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Disciplinary Procedures



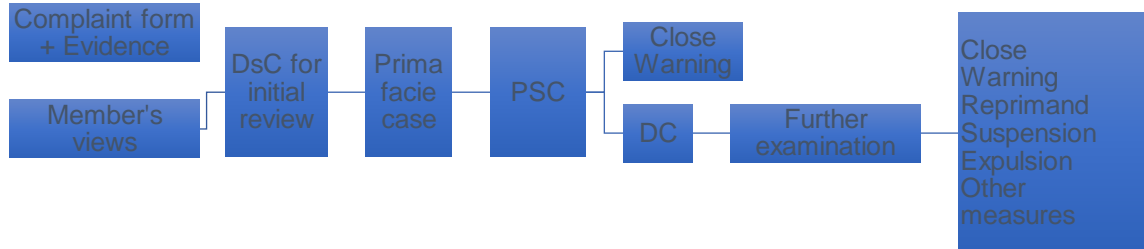
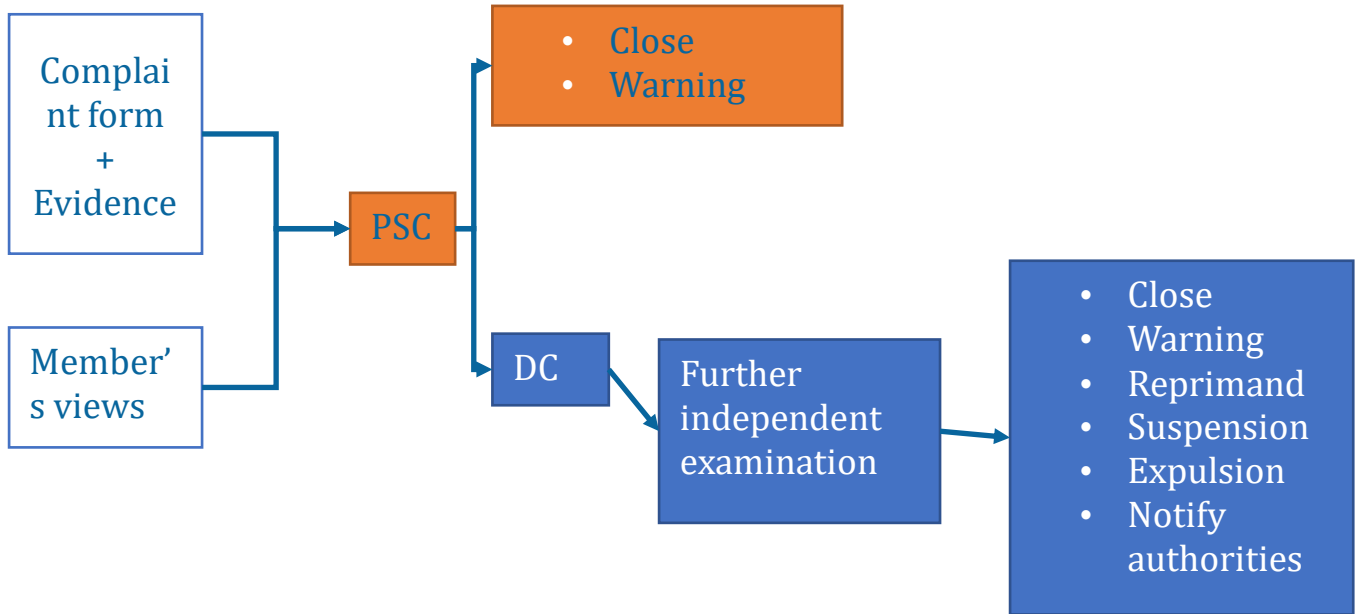
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Flow chart procedure



Section A - Scope

Article 1. Application and interpretation of the ICC/ESOMAR International Code

1.1. Responsibility for applying the ICC/ESOMAR International Code

The ICC and ESOMAR are competent for the interpretation and application of the joint ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics (hereinafter “the Code”).

By extension, associations that have formally adopted the Code and notified their adoption to ESOMAR are also granted the competence to interpret and apply the Code in their jurisdiction in accordance with these Disciplinary Procedures and without prejudice to Article 2.

