



3 March 2014  
 su14037cl – 3.1

## Concerning: “Social Democracy” - Mr Battistelli's reform of the Staff Representation

Dear Sir, Madam,

As delegates of the Members States, you have not only the duty to regulate and supervise the operations of the European Patent Office, but also to ensure that your own Governments and/or your delegations do not themselves become vicariously liable for unlawful acts by the EPO.

In this respect, the EPO staff wishes to draw your attention to the following matters:

1. In June last year, you supported Mr Battistelli's controversial revision to the Staff Regulations in respect of strikes (CA/D 5/13)<sup>1</sup>. In these approved regulations there was a “blanket clause” enabling the President to enact wide-ranging regulations to control the exercise of the right to strike. Mr Battistelli has used his new powers swiftly by enacting Circular 347<sup>2</sup> that severely both reduces the freedom of action of legitimate unions and curtails the staff's right to strike. SUEPO has challenged these new regulations before national courts in Germany and The Netherlands: indeed in the Netherlands, an injunction was sought against the new strike regulations. Although the judge in the first instance found<sup>3</sup> the relief sought inappropriate, he nevertheless unambiguously stated that:
  - **SUEPO has legal personality and can bring claims against the EPO;**
  - The EPO is bound by international standards and fundamental rights;
  - Since SUEPO has no other recourse to justice, **the EPO is not entitled to rely on its immunity** beyond exercising its normal tasks.

The matter of the appropriateness of the relief claimed is now before the Court of Appeal. We expect a decision in about two months' time, and feel confident that the Court of Appeal will find the regulations both excessive and liberticidal.

2. Now, Mr Battistelli is proposing further fundamental changes to the Service Regulations for your approval. Under the misnomer “Social Democracy” he seeks to limit severely the role and effective functioning of the Staff Representation<sup>4</sup>. In particular, the proposal includes repealing Art. 35(6)(b), which lays down that the staff should decide how to elect their representatives. In its place, **the President will ask you to provide yet another “blanket clause” enabling him to regulate who, when and how staff representatives can be elected.** In anticipation of your approval allowing him to further

<sup>1</sup> ANNEX 1

<sup>2</sup> ANNEX 2

<sup>3</sup> The text of the decision, translated in English, is provided as ANNEX 3.

<sup>4</sup> ANNEX 4

enlarge his powers, he has already drafted a circular for this purpose<sup>5</sup>. Since staff has adopted the election rules presently in force at all places of employment, it should not be possible to change them unilaterally simply by a Presidential decree<sup>6</sup>.

3. Through a further Circular<sup>7</sup>, he also intends to change the rules concerning the facilities afforded by the Office to the Staff Representation. One of the important points is that all union activities are forbidden on Staff Representation premises – and there is every probability that this will be extended office-wide.
4. It is in the interest of the smooth running of the Office to verify whether or not staff would willingly and readily accept such unilaterally proposed changes. Since under Art. 34(1) SR, “the Staff Committee [...] shall contribute to the smooth running of the service *by providing a channel for the expression of opinion by the staff*”, the CSC<sup>8</sup> organised an opinion poll using a previously approved, web-based platform<sup>9</sup>.

Rather than being grateful for the service and feedback the service would have provided, **Mr Battistelli immediately ordered the IT department to block access to the web-based platform by putting it on the blacklist of the EPO**. He then accused the CSC in writing of “very serious misconduct” warranting disciplinary proceedings and even eventually lawsuits under national law<sup>10</sup>. He has alleged impropriety in using the particular external web service, yet this was the very same service the Office was planning to use later in the same week to carry out the vote on the PEACES strike proposal<sup>11</sup>. Without even waiting for any response to his warning letters (which he demanded in three working days), on 14 February the President has issued Communiqué 50 alleging that the CSC has used unlawfully a list of names compiled by the Office to prepare a vote on the strike proposal PEACES<sup>12</sup>. He used this as an excuse to postpone the strike ballot.

This is another misinterpretation of the facts: we have simply compiled a list of names and email addresses from the EPO’s phone book, which is accessible to everybody in the Office. We interpret the President’s reluctance to allow the opinion poll was because he was very concerned that the results would have clearly shown that staff is fervently opposed to a “social democracy project” à la Battistelli.

As for postponing the strike ballot, if the President no longer trusts the services of a particular provider, then rather than postpone the ballot, he should instead still run the ballot in time using the “tried and trusted” method of a paper ballot. The CSC as interlocutor for PEACES could certainly agree to such a paper ballot. By not holding the strike ballot in due time, the President has failed to comply with his obligations under his own, albeit contested, strike guidelines with regards to the deadline for carrying out the agreed strike ballot.

