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Program and Budget Committee

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TARGETED TIMELINES IN THE INVESTIGATION AND RELATED PROCESSES

prepared by the Independent Advisory Oversight Committee (IAOC)

1. At its 28th session, the Program and Budget Committee (PBC) requested the WIPO Independent Advisory Oversight Committee (IAOC) “...to review and propose amendments as appropriate to the WIPO Internal Oversight Charter or the investigation policy, in line with the IAOC Terms of Reference, with the view to provide clarification of targeted timelines in the reporting and investigation processes to ensure cases are addressed in a timely manner, while taking into account UN system-wide best practice and the UN Joint Inspection Unit’s report on “Review of Whistleblower Policies and Practices in UN System Organizations” (JIU/REP/2018/4) by the 29th session of the PBC.
2. At its 51st session, the IAOC reviewed the WIPO Internal Oversight Charter, the WIPO Investigation Policy (IOD/IP/2017/1), the WIPO Policy to Protect against Retaliation for Reporting Misconduct and for Cooperating with Duly Authorized Audits or Investigations (OI/33/2017), relevant reports of the Joint Inspection Unit (JIU) and other relevant documents.
3. The IAOC concluded that the targeted timelines established in WIPO were generally adequate and that no amendments to the WIPO Internal Oversight Charter were warranted. The IAOC recommended, however, amendments to the Investigation Policy and to the Policy to Protect against Retaliation. Accordingly, a draft report containing recommendations addressed to the Director General and to the Director, IOD, respectively, was shared with the Director General and the Director, IOD. Their comments were duly considered by the IAOC at its 52nd session and have been reflected in the final version of this report.

4. The applicable WIPO policies contain targeted timelines for various stages of the reporting and investigation processes:

(a) The WIPO Internal Oversight Charter stipulates that the Director General shall seek the advice of the IAOC on how to proceed in cases of allegations of misconduct against the Director, Internal Oversight Division (IOD) “...*at the earliest opportunity, but not later than one month*” (paragraph 22). In case of allegations of misconduct against the Director General, the Director, IOD shall “*immediately*” seek the advice of the IAOC on how to proceed (paragraph 24).

(b) In the above cases, based on the results of the preliminary evaluation, the IAOC shall provide a recommendation to the Director General and the Chair of the Coordination Committee (in case of allegations of misconduct against the Director, IOD) or to the Chairs of the General Assembly and of the Coordination Committee (in case of allegations of misconduct against the Director General) on whether to close the case or refer the matter for investigation to an independent external investigative entity.

(c) Similarly, in cases of allegations of misconduct against the staff of IOD, the Director, IOD shall seek the advice of the IAOC on how to proceed (paragraph 21). The Director, IOD shall also report any significant impairment to independence and objectivity, including conflicts of interest, for due consideration by the IAOC (paragraph 20).

(d) The Internal Oversight Charter stipulates that where the advice of the IAOC is required, such advice shall be provided “*within one month, unless the complexity of the matter requires more time*” (paragraph 25).

(e) The Internal Oversight Charter does not establish a timeline for the decisions to be made upon receipt of the IAOC’s advice.

(f) The WIPO Staff Regulations and Rules stipulate that a complainant may inform the Director General or the Chair of the Coordination Committee of suspected wrongdoing if the Director, IOD has not notified the complainant in writing of the status of the matter “...*within six months*” (Staff Regulation 1.7(c)).

(g) The Investigation Policy stipulates that the Director, IOD shall acknowledge receipt of allegations of misconduct “...*within five working days*” (paragraph 16). Furthermore, IOD shall endeavor to complete the preliminary evaluation of allegations “...*within 30 working days*” (paragraph 23). The Director, IOD shall also endeavor to submit final investigation reports “*within six months*” of the date of initiating the full investigation (paragraph 36).

(h) The WIPO Policy to Protect against Retaliation for Reporting Misconduct and for Cooperating with Duly Authorized Audits or Investigations stipulates that the Ethics Office shall seek to complete the preliminary review “...*within 30 working days*” of receiving all information requested (paragraph 20) and that IOD shall seek to complete its investigation and submit its report “...*within 120 days*” (paragraph 23). In comparison, the United Nations Policy on Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations (ST/SGB/2017/2) establishes targeted timelines of 30 (calendar) days and 120 (calendar) days, respectively.

