



Alicante 20 January 2016

**To the attention of  
Irene Souka, Director General DG ADMIN**

**SUBJECT: OHIMS DRAFT IMPLEMENTING RULES ON ART. 51 OF THE STAFF  
REGULATIONS**

Dear Mrs Souka:

The Commission has recently received for approval Draft Implementing Rules ('the Rules') on Article 51 of the Staff Regulations from OHIM. The Staff Committee of OHIM was invited by Human Resources to make observations and suggestions concerning the Rules. We enclose our comments, which we also submitted to the OHIM Administrative Board on 23/11/2015.

We consider that the wording of Article 51 of the Staff Regulations may cause harm to staff and complications for the management charged with applying it. Implementing Rules should safeguard against a literal interpretation of the law, and ensure that established principles of good administration are respected. Crucially, all efforts must be made to avoid applying a sanction that is disproportionate. Jobholders may show significant progress despite three consecutive unsatisfactory appraisals. A quasi automatic downgrading after three consecutive unsatisfactory appraisals is unlikely to be in the interest of the service or of team spirit. The past achievements of a member of staff must be acknowledged and their contribution in attaining high standards ought to receive due credit. The sanction of freezing a career in exceptional circumstances may be considered, but demotion should be ruled out in practice for all but the most extreme cases. It is vital that each case is assessed having regard to all the circumstances.

The present wording gives the impression (and is interpreted this way by our Appointing Authority) that the administration has an unnegotiable duty to initiate proceedings after three consecutive unsatisfactory reports. We suggest that in the context of the next reform of the SR, the former wording of Article 51 paragraph 1 a) Staff Regulations is re-established to the extent that the word "shall" is replaced by "may" as in the previous version. This will remove the possible risk of an automatic application of the provision (see deleted text and highlighted change):

*Article 51*

1. The appointing authority of each institution shall define procedures to identify, deal with and remedy cases of incompetence in a timely and appropriate fashion.

When adopting internal provisions, the appointing authority of each institution shall respect the following requirements:

(a) an official who, on the basis of three consecutive unsatisfactory annual reports as referred to in Article 43, still shows no progress in his professional competence ~~shall~~ **may** be downgraded by one grade. If the following two annual reports still show unsatisfactory performance, the official ~~shall~~ **may** be dismissed;

We are particularly concerned by your letter dated 28/09/2015 to the President of OHIM, in which you apparently state that the implementing rules should apply *retroactively* to appraisal reports for the period 01/01/2013 to 31/12/2013. We consider that Article 51 should not apply until the implementing rules have been adopted (see our enclosed letter). We consider there are good legal reasons in this circumstance for not maintaining your position. The Staff Committee of OHIM considers that reviewing your point of view, at least regarding the matter of retroactivity, would mean that the European Union civil service respects a proper balance between management and staff, and applies a European Union labour law that is consistent with long-established legal principles.

We propose that you consider suspending agreement to the Rules in order to review your position on retroactivity and, most importantly of all, to make sure that Article 51 is not launched pre-emptively by OHIM on a different trajectory from that envisaged by the Commission.

Yours sincerely,

Gregor Schneider

Chairperson

*HABM PERSONALVERTRETUNG • OAMI COMITE DE PERSONAL • OHIM STAFF  
COMMITTEE • OHMI COMITÉ DU PERSONNEL • UAMI COMITATO DEL PERSONALE*

Annex: Comments of the Staff Committee on the Draft Implementing Rules of the OHIM on Article 51 of the Staff Regulations