1.2. Coordination with the International Chamber of Commerce (ICC)

The Governing Bodies as listed in Section B of these Disciplinary Procedures are responsible for the examination of any reported and alleged breach of the Code by individuals and organisations (hereinafter ‘Members’) party to the ICC/ESOMAR Code at the international level. ESOMAR will notify the ICC of all cases referred to the Disciplinary Committee.

1.3. Compliance with the Code

ESOMAR members must always comply with the letter and the spirit in which the ICC/ESOMAR Code was written as well as to the letter of the Code and the guidelines. The Code should be read in conjunction with other relevant ICC and ESOMAR codes, guidelines and principles.

Article 2. Competent associations

2.1. Interpretation of the Code by competent associations

The Governing Bodies as listed in Section B of these Disciplinary Procedures may, at the request of associations that have adopted the Code, support them and other applicable self-regulatory bodies with their interpretation of the Code and guidelines.

2.2. Cases/alleged breaches at the national level

In accordance with Article 1.1 of these Disciplinary Procedures, associations that have adopted the Code are responsible for examining alleged breaches of the Code occurring within their jurisdiction.

The Governing Bodies as listed in Section B of these disciplinary procedures may in exceptional circumstances investigate alleged breaches of the Code occurring at national level, only when one or several of the following conditions are satisfied:

- there are no competent associations that have adopted or endorsed the ICC/ESOMAR Code, or
- the competent association is not able to examine the alleged breach and formally refers the examination to the Governing Bodies, or
- more than one country or competent association is involved, as with international projects.

2.2. Reciprocity of sanctions at national level

If a competent association finds an ESOMAR member to be guilty of violating the Code at national level, the association shall notify ESOMAR of the case and the sanctions imposed.

a) for associations adopting the Code

Associations adopting the Code will notify ESOMAR of the case details and the sanction(s) imposed. ESOMAR will follow the decision taken at national level and apply an equivalent sanction imposed at national level notwithstanding the powers granted to the Governing Bodies by these Disciplinary Procedures and the Statutes of ESOMAR.

b) for associations endorsing the Code

Associations endorsing the Code will send ESOMAR the full case details, including all evidence on which the decision was based. ESOMAR will consider whether the case calls for additional action by ESOMAR in relation to the member concerned.

Article 3. Application to non-members

3.1. Cases involving non-members

ESOMAR will only examine alleged breaches of the Code involving non-members if deemed necessary by the relevant Governing Body as listed in section B to safeguard the ethical standards in the Code or to protect the reputation of research or of its members.

3.2. Procedure regarding non-members

To the extent practicable, the Disciplinary Procedures will be applied equally to cases involving non-members.

3.3. Sanctions against non-members

Non-members may be requested to refrain from the action complained about. In case such a request has not been complied with or if a more serious sanction is deemed necessary, the Governing Body will refer the case to the Council with a proposal for appropriate steps including publication and/or notification to the authorities.

3.4. Admission to membership

Admission to membership will not be granted until any outstanding disciplinary process has been completed and any potential remedy or sanction has been fulfilled.

Article 4. Application to former members

4.1. Resignation during a disciplinary investigation

If a member complained about resigns or if their membership is withdrawn, (for example through reason of non-payment of membership fees), while the [case is unresolved/investigation is ongoing], the Governing Bodies will still examine the matter and may impose relevant measures. Resignation during a disciplinary investigation does not absolve a member of any disciplinary measures resulting from an alleged breach taking place during the effective membership.

4.2. Re-admission to membership

Re-admission to membership will not be granted until any outstanding disciplinary process has been completed and any potential remedy or sanction has been fulfilled.

Article 5. Legal Proceedings

5.1. Ongoing legal proceedings

Any disciplinary investigation regarding a case that is in legal dispute shall be placed on hold until the legal proceedings are resolved, unless there is a pressing need to take immediate action and the competent Governing Body unanimously agrees it necessary to continue the investigation. After the court case is finished, the Governing Body may continue the investigation into the Code breach and take a decision.

5.2. Advice to courts of law and public authorities

If requested, the relevant Governing Bodies may give its opinions to courts of law and public authorities with respect to the interpretation of the Code.

Section B – Governing Bodies

Article 6. Appointment

6.1. Appointment

The Council will, on the recommendation of the President of Council, appoint the Chairman and members of the Governing Bodies.

6.2. Replacement

The Council may replace any member of a Governing Body for cause. Such cause may include failure to perform the duties expected of the member. The Council may also replace any member who has become unavailable.

