



**Rules of Procedure in the Event of Suspected Misconduct by Directors  
of the Max-Planck-Gesellschaft**

**Section One: General provisions**

**Article 1 Personal scope of application**

These Rules of Procedure apply to all Directors as defined in Art. 28, para. 3 of the Statutes of the Max-Planck-Gesellschaft (MPG Statutes) and to all Scientific Members (with the exception of External Scientific Members) as defined in Art. 5, para. 1 of the MPG Statutes.

**Article 2 Material scope of application**

(1) These Rules of Procedure apply in the event of indications of scientific and non-scientific misconduct.

(2) Within their personal scope (Art. 1), these Rules of Procedure take precedence over the procedural rules as well as the provisions on the determination of measures applicable when scientific misconduct is ascertained pursuant to Section II, Subsections 2 and 3 of the Rules of the Max-Planck-Gesellschaft for “Responsible Acting in Science: Rules of conduct for good scientific practice – How to handle scientific misconduct”<sup>1</sup>.

(3) These Rules of Procedure replace, within their personal scope (Art. 1), the Rules of Procedure “Handling of Suspected Non-Scientific Misconduct”, which came into force by resolution of the Senate on 22 November 2019.

(4) The tasks of the Ombudspersons of the Institutes and the Sections to advise the parties involved in cases of conflict relating to good scientific practice in accordance with the “Guidelines of the Scientific Council for Electing Ombudspersons to Max Planck Institutes and the Sections of the Max-Planck-Gesellschaft” remain unaffected.

**Article 3 Definitions**

(1) Scientific misconduct occurs when in a scientifically significant context, false statements are made deliberately or due to gross negligence, the intellectual property of others is infringed, or their research activities are otherwise impaired. The circumstances of each individual case are decisive. Details can be found in Section I and Section II, Subsection 1 of the Max-Planck-Gesellschaft's Rules “Responsible Acting in Science: Rules of conduct for good scientific practice – How to handle scientific misconduct”.

(2) Non-scientific misconduct occurs when, due to active action or omission (including instigation or participation), applicable law is violated and the violation affects the Max-Planck-Gesellschaft and/or its

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<sup>1</sup> Current version: April 2022.

employees in their professional relationship. Details can be found in the “General Works Agreement on Handling and Procedure as regards Misconduct in the Max-Planck-Gesellschaft”<sup>2</sup> .

(3) An incriminated person is any person who is subject to an allegation of scientific or non-scientific misconduct based on a hint or other reasons.

(4) A person giving a hint (whistleblower) is any person who makes a report of scientific or non-scientific misconduct, regardless of a contractual relationship with the Max-Planck-Gesellschaft.

(5) An informant is a person who can state their own perceptions in order to clarify the facts of the case without being a whistleblower themselves.

(6) The Vice President who is assigned by the President as competent for attending to the matters of the Institute concerned is the competent Vice President. In case of a conflict of interest the President shall assign another Vice President to attend to the proceedings.

#### **Article 4 Protection of whistleblowers, informants and potentially harmed individuals**

(1) For the position of whistleblowers, the rules of the Hinweisgeberschutzgesetz (HinSchG; German Whistleblower Protection Act)<sup>3</sup> as well as the “General Works Agreement on Handling and Procedure as regards Misconduct in the Max-Planck-Gesellschaft” apply, in particular as regards the specifications on the tasks of the legal confidants.

(2) The Max-Planck-Gesellschaft must not discriminate against whistleblowers, informants or possibly harmed individuals because of them giving hints or participating in the proceedings. The whistleblower, an informant or a possibly harmed individual must not be deprived of any advantages because of their involvement. Discrimination and/or intimidation of the whistleblower, an informant or a possibly harmed person because of their hints or participation in the proceedings, as well as the threat or its attempt constitute a breach of duty which may have consequences under labour law, civil law and/or criminal law.

### **Section Two: Preliminary investigations**

#### **Article 5 Decision on the initiation of preliminary investigations**

In the event of actual indications of scientific or non-scientific misconduct based on hints or other circumstances, the responsible Vice President and the Secretary General decide to initiate preliminary investigations. As part of the preliminary investigations, it is examined whether there are sufficiently concrete grounds for suspicion of misconduct. Hints which do not substantiate a conclusive suspicion (as far as possible) despite further inquiries with the whistleblower are to be documented, but not processed any further. The whistleblower will be informed if it is possible to make contact.

