



association du personnel

staff association

## Internal Memorandum – Mémorandum interne

**To/À:** The Director General **Date:** September 6, 2017

**From/De:** The Staff Council of the WIPO Staff Association **cc:** Chair of the WIPO Coordination Committee Federation of International Civil Servants' Associations (FICSA)

*C. Masera*

**Subject/Objet:** Comments on Revised Whistleblower Policy

A draft new Whistleblower Protection Policy (WPP) was presented recently to Member States for their comments in response to the demands made by the Member States of the World Intellectual Property organization (WIPO) during its 2016 General Assembly.

Although the Staff Council of the WIPO Staff Association has not been invited to comment on the WPP, the Staff Council believes that it is duty bound to provide its views on such important issues concerning staff at large. We therefore have the pleasure in presenting the following comments.

It is our view that the current draft consists of a number of superficial revisions and has left key deficiencies in the original policy intact.

'Substantive' changes appear to be the following:

- In case the Chief Ethics Officer has a potential conflict of interest, he/she should "designate another appropriate WIPO staff member to act in his or her stead" (paragraph 25);
- In case the Director General has a potential conflict of interest, he/she should "designate another appropriate WIPO staff member to act in his or her stead" (paragraph 26); and
- The complainant may wish to refer WIPO Ethics Office's determination to the Chair of the UN Ethics Panel for review (paragraph 27).

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Following a turbulent and divisive period in WIPO's recent history, it is difficult not to wonder if such efforts are merely an example of window-dressing designed to mask over serious issues in WIPO concerning whistleblower protection. These revisions do not give (potential) whistleblowers much confidence:

- In case the Chief Ethics Officer has a potential conflict of interest, he/she is still the one to determine who is the "appropriate" WIPO staff member and to designate the alternate;
- In case the Director General has a potential conflict of interest, he/she is still the one to determine who is the "appropriate" WIPO staff member and to designate the alternate, whose career in WIPO remains at the mercy of the Director General. Furthermore, it is not clear if the alternate's decision is subject to the Director General's review. WIPO's rules and regulations, in addition to the WPP, only allow the Director General to use his/her discretion for final determination;
- Although the complainant may refer the WIPO Ethics Office's determination to the Chair of the UN Ethics Panel for review, the draft does not give any indication if the conclusion of the review would overwrite the WIPO Ethics Office's determination and if the Director General is also obliged to react to the conclusion of the review.

While the proposed revisions do not provide the effective improvements that Member States demanded, the systemic weaknesses in the original policy have been left intact:

- The WIPO Ethics Office can hardly be considered as independent if it continues to report to the Office of the Director General;
- The policy expects whistleblowers to make their report on "reasonable and demonstrable grounds" (paragraph 15.(a)) . Whistleblowers are not investigators. They lack the means to always be able to provide demonstrable evidence. This expectation is inconsistent with the spirit that "the burden of proof shall lie with the Organization" (paragraph 11);
- The policy has a narrow scope for whistleblowers to seek alternative channels of reporting (paragraph 14). For example, excessive delays by the Ethics Office or the Director General in responding to whistleblower's report is not a sufficient reason for whistleblower to seek alternative channels.

In addition, the new draft policy does not address the issue relating to cases filed before and whistleblowers who have already suffered injustice and/or been forced out of the Organization - the policy only applies to WIPO staff. This is not simply a legacy issue. It could also refer to future cases – whistleblowers could be forced out of the Organization before they could make a complaint or before their complaints are concluded or reviewed; then they are no longer protected under this policy.

Addressing these problems is not difficult:

- The Chief Ethics Officer should report to the Independent Advisory Oversight Committee (IAOC) and make the IAOC the authority for hiring, firing and performance evaluation of the Chief Ethics Office;

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- The IAOC should receive whistleblower report and designate an external entity for determination when the Chief Ethics Officer or the Director General has a conflict of interest. In case the Director General has a conflict of interest, IAOC should also designate an external entity for the final determination after investigation. The director General should be obliged to implement the determination in full within 30 days;
  - It should be explicitly stated that the Chair of the conclusion of UN Ethics Panel's review shall overwrite WIPO's Ethics Office's determination and the Director General must act upon the review conclusion as if it is issued by WIPO Ethics Office;
  - The term "demonstrable grounds" should be excluded;
  - Whistleblowers should be allowed to seek external channels for reporting as they see fit when they experience excessive delays from the WIPO Ethics Office or the Director General in responding to the report;
  - Access to external arbitration should be provided;
  - The new WPP should be made retroactive in order to address reprisals already visited upon staff members by WIPO administration. Or, at the very least, a grace period should be provided for previous whistleblowers to re-file their cases so that their cases can be dealt with due care under the new policy.

Finally, we would like to emphasize that the Staff Council of the WIPO Staff Association considers whistleblower protection to be one of the most important aspects for organizational transparency and good governance. We take this opportunity to express our strong desire to work with the WIPO administration and Member States on this subject for our shared core values and principles.