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<sup>5</sup> ANNEX 4.1

<sup>6</sup> *Quo modo oritur, ejusdem modo dissolvitur*

<sup>7</sup> ANNEX 4.2

<sup>8</sup> with the backing of SUEPO, who decided to support the endeavor of the CSC by footing the bill

<sup>9</sup> ANNEX 5

<sup>10</sup> ANNEX 6

<sup>11</sup> ANNEX 7

<sup>12</sup> The President has also used this pretext for and using the opportunity for postponing *sine die* the vote on the PEACES initiative, alleging that “the anonymity of the voters could not be guaranteed”. This is preposterous, since the Office itself has vetted the company that provides the platform.

5. **Repression of dissent appears to be the next step in Mr Battistelli's programme.** The members of the Disciplinary Boards have been instructed by PD43 to be on call and make themselves available as a priority – even above the normal tasks for which they have been recruited.
6. Mr Battistelli has said that the reason for not wanting to discuss issues with SUEPO is that SUEPO has not always spoken with one voice and that therefore it is difficult to come to binding agreements. While we disagree with his diagnosis, we have taken his concerns seriously and have provided him with a **draft proposal for a framework agreement to regulate the relations between SUEPO and the Office**<sup>13</sup>. The draft proposal is based on norms in force throughout Europe. Sadly, to date, we have not even received the courtesy of an acknowledgment of receipt.
7. Despite having a responsibility to communicate with the staff they represent, staff and union representatives have been punished with disciplinary sanctions for allegedly having sent mails to more than 50 staff members to inform them about developments within the Office.

Such anti-democratic and authoritarian actions only reinforce our position before the Dutch court, where we are claiming that the Office does not respect even the most fundamental norms of democracy. In the long term, this may have consequences and repercussions for the Administrative Council's delegations and their States, who should accept their duty to guarantee at least some minimum standards of fundamental rights for all their nationals.

However, it is our duty to tell you that our members are upset at the present state of affairs: staff *in general* is very upset. You can request the President to allow the opinion poll to run if you do not believe us – our own “straw poll” of opinion gathered through general assemblies at all sites send this message very clearly. It is in the interest of the Organisation to ensure a minimum of social peace. We cannot go on like this.

We respectfully suggest that you carefully examine and consider any proposal purporting to change significantly the relationship between the EPO and its social partners. Any further fiasco could have wider implications than for the EPO alone. In particular, we suggest that “blanket powers” be granted only in the most exceptional of circumstances.

Should you decide however to support Mr Battistelli's reform of the Staff Representation, please be aware that **all** further changes or reforms affecting staff introduced in the EPO after 1 June 2014, would be tainted with legal uncertainty.

In any event, it would be prudent for the Administrative Council to await the forthcoming judgment of the Court of Appeal before starting any discussion or vote on any further changes to the EPO Service Regulations. Please be informed that one of our claims is that SUEPO be recognized by the EPO as a negotiating partner.

We will continue to keep you informed. In the meantime, we remain

Yours sincerely,

SUEPO Central

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<sup>13</sup> ANNEX 8

**CA/D 5/13**

DECISION OF THE ADMINISTRATIVE COUNCIL  
of 27 June 2013  
inserting an Article 30a and amending Articles 63  
and 65 of the Service Regulations for permanent  
employees of the European Patent Office

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THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the European Patent Convention, and in particular Article 10(2)(c) and Article 33(2)(b) thereof,

Having regard to the Service Regulations for permanent employees of the European Patent Office (hereinafter referred to as "the Service Regulations"), and in particular Articles 63 and 65 thereof,

On a proposal from the President of the European Patent Office, submitted after consulting the General Advisory Committee,

HAS DECIDED AS FOLLOWS:

Article 1

The following new Article 30a of the Service Regulations shall be inserted:

**"Article 30a**

**Right to strike**

(1) All employees have the right to strike.

- (2) A strike is defined as a collective and concerted work stoppage for a limited duration related to the conditions of employment.
- (3) A Staff Committee, an association of employees or a group of employees may call for a strike.
- (4) The decision to start a strike shall be the result of a vote by the employees.
- (5) A strike shall be notified in advance to the President of the Office. The prior notice shall at least specify the grounds for having resort to the strike as well as the scope, beginning and duration of the strike.
- (6) Employees shall inform the Office about their participation in a strike.
- (7) The freedom to work of non-strikers shall be respected.
- (8) Strike participation shall lead to a deduction of remuneration.
- (9) The President of the Office may take any appropriate measures, including requisitioning of employees, to guarantee the minimum functioning of the Office as well as the security of the Office's employees and property.
- (10) The President of the Office may lay down further terms and conditions for the application of this Article to all employees; these shall cover inter alia the maximum strike duration and the voting process."

