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## **Assemblies of the Member States of WIPO**

### **Fifty-Ninth Series of Meetings Geneva, September 30 to October 9, 2019**

#### **APPOINTMENT OF THE DIRECTOR GENERAL IN 2020**

*Memorandum prepared by the Secretariat*

#### Introduction

1. The term of office of the Director General will expire on September 30, 2020. The present memorandum recalls the constitutional provisions concerning the nomination and appointment of Directors General of WIPO and the “Procedures for the Nomination and Appointment of Directors General of WIPO,” adopted by the WIPO General Assembly in 1998<sup>1</sup> (1998 Procedures). Regarding the 1998 Procedures, the present memorandum reviews its prescribed timetable of procedural steps and, for reasons stated in more detail below, proposes the adoption of two amendments necessary to ensure that such Procedures continue to provide sufficient flexibility and durability in their application to future elections of Directors General. In addition, given a particular feature of the timetable as applied to the current election process, the present memorandum also proposes a one-time derogation from those Procedures. This memorandum concludes by setting forth the timeline for the implementation of the procedural steps.

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<sup>1</sup> See documents WO/GA/23/6, paragraph 5, and WO/GA/23/7, paragraph 22.

## Constitutional Provisions

2. The Convention Establishing the World Intellectual Property Organization (WIPO Convention) contains the following provisions on the nomination and appointment of the Director General.

### Nomination

#### Article 8(3)

“The Coordination Committee shall:

“...(v) when the term of office of the Director General is about to expire, or when there is a vacancy in the post of the Director General, nominate a candidate for appointment to such position by the General Assembly; if the General Assembly does not appoint its nominee, the Coordination Committee shall nominate another candidate; this procedure shall be repeated until the latest nominee is appointed by the General Assembly”;

### Appointment

#### Article 6(2)

“The General Assembly shall:

“(i) appoint the Director General upon nomination by the Coordination Committee”;

#### Article 6(3)

“(g) For the appointment of the Director General...the required majority must be attained not only in the General Assembly but also in the Assembly of the Paris Union and the Assembly of the Berne Union.”

Furthermore, the WIPO Convention contains the following provision on the appointment of the Deputy Directors General.

#### Article 9(7)

“The Director General shall appoint the staff necessary for the efficient performance of the tasks of the International Bureau. He shall appoint the Deputy Directors General after approval by the Coordination Committee. ...”

## Procedural Steps

3. At its meeting in September 1998, the WIPO General Assembly adopted the 1998 Procedures. The 1998 Procedures are set out in Annex I to this memorandum.

4. The first step in the Procedures consists of the sending of a circular by the Chair of the WIPO Coordination Committee to all Member States of WIPO, inviting them to propose a national as candidate for the post of Director General of WIPO. This circular will be sent on September 30, 2019. A copy of it is set out in Annex II to this memorandum.

5. The Procedures adopted in 1998 foresee that the “WIPO General Assembly which is to appoint the Director General upon nomination by the Coordination Committee shall be convened to meet not earlier than three months and not later than one month before the expiration of the term of the outgoing Director General” (see the last paragraph of Annex I).
6. The current term of the outgoing Director General expires on September 30, 2020. Hence, applying the above-mentioned provision, the General Assembly would have to meet no earlier than June 30 and no later than August 30, 2020, to appoint the Director General.
7. Further, in the context of the election of the Director General in 2014, the Coordination Committee approved a change to the terms of office of the Deputy Directors General (DDGs) and the Assistant Directors General (ADGs) so as to coincide with the mandate of the Director General. Consequently, the terms of the outgoing DDGs and ADGs now likewise expire on September 30, 2020.<sup>2</sup> In light of this change, and to ensure sufficient time to complete the entire appointment process concerning the DDGs and ADGs (including the time necessary for vacancy announcements, internal and potentially external evaluation of candidates, and an additional extraordinary session of the Coordination Committee for approval of DDG candidates and advice on the appointment of ADG candidates) prior to their start on October 1, 2020, it is proposed to amend the 1998 Procedures as set out below.
8. It is recalled that in 2013 and 2002, Member States similarly approved modifications to the timetable of procedural steps stipulated in the 1998 Procedures, specifically to ensure that the Director General could propose the appointment of DDGs and ADGs in a timely manner so as to facilitate the transition from one Senior Management Team (SMT) to the next.<sup>3</sup> They did so, however, on the basis of one-time derogations from the 1998 Procedures. At the present time, given the need for sustained flexibility in the procedures to remain applicable to the 2020 and future elections, it is proposed to amend the 1998 Procedures rather than operate on the basis of *ad hoc* derogations to procedures adopted over two decades ago and which are no longer fit for use.
9. It is further recalled that in the document on the Appointment of the Director General in 2014, which was presented to the WIPO General Assembly in 2013, it was already envisioned that the Secretariat would present a new proposal for election procedures for consideration by the General Assembly at a future session, which would “regularize the holding of the session of the General Assembly at a date which provides sufficient time for the newly appointed Director General to undertake the process of consultation and nomination of [an SMT] so that the SMT is in place for the commencement of the mandate of the newly appointed Director General. The said proposal *will avoid the need for any derogations in the future*” (emphasis added).<sup>4</sup> With the shift in the expiration of the terms of office of the outgoing DDGs and ADGs to a date sooner than in previous elections, the need for amendments to the 1998 Procedures is now more urgent.

