



CSC-Report on the 147th meeting of the Administrative Council on 16 March 2016

The [agenda](#) of the meeting was not particularly dense for the open session, which we were allowed to attend. Mainly the following topics were discussed, for information¹.

The President orally presented in his activities report ([CA/44/16](#)) the year 2015 as almost exclusively positive. Some delegations questioned whether results (production, quality, timeliness, ...) so conspicuously and consistently favourable gave a complete picture of the actual situation. Many delegations placed more emphasis on the lack of progress, or even the obvious worsening, in the social climate at the Office in clear non-diplomatic language. For its part, the staff representation summarily presented [preliminary results from the Technologia staff survey](#) evidencing the (psycho-)social and management problems at the Office and requested an independent review of the disciplinary procedures against staff representatives and union officials as supported by 3701 staff members within the recent [call for strike "Lawfulness at the EPO"](#).

The structural reform of the Boards of Appeal was also on the agenda, with no accompanying document. Delegations criticised the (slow) pace of the reform. In a resolution ([CA/26/16](#)), the Council requested the President of the Office to submit, for immediate implementation, proposals at the June Council meeting, after discussion in the B28 and consultation of the Boards' Presidium.

The Staff Representation took the report of the chairman of the Select Committee as an opportunity to welcome the progress made leading to the unitary patent and to remind that the work of the examiner was central for a strong (unitary) patent.

The discussions in the closed session took most of the time in this meeting. The delegations are now fully aware of the social situation at the Office, which is a problem to be solved urgently. The resulting resolution ([CA/26/16](#)) adopted by the Council reflects their concerns.

¹ For the other topics, please refer to the agenda

SELECTED INTERVENTIONS OF THE MEMBERS OF THE STAFF REPRESENTATION IN THE 147TH MEETING OF THE AC

The interventions below are not (necessarily) *verbatim* transcriptions of the oral interventions, but sometimes reflect them on the basis of prepared speaking notes and personal recollection.

1.4 President's activities report (CA/44/16)

Preliminary results of the TECHNOLOGIA 2016 staff survey

This intervention will be made available by the presenter as soon as available. However, in general terms the AC delegates were informed on the very worrying preliminary results along the lines of the [publication by SUEPO The Hague](#):

The 2016 Staff Survey by Technologia was completed on last Monday. Preliminary results are now available... The President did not allow the survey. However, with a remarkable 39% of all EPO staff answering the questionnaire, the results are statistically significant. The survey was run in the same way as those of 2010 and 2013, to allow for comparisons. There is a consistent and increasing worsening in the situation.

- *“Job strain” is increasing, while “job recognition”, confidence” and “quality” are consistently falling.*
- *Up from 2% in the previous surveys, in 2016 11% of staff are experiencing “psychological distress” (anxiety, depression, cognitive troubles, etc.).*
- *While previous Presidents could muster an already meagre 7% of support, 0% (zero per cent) of staff has any confidence in Mr Battistelli – the same applies to the MAC...*
- *80% of staff are of the opinion that quality has diminished considerably.*

The disciplinary cases against staff representatives and union officials

Dear Delegates,

You may understand that we are very concerned of the increasing social conflict leading to the deepest crisis of the Office. We kept you informed that your call for a renewed social dialogue of March last year was followed by increased investigations and threats to Staff Representatives and Union officials. That's also why last year saw a series of about 10 strong demonstrations. This year the threats resulted in disciplinary sanctions and dismissals on three Staff Representatives and Union officials. Concerning this we see today in front of this building already the 4th demonstration in 2016.

These investigations and disciplinary actions caused unrest and high public and external attention (including media coverage) and are especially perceived by staff as a concerted action against the Staff Representation and SUEPO. All these actions are highly confidential and not transparent at all.

