

# DISCIPLINARY PROCEDURES

# PROPOSED DISCIPLINARY PROCEDURES

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## APPLICATION

Applying and interpreting the ICC/ESOMAR International Code on Market and Social Research is the primary responsibility of ESOMAR in cases involving an ESOMAR member. ESOMAR will notify the ICC of cases submitted to the ESOMAR Disciplinary Committee.

## RULES

### SECTION A. THE PROFESSIONAL STANDARDS COMMITTEE

#### Article 1

- 1.1.** ESOMAR has a Professional Standards Committee (“PSC”). An important function of the PSC is to apply, primarily at the international level, the ICC/ESOMAR International Code on Market and Social Research, as detailed in the related Notes on the ICC/ESOMAR International Code on Market and Social Research (“Notes”).
- 1.2.** The PSC is located at the ESOMAR Secretariat but may meet in any appropriate place at the request of the PSC Chairman or in his/her absence the Vice Chairman.

#### Composition and Appointment

#### Article 2

- 2.1.** The PSC shall be composed of a Chairman and no fewer than five ESOMAR members, who themselves shall elect a Vice Chairman from among the remaining PSC members. The PSC shall be composed so as to reflect a variety of experiences and interests relating to the market research sector. To this purpose, the PSC members shall come from at least five different countries.
- 2.2.** The Chairman and members of the PSC shall be appointed for a term of three years by the ESOMAR Council, acting on the recommendation of the President of ESOMAR. Their term of office shall be renewable. Upon the retirement of the Chairman of the PSC, a successor shall be nominated by the President of ESOMAR, said nomination being subject to approval by the Council.
- 2.3.** Additional PSC members (with a maximum of two) and one or more consultants may be appointed by the Council.
- 2.4.** The Chairman of the PSC shall nominate a Secretary to the committee, said nomination being subject to approval by the PSC. The position of Secretary may be filled by either a PSC member or non-member. The Secretary shall be entitled to vote on matters brought to the PSC only if the Secretary has been confirmed by the Council as a PSC member.
- 2.5.** The Council, acting in its sole discretion, may replace any PSC member for cause. Such cause may include, but need not be limited to, failure to perform the duties expected of PSC members, as described herein. The Council also may replace any PSC member who has become unavailable.

## Competence

### Article 3

- 3.1.** The Chairman, the Vice Chairman or his/her delegate, after consultation with the PSC, shall examine cases of possible infringement by an ESOMAR member of the above mentioned Code and Notes arising at the international level.
- 3.2.** The PSC shall not examine complaints with respect to contractual, payment or employment issues which the PSC, at its sole discretion, deems fit to be dealt with through legal means unless the alleged violation or violations appear to bring the profession into disrepute and constitute a breach of the Code.
- 3.3.** Any PSC action regarding a Code infringement that may be in legal dispute shall be placed on hold until any legal proceeding is resolved unless the PSC at its discretion deems otherwise. However, the disposition of any legal proceeding does not prohibit the PSC from addressing the Code infringement afterwards.
- 3.4.** As a matter of principle, the PSC shall not examine alleged infringements of the above mentioned Code and Notes occurring at a national level, unless:
  - a)** there are no competent national associations that have adopted or endorsed the ICC/ESOMAR Code or
  - b)** the relevant national associations are not able to deal with the case and refer the case to ESOMAR or
  - c)** more than one country is involved, as with international projects.
- 3.5.** Notwithstanding the provisions of Article 3.4, in any case where an ESOMAR member has after investigation by a national association which has adopted or endorsed the ICC/ESOMAR Code, been found to be guilty of an infringement of the above mentioned Code and Notes at national level that the association considers sufficiently serious to call for suspension or withdrawal of the offender's membership in that association, the latter shall notify the ESOMAR PSC accordingly and provide full details of the case to the PSC. The PSC then shall consider whether the case calls for additional action by ESOMAR in relation to the member concerned.
- 3.6.** The PSC may upon request give opinions to courts of law, public authorities, national associations and national self-regulatory bodies with respect to the interpretation of the above mentioned Code and Notes.