Article 7. Location

7.1. Meetings of the Governing Bodies

Meetings of the Governing Bodies may be held in person, by telephone or by any other appropriate means of communication as determined by the Chairman.

7.2. Location of the Governing Bodies

The Governing Bodies are located at the ESOMAR Secretariat but may meet in any appropriate place at the request of the Chairman or any place deemed appropriate by a majority of the members.

Article 8. Professional Standards Committee

8.1. Composition

The Professional Standards Committee (PSC) will be composed of a Chairman and at least five and no more than seven ESOMAR members, as appointed by Council. The PSC may appoint one or more consultants to the Committee. The PSC will reflect a variety of experiences and interests relating to the data, research and insights sector. To this end, PSC members shall come from at least five different countries.

8.2. Chair

The PSC will appoint a Vice Chairman from among its members. In case of retirement of the Chairman, a successor will be nominated by the President and approved by Council.

8.3. Term of Office

All members of the PSC will be appointed for a term of three years. After three years, the PSC members' term may be renewed for a second and successive terms.

8.4. Quorum

Decisions by the PSC will be valid when the Chairman or the Vice Chairman and two third of all members of the PSC participate in the meeting. Participation requires presence in person, by telephone, or similar electronic means. Decisions require a majority vote by the participating members.

8.5. Objectivity

The PSC will consider all complaints in an objective manner. PSC members, including the Chairman, will withdraw themselves from the discussion of a complaint, if they

have personal or business interest in the subject of the complaint or a relationship with one of the parties to a complaint.

8.6. Secretary

The Chairman of the PSC will nominate a Secretary to the committee. The nominated Secretary needs to be approved by the PSC. The Secretary may be a PSC member or non-member. The Secretary is not allowed to vote unless Council has appointed the Secretary as a PSC member.

8.7. Right of initiative

Should the PSC be made aware of a potential breach of the Code, the PSC may start an investigation into this potential breach on its own initiative. The same procedures will be applied when the PSC uses its right of initiative.

Article 9. Disciplinary Subcommittee

9.1. Composition

The Disciplinary Subcommittee (Dsc) is a subcommittee of the PSC composed at minimum of the Chairman of the PSC and two PSC members.

9.2. Mission

The role of the Dsc is to review, evaluate and prepare cases in first instance and to submit a recommendation for consideration to the PSC.

9.3. Appointment

The Chairman of the PSC will appoint the members of the subcommittee from among its members.

9.4. Objectivity

The Dsc will consider all complaints in an objective manner. Dsc members, including the Chairman, will withdraw themselves from the discussion of a complaint, if they have personal or business interest in the subject of the complaint or a relationship with one of the parties to a complaint.

Article 10. Disciplinary Committee

10.1. Composition

The Disciplinary Committee (DC) will be composed of a Chairman and a panel of seven senior ESOMAR members. The DC will reflect a variety of experiences and interests relating to the data, research and insights sector.

10.2. Chair

The Chairman shall preferably be an independent lawyer with relevant knowledge of the market research sector. The Chairman shall nominate an independent substitute Chairman to replace him or her if necessary. The substitute Chairman needs to be approved by Council. In case of retirement of the Chairman, a successor will be nominated by the President and approved by Council.

10.3. Terms of office

The members of the DC will be appointed for a term of three years. After three years the DC members' term may be renewed. The Chairman of the DC will be appointed for a term of five years. After five years the Chairman's term may be renewed.

10.4. Chamber

The Disciplinary Committee operates in chambers. Once a case has been received by the DC, the DC chair will appoint three members and a substitute member to form the chamber that will deal with that individual case.

10.5. Quorum

Decisions by the DC will be valid when the Chairman or the substitute Chairman and all members of the chamber participate. Depending on the [procedure/type of hearing] participation requires presence in person or by means of a conference telephone or similar communication equipment. Decisions by the DC require a majority vote by the members serving on the chamber. The Chairman of the DC shall not be entitled to vote.

10.6. Objectivity

The DC will consider all complaints in an objective manner. DC members, including the Chairman, shall undersign that they have no personal interest in the content of a complaint and no relationship with any of the parties to the complaint. Should this be the case, they will withdraw themselves from the discussions of the complaint and an alternate member will be appointed by the Chairman. Should the Chairman withdraw, the substitute Chair will be appointed.