## Article 2

Article 63(1) of the Service Regulations shall be amended to read as follows:

"(1) Except in case of incapacity to work due to sickness or accident, a permanent employee may not be absent without prior permission from his immediate superior. Any unauthorised absence which is duly established shall lead to a deduction of the remuneration of the permanent employee concerned pursuant to Article 65(1)(d)."

Article 3

Article 65(1) of the Service Regulations shall be amended to read as follows:

"(1)(a) Payment of remuneration to employees shall be made at the end of each month for which it is due.

(b) Where remuneration is not payable in respect of a complete month, the monthly amount shall be divided into thirtieths and

- where the actual number of days for which pay is due is fifteen or less, the number of thirtieths payable shall equal the actual number of days for which pay is due;

- where the actual number of days for which pay is due is more than fifteen, the number of thirtieths payable shall equal the difference between the actual number of days for which pay is not due and thirty.

(c) Notwithstanding the provisions of (b), where remuneration is not payable in respect of a complete month owing to participation in a strike, the monthly amount shall be divided into twentieths to establish the due deduction for each day of strike on a working day.

(d) Notwithstanding the provisions of (b), where remuneration is not payable in respect of a complete month owing to unauthorised absence, the monthly amount shall be divided into twentieths to establish the due deduction for each day of unauthorised absence on a working day.

(e) Where entitlement to any of the allowances provided for in Article 67 commences at or after the date of entering the service, the employee shall receive such allowance as from the first day of the month in which such entitlement commences, provided that any request for the allowance is submitted within six months of the date on which entitlement commences, unless otherwise provided in these Regulations. If an allowance is requested after expiry of the above six-month period, it shall be granted retroactively but only for the six months preceding the month in which the request was submitted, except in a duly substantiated case of force majeure. On cessation of such entitlement the employee shall receive the sum due up to the last day of the month in which entitlement ceases.

(f) All permanent employees in receipt of an allowance shall inform the President of the Office immediately in writing of any change which may affect their entitlement to that allowance."

Article 4

This decision shall enter into force on 1 July 2013.

Done at Munich, 27 June 2013

For the Administrative Council  
The Chairman

A handwritten signature in black ink, appearing to read 'J. Kongstad'. The signature is written in a cursive, slightly slanted style.

Jesper KONGSTAD

## CIRCULAR ON STRIKES

The President of the European Patent Office;

Having regard to the European Patent Convention, and in particular Article 10 thereof;

Having regard to the Service Regulations for permanent employees of the European Patent Office, and notably Articles 30, 30a, 63 and 65 thereof;

Having consulted the General Advisory Committee;

Recognising the right to strike, whilst having regard to the need for specific terms and conditions for its exercise in order to ensure a proper functioning of the Office;

Considering that a strike should be a proportionate action of last resort;

Has decided as follows:

### **Guidelines applicable in the event of strike**

#### **A. Definition**

##### **1. Strike**

A strike is defined in Article 30a(2) of the Service Regulations.

Industrial actions which are not a collective and concerted work stoppage, such as go-slow or work-to-rule actions, shall not be considered as a strike.

The protection granted by the right to strike does not apply to employees participating in industrial actions other than a strike.

#### **B. Exercising the right to strike**



## **2. Call for a strike**

A Staff Committee (Central Staff Committee or a local section), an association of employees, or a group of employees representing at least 10% of all EPO employees may decide to call for a strike.

## **3. Decision to start a strike**

The start of a strike shall be the result of a vote by the employees entitled to vote.

Entitled to vote are the active employees either office-wide or at sites concerned by the strike which has been called for.

The voting process shall be organised and completed by the Office within a maximum of one month following the decision to call for strike. The voters' confidentiality shall be guaranteed. Employees not able to vote personally shall have the possibility to vote by proxy. An employee can be given only one proxy vote.

The voting process shall be supervised by a committee composed of two employees designated by the President and two employees designated by the Central Staff Committee on an ad hoc basis.

To be valid, at least 40% of the employees entitled to vote shall participate in the ballot. The decision to start the strike has to be approved by a majority of more than 50% of the voters.