## Submission of complaints

### Article 4

- 4.1.** Any person, company or other organisation directly concerned by an alleged infringement of the above mentioned Code and Notes by a member may file a complaint with the PSC in accordance with Article 3.
- 4.2.** Should the PSC be made aware of a potential breach of the Code that could bring the profession into disrepute, the PSC can at its own discretion start an investigation, which may lead to disciplinary action.
- 4.3.** A complaint can be lodged against an individual or a corporate member. In the latter case, the Corporate Signatory shall respond on behalf of the company or designate a senior executive with appropriate knowledge to respond on their behalf.
- 4.4.** The complaint shall be made in writing and shall be supported with a statement of the case and the Code article(s) which has allegedly been breached as well as by all relevant documents and other evidence. It shall be addressed to the Professional Standards Committee of ESOMAR.

Notwithstanding the previous paragraph, the PSC shall be able to make an independent decision regarding which Code articles have been allegedly breached.

## Procedure

### Article 5

- 5.1. On receipt of a complaint concerning a member's conduct or on his/her own initiative, the Chairman of the PSC, the Vice Chairman or his/her delegate shall cause inquiries to be made to establish the facts and circumstances of the matter by whatever means the PSC considers appropriate, including raising questions directly with the member concerned. The member shall be informed upon the raising of any question that such questions are being asked in connection with possible disciplinary proceedings.
- 5.2. Any member of the PSC, including the Chairman, having a personal interest in the subject matter of a complaint or a relationship with one of the parties of a nature that might affect the PSC member's ability to proceed in an objective manner shall withdraw from any consideration of the complaint.
- 5.3. Having made such inquiries, the PSC may conclude that there is no prima facie case against the member concerned, in which event the PSC shall so inform the member in writing as well as any complainant involved.
- 5.4. To avoid unnecessary damage to the member's reputation or the reputation of others, the Chairman, the Vice Chairman or his/her delegate, as the case may be, may act on behalf of the PSC.

Such action shall be limited to deciding whether the complaint and related inquiries have been sufficient to establish the existence of a prima facie violation of the above-mentioned Code and Notes. If the Chairman, the Vice Chairman or his/her delegate concludes that a prima facie case has not been established and that an early decision on the particular complaint is needed, he/she may terminate the proceedings and so inform the parties. In the event of such action, the PSC Chairman, the Vice Chairman or his/her delegate, as the case may be, shall notify the other members of the PSC promptly of the action he/she has taken. In no event shall the Chairman, the Vice Chairman or his/her delegate undertake on his/her own to impose a warning on any member or non-member of ESOMAR.

- 5.5. If, having undertaken appropriate inquiries, the Chairman, the Vice Chairman or his/her delegate, after consultation with the PSC, decides that there is a prima facie case that should be pursued against the member concerned in respect of a possible breach of any provision of the above mentioned Code and Notes, the PSC shall write to the member setting out the conduct complained of and provide the member with the documentation supporting the claim submitted by the complainant and the Code provisions allegedly breached.
  - a) The PSC shall allow the member a maximum of 21 calendar days to provide a written response. Members are expected to co-operate in the investigation of a complaint. Failure to cooperate can lead to a sanction.
  - b) Upon receipt of the member's written response, or after a maximum of 21 calendar days, whichever occurs earlier, the PSC shall undertake such further inquiries as it considers necessary.
  - c) Upon completing its inquiries, the PSC shall give its opinion on the case and send its findings and reasons promptly to the member in writing.
  - d) In any case that appears to the PSC, having completed its inquiries, to be so serious that a sanction should be considered as stated in Article 12, numbers 1, 2, 3, 4 or 5, then the matter shall be referred to the Disciplinary Committee. In that event, the PSC shall set out the case fully in writing, together with any relevant documents and other evidence, and shall provide such full case to the Disciplinary Committee and inform the Council. The member and complainant shall be informed that the case has been passed to the Disciplinary Committee and that the Council has been informed.

- 5.6.** Meetings of the PSC may be held, at the discretion of the PSC Chairman, Vice Chairman or his/her delegate, as the case may be, in person, by telephone or by any other appropriate means of communication. Votes may be taken and recorded in the same manner. The PSC may decide about complaints without a hearing and shall notify the parties of its decision.

If the PSC finds that there is no case to pursue, the complainant can request a review of the decision. The same applies should either party wish to have any PSC decision regarding a warning reviewed.

All parties shall be informed that such requests must be lodged in writing, be accompanied by documented evidence supporting such a request and be received within 21 calendar days of the sending of the PSC's decision. The Disciplinary Committee Chairman or his/her delegate, whose decision is final, will decide if such a request should be granted and if so, he/she will pass the case to the Disciplinary Committee for review (see Article 10.4).