10.7. Right of challenge

The parties have the right to challenge members of the DC chamber at the outset of the procedure, or as soon as possible, but at least before the case is heard. In case a member of the chamber is challenged, the Chairman will appoint an alternate member. The Chairman will be the sole judge on the grounds of challenge and his or her decision will be final. Should the Chairman be challenged, the substitute Chair will be appointed.

10.8. Secretary

The Chairman of the DC will nominate a Secretary to the committee. The nominated Secretary needs to be approved by the DC. To ensure objectivity the nominated Secretary to the DC will be different from the Secretary to the PSC.

Section C - Procedure

Article 11. Submitting a complaint

11.1. Who may submit a complaint?

Any private individual or organisation directly concerned by an alleged breach of the Code may submit a complaint reporting an alleged breach of the Code to the competent bodies.

11.2. Complaints regarding contractual, payment or employment issues

ESOMAR will not examine complaints with respect to contractual, payment or employment issues, as these are best dealt with through legal means. ESOMAR will only accept such cases if there is evidence of an alleged breach of the Code or of recurring behaviour that appears to bring the profession into disrepute.

11.3. Statute of limitations

A complaint must be filed within 3 years of the alleged breach occurring. ESOMAR will not examine complaints with respect to alleged Code breaches that occurred three or more years before the complaint was filed.

Article 12. Requirements for submitting a complaint

12.1. Evidence

All submitted complaints shall include a description of the case and which Code article(s) have allegedly been breached. The PSC may make an independent decision regarding which Code article(s) have allegedly been breached. Complaints will only be accepted if they are supported by evidence, including relevant documents.

12.2. Language

All complaints need to be submitted in English. Evidence needs to be delivered in the original form. If the original is not in English, a translation needs to be added. The Chairman of the relevant Governing Body may decide, at the request of one or more of the parties involved, that complaints and evidence can be submitted in another language.

Article 13. Responding to a complaint

13.1. Failure to co-operate

ESOMAR members must make themselves available and co-operate in the investigation of a complaint. Failure to co-operate is a breach of the Code and can lead to a sanction.

- 13.2. **Accountability of Individual members responding to a complaint**
Individual ESOMAR members will be contacted whenever a complaint is received about their organisation. Individual ESOMAR members must investigate and to the extent possible address any alleged breach in their organisation. However, Individual ESOMAR members cannot be held accountable for Code breaches occurring in departments or offices over which they cannot assert control or influence.
- 13.3. **Accountability of Corporate members responding to a complaint**
In case a complaint is received about an organisation with Corporate ESOMAR members, the Signatory member will be contacted. The signatory must respond on behalf of the company or designate the employee with appropriate knowledge to respond on behalf of the company. The Signatory can be held accountable for Code breaches in any department or office included in the Corporate membership.

Article 14. DsC Initial Case Review

- 14.1. **Informing the responder**
Once a complaint is received, the responder will be informed and asked to respond to the claims made by the complainant. The responder will be informed that such questions are being asked in connection with possible disciplinary proceedings.
- 14.2. **Responding to the enquiries**
The responder will be allowed a maximum of 21 calendar days to provide a written response. If no response is received within 21 calendar days, this will be considered failure to co-operate, as specified in article [13.1. Failure to co-operate.](#)
- 14.3. **DsC enquiries**
The DsC will ensure that complainant and responder are asked all relevant questions to establish the facts and circumstances of the case. To the extent possible the DsC will attempt to settle the case to both parties' satisfaction.
- 14.4. **DsC decision**
If the case can't be settled to both parties' satisfaction and after the facts and circumstances of the case are sufficiently clear the DsC may decide:
- ESOMAR has no competence to pursue the case, following article [2.2. Cases/alleged breaches at the national level](#), [3. Application to non-members](#), or [11.2. Complaints regarding contractual, payment or employment issues.](#)
 - there was no breach of the Code and the case will be closed.
 - the Code was breached and the case against the responder must be pursued.

14.5. Decision no case to pursue

In case the DsC finds there is no competence or no case to pursue, the complainant and responder will be informed of the reasoning and decision in writing. This decision will be reported to the PSC. The Chairman of the DsC may decide to refer the decision not to pursue a case to the PSC, in which case it will inform the PSC of the facts and circumstances of the case.