## **4. Prior notice**

Pursuant to Article 30a(5) of the Service Regulations, prior notice of a strike shall be given to the President at least five working days before the commencement of the strike action.

As regards the scope of the strike, the notice shall indicate which sites of the Office are concerned.

The duration of the strike shall not exceed one month starting from the date indicated in the prior notice as the beginning of the strike. Beyond this maximum duration, any new strike shall be organised in compliance with Article 30a of the Service Regulations.

## **5. Declaration of participation in a strike**

Employees participating in a strike shall inform their immediate superior and shall register via an electronic self-registration tool made available by the Office. The immediate superior will have access to the self-registration tool.

The registration shall occur before or, at the latest, on the day of the strike.

Employees may be considered on unauthorised absence within the meaning of Article 63 of the Service Regulations if they were not at their workplace during a strike action, did not register and did not inform their immediate superior of their absence from work.

## **6. Deduction of remuneration**

For each working day during which an employee participated in a strike, the Office will apply a deduction of the monthly remuneration, in accordance with Article 65(1)(c) of the Service Regulations.

For participation in a strike for more than four hours in a single working day, the Office will apply a deduction of 1/20th of the monthly remuneration.

For participation in a strike for four hours or less in a single working day, the Office will apply a deduction of 1/40th of the monthly remuneration.

For staff working part-time, the deduction will be adjusted proportionally.

The basis for calculating the deduction is the remuneration defined in Article 64(2) of the Service Regulations.

A strike participant remains covered by the social security scheme during strike and therefore continues to contribute in full to the scheme.

## **C. Entry into force**

This decision shall enter into force on 1 July 2013.



# Judgement

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## DISTRICT COURT OF THE HAGUE

Commercial Team - Judge for Interim Relief

Case / cause-list number: C/09/453749 / KG ZA 13-1239

### Judgement in interim injunction proceedings of 14 January 2014

In the case of

**1. The trade union of the European Patent Office (VEOB, The Hague Office)**, having its registered office in Rijswijk,

**2. Staff Union of the European Patent Office (SUEPO)**,

having its registered office in The Hague,  
Plaintiffs,

Advocate *mr.* L. Zegveld in Amsterdam,

versus:

**European Patent Organisation (also European Patent Office)**,

having its registered office in Munich (Germany), as well as in Rijswijk,

Defendant,

Advocate *mr.* G.R. den Dekker in The Hague.

The parties herein will be referred to below as 'the VEOB', 'SUEPO' and 'the Patent Organisation'.

#### 1. The facts

On the basis of the documents and the proceedings during the hearing of 18 December 2013 the starting points of this action are as follows.

1.1 The Patent Organisation is an international organisation governed by public law with 38 participating member States ('Contracting States'). The Patent Organisation was established under the Convention on Grant of European Patents (European Patent Convention, further herein: EPC) and has its headquarters in Munich. In addition, the Patent Organisation has an office in Rijswijk and in various other European countries.

1.2 The Netherlands ratified the EPC on 28 February 1977. On 7 October 1977 the EPC came into force for the Netherlands. The EPC states amongst other things:

#### *"Article 4. European Patent Organisation*

1. *A European Patent Organisation, hereinafter referred to as the Organisation, is established by this Convention. It shall have administrative and financial autonomy.*
2. *The organs of the Organisation shall be:*
  - a. *the European Patent Office;*
  - b. *the Administrative Council.*

- 3 *The task of the Organisation shall be to grant European patents. This shall be carried out by the European Patent Office supervised by the Administrative Council.*  
(...)

**Article 8. Privileges and immunities**

*The Protocol on Privileges and Immunities annexed to this Convention shall define the conditions under which the Organisation, the members of the Administrative Council, the employees of the European Patent Office, and such other persons specified in that Protocol as take part in the work of the Organisation, shall enjoy, in each Contracting State, the privileges and immunities necessary for the performance of their duties.*  
(...)