As such a call for strike has been launched contesting the disciplinary cases. 3701 staff members representing 91,1% of the voters voted for a strike. Let me quote from the strike petition:

The undersigned, noting:

- ***the dismissal of two elected staff representatives on 15 January 2016 and the severe downgrading of a third***
- ***their lack of confidence that the procedure conducted against these colleagues complied with sound European legal principles based on Human Rights***
- ***the sustained deterioration of the legal framework under which EPO staff work since the current President took office***

request:

- ***the immediate suspension of the disciplinary measures against the three staff representatives***
- ***a truly independent review of the cases against the staff representatives by a body that enjoys the full trust of both the management and the staff of the EPO***

Yesterday the CSC in its function as interlocutor for the call for strike met the President. The President stated that this meeting is to clarify the grounds for strike. So - to be understood - not to negotiate but only to clarify the clear requests of the strike petition. In the meeting there was no concession – not a sign – by the President in view of the disciplinary cases. Thus, neither a review of the disciplinary sanctions nor the admission of an independent review of the cases has been considered, although both actions being very well within the discretionary power of the President.

Please be informed that these three Staff Representatives now sanctioned are not the first ones and that further members of the Staff Representation and Union Officials are under investigation and threat.

The disciplinary investigations and sanctions have severe consequences on the individuals concerned, the functioning of the Staff Representation and the Union, the atmosphere of the Office and finally on the image of the EPO.

Therefore, in the name of at least 3701 staff members, we urge you to take your responsibility to bring transparency in all these cases and to support an independent review of these disciplinary cases.

Thank you for your attention!

1.5 Proposal for a structural reform of the EPO Boards of Appeal – status report

Thank you Mr Chairman.

As mentioned by the President of the Office, we are facing complex problems here. Courts have different forms in the member states or for international organisations. Furthermore, the Council has decided to design the reform of the Boards of Appeal within the legal framework of the EPC as it is now. As a last challenge, the standing of the Boards and the actions of the Council are under particular public scrutiny.

Regardless of, or rather in view of all these challenges, basic principles common to all forms of the judiciary have to be paid attention to.

The organisational autonomy: The BoA must be self-governing. Presently, the Presidium is the autonomous body according to Rule 12 EPC. Autonomy is about:

- (re-)appointments and training, which should be within the Boards of Appeal*
- adoption of Rules of Procedure, presently by the Enlarged Board of Appeal and by the Presidium,*
- adoption of a Business Distribution Plan and management of the workload in the Boards,*
- a code of conduct and discipline,*
- last but not least, sufficient budget and resources, decided by the Council and agreed with the Judiciary.*

As regards staff matters, we welcome the decision to appoint Chairs and Members to the Boards again, which decision was long overdue. We would also have welcomed a decision, or at least a clear statement, as regards the location of the Boards. Deciding for a location in Munich would allow normalising the recruitments in the other places of employment involved, that is in Berlin and Vienna.

Thank you for your attention!

3.2 Report of the chairman of the Select Committee on its 19th meeting

Wir begrüßen jeden Fortschritt in Richtung des einheitlichen Patentschutzes. Ich versichere Ihnen, dass das Personal hochqualifiziert ist, um das Einheitliche Patent mit sehr guter Qualität zu prüfen. Wie Sie wissen, werden europäische Patente oft nur in wenigen Ländern validiert. Mit dem Einheitlichen Patent wird es aber in vielen Staaten von uns erteilte Monopole geben. Daher ist es wichtig, dass eine sehr hohe Qualität gewährleistet ist. Ein sorgfältig geprüftes Patent benötigt aber Zeit. Wenn Sie auf Effizienz schauen, sollten nicht nur Produktionszahlen im Vordergrund stehen. Wenn die erteilten Monopole für die Wirtschaftslandschaft in Europa nützlich sein sollen, ist eine unbegrenzte Effizienzsteigerung nicht denkbar. Wir sind daran interessiert, immer besser zu werden. Eine Unterstützung durch IT-Tools ist sicher sinnvoll, aber versprechen wir uns nicht zu viel davon. Recherche und Prüfung muss immer von Menschen gemacht werden, wenn sie

sinnvoll sein soll. Software ist und bleibt immer nur ein Hilfsmittel. Beachten Sie also, dass eine Steigerung der Effizienz bedeutet, dass pro Patentanmeldung im Durchschnitt weniger Zeit investiert wurde. Der Patentprüfer hat weniger Zeit für die Bearbeitung der Anmeldung gehabt. Wir sind bereit, zur hohen Qualität des Einheitlichen Patents beizutragen. Hierzu benötigen wir aber eben auch genügend Zeit, und ich hoffe darauf, dass Sie dies nicht außer Acht lassen werden.