14.6. Decision to pursue case

In case the DsC finds the Code was breached and the case against the responder must be pursued, the DsC will inform the PSC of the facts and circumstances of the case and the recommendation action.

14.7. Appeal

In case the DsC finds there is no competence or no case to pursue, the complainant or responder can request a review of the DsC decision in writing within 21 calendar days of receiving the decision. These requests need to be supported by documented evidence and an explanation why the PSC should pursue this case.

Article 15. PSC Procedure

15.1. PSC procedure

Once the PSC is informed by the DsC of the facts and circumstances of the case or the appeal, the PSC may decide to raise their own questions with the complainant and/or responder. The complainant and/or responder must provide a written response within 21 calendar days. After a response is received or after 21 calendar days, the PSC may ask any further questions it deems necessary.

15.2. PSC decision

After completing its inquiries, the PSC will give its opinion on the case and send its reasoning and findings to both parties. The PSC may decide:

- there is no competence to pursue the case.
- there has not been a breach of the Code.
- to send the complainant or responder an unpublished warning for a breach of the Code.
- that the case appears to be a serious breach of the Code for which a sanction, as stated in article 16.7, should be considered.

In imposing a warning or sanction the PSC will take into account the number of times the Code was breached, mitigating circumstances – such as immediate remedial action taken – or aggravating circumstances – such as recurring behaviour signalling that the offender is incapable or unwilling to comply with the Code – and the scale of the impact of the breach.

15.3. Decision no case to pursue

In case the PSC finds there is no competence or no case to pursue the complainant and responder will be informed of the reasoning and decision in writing.

15.4. Decision unpublished warning

In case the PSC finds there was a breach of the Code it may impose an official warning. Both parties will be informed of the reasoning and the decision to impose an unpublished warning. A record of the warning will be kept and will be considered should complaints on similar grounds be received. Both parties will be asked to respect the confidentiality of this measure. Breaching this confidentiality will be considered a breach of article 11c of the Code.

15.5. Sanction

If the PSC decides a sanction is the appropriate measure for the breach of the Code, it will refer the case to the Disciplinary Committee. The PSC will include a recommendation for a sanction.

15.6. Appeal

The complainant and/or responder may request a review of the PSC decision in writing within 21 calendar days of receiving the decision. These requests need to be supported by documented evidence and an explanation why the decision should be reviewed. In case of an appeal the DC Chairman, whose decision is final, will decide if the appeal is admissible.

15.7. Requirements for the referral to the DC

The PSC will refer the facts and circumstances of the case including all the evidence to the DC, accompanied by its reasoning for the decision. In case of a referral, the full case will be referred to the DC within 21 days. The PSC will inform the Council and all parties to the case.

Article 16. DC Hearing Procedure

16.1. DC hearing

Once the full case is received, the DC Chairman will inform the PSC and parties to the case without undue delay regarding:

- the composition of the DC chamber
- the right to challenge the composition of the chamber
- the right to opt for a face to face hearing.

The hearing will be held in writing, unless the PSC or one of the parties requests a face-to-face hearing, within 14 days of the notification. After these 14 days a date for the hearing will be set by the DC Chairman and all parties will be notified. The hearing date must be communicated to all parties at least 6 weeks in advance.

16.2. DC Enquiries

The DC may raise questions with the PSC and/or the parties to the case. Questions raised will be shared with all parties, including the PSC. Members of the DC may themselves question witnesses, parties or representatives as they see fit. The DC may, after consultation with the parties, seek expert advice at any time. The expert advice will be made available to all parties.

16.3. Requirements for submissions

The following requirements apply to all submissions to the DC:

- Submissions must be received at least 14 days before the hearing.
- Anything received after that date must include a statement of reasons by the submitter to justify the late submission. The DC will determine the admissibility of late submissions, considering the need to ensure fair and orderly proceedings.
- All evidence presented to the DC must be supported by a written explanation of the essential parts to the evidence.

All submissions will be shared with all parties.

16.4. Face-to-face hearing

In the event a hearing is held face-to-face the following procedure shall apply:

- Should one of the parties not be available they must inform the DC within 7 days of the notification. The hearing date may be reset once, and if one of the parties is still not available, the hearing will be held in writing instead.
- In determining the location for the face-to-face hearing, the DC members will consider the interests of those expected to appear before the DC.
- If one of the parties wishes to have legal representation, the party will inform the DC within 7 days of having received the date and location.
- The DC Chairman may invite experts to appear before the DC.