## SECTION B. THE DISCIPLINARY COMMITTEE

### Article 6

- 6.1.** ESOMAR has a Disciplinary Committee ("DC"). The key function of the DC is to apply, the ICC/ESOMAR International Code on Market and Social Research, as detailed in the related Notes on the ICC/ESOMAR International Code on Market and Social Research ("Notes"), by examining complaints referred by the PSC.
- 6.2.** The DC is located at the ESOMAR Secretariat but may meet, at the discretion of the DC Chairman or in his/her absence the Substitute Chairman, at any place deemed by a majority of the DC members to be appropriate. In exercising the latter discretion, the DC members shall seek whenever possible to accommodate the interests of those expected to appear before the DC.

### Composition and Appointment

#### Article 7

- 7.1.** The DC shall be composed of a Chairman and seven senior ESOMAR members appointed by the Council for a term of three years, which may be renewed. The DC shall be composed so as to reflect a variety of experiences and interests relating to the market research sector. Once a case has been received by the DC Chair, the DC chair shall appoint three members and a substitute to form the chamber that will deal with that individual case.
- 7.2.** The Chairman shall preferably be an independent lawyer with relevant knowledge of the market research sector. In cases of unavailability the Chairman shall nominate an independent Substitute Chairman who shall replace him or her. The appointment of the Substitute Chairman shall be subject to Council approval.
- 7.3.** The Chairman shall be appointed for a term of five years by the ESOMAR Council, acting on the recommendation of the President of ESOMAR. The Chairman's term of office shall be renewable. Upon the retirement of the Chairman of the DC, a successor shall be nominated by the President of ESOMAR, said nomination being subject to approval by the Council.
- 7.4.** The Chairman of the DC shall nominate a Secretary to the committee, said nomination being subject to approval by the DC.
- 7.5.** The Council, acting in its sole discretion, may replace any DC member for cause. Such cause may include, but is not limited to, failure to perform the duties expected of DC members, as described herein. The Council also may replace any DC member who has become unavailable.

## Right of challenge

### Article 8

- 8.1.** Any member of the DC, including the Chairman, shall undersign that they have no personal interest in the subject matter of a complaint or a relationship with one of the parties of a nature that might affect the DC member's ability to proceed in an objective manner. Should this be the case, they shall withdraw from any consideration of the complaint.
- 8.2.** Should a member of the DC chamber selected to deal with the complaint be challenged by one of the parties at the outset of a case or at the earliest practicable time before the case is heard by the DC, the DC Chair shall decide at his or her discretion to appoint an alternate. The decision of the DC Chair, who shall be the sole judge of the grounds of challenge, shall be final.
- 8.3.** Shall the Chairman withdraw from considering a complaint according to article 8.1 or be challenged by one of the parties, a Substitute Chairman will be appointed by the ESOMAR Council following the procedure established in article 7.3 for the DC Chairman's appointment.

## Quorum

### Article 9

- 9.1.** The deliberations of the DC shall be valid when the Chairman or the Substitute Chairman and all members of the chamber participate.
- 9.2.** Decisions by the DC require a majority vote by the members serving on the chamber. The Chairman of the DC or, in his/her absence, the Substitute Chairman, shall not be entitled to vote.

## Competence

### Article 10

- 10.1.** The DC shall examine, upon referral from the PSC, cases in which the PSC has found a prima facie breach of the ICC/ESOMAR International Code on Market and Social Research, as detailed in the related Notes, that is, in the opinion of the PSC, so serious that a sanction should be considered as stated in Article 12, numbers 1, 2, 3, 4 or 5.
- 10.2.** As stated in Article 5, the PSC, having first carried out its own preliminary investigation, shall refer to the DC for judgement only those cases where the PSC has concluded that one or more sanctions (numbers 1, 2, 3, 4 or 5 under Article 12) may be called for.
- 10.3.** The PSC shall set out its considerations in coming to its conclusion. If it decides that the case shall be referred to the DC, it shall also include a recommendation for a sanction and the reasons why, noting that the DC is not bound by this recommendation.
- 10.4.** The DC shall also deal with requests to review decisions made by the PSC as authorised by the DC Chairman (see Article 5). The PSC shall be entitled to respond to any such appeals.

## Procedure

### Article 11

**11.1.** Within 21 calendar days of the PSC's submission of the case to the member, the PSC shall provide the full case to the DC and inform the Council and the complainant accordingly.