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<sup>2</sup> See documents WO/CC/70/2, paragraph 20, and WO/CC/70/5, paragraph 39.

<sup>3</sup> In 2013, the WIPO General Assembly was moved to an earlier date (four months and three weeks (rather than three months) before the expiration of the term of the outgoing Director General) to ensure that the newly appointed Director General had time to propose the appointment of the DDGs and ADGs (see A/51/3, paragraph 6 and A/51/20, paragraph 171). This derogation was deemed necessary even though the timeline was less dense as the term of the DDGs and ADGs only started on *December 1*, 2014, not, as it will be the case in 2020, on *October 1*. In 2002, it was decided to derogate from the 1998 Procedures and convene the General Assembly earlier (May 2003 instead of September 2003), to accommodate the “need to engage in consultations for the direct collaborators of the Director General,” the DDGs and ADGs (see A/37/14, paragraphs 133 and 134).

<sup>4</sup> See document A/51/3, paragraph 7.

## Amendments to the 1998 Procedures

10. Consequently, to permit the scheduling of meetings according to new, more flexible, timelines, it is recommended that the 1998 Procedures be amended, resulting in new 2019 Procedures, as set out in Annex III. In that regard, the proposed new 2019 Procedures could allow for a period of at least four months after the appointment of the Director General for the requisite transitional arrangements, which would include the time necessary for the Director General-elect to assemble the team of DDGs and ADGs, as well as to undertake any necessary substantive briefings. This could be achieved by amending the provision regarding the timing for the convocation of the General Assembly to appoint the Director General as follows:

- (i) Amendment regarding the timing for the convocation of the General Assembly

### Current Provision<sup>5</sup>

“The WIPO General Assembly which is to appoint the Director General upon nomination by the Coordination Committee shall be convened to meet not earlier than **three** months and not later than **one** month before the expiration of the term of the outgoing Director General.”

### Amended Provision

“The WIPO General Assembly which is to appoint the Director General upon nomination by the Coordination Committee shall be convened to meet not earlier than **six** months and not later than **four** months before the expiration of the term of the outgoing Director General.”

11. As the timing for the convocation of the General Assembly to appoint the Director General would be shifted earlier, it is also proposed that a corresponding shift take place in the timing for the convocation of the Coordination Committee. That is, because the timing for the convocation of the Coordination Committee is temporally dependent upon the timing for the convocation of the General Assembly under the 1998 Procedures, a similar amendment is proposed to the relevant provision concerning the Coordination Committee as follows:

- (ii) Amendment regarding the timing for the convocation of the Coordination Committee

### Current Provision<sup>6</sup>

“The Coordination Committee shall be convened in order to nominate a candidate for the post of Director General, no earlier than **six** months and no later than **five** months before the meeting of the WIPO General Assembly which is to appoint the Director General upon nomination by the Coordination Committee.”

### Amended Provision

“The Coordination Committee shall be convened in order to nominate a candidate for the post of Director General, no earlier than **three** months and no later than **two** months before the meeting of the WIPO General Assembly which is to appoint the Director General upon nomination by the Coordination Committee.”

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<sup>5</sup> See document WO/GA/23/6, paragraph 5 and WO/GA/23/7, paragraph 22.

<sup>6</sup> See document WO/GA/23/6, paragraph 5 and WO/GA/23/7, paragraph 22.