16.5. Order of the hearing proceedings

The order of proceedings for the hearing before the DC, will be as follows:

- Submissions by or on behalf of the PSC
- Submissions by or on behalf of any or all of the parties to the case
- Hearing of any witnesses called by the PSC or evidence submitted by the witnesses, followed by cross examination of such witnesses by any or all of the parties to the case.
- Hearing of any witnesses called by any or all of the parties to the case or evidence submitted by the witnesses, followed by cross examination of such witnesses by or on behalf of the PSC.
- Closing submissions by or on behalf of the PSC.
- Closing submissions by or on behalf of the member.

16.6. DC decision

The DC shall reach decisions based on the balance of probability and in line with the general principles of fair process. The decision together with any sanction to be

imposed, including the reasons therefore, will be provided in writing to all parties to the case, the PSC and Council as soon as practicable.

16.7. Sanctions

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

- **Reprimand:** an official letter detailing the wrongful actions of the member and the punishment that can be expected if the actions are repeated.
- **Suspension:** the suspension will be for a period of at least one year and no more than two years. After that period, the member may request to be reinstated by providing sufficient written assurance that remedial action has been taken to ensure that the wrongful actions will not be repeated. If such assurances are not provided, the DC may recommend to the Council to expel the member.
- **Expulsion:** the expulsion will be for a period of at least three years. After that period, the member may request to be reinstated by providing sufficient written assurance that remedial action has been taken to ensure the wrongful actions will not be repeated. If such assurances are not provided, the DC may recommend to the Council to not reinstate the member.
- **Publication:** A summary of the decision will be published, including the wrongful actions, the sanction, and name of the person or company sanctioned. This summary may be published, as appropriate: on the ESOMAR website, in ESOMAR's magazine, in an email newsletter, in a dedicated email, and/or shared via social media.
- **Notification to the authorities:** Wrongful actions may be notified to the relevant (public) authorities or enforcement bodies.
- **Any further measures authorised by the Council:** In exceptional circumstances, the DC may request Council to authorise any further measure deemed necessary.

In imposing a warning or sanction the DC will consider the number of times the Code was breached, whether the behaviour is recurring signalling that the offender is incapable or unwilling to comply with the Code, whether remedial action has been taken, or action to prevent a recurrence.

16.8. Publication of sanctions

Sanctions imposed by the DC will be published unless the DC on the request of one or more of the parties decides to abstain from publication. Suspensions and expulsions will be published, reprimands may be published. Warnings are a private measure and will not be published.

16.9. Appeal in case of procedural irregularity

The decision of the DC will be final, however any of the parties to the case can request for an appeal to Council, under the following conditions:

- there have been substantial deviations from these Disciplinary Procedures,

- the request is supported by documented evidence of these deviations, including references to these procedures, and
- the request must be received by the Director General of ESOMAR within 21 days of receiving the DC decision.

In the event of an appeal to Council, the PSC and DC are entitled to respond to the claims regarding procedural irregularity. If an appeal is made against the DC decision, the Council may require a reasonable deposit to be made by the appellant as proof of goodwill. If the appeal is sustained, the deposit will be returned to the appellant and the case will be considered by another chamber of the DC. If the appeal is not sustained the deposit will not be returned. If deemed appropriate by Council, the Substitute Chairman may be appointed to review the claims.

Section D – Other Requirements

17.1. Confidentiality

Documents the Governing Bodies accept as being confidential, will only be shared with the parties to the case, the relevant body, the secretary, members of ESOMAR's executive and professional staff on a need to know basis. Experts consulted by any of the parties or the Governing Bodies will only get access to the documents necessary to enable them to formulate an expert opinion. Anyone given access to confidential documents, including the parties involved, must respect the disclosure limitations placed on such documents.

17.2. Costs

No out of pocket costs shall be reimbursed. However, if no Code violation is found, the Council may decide to indemnify those involved for that part of the costs that Council deems necessary to serve the interests of justice. Legal costs will never be reimbursed.

17.3. Jurisdiction

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.

17.4. Annual Report

The PSC and the DC will present an annual report to the ESOMAR Council and the Annual General Meeting (AGM). 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 wrongful action. The names of these members will also be stored in ESOMAR's CRM system for future reference.