Upon receipt of the full case the DC shall confer to consider the matter and:

- a) shall inform the PSC and the member regarding the procedures to be followed, including that the hearing can be held either on paper or face to face
- b) may raise preliminary questions with the PSC and/or the member, which shall be in writing and shall be sent to both the PSC and the member,

**11.2.** The hearing shall be dealt with on paper unless the member requests that it be held in person within 14 calendar days of the DC hearing notification being sent.

- a) If the member has requested a face to face hearing, the member must be notified of the date at least 42 calendar days in advance. Should the member not be available, they must inform the DC within seven days of being notified of the hearing date, which can be reset once at the DC Chairman's discretion, and if the member then cannot participate, the matter will be dealt with on paper unless the DC Chairman decides otherwise.
- b) All evidence placed before the DC must be supported by a written statement setting out the essential features of that evidence.
- c) Any documents or witness statements relating to the case shall be exchanged at least 14 calendar days prior to the hearing. Any document or witness statement submitted later shall be accompanied by a statement of reasons deemed by the submitter to justify the late submission. The DC shall be the final arbiter of the admissibility of individual documents, being guided in that respect by the need to ensure that the proceedings are conducted in a fair and orderly manner.
- d) In the event that the member wishes to have legal representation at a scheduled hearing the member shall so inform the DC at least 28 calendar days in advance of the hearing.
- e) The DC may vary these requirements in exceptional circumstances.
- f) Members of the DC may themselves question witnesses, parties or representatives as they think fit.
- g) The DC shall reach decisions based on the balance of probability and in conformity with the general principles of fair process.

**11.3.** The order of proceedings for the hearing before the DC, unless the DC otherwise directs, shall be as follows:

- a) submissions by or on behalf of the PSC;
- b) submissions by or on behalf of the member;
- c) hearing of any witnesses called by the PSC or evidence submitted by them followed by cross examination of such witnesses by or on behalf of the member;
- d) hearing of any witnesses called by the member or evidence submitted by them followed by cross examination of such witnesses by or on behalf of the PSC;
- e) closing submissions by or on behalf of the PSC and
- f) closing submissions by or on behalf of the member.

**11.4.** The decision of the DC together with any sanction to be imposed shall be provided in writing to the member, complainant, the PSC and Council as promptly as practicable and the DC shall set out the reasons therefore.

- 11.5.** Whilst the decision of the DC shall be final, the member or the complainant can appeal to Council if he or she contends that there have been substantial deviations from the required procedure. Any appeal must be supported by documented evidence, related to the Articles of these procedures and received by the Director General within 28 calendar days upon receipt of notification of the DC's decision.
- 11.6.** In the event of an appeal, the PSC and the DC shall each be entitled to respond to the party's claim of procedural irregularity.
- 11.7.** Should the appeal to Council be successful, the case shall be considered by another chamber of the DC. If the Council deems it appropriate, a Substitute Chairman shall be appointed following the procedure established in article 7.3 for the DC Chairman's appointment.

## SECTION C. SANCTIONS

### Article 12

- 12.1.** In imposing a sanction, which will apply to both individual and corporate members as relevant, the following may be taken into account:
- The number of violations that are found;
  - Whether such violations constitute a pattern tending to establish that the member is incapable of complying or unwilling to comply with the Code and its Notes;
  - That the member may also be required to take appropriate remedial action and can be required to provide an undertaking to prevent a recurrence.

The PSC may only impose a warning.

The DC may impose a warning and in addition one or more of the following sanctions:

1. reprimand
2. suspension
3. expulsion
4. notification to authorities
5. any further measures that are authorised by the Council

If suspension is imposed, the duration should not be less than one year or more than two years. At the end of the suspension period, the member may be reinstated by Council on condition that written assurance is received that remedial action has been taken to ensure that the action or omission named in the decision of the DC will not be repeated. In imposing the sanction of suspension the DC may recommend to the Council that the member be expelled from membership if such assurances are not provided.

If a member is expelled, they can apply for reinstatement not less than three years after expulsion and must provide a written assurance that remedial action has been taken to ensure that the action or omission named in the decision of the DC will not be repeated before the application can be considered by Council.

- 12.2.** If a member subject to a complaint resigns or their membership is withdrawn through reason of non-payment of membership fees while the matter is unresolved, the PSC and the DC shall still be entitled to examine the matter and impose the relevant measure. Re-admission to membership will not be granted until any outstanding disciplinary process has been completed.