**Article 13. Disputes between the Organisation and the employees of the European Patent Office**

1. *Employees or former employees of the European Patent Office or their successors in title may apply to the Administrative Tribunal of the International Labour Organization in the case of disputes with the European Patent Organisation, in accordance with the Statute of the Tribunal and within the limits and subject to the conditions laid down in the Service Regulations for permanent employees or the Pension Scheme Regulations or arising from the conditions of employment of other employees.*
2. *An appeal shall only be admissible if the person concerned has exhausted such other means of appeal as are available to him under the Service Regulations for permanent employees, the Pension Scheme Regulations or the conditions of employment of other employees.”*
- 1.3 In the Protocol on the Privileges and Immunities of the European Patent Organisation belonging to the EPC (Protocol on Privileges and Immunities: further herein: PPI) states for instance:

**"Article 3**

1. *Within the scope of its official activities the Organisation shall have immunity from jurisdiction and execution, except:*
  - a) *to the extent that the Organisation shall have expressly waived such immunity in a particular case;*
  - b) *in the case of a civil action brought by a third party for damage resulting from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Organisation, or in respect of a motor traffic offence involving such a vehicle;*
  - c) *in respect of the enforcement of an arbitration award (...).*
- (...)
4. *The official activities of the Organisation shall, for the purposes of this Protocol, be such as are strictly necessary for its administrative and technical operation, as set out in the Convention.”*

- 1.4 The VEOB is the trade union of the European Patent Office, The Hague office. The VEOB is an association according to Dutch law and has its registered office in Rijswijk. Membership of the VEOB is open to those who are or were employed by the European Patent Office at the office in The Hague.

- 1.5 SUEPO is the umbrella trade union of the Patent Organisation and consists of the four offices in The Hague (the VEOB), Munich, Berlin and Vienna.
- 1.6 The VEOB and SUEPO on behalf of their members have announced strikes as from March 2013 onwards. Actual strikes took place in March, May, June and July 2013.
- 1.7 The employment conditions of the personnel of the Patent Organisation are laid down in the 'Service Regulations for Permanent Employees' (further herein: the Service Regulations). The Service Regulations provide for a special procedure to settle disputes between (former) employees of the Patent Organisation and the Patent Organisation. A (former) employee can first lodge a notice of objection to a decision by the Chairman (or the Administrative Council), and subsequently - if necessary - appeal internally and after that appeal to the International Labour Organisation Administrative Tribunal (further herein: ILOAT).
- 1.8 As from 1 July 2013 the Patent Organisation has adjusted the Service Regulations. A new article 30a and a new article 65 paragraph 1 under c have been added, stating for instance:

**“Article 30a(...)  
Right to strike**

- (1) *All employees have the right to strike.*
- (2) *A strike is defined as a collective and concerted work stoppage for a limited duration related to the conditions of employment.*
- (3) *A Staff Committee, an association of employees or a group of employees may call for a strike.*
- (4) *The decision to start a strike shall be the result of a vote by the employees.*
- (5) *A strike shall be notified in advance to the President of the Office. The prior notice shall at least specify the grounds for having resort to the strike as well as the scope, beginning and duration of the strike.*
- (...)
- (8) *Strike participation shall lead to a deduction of remuneration.*
- (9) *The President of the Office may take any appropriate measures, including requisitioning of employees, to guarantee the minimum functioning of the Office as well as the security of the Office's employees and property.*
- (10) *The President of the Office may lay down further terms and conditions for the application of this Article to all employees; these shall cover inter alia the maximum strike duration and the voting process.*
- (...)

**Article 65(...)  
Payment of remuneration**

- (1) (...) (a) *Payment of remuneration to employees shall be made at the end of each month for which it is due.*
- (...)
- (c) *(...) the monthly amount shall be divided into twentieths to establish the due deduction for each day of strike on a working day."*

- 1.9 The new rules have been detailed in a Circular on Strikes issued by the President of the Patent Organisation (Circular 347).

## 2. The dispute

2.1 The VEOB and SUEPO claim concisely summarised:

- I. that the Patent Organisation be ordered to terminate the violations of the right to strike and the right to collective bargaining;
- II. that the Patent Organisation be ordered to withdraw Articles 30a and 65 paragraph 1 under c of the Service Regulations and further elaborations of this, at any rate to suspend the operation of these;
- III. that the Patent Organisation be ordered to acknowledge the VEOB and SUEPO as social partners with the right to collective bargaining and to allow them to have access to the collective bargaining consultations with regard to the personnel of the Patent Organisation;
- VI. that the Patent Organisation be prohibited from conducting or from continuing the consultations about the new collective arrangements concerning the personnel of the Patent Organisation without admitting the VEOB and SUEPO.

2.2 To this end the VEOB and SUEPO have put forward the following. The Patent Organisation is bound to the treaties and the customary law in which the rights are laid down which are up for discussion in this action. The right to strike is embedded in Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 6 of the European Social Charter (ESC). The right to collective bargaining has been laid down in Article 6 ESC and is also implied in Article 11 of the European Convention on Human Rights (ECHR).

