



Considerations about the training of EQE candidates during the Covid-19 crisis¹

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The definition of the period of activity

Due to the COVID-19 pandemic, **epi** has recently received more questions about the definition of the period of activity required according to the Regulation on the European qualifying examination for professional representatives before the European Patent Office (REE). The present considerations have been drafted to assist candidates and their supervisors assess their situation.

According to Article 9(2)(c) and 10(2) REE, it is the Examination Secretariat (ES) that decides on the registration and enrolment of candidates in accordance with the REE and the IPREE, without being bound by any instructions and only complying with the provisions of the REE and the IPREE. It is also referred to the [relevant FAQ](#) on their website.

An appeal is possible (Article 24(1) REE), but only on the grounds that the REE or any provision relating to its application has been infringed.

The ES decides normally on the basis of the certificates provided by the candidates, and it is for the persons to decide in all conscience whether to sign; the ES requests explanations in case of doubt.

An example of a question **epi** received is the following:

Due to the situation with COVID-19, some of the trainees in our company may be considered for "furloughing", "chômage technique" or "Kurzarbeit". For the purposes of the EQE certificate of training, would any such period be deducted from a period of training or employment?

The legal framework

Under Article 134a(1)(b) EPC, the Administrative Council (AC) is competent to adopt and amend provisions governing the training required of a person for admission to the European qualifying examination (EQE).

The AC adopted the Regulation on the European qualifying examination for professional representatives before the European Patent Office (REE). In accordance with Article 3(7) REE, the Supervisory Board adopted Implementing provisions to the Regulation on the European qualifying examination (IPREE). The latest versions of the REE and IPREE are published in [Supplementary publication 2 – OJ EPO 2019](#).

Relevant with regard to training periods are in particular Art 11(2), (3) and (4) REE and Rule 15 IPREE (see Annex).

The relevant elements for determining the period of activity

¹ The present considerations cannot in any way bind the Examination Secretariat or the Disciplinary Board of Appeal, who are solely bound by the REE and the IPREE.

The relevant elements for the present considerations can be reduced to the following:

(A) full-time

(B) a period expressed in years

(C) taking part in a wide range of activities pertaining to European patent applications or European patents, including activities in proceedings relating to national patent applications and national patents

(D) **either** (D1) training under the supervision of, while assisting, a European Patent Attorney (EPA) **or** (D2) employment in an EPC contracting state and representation of the employer before the EPO (representation in proceedings relating to national patent applications and national patents is also taken into account).

As to (A), the definition of "full-time" might vary between the 38 EPC contracting states, but should be clear in the relevant state(s). It includes the period of annual leave. Any period of part-time (with a minimum of 50%, Rule 15(2) IPREE) is counted proportionally.

As to (B), since the period is expressed in years, it must be understood that a rule of reason must be applied, and that there need not be deducted every single day of absence, e.g. for illness or even maternity.²

As to (C), the activities must mainly pertain to European patent applications or patents (representation in proceedings relating to national patent applications and national patents is also taken into account); a rule of reason should also apply, so that the occasional preparation for the EQE need not be deducted, like a mock exam paper.

As to (D1), being supervised by whilst assisting an EPA is an essential condition. This does not require that the candidate should have an employment relationship with the EPA or the firm of the EPA, or be an employee at all; for example, supervision can be done pro bono or through a contract.

As to (D2), by contrast, being employed **and** having represented the employer is an essential condition.

These two conditions (D1) and (D2) should be viewed as alternatives; they do not need to be cumulated.

View of the epi

In view of **epi**, a period of complete unemployment would not count under criterion (D2) and would thus be deducted. Reduced employment would count proportionally as part-time employment. In any case, the Examination Secretariat should be informed of such a reduction.

² Maternity leave meaning a period in which a woman is legally allowed to be absent from work in the weeks before and after she gives birth, e.g., in Germany normally 6 weeks before and 8 weeks after birth. Not included in this definition is the additional parental leave.



Whether such a period would count under criterion (D1) would not depend on the relationship with the company but on whether training is done during that period under the supervision of, and as an assistant to, an EPA.

Informing the Examination Secretariat

As a first step, before enrolling to the pre-examination, candidates need to register (by 15 January if they intend to sit the next year). When registering, candidates and their trainers are reminded of their duty to inform the Examination Secretariat of any changes in their professional activity.

Final remarks

It is for the mentor to decide in all conscience whether he signs the declaration of a training period of three years.

It has to be stressed that in the end, it is for the candidates to satisfy the Examination Secretariat that they meet the requirements (Article 11(2)(a) REE).

ANNEX

Article 11 REE:

Conditions for registration and enrolment

(1) Candidates shall be registered for the examination on request provided that

(a) they possess a university-level scientific or technical qualification, or are able to satisfy the Secretariat that they possess an equivalent level of scientific or technical knowledge, as defined in the IPREE, and

(b) have started the professional activities defined in paragraph 2(a) or are employed as defined in paragraph 2(b).

(2) Subject to paragraph 1, candidates who apply to be enrolled for one or more examination papers must be able to:

(a) satisfy the Secretariat that at the date of the examination they have:

(i) completed a full-time training period of at least three years in one of the contracting states to the European Patent Convention (hereinafter "the EPC") under the supervision of one or more persons entered on the list of professional representatives before the EPO (Article 134(1) EPC), as an assistant to that person or those persons, and that in the said period they took part in a wide range of activities pertaining to European patent applications or European patents, or

(ii) worked full-time for a period of at least three years in the employment of a natural or legal person whose residence or place of business is within the territory of the EPC contracting states and have represented their employer before the EPO in accordance with Article 133(3) EPC while taking part in a wide range of activities pertaining to European patent applications or European patents, or

(b) satisfy the Secretariat that at the date of the examination they have performed full-time the duties of an examiner at the EPO for at least four years.

(3) The duration of the periods of professional activity referred to in paragraph 2(a) may be aggregated to make up a total full-time training period. The periods of professional activity shall only be considered after the qualification required in paragraph (1)(a) has been obtained and subject to any further provisions laid down in the IPREE.

(4) In determining the periods of activity referred to in paragraph 2(a) the Secretariat shall also take into account candidates' activities in proceedings relating to national patent applications and national patents.

(5) Under the conditions laid down in the IPREE, the Secretariat may grant a reduction, of up to one year, in the duration of the periods of professional activity defined in paragraph 2(a) above.

(6) An application for registration and/or enrolment for the examination shall not be deemed to have been filed until after the prescribed fees have been paid within the period laid down in the notice specified in Article 18.

(7) If a pre-examination, as referred to in Article 1 of this Regulation and defined in the IPREE, is to be held, candidates who apply for enrolment for this pre-examination must be able to satisfy the Secretariat that at the date of the said pre-examination they have completed the periods mentioned in paragraph 2(a) and (b) above, such periods being reduced by one year. All other conditions applicable to the examination shall apply equally to the pre-examination unless the contrary is specifically stated. Moreover, if such a pre-examination is held, candidates who apply to be enrolled for the examination must have obtained a pass grade in the pre-examination.

(8) Members of the Supervisory Board, the Examination Board, the Examination Committees and the Secretariat shall not be entitled to enrol for the examination. Former members of these bodies who satisfy the requirements of paragraphs 1 and 2 shall be entitled to enrol, at the earliest, for the third examination following the expiry of their term of office.

Rule 15 IPREE:

Professional activities

(1) The professional activities referred to in Article 11(2)(a) REE shall be completed in one or more of the contracting states.

(2) Only professional activities amounting to a minimum period of three months with at least 50% part-time involvement shall be considered for the purposes of Article 11(3) REE.