- 12.3.** Sanctions imposed by the DC will be published unless the DC on the request of one or more of the parties involved decides to abstain from publication.

Publication will apply to individual and corporate members and implies the dissemination of a summary of the decision including the name of the member and the sanction.

Publication can include information being published on ESOMAR's website, in ESOMAR's magazine or equivalent and notifying the relevant national association/s or other bodies as relevant.

The complainant's name should never be included in the publication of a sanction unless specifically requested by the complainant.

## SECTION D. OTHER REQUIREMENTS

### Confidentiality

#### Article 13

- 13.1.** Except as provided below, the deliberations of the PSC and the DC shall be confidential.
- 13.2.** Documents the PSC or the DC accept as being confidential shall not be shown to anyone other than PSC/DC members, the PSC Secretary, pertinent members of ESOMAR's executive, professional staff and any experts needing access to such documents to enable them to formulate the expert opinion(s) being sought by the PSC or the DC, as the case may be, or any of the parties.
- 13.3.** All of those given access to confidential documents, including the parties involved, in connection with any disciplinary proceeding shall be required to sign a document pledging them to respect any and all disclosure limitations that have been placed on individual documents.
- 13.4.** ESOMAR shall report the decisions formulated in individual cases resulting in a sanction being imposed by the DC once such decisions have become final (see Article 19).
- 13.5.** If the PSC or DC, as the case may be, does not sustain the charges alleged in the particular complaint, the name(s) of the ESOMAR member(s) against whom the particular complaint has been lodged shall be included in any report of PSC/DC decisions only if such member(s) unanimously so request in writing.

### Languages

#### Article 14

The language to be used will be English unless, at the request of one or more of the parties involved, the Chairman of the relevant committee decides that complaints and other statements can be made in another language. Documents should be delivered in the form of original copies and, if they are not in English, a translation should be added.

### Expert advice

#### Article 15

The DC may after consultation with the parties seek expert advice at any time, which shall be made available to both parties. At the discretion of the Chairman or Substitute Chairman, as the case may be, experts may be invited to appear before the DC.

## Costs

### Article 16

- 16.1.** As a principle, no out of pocket costs shall be reimbursed. However, If the charges in the complaint are not sustained, the Council may indemnify the individual professional member(s) involved for that part of the member(s)' out-of-pocket costs that the Council, acting in its sole discretion, deems to be required to serve the interests of justice. Legal costs will never qualify for reimbursement.
- 16.2.** If an appeal is made against a DC decision, the Appeals Committee may require a reasonable deposit (that shall not exceed five times the annual membership fee for complaints against individual professional members) to be made by the appellant as proof of goodwill. The deposit shall be repaid to the appellant if the appeal is sustained.

## Interpretation

### Article 17

ESOMAR members should seek always to comply with the spirit as well as the letter of the ICC/ESOMAR Code, as detailed in the related Notes.

## Jurisdiction

### Article 18

All disputes arising out of or in connection with these Disciplinary Procedures must be dealt with under Dutch law and a Dutch Court will have exclusive jurisdiction.

## Time periods

### Article 19

All references to “days” throughout this Disciplinary Procedures should be interpreted to mean “calendar days”

### Article 20

Any time period set out in these procedures may be varied at the discretion of the committee dealing with the complaint at the time within reasonable limits.

## Annual report

### Article 21

The PSC and the DC shall present an annual report to the ESOMAR Council and Annual General Meeting. The names of members expelled or suspended as a result of a disciplinary action shall be included in the report to the AGM with a summary of the offence.

## SECTION E. APPLICATION TO NON-MEMBERS

### Article 22

- 22.1.** The rules specified herein shall apply to any complaint brought against an ESOMAR member. To the extent practicable, the same rules shall be employed whenever a complaint involves a non-member.
- 22.2.** A proceeding against a non-member may be entertained only if approved by the PSC , which shall authorise such a proceeding only if deemed by the Council to be required to safeguard the ethical standards contained in the ICC/ESOMAR Code on Market Research and Social Research and the related Notes.
- 22.3.** In the case of a complaint against a non-member of ESOMAR, the PSC may request that the non-member refrain from the action complained of or, in more serious cases or when the request has not been complied with, refer the matter to the Council with a proposal for appropriate steps including publication and/or notification to the authorities.



ESOMAR is the world organisation  
for encouraging, advancing and elevating  
market research worldwide.