### One-time derogation from the 1998 Procedures

12. The proposed new 2019 Procedures will not be in effect until they are approved by the WIPO General Assembly at its Fifty-First session and the WIPO Coordination Committee at its Seventy-Sixth session, at which time, if and when approved, they will govern the remainder of the process regarding the nomination and appointment of Directors General in 2020 and future elections. However, the start of that process, namely, the dispatch of the circular inviting Member States to propose candidates, must take place before the General Assembly and the Coordination Committee will have an opportunity to consider and approve those new Procedures. The minimum time interval allowed under the (currently applicable) 1998 Procedures between the dispatch of the circular and the meeting of the Coordination Committee that nominates a candidate for appointment to the post of Director General is six months. As a general matter, such a six-month period remains reasonable and sound, and therefore no amendment is proposed to this particular provision. However, in order to implement the current timeline in accordance with the two amendments above, it is proposed to make a one-time derogation from the Procedures with regard to this minimum time interval allowed, that is, to five months instead of the required six.

#### Current Provision<sup>7</sup>

“At least **six** months before the meeting of the Coordination Committee which is to be convened for nominating a candidate for appointment to the post of Director General, the Chair of the Coordination Committee shall send a circular to all Member States of WIPO, inviting them to propose a national as candidate for the post of Director General of WIPO.”

#### One-time Derogation

“At least **five** months before the meeting of the Coordination Committee which is to be convened for nominating a candidate for appointment to the post of Director General, the Chair of the Coordination Committee shall send a circular to all Member States of WIPO, inviting them to propose a national as candidate for the post of Director General of WIPO.”

### Timeline

13. In line with the two above-proposed amendments and the one-time derogation, the suggested corresponding timeline, following the dispatch, on September 30, 2019, of the circular inviting proposals for candidates, is as follows:

- |                                  |                                                                                                                                 |
|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| December 30, 2019 <sup>8</sup> : | Deadline for submission of candidatures.                                                                                        |
| March 5 and 6, 2020:             | Extraordinary Session of the Coordination Committee to nominate candidate for appointment to post of Director General.          |
| May 7 and 8, 2020:               | Extraordinary Sessions of the General Assembly, Paris Union Assembly, and Berne Union Assembly to appoint the Director General. |

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<sup>7</sup> See document WO/GA/23/6, paragraph 5 and WO/GA/23/7, paragraph 22.

<sup>8</sup> According to the 1998 Procedures (see document WO/GA/23/6, paragraph 5) as well as the proposed new 2019 Procedures, the deadline for submission of candidatures shall be three months after the dispatch of the circular.

14. *The WIPO General Assembly, the WIPO Coordination Committee and the Paris and Berne Union Assemblies, each in so far as it is concerned, are invited:*

*(i) to note the dispatch of the circular set out in Annex II;*

*(ii) to amend the 1998 “Procedures for the Nomination and Appointment of Directors General of WIPO” as set out in paragraphs 10 and 11 of this document to create new 2019 “Procedures for the Nomination and Appointment of Directors General of WIPO”, as set out in Annex III;*

*(iii) to adopt a one-time derogation from the 1998 “Procedures for the Nomination and Appointment of Directors General of WIPO” as set out in paragraph 12 of this document to convene the WIPO Coordination Committee on March 5 and 6, 2020;*

*(iv) to approve the convening of the WIPO General Assembly, the Paris Union Assembly and the Berne Union Assembly on May 7 and 8, 2020;*

*(v) to approve the timeline of procedural steps set out in paragraph 13.*

[Annexes follow]

## PROCEDURES FOR THE NOMINATION AND APPOINTMENT OF DIRECTORS GENERAL OF WIPO

### Procedures for the Announcement of an Impending Vacancy and for the Submission of Candidatures

1. At least six months before the meeting of the Coordination Committee which is to be convened for nominating a candidate for appointment to the post of Director General, the Chair of the Coordination Committee shall send a circular to all Member States of WIPO, inviting them to propose a national as candidate for the post of Director General of WIPO.
2. The candidature submitted by a Member State shall be accompanied by the curriculum vitae of the candidate.
3. The exact time (Geneva) and date of the deadline for submission of candidatures shall be specified in the circular sent by the Chair of the Coordination Committee inviting candidatures. That date shall be three months after the date of the circular.
4. The Chair of the Coordination Committee, with the collaboration of the International Bureau, shall communicate the various nominations to all the Member States immediately on receiving them. Immediately following the deadline for the submission of candidatures, the Chair shall communicate to the Member States, in one consolidated communication, all nominations received.
5. The Coordination Committee shall be convened in order to nominate a candidate for the post of Director General, no earlier than six months and no later than five months before the meeting of the WIPO General Assembly which is to appoint the Director General upon nomination by the Coordination Committee.
6. The decision of the Coordination Committee shall be notified to all the Member States by the Chairman of the Committee immediately after the decision had been made.

