

## **Rule 161(1) and (2) EPC**

### **Is the response to R.161 communication mandatory or voluntary?**

Was the EPO (S)ISA?

1. Yes, and the "opinion" was negative, and the applicant failed to file comments and/or amendments upon entry into the EP phase → Mandatory (R.161(1) EPC)  
(If no response, application is deemed withdrawn.)
2. Yes, and the "opinion" was positive or the applicant already filed comments and/or amendments upon entry into the EP phase → Voluntary (R.161(1) EPC)
3. No → Supplementary European Search will be drawn up under Art.153(7) EPC → Voluntary (R.161(2) EPC)

### **What is the time period for the mandatory/voluntary response?**

6 months (the time limit cannot be extended, but Further Processing (Art.121 EPC) is possible.)

### **How to waive the R.161 communication?**

- First, make sure that the requirements of R.161 are fulfilled (the "opinion" is fully positive, or was dealt with upon entry).
- File an explicit written request, e.g. ticking the box in Form 1200 or in a separate, signed written statement.
- Pay the claims fees under R.162 EPC, if applicable.