Until 1 July 2013 there were no provisions for strikes in the Patent Organisation. In response to the strikes which the VEOB and the SUEPO have called for since the beginning of this year, the Service Regulations were adjusted in order to regulate strikes to a high degree. Article 30a paragraph 2 of the Service Regulations applies a much too restricted definition of a strike. Strikes of an indefinite period of time, go-slow actions and work-to-rule campaigns are not recognised as strikes. In addition the requirement that strike actions must be related to (individual) employment conditions is too restricted. Article 30a paragraph 2 of the Service Regulations is for that reason a wrongful restriction of the right to strike. This also applies to paragraph 4 of that Article, providing that the vote - also with regard to strikes called for by the trade unions - must take place by *all* the employees. In addition, in practice it is practically impossible to bring about a vote if spontaneous, wild strikes are called for, whereas those strikes are indeed allowed by the ILO. The provision has no exceptions. Article 30a paragraph 10 of the Service Regulations gives the President of the Patent Organisation a *carte blanche* to determine further implementation measures and requirements with regard to a strike action so that there is no certainty whatsoever for striking employees. In addition, this paragraph of the Article is wrongful since it gives the President the authority, in conjunction with Article 30a paragraph 5 of the Service Regulations, to determine the maximum duration of a strike. It is contrary to the right to strike if strikers have to indicate in advance how long the strike will last and even more so if the President determines on the basis of that time indication what the maximum duration of the strike should be. The duration of a strike action depends on the extent to which the employer meets his employees or begins to negotiate with them about their grievances, so that the rationale of the right to strike is not suitable for this to be restricted by time in advance. Moreover, it appears in practice that the President meticulously controls the voting process. This is an unlawful interference in trade union matters.

Therefore since 1 July 2013 employees have also been experiencing more disadvantageous financial consequences from strikes. The new Article 65 paragraph 1 under c of the Service Regulations provides that upon strikes there will be a salary deduction of 1/20th of the monthly salary. Thereby in that connection a day of strike is equalised with one day of unauthorised absence. Salary deduction in the event of allowed forms of absence is calculated on the basis of 1/30th of the monthly salary. Moreover, the calculation of the amount of salary deduction takes place on the basis of half-days and not on the basis of the actual number of hours on strike.

In practice the changes mean a far-reaching restriction of the right to strike. This is not only evident from the text of the Articles and their explanations but also from the application and implementation of this by the management of the Patent Organisation. On the basis of the new rules the Patent Organisation declared as unlawful the work strikes after 1 July 2013 which were announced in March 2013 by the VEOB and SUEPO and which were confirmed in June by the majority of votes by trade union members. In the event of future strikes the Patent Organisation will begin disciplinary proceedings.

The Patent Organisation also obstructs the right to strike in other ways. As from 3 June 2013 onwards the Patent Organisation drastically restricted the facilities which are required for effective communication between the VEOB and SUEPO and its members. For instance the Patent Organisation refused to distribute paper bulletins of the trade unions, installed a filter so that all incoming e-mails from addresses ending on "@suepo.org" are blocked and introduced an automatic block for e-mails sent to more than fifty e-mail addresses. Since trade unions have the right to communication and have the right to use the e-mail facilities of the organisation, these measures are unlawful. The reasoning on which the measures are based is also in contravention of the case law of ILOAT.

The Patent Organisation not only discourages strikes but also wants to put the trade unions out of action. The trade unions are merely tolerated and have no legal status in the organisation. Therefore they have no formal access to negotiations about issues directly involving their members. The VEOB and SUEPO were not consulted with regard to the changes in the working conditions and other work-related measures, let alone that negotiations about the new rules were conducted with them. So the Patent Organisation does not acknowledge the right to collective bargaining either. Work strikes are the only means remaining to affect the policy of the Patent Organisation.

The measures taken by the Patent Organisation form a serious restriction of the right to strike and the right to collective bargaining. The necessity of a provision is urgent because the VEOB and SUEPO announced follow-up strikes for December 2013. The current strike rules make this in actual fact impossible. The VEOB and SUEPO have been deprived of reasonable means of being able to organise the strike. Going on strike involves unacceptable risks for strikers, both financially as well as for their further career.

2.3 The Patent Organisation has conducted a reasoned defence, which will be discussed below, insofar as this is necessary.

### **3. The assessment of the dispute**

3.1 It is first stated that the Patent Organisation as an independent organisation taking part in judicial matters, is bound to the primary sources of law such as the customary international law, the fundamental rights acknowledged in international conventions and other universally recognised legal principles. In itself the Patent Organisation did not dispute this.