### Procedures for Nomination by the Coordination Committee of a Candidate to the Post of Director General

#### I. General principles

1. The selection of a candidate for Director General shall be guided by respect for the dignity of the candidates, as well as the countries nominating them, and transparency of the nomination process.
2. The nomination of a candidate for Director General should, if possible, be made by consensus. This will facilitate the appointment of the Director General by the General Assembly. However, it is recognized that voting will probably be a necessary means of building consensus for the nomination of a candidate.
3. Efforts to nominate a candidate *via* consultations leading to consensus are welcome at any stage of the selection process, but such efforts should not unduly delay the decision-making process.

## II. Right to vote

It is established that, for the purposes of the nomination of a candidate for Director General by the Coordination Committee, all the members of the Coordination Committee, with the exception of associate members, may exercise their vote.

## III. Decision-making process

1. Where there are more than three candidates, before any formal vote is taken, an indication of the relative support enjoyed by candidates may be assessed by means of a “straw poll.” The “straw-poll” will be conducted in such a way that each member of the Coordination Committee which has a right to vote will mark its first and second choice on the list of candidates on his voting paper. Voting will be by Secret Ballot. Where there are three or less candidates, the procedures in this paragraph and the next paragraph shall be omitted.
2. Formal voting by Secret Ballot will proceed in several steps, each time with adequate advance notice, with a view to the gradual reduction of the number of candidates to a short-list of three candidates. Following each vote, the candidate receiving the least number of votes will be ineligible to participate in the next vote. If, however, the number of candidates is large, in order to limit the frequency of votes, the two or three candidates receiving the least number of votes may be declared to be ineligible to participate in the next vote. The exact dimension of each step will be decided, after consultation, by the Chair in the light of the number of candidates remaining at any given time. These steps will be carried out in keeping with the spirit of the following illustrative example based on a notional field of ten candidates: after the first formal vote amongst all the ten candidates, participation in additional votes shall be restricted to the seven candidates having obtained the greatest number of votes. After the second formal vote, participation in additional votes shall be restricted to the five candidates having obtained the greatest number of votes. After the third formal vote, a short-list will be established of the three candidates having obtained the greatest number of votes.
3. If consultations on the basis of the short-list of three candidates are not progressing, the voting process will be continued. Following the vote on the candidates of the short-list, a final vote will be restricted to the two candidates having obtained the greatest number of votes. The Coordination Committee will then, no later than the final day of its meeting, take its final decision amongst two candidates in a vote.
4. The Chairman of the Coordination Committee will communicate the name of the candidate for appointment to the post of Director General to the Chairman of the General Assembly.

## Appointment of Director General

The WIPO General Assembly which is to appoint the Director General upon nomination by the Coordination Committee shall be convened to meet not earlier than three months and not later than one month before the expiration of the term of the outgoing Director General.

[Annex II follows]



Circular to be Sent to WIPO Member States Inviting Proposals of Candidates for the Post of Director General

C. N ----

The Chair of the Coordination Committee of the World Intellectual Property Organization (WIPO) presents his compliments to the Minister for Foreign Affairs and has the honor to communicate to the Government of each State member of WIPO the following.

The term of office of the Director General of WIPO, Mr. Francis Gurry, expires on September 30, 2020.

In accordance with the provisions of the Convention Establishing the World Intellectual Property Organization and pursuant to the Procedures for the Nomination and Appointment of Directors General of WIPO adopted by the WIPO General Assembly in September 1998, it will be the task of the WIPO Coordination Committee, meeting in extraordinary session, on a date to be determined per a decision by the Coordination Committee at its Seventy-Sixth (50<sup>th</sup> Ordinary) Session, to nominate a person for appointment by the WIPO General Assembly as Director General. The decision on that nomination will be made by the WIPO General Assembly in its next session in 2020 after the nomination of the WIPO Coordination Committee has been made.

The Government of every State member of WIPO may, if it so desires, propose the name of one of its nationals as candidate for nomination by the WIPO Coordination Committee. Any proposal shall be accompanied by the curriculum vitae of the person proposed and should be addressed to the Chair of the WIPO Coordination Committee, at the address of WIPO in Geneva, by the Minister for Foreign Affairs of the Member State making the proposal. Proposals must reach WIPO before 5 p.m. on Monday, December 30, 2019.

