

Zentraler Vorstand . Central Executive Committee . Bureau Central

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What is wrong with the EPO Memorandum of Understanding (MoU)?

Introduction

In [March 2015](#) the Administrative Council encouraged SUEPO to enter into tri-lateral talks with the Council and the President to come to a recognition of the Unions as a social partner. Other topics such as the reforms of the last years were excluded from the discussion. During the talks (to be concluded by the end of the year) the reforms were to continue.

SUEPO exists since 40 years. It represents about 50% of staff. “Talks” should not be necessary for the administration to recognize its existence. Union recognition talks furthermore do not address any of the real problems facing staff. Under pressure from Mr Kongstad (Chair of the Council) who insisted that these talks were “only a start”, SUEPO nevertheless agreed, also since such talks at least provide access to the Council.

The [result](#) is known: Mr Battistelli¹ sent the Investigative Unit after his would-be “social partner” on the basis of vexatious and absurd accusations, thereby demonstrating bad faith. When questioned about the investigations during one of the meetings, Mr Battistelli cynically asked why we felt concerned. Under such circumstances meaningful talks are not possible and SUEPO pulled out. However, a small staff union (about 75 members) in The Hague did sign the proposed Memorandum of Understanding (MoU).

In its March 2016 [meeting](#) the Council requested Mr Battistelli “to achieve, within the framework of the tripartite negotiations, an MoU **simultaneously** with both trade unions, which would have no pre-conditions or exclude any topics from future discussions.” With the disciplinary sanctions against 3 SUEPO officials still standing and 3 others still under investigation, we do not see how any MoU could be achieved. But the investigations are not the only hindrance, the MoU proposed by the EPO also shows the bad faith of the administration. Below we list some of the most obvious deficiencies.

1. The MoU stresses (it is mentioned three times) that the unions “*shall be bound by the legal framework applicable to the EPO*”. That legal framework as it now stands contains strike regulations that have been judged illegal, and various other regulations that are highly controversial (staff committee elections, investigation guidelines, sick leave and invalidity regulations, new career). It is clear that SUEPO cannot sign up to such regulations.

2. The EPO legal framework (Service Regulations, Circulars, Guidelines) can be changed unilaterally by the Council and/or by the President. Signing a MoU that obliges the Staff Union

¹In the one case where we have been informed about identity of the complainant it was Ms Bergot (PD HR and right-hand of the President). In the other cases we were **not** informed about the complainant, raising the strong suspicion that these were also initiated by Ms Bergot.

to respect Regulations which can be subsequently changed on a unilateral basis amounts to signing a blank check.

3. The MoU does not have much to offer for the unions: some office space, two mass e-mails per year, the right to hold general assemblies outside core hours – all of which the unions had before Mr Battistelli took it away.

4. Art. 4 MoU stipulates that "*union activities shall in no way be prejudicial to the person concerned*". The wording of this Article is equivalent to Art. 34(2) of the ServRegs² for the staff representatives. Staff representatives are nevertheless being sanctioned by the President who simply denies that the disciplinary measures imposed have any connection with staff representation activities. There is no reason that this will change with the MoU.

More generally: *what is the value of an agreement concluded between two parties, if one of the two parties considers itself not to be bound by any regulations and hides behind its immunity when caught breaching the law?*

5. The MoU is silent on what will happen in case no agreement can be reached. But the wording gives some hints. Art. 11(1) of the MoU states that the President shall **inform** the unions what items **are to be** the subject of **consultation**. According to Art. 11(3) MoU the unions **may** inform the President which items they **wish** to have **discussed**. The final list shall be established in mutual agreement. And who decides if there is no agreement? The answer is in Art. 13(4): "the agenda shall be set by the President". In other words: the MoU foresees just another consultation process, the topics of which are dictated by the President and the results of which may be ignored by the President.

6. The devil is in the details. There are many more details that need to be questioned. For example: existing rules and (past) decisions are explicitly excluded from the negotiation process (Art. 11(4) MoU), so signing this MoU means accepting all Mr Battistelli's reforms. The MoU requires the Union to act "in the general interest of staff" (Art. 3(2) MoU). But who will decide what is in the interest of staff? MoUs normally foresee a minimum level of staff adherence, for example 5% in the EU agreement, as a pre-condition for a recognized Union to be considered as representative. The EPO-MoU does not. This means that SUEPO, representing 50% of staff, is considered by management just as representative as any other Union, even one which would represent only 1% of staff.

The alternative - ignored

SUEPO submitted a proposed model "Framework Agreement" on 5 February 2014 ([su14020cl](#)). On 29 April 2015 SUEPO further submitted the MoU which was agreed upon in the EU ([su15182cl](#)). Both proposals are examples of European "best practice" and either of them would, in our opinion, be a much more suitable starting point for discussion between the Office and SUEPO. The current Administration chose to disregard both these proposals without any further discussion.

With additionally three SUEPO officials sanctioned in Munich and three more expecting the same in The Hague, it is not clear how union recognition talks can be taken up again. Under the circumstances agreement seems a long way away.

SUEPO Central

² "*The duties undertaken by members of the Staff Committee and by their nominees to the bodies set up under the Service Regulations or by the Office shall be part of their normal service. The fact of performing such duties shall in no way be prejudicial to the person concerned.*"