The Patent Organisation put forward as its primary defence that it has immunity of jurisdiction so that the Dutch court has no jurisdiction to hear the claims. According to the VEOB and SUEPO a plea of immunity means an unlawful restriction of the right to judicial access, as embedded in Article 6 ECHR.

3.2 The starting point is that the Patent Organisation, established under Article 4 EPC, has privileges and immunities, under the conditions described in the PPI to that end, which are necessary for performing its duties (Article 8 EPC). As appears from Article 3 PPI the Patent Organisation has immunity of jurisdiction in connection with its official activities. It is not in dispute between the parties that the activities of the Patent Organisation associated with the dispute currently at hand, are official activities of the Patent Organisation within the sense of Article 3 PPI.

However, contrary to what has been argued by the Patent Organisation, the immunity arising from Article 3 PPI does not mean automatically that the Judge for Interim Relief must declare that it has no jurisdiction to hear the case. It is true that the right to access to an independent and impartial court guaranteed in Article 6 ECHR is not absolute and that this right can be subject to restrictions, but those restrictions must be in proportion to the aim pursued and they should not go so far that this would prejudice the essence of the right to judicial access. The latter is for instance the case if the interested party has no reasonable alternative for effectively invoking his rights under the ECHR (ECtHR 18 February 1999, case number 26083/94 (*Waite and Kennedy*) and ECtHR 18 February 1999, case number 28934/95 (*Beer and Regan*)).

3.3 The Patent Organisation argued that it ensues from ground for decision 72 of the *Waite and Kennedy* ruling and ground for decision 62 of the *Beer and Regan* ruling that the right to immunity does not depend on the answer to the question whether or not there is access to a court. This argument is not successful. After all, it only follows from those considerations that the proportionality review referred to under 3.2 cannot be applied in such a way that the subjection of an international organisation to national employment law can be enforced. This situation does not occur here since the VEOB and SUEPO invoke fundamental rights acknowledged in international conventions. The VEOB and SUEPO are not invoking national employment law.

3.4 Insofar as the Patent Organisation argues that the ruling of the ECtHR of 11 June 2013, case number 65542/12 (*Mothers of Srebrenica*) entails a change with regard to the previous ruling of the ECtHR, that argument is not followed either. It is true that it can be deduced from that ruling that the absence of an alternative procedure does not entail automatically and in all cases that an immunity plea is incompatible with Article 6 ECHR, but the conclusion cannot be derived from this that respecting the immunity of an international organisation in any event does not mean a disproportional restriction of the right to judicial access. It is true that in the *Mothers of Srebrenica* ruling the conclusion was drawn that the immunity of the United Nations is absolute, but this only gives an opinion on the scope of the immunity of this specific organisation in connection with the performance of its powers with regard to international peace and safety. Therefore this opinion is not applicable to a dispute with another international organisation, such as - in this case - the Patent Organisation.



3.5 The foregoing leads to an assessment of whether the granting of immunity is in proportion with the aim pursued. The rationale for granting immunity to international organisations is to enable those organisations to operate independently and effectively. The immunity of jurisdiction in principle vested in the Patent Organisation, as an inter-governmental organisation, is of great importance to it in order to be able to carry out its (official) activities unhindered and independently of its guest country. All this leads to the conclusion that the immunity of the Patent Organisation serves a legitimate purpose.

3.6 Moreover, in connection with the assessment of the proportionality it is important whether alternative legal remedies are available to the VEOB and SUEPO which effectively protect their right to judicial access. In the opinion of the Judge for Interim Relief this is not the case. Although there is access to the procedure at ILOAT against decisions by (organs of) the Patent Organisation, this procedure is only open to individual (former) employees of the Patent Organisation (see Article 13 EPC and the dispute settlement scheme in the Service Regulations). That the VEOB and SUEPO represent the interests of those individual employees and that a review of the general policy is possible via an individual case, does not detract from the fact that there is no direct judicial access for the VEOB and SUEPO itself. Moreover, general measures such as introducing new rules about strikes cannot be contested in advance, that is to say not before individual employees have actually been affected by this. Considering this, the further characteristics of the procedure at ILOAT, such as the time of the procedure and whether or not it is possible to give provisional relief, do not require any further discussion. All this leads to the plea of immunity of jurisdiction of the Patent Organisation being rejected.