September 30, 2019

[Annex III follows]

## PROPOSED NEW PROCEDURES FOR THE NOMINATION AND APPOINTMENT OF DIRECTORS GENERAL OF WIPO

### Procedures for the Announcement of an Impending Vacancy and for the Submission of Candidatures

1. At least six months before the meeting of the Coordination Committee which is to be convened for nominating a candidate for appointment to the post of Director General, the Chair of the Coordination Committee shall send a circular to all Member States of WIPO, inviting them to propose a national as candidate for the post of Director General of WIPO.
2. The candidature submitted by a Member State shall be accompanied by the curriculum vitae of the candidate.
3. The exact time (Geneva) and date of the deadline for submission of candidatures shall be specified in the circular sent by the Chair of the Coordination Committee inviting candidatures. That date shall be three months after the date of the circular.
4. The Chair of the Coordination Committee, with the collaboration of the International Bureau, shall communicate the various nominations to all the Member States immediately on receiving them. Immediately following the deadline for the submission of candidatures, the Chair shall communicate to the Member States, in one consolidated communication, all nominations received.
5. The Coordination Committee shall be convened in order to nominate a candidate for the post of Director General, no earlier than three months and no later than two months before the meeting of the WIPO General Assembly which is to appoint the Director General upon nomination by the Coordination Committee.
6. The decision of the Coordination Committee shall be notified to all the Member States by the Chair of the Committee immediately after the decision had been made.

### Procedures for Nomination by the Coordination Committee of a Candidate to the Post of Director General

#### I. General principles

1. The selection of a candidate for Director General shall be guided by respect for the dignity of the candidates, as well as the countries nominating them, and transparency of the nomination process.
2. The nomination of a candidate for Director General should, if possible, be made by consensus. This will facilitate the appointment of the Director General by the General Assembly. However, it is recognized that voting will probably be a necessary means of building consensus for the nomination of a candidate.
3. Efforts to nominate a candidate *via* consultations leading to consensus are welcome at any stage of the selection process, but such efforts should not unduly delay the decision-making process.

## II. Right to vote

It is established that, for the purposes of the nomination of a candidate for Director General by the Coordination Committee, all the members of the Coordination Committee, with the exception of associate members, may exercise their vote.

## III. Decision-making process

1. Where there are more than three candidates, before any formal vote is taken, an indication of the relative support enjoyed by candidates may be assessed by means of a “straw poll.” The “straw-poll” will be conducted in such a way that each member of the Coordination Committee which has a right to vote will mark its first and second choice on the list of candidates on his voting paper. Voting will be by Secret Ballot. Where there are three or less candidates, the procedures in this paragraph and the next paragraph shall be omitted.

2. Formal voting by Secret Ballot will proceed in several steps, each time with adequate advance notice, with a view to the gradual reduction of the number of candidates to a short-list of three candidates. Following each vote, the candidate receiving the least number of votes will be ineligible to participate in the next vote. If, however, the number of candidates is large, in order to limit the frequency of votes, the two or three candidates receiving the least number of votes may be declared to be ineligible to participate in the next vote. The exact dimension of each step will be decided, after consultation, by the Chair in the light of the number of candidates remaining at any given time. These steps will be carried out in keeping with the spirit of the following illustrative example based on a notional field of 10 candidates: after the first formal vote amongst all the 10 candidates, participation in additional votes shall be restricted to the seven candidates having obtained the greatest number of votes. After the second formal vote, participation in additional votes shall be restricted to the five candidates having obtained the greatest number of votes. After the third formal vote, a short-list will be established of the three candidates having obtained the greatest number of votes.

3. If consultations on the basis of the short-list of three candidates are not progressing, the voting process will be continued. Following the vote on the candidates of the short-list, a final vote will be restricted to the two candidates having obtained the greatest number of votes. The Coordination Committee will then, no later than the final day of its meeting, take its final decision amongst two candidates in a vote.

4. The Chairman of the Coordination Committee will communicate the name of the candidate for appointment to the post of Director General to the Chairman of the General Assembly.

## Appointment of Director General

The WIPO General Assembly which is to appoint the Director General upon nomination by the Coordination Committee shall be convened to meet not earlier than six months and not later than four months before the expiration of the term of the outgoing Director General.

[End of Annex III and of document]