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<sup>2</sup> “GWA Reporting System” dated 18 February 2020, in force since 23 October 2020

<sup>3</sup> (German) Whistleblower Protection Act (HinSchG) adopted on 31 May 2023.

## **Article 6 Conducting the preliminary investigations**

(1) The Staff Unit "Internal Investigations" of the Max-Planck-Gesellschaft is responsible for conducting the preliminary investigations. This Staff Unit is established within the Audit Department of Administrative Headquarters of the Max-Planck-Gesellschaft. The procedural competences within this Staff Unit is set by the Standards of Operation Procedure of the Audit Department as resolved by the Verwaltungsrat (Executive Committee).

(2) The Staff Unit "Internal Investigations" prepares the facts of the case from a factual and legal point of view. It has to identify incriminating and exculpatory facts. The Staff Unit respects the presumption of innocence and the acknowledged rules of fair proceedings. The duration of the preliminary investigations shall not exceed a period of six months.

(3) The Staff Unit "Internal Investigations" may involve internal and external individuals (e. g. staff members of the Institute concerned, lawyers, experts, external scientists, etc.) to assist in clarifying the facts.

(4) The incriminated person is to be informed by the Staff Unit "Internal Investigations" about the commencement of preliminary investigations. This does not apply in case of opposing reasons on the part of the Max-Planck-Gesellschaft or other individuals, which need to be justified and documented (e. g. endangerment of the investigation, risk of reprisals for whistleblowers, informants and possibly harmed parties, and legal exceptions to notification requirements). The information is to be provided without delay if the opposing reasons no longer exist. The incriminated person will be informed in an appropriate manner about the progress of the proceedings.

(5) The Managing Director is to be informed of the initiation of the preliminary investigation as soon as members of the Staff Unit access documents of the Institute in the course of their investigation, request information from staff members of the Institute or are on the premises of the Institute. If the investigation concerns the Managing Director, their deputy shall be informed. Art. 6 para.4 sentences 2 and 3 apply accordingly.

(6) By stating the incriminating facts and evidence and at the same time safeguarding the protection of whistleblowers, informants and possibly harmed individuals (→ Art. 7), the incriminated person has to be given the opportunity to make a statement in writing or - at their choice - to be heard in person. For this purpose, they may be assisted by a person of their confidence as legal counsel or other adviser. The deadline for a written statement is four weeks; it may be extended depending on the circumstances of the individual case.

(7) The initiation of preliminary investigations may be waived with the consent of both the competent Vice President and the Secretary General if the available indications allow the conclusion that upon detection of any misconduct a discontinuation according to Art. 9 para. 4 sentence 2 may be considered. Art. 5 sentence 4 applies accordingly.

(8) If, in the course of the preliminary investigation, indications of conflict situations at the Max Planck Institute concerned arise, an arbitrator or a competent ombudsperson may be involved, mediation procedures may be initiated or other measures may be taken with the aim of conflict resolution, regardless of the decision to conduct a formal investigation.

## **Article 7 Protection of whistleblowers, informants and potentially harmed individuals**

The identity of the whistleblower as well as the identity of the informants or potentially harmed individuals will be treated confidentially at their request within the framework of the preliminary investigations.

## **Article 8 Preliminary investigation report**

(1) Upon completion of the clarification of facts, the Staff Unit "Internal Investigations" prepares a written report on the result of its preliminary investigations, in particular its findings on the facts of the case and its legal assessment.

(2) The report is to be submitted without delay to the competent Vice President and to the Secretary General.

## **Article 9 Decision on the progress of proceedings**

(1) Based on the preliminary investigation report, the competent Vice President and the Secretary General decide on the further steps of the proceedings.

(2) Once the suspicion of misconduct could not sufficiently be confirmed or the allegations not been proven, the proceedings have to be terminated by informing the incriminated person of the reasons. The result has to be put on record. The incriminated person has to be rehabilitated in an appropriate manner at their request.

(3) If the existence of sufficiently concrete suspicions of misconduct is confirmed on the basis of the preliminary investigations, the competent Vice President and the Secretary General will decide on the transition to the formal investigation proceedings. The decision is communicated to the Managing Director of the Institute where the incriminated person is active. If the Managing Director is the incriminated person, their deputy has to be informed.