(i) The WIPO procedures governing the resolution of “Workplace-related conflicts and grievances” (Staff Rule 11.4.1 and OI/47/2016) stipulate that the Director General shall take a decision “...*within 60 calendar days*” of receipt of the respondent’s response to the complaint (of discrimination, harassment and/or abuse of authority), unless the complaint is referred for investigation, in which case the decision shall be notified “*not later than sixty (60) calendar days* following the communication of the investigative findings to the Director General”.

5. The JIU in their report on “Fraud Prevention, Detection and Response in United Nations System Organizations” (JIU/REP/2016/4), noted that timeliness of investigations is an issue in many organizations and recommended to establish key performance indicators for the conduct and completion of investigations (recommendation 13). However, so far, the JIU has not proposed benchmarks for targeted timelines in the investigation process.

6. At the request of the IAOC, the Director, IOD collected information from other UN system organizations on applicable time targets, if any, for completion of preliminary evaluations and of investigations. A number of UN system organizations has not or has not yet established targeted timelines as performance indicators. Those, who have done, have defined longer timelines for the completion of the investigation (9 to 12 months) or have defined different time targets for different types of alleged misconduct.

7. In the view of the IAOC, targets of 30 days for the completion of the preliminary evaluation and of six months for the completion of the full investigation are adequate and can be considered best practice.

8. While the timelines established in WIPO seem to be generally adequate to address allegations of misconduct in a timely manner, the IAOC noted that the various policy documents contain precise timelines for most, but not all, procedural steps. Furthermore, there is no consistent use of the applicable time units (calendar days, working days, months). The IAOC also noted that the Policy to Protect against Retaliation does not establish a timeline for acknowledging receipt of retaliation complaints nor for the final determination by the Ethics Office upon receipt of the investigation report.

9. To ensure a consistent use of timelines and facilitate monitoring of their implementation, the IAOC recommended that the Director, IOD align the Investigation Policy with the WIPO Internal Oversight Charter, using calendar days and months, instead of working days. Similarly, the reference to “30 working days” in the Policy to Protect against Retaliation should be replaced by “30 calendar days”. The IAOC further recommended including an explicit obligation to acknowledge receipt of complaints of retaliation within seven calendar days and establishing a targeted timeline for the final determination of the complaint (e.g., within 30 calendar days after receipt of the investigation report).

10. The IAOC has identified other factors that lead or contribute to often significant delays in completing investigations:

(a) A number of investigation cases warrant referral to an independent external investigative entity, due to a conflict of interest situation or due to the sensitivity or complexity of the matter. Whenever required by the WIPO Internal Oversight Charter, the IAOC identifies and proposes a suitable investigative entity. Often, qualified external investigators are not available at short notice. However, even in cases where the proposed investigator was available, the IAOC noted that the contracting process for

engaging the external investigator was often time-consuming and lead to significant delays. The IAOC therefore suggested that the Director, IOD engage investigation consultants identified by the IAOC on a retainer basis in order to be able to address future cases, where external referral is required, in a timelier manner. The Director, IOD has accepted the recommendation and is currently in the process of establishing, in consultation with the IAOC, "Framework Agreements" with pre-selected individuals and companies for investigative assignments.

(b) Another delaying factor, which the IAOC has observed in a number of cases, is the lack of cooperation of investigation subjects with the investigation, often on alleged health grounds. The IAOC also noted cases where the subject of an investigation countered the investigation with an allegation of harassment against the investigators, thus creating a potential conflict of interest situation. Even if such allegations may turn out to be unfounded, they disrupt the investigative process, as the investigators involved cannot proceed with the case until cleared.

11. Finally, the IAOC wishes to emphasize that the established timelines are targets, not binding deadlines. While straightforward investigation cases can be resolved within even shorter timeframes, considerably more time may be required to address complex and large cases. Under no circumstances should the endeavor to complete an investigation within the targeted timelines affect the quality of the investigation.

12. The IAOC recommended that:

(a) The Director, IOD align the Investigation Policy (IOD/IP/2017/1) with the WIPO Internal Oversight Charter, using calendar days and months instead of working days for the definition of targeted timelines.

(b) The Secretariat consider amending the Policy to Protect against Retaliation (OI/33/2017), using calendar days instead of working days for the definition of targeted timelines, establishing an obligation to acknowledge receipt of retaliation complaints within a given timeline, and establishing a targeted timeline for the final determination of complaints by the Ethics Office.

13. The Director General and the Director, IOD concur with the recommendations made. The Director, IOD has already initiated amendments to the Investigation Policy accordingly.

14. The following decision paragraph is proposed:

15. The Program and Budget Committee (PBC) took note of the contents of document WO/PBC/30/14.

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