any of the other languages specified in paragraph 1.
- The minutes of the deliberations of the Committee shall be drawn up in the language(s) in which the deliberations of the Committee were conducted.
3. At the request of any member, interpretation from the languages of English, French or German into any of the other two languages shall be provided throughout the meeting of the Committee. Such a request of a member shall specify the languages from and to which the interpretation is requested.
 4. Any request of a member submitted in accordance with paragraphs 2 or 3 shall be addressed to the Secretariat no later than three calendar days after the receipt of the provisional agenda.

Article 12

Minutes

1. Minutes of each meeting of the Committee shall be forwarded to members no later than one week after the end of the meeting. The opinion on candidates' suitability to perform the duties of a judge of the Court and opinions referred to in Article 14(1)(c) of the Agreement shall be forwarded to the Chairperson of the Administrative Committee, and proposals referred to in Article 14(1)(b) of the Agreement shall be forwarded to the President of the Court of Appeal.
2. The draft minutes shall be approved at the following meeting of the Committee, and the original copy of the minutes, as approved, shall be signed by the Chairperson. The signed copy of the minutes shall be kept in the archives of the Secretariat.

3. The final text of the minutes shall be forwarded to members no later than two weeks after its approval.

Article 13

Confidentiality

1. The deliberations of the Committee shall take place *in camera*, unless the Committee decides otherwise in respect of agenda items other than those relating to the opinion on the candidates' suitability to perform the duties of a judge of the Court under Article 3(2) of the Statute.

2. The proceedings of the Committee shall be confidential for those agenda items defined as confidential in accordance with paragraph 1. Members and other people present at meetings of the Committee shall respect the confidential character of these proceedings.

3. Non confidential documents may be made available to third parties or to the public, unless the Committee decides otherwise in a particular case. The opinion on the candidates' suitability to perform the duties of a judge may only be made available to the Administrative Committee, to the candidate insofar the opinion is referring to him, and to the Court for the inclusion in the personal file of that candidate.

4. The Committee may decide, in accordance with the procedures and rules which it adopts, to publicise its decisions.

Article 14

Subcommittees, working parties and other subsidiary bodies

1. The Committee may establish subcommittees, working parties or other subsidiary bodies to advise on it on particular questions. It shall determine their tasks and composition.

2. Unless provided otherwise in this Article, each subsidiary body shall establish its own rules of procedure on a proposal from its Chairperson.

3. The President of the Court of Appeal and the President of the Court of First Instance shall have the right to attend meetings of the Committee as well as the right to attend, or be represented at, any meeting of a subsidiary body. They may be assisted by other members of the Presidium and by officials and other servants of the Court.

4. Articles 3(5), 4, 5(3), 8, 11 to 13, 15 and 16 shall apply *mutatis mutandis* to subsidiary bodies.

Article 15

Financial Provisions

Members required to travel away from their place of residence in order to carry out their duties shall be entitled to reimbursement of their expenses and allowance on the basis of the decisions of the Budget Committee. The corresponding expenditure shall be borne by the Court.

Article 16

Communications

1. All correspondence with the Committee shall be addressed to the Secretariat.
2. In the interests of rapid and efficient correspondence among members, the Committee shall, whenever possible, make use of generally available electronic communications facilities, especially electronic mail (e-mail) and the databases of the Court. The Secretariat shall maintain a list of all e-mail addresses and databases relevant to the work of the Committee, and shall provide such information to members and other participants.
3. Where notices of convocation, notifications, documents and other communications subject to deadlines have to be transmitted, the relevant deadline shall be deemed to be met if, within the time limit, any of the above is transmitted by e-mail or made available in one of the databases of the Court.
4. The Secretariat shall notify all members by e-mail when such documents have been made available in one of the databases of the Court.
5. The Secretariat shall be responsible for ensuring access to such databases by members and other participants.
6. Members shall inform the Secretariat by e-mail of all documents not received relating to notified meetings, within three calendar days after the relevant deadline has expired.

Article 17

Amendments

1. The Advisory Committee may amend these Rules of Procedure.
2. Amendments to the Rules of Procedure shall enter into force on the date fixed by the Advisory Committee.

Article 18

Entry into force

These Rules of Procedure shall enter into force on 24 February 2022

For the Advisory Committee

[Signatures and name of the Chairperson] The Chairperson