(4) If, in the course of the preliminary investigation, the incriminated person has admitted the misconduct they are charged with, the preliminary investigation report may, with their consent, be submitted without delay to the Scientific Commission which assesses the seriousness of the misconduct and proposes possible measures to the Verwaltungsrat (Executive Committee) (→ Art. 16). If the admitted misconduct is considered minor, an immediate termination of the proceedings may be taken into account by the competent Vice President and the General Secretary, in particular if the incriminated person has significantly contributed to the clarification of the matter or has already taken measures to remedy any damage that has occurred or to refrain from similar misconduct.

(5) The final result of the preliminary investigations, together with the main reasons, is to be communicated in writing to the incriminated person and, at their request, also to the whistleblower and to potentially harmed individuals in accordance with the "General Works Agreement on Handling and Procedure as regards Misconduct in the Max-Planck-Gesellschaft". In the event of termination of the proceedings, they shall be given the opportunity to make a statement.

### **Section Three: Formal investigation**

#### **Article 10 Competence and composition of the Commission of Inquiry**

(1) A Commission of Inquiry which consists of three individuals is responsible for the formal investigation.

(2) The Chairperson of the Commission must be qualified to hold judicial office and may not have any close relationship with the Max-Planck-Gesellschaft. She or he is nominated by the Verwaltungsrat (Executive Committee) of the Max-Planck-Gesellschaft for all formal investigation proceedings initiated by the competent Vice President and the Secretary General during a period of three years. The Verwaltungsrat (Executive Committee) nominates two further individuals who are qualified to hold judicial office and who may be entrusted with the chairpersonship of investigative committees in the event of the absence, overload or resignation of the Commission Chairperson.

(3) One of the two further Commission members must be a Scientific Member of the Max-Planck-Gesellschaft and the other one an external scientist with a professional connection to the scientific field of activity of the incriminated person.

(4) The competent Vice President and the Secretary General decide on the specific selection of any further Commission members after hearing the Chairperson and their deputy of the Section to which the incriminated person belongs. The Commission member who belongs to the Max-Planck-Gesellschaft is nominated from a list of 10 individuals who were generally elected by the competent Section for such a purpose. The allocation of Scientific Members to a Commission of Inquiry shall rotate in alphabetical order in view of successive nominations for different proceedings. The general rules on conflicts of interest are to be observed.

#### **Article 11 Conducting the formal proceedings**

(1) The Commission of Inquiry deliberates in non-public oral proceedings. It examines in free assessment of evidence whether scientific or non-scientific misconduct has occurred. It decides hereon by a majority of its votes after completion of the investigative measures. The Commission of Inquiry observes the presumption of innocence and the recognized rules of a fair trial. The incriminated person will be informed in an appropriate manner about the progress of the proceedings.

(2) The Commission of Inquiry may question informants, consult experts and take further relevant investigative measures.

#### **Article 12 Hearing of the incriminated person**

The incriminated person is to be given the opportunity to submit a written statement within a reasonable time limit. At their request, they are to be heard orally. They may be assisted by a person of their confidence as legal counsel or other adviser.

### **Article 13 Limited protection of whistleblowers, informants and potentially harmed individuals**

(1) The identity of a whistleblower, an informant or a potentially harmed individual has to be disclosed with their consent if the incriminated person cannot otherwise defend themselves properly. This applies in particular if the credibility of the whistleblower, the informant or the possibly harmed individual is of essential importance for the determination of the misconduct. If this individual refuses to consent to the disclosure of their identity, their statements cannot be used to the disadvantage of the incriminated person.

(2) At a hearing, the whistleblower, an informant or a potentially harmed individual may be assisted by a person of their confidence as legal counsel or other assistance.

### **Article 14 Commission report**

(1) The Commission of Inquiry prepares a written report on the facts established, the possible existence of scientific or non-scientific misconduct as well as its procedure and decision-making.

(2) The report is to be submitted without delay to the competent Vice President and to the Secretary General.

### **Article 15 Decision on the further proceedings**

(1) On the basis of the investigation report, the competent Vice President and the Secretary General decide on the further steps of the proceedings.

(2) Once the suspicion of misconduct could not sufficiently be confirmed or the allegations not be proven, the proceedings are to be terminated by informing the incriminated person. Art. 9 para. 2 sentence 3 applies accordingly.

(3) If the Commission of Inquiry considers the misconduct to be sufficiently proven, the competent Vice President and the Secretary General submit the investigation report without delay to the Scientific Commission and subsequently, together with the recommendation of the Scientific Commission pursuant to Art. 16, to the Verwaltungsrat (Executive Committee). Art. 9 para. 4 sentence 2 applies accordingly.

## **Section Four: Measures in case of identification of misconduct**

### **Article 16 Deliberation and recommendation of the Scientific Commission**

The Scientific Commission assesses the seriousness of the misconduct on the basis of the investigation report and proposes to the Verwaltungsrat (Executive Committee) any measures within the meaning of Art. 18 of these Rules of Procedure by a majority of its votes. The general rules on conflicts of interest are to be observed.

### **Article 17 Decision of the Verwaltungsrat (Executive Committee)**

(1) The Verwaltungsrat (Executive Committee) decides on the nature and scope of the measures on its own responsibility and in compliance with the general rules on conflicts of interest by a majority of its votes.

(2) The Chairperson of the competent Section and their deputy are to be invited to the previous deliberations of the Verwaltungsrat (Executive Committee).

### **Article 18 Measures**

(1) Measures include in particular:

a) the formal determination of the misconduct of the incriminated person

b) a warning letter

c) a temporary or permanent exclusion of the incriminated person from participation in certain bodies of the Max-Planck-Gesellschaft

d) a temporary or permanent exclusion of the incriminated person from MPG-internal application procedure

e) a reduction in the material, personnel and financial resources under the conditions of an extraordinary notice of termination in accordance with h) or in accordance with the employment contract agreements between the Max-Planck-Gesellschaft and the incriminated person

f) a complete, content-limited or temporary withdrawal or non-renewal of the Directorship for good cause; the withdrawal requires serious misconduct on the part of the incriminated person

g) a termination of the Scientific Membership for good cause; this requires a serious misconduct of the incriminated person

h) an extraordinary termination of the employment relationship for good cause within the limits of the statutory requirements and those contractual agreements which govern the employment contract of the incriminated person (including the reference to the requirements of Civil Service Law for the removal of a civil servant from civil service status)

(2) The measures are to be ordered in compliance with the principle of proportionality.

(3) In case of an urgent suspicion of serious misconduct on the part of the incriminated person and in case that a Head of Institute or a Scientific Member exercises their rights during the ongoing proceedings under these Rules of Procedure with considerable risks for third parties or the reputation of the Max-Planck-Gesellschaft, the Verwaltungsrat (Executive Committee) may, upon request from the Vice President and the Secretary General as well as in compliance with the principle of proportionality, by a majority of its votes, order a temporary withdrawal of the Directorship until the completion of the proceedings. Art. 17 para. 2 applies accordingly. The temporary withdrawal may be limited to single areas of responsibility of the Directorship. The time limit may not exceed a period of six months. The withdrawal

may be extended for another six months if the reasons according to sentence 1 continue to exist. It is to be revoked immediately once the reasons according to sentence 1 do not (or no longer) exist.

## **Section Five: Final provisions**

### **Article 19 Termination of proceedings by mutual consent**

At any stage of the proceedings, the Vice President and the Secretary General may negotiate with the incriminated person on a mutually agreed termination of the proceedings. The termination of the proceedings requires the approval of the Verwaltungsrat (Executive Committee). An amicable solution must take sufficient account of the interests of the whistleblowers, informants and potentially harmed individuals and is to be brought to their attention.

### **Article 20 Interaction of Vice President and Secretary General**

In case that, according to these Rules of Procedure, the competent Vice President and the Secretary General are called upon to decide, a mutual agreement needs to be reached. If this is not possible, the President will appoint another Vice President who shall have the casting vote. Preliminary investigations pursuant to Art. 5 sentence 1 shall be initiated if either the competent Vice President or the Secretary General approve the existing indications of scientific or non-scientific misconduct to be sufficient.

### **Article 21 Coming into force**

(1) These Rules of Procedure come into force with expiry of 31 December 2023.

(2) Investigation proceedings initiated prior to that date will be continued under the rules in force on 31 December 2023. Pending proceedings may be continued based on these Rules of Procedure provided that the incriminated person agrees.