3.7 Moreover, the Patent Organisation takes the position that the claims by VEOB and SUEPO must be declared inadmissible. This is ignored insofar as the Patent Organisation bases this on the fact that they cannot take legal action independently. After all, differences between the entry in the Trade Register and the Articles of the VEOB cannot substantiate this opinion and these differences are of no concern to the Patent Organisation (in this respect). The Patent Organisation did not dispute that the VEOB is a legal entity as is also evident from the Trade Register. The right to take legal action independently arises automatically from this. In addition, since it arises from the documents produced that the Patent Organisation acknowledges the existence of SUEPO and since the Patent Organisation has not put forward any concrete indications demonstrating that SUEPO is not a legal entity, it should be assumed in these interim injunction proceedings that SUEPO can also take legal action independently.

3.8 The allegation of the Patent Organisation that the claims of VEOB and SUEPO cannot be declared admissible because these claims constitute in effect a collective claim within the sense of Section 3:305a of the Civil Code, is also ignored. The Patent Organisation argues rightly in itself that a foundation or association with full legal capacity can only bring a legal action serving to protect similar interests of other persons and that the VEOB and SUEPO are not such an association or foundation. However, the VEOB and SUEPO have alleged explicitly that they have their own interest in the relief sought. Although the objective of the VEOB and SUEPO is to represent the interests of their members, and to that extent any interest they have covers the interest of their members, the personal interest of the VEOB and SUEPO consists of them getting the opportunity to carry out their duties without any restrictions. Through their claims the VEOB and SUEPO intend in essence

to be enabled to organise strikes effectively and to be admitted as negotiating parties in connection with the formation of new regulations. This interest must be abstracted from the question of whether they are also entitled to this.

3.9 The Patent Organisation also disputed the urgent interest of the VEOB and SUEPO in the relief sought. However, the Judge for Interim Relief is of the opinion that they have made their urgent interest in the claims relating to (rules with regard to) the right to strike sufficiently plausible. Although the strike for December 2013 previously announced has been called off and there are no concrete plans to organise a new strike in the short term, the intention and - according to the opinion of the VEOB and SUEPO - the necessity for this are still present. The urgent interest of the VEOB and SUEPO is based on the allegation that under the current rules and circumstances they are not able to organise (independently) their intention to organise a strike with the details they desired. The Judge for Interim Relief does agree with the Patent Organisation that the VEOB and SUEPO have insufficiently substantiated their urgent interest in the claims serving to be acknowledged and admitted as negotiating partners. No submission was made or evidence produced that the Patent Organisation intends to adjust or supplement its internal regulations in the short term.

3.10 It arises from the foregoing that the claims relating to (rules about) the right to strike must be assessed on their merits. The VEOB and SUEPO have alleged that it should be assessed whether the Patent Organisation is observing the fundamental human rights on Dutch territory and that by bringing the claims the intention is to bring about changes in the office of the Patent Organisation in the Netherlands (Rijswijk).

3.11 Article 8 EPC guarantees the operation of the Patent Organisation as a whole so that uniform regulations can be applied organisation-wide. The VEOB and SUEPO intend by their claims to break through this provision. After all, to allow (a part of) the claims would result in a fragmentation of the Patent Organisation, within the sense that different regulations must be applied in the Netherlands than in other participating member States. This would impair the essence of the immunity, namely that the internal regulations of international organisations are not dependent on the national legislation and national judicial opinions. That - as held above - a procedure for the VEOB and SUEPO is absent within the legal system of the Patent Organisation to act against decisions by (organs of) the Patent Organisation, does not justify an opinion of the Dutch Judge for Interim Relief with regard to the lawfulness of the regulations. After all, no submission was made nor any evidence produced that it is not possible for the VEOB and SUEPO to turn to the central organisation with these claims.

3.12 The foregoing leads to rejection of the claims. As the parties found at fault the VEOB and SUEPO will be ordered to pay the costs of the action.

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#### 4. The decision

The Judge for Interim Relief:

- rejects the relief sought;

- orders the VEOB and SUEPO to pay the costs of the action, until now estimated on the part of the Patent Organisation at €1,405, of which €816 as the fee for the advocate and €589 as the court fee.

- declares the order to pay the costs of the action provisionally enforceable.

This judgement has been rendered by *mr.* G.H.I.J. Hage and pronounced in public on 14 January 2014.

*hvd*

[signature]

[signature]

Directorate 4.3.3

Munich, 10 February 2014

Mr A Casado  
Chairman of the GAC  
Room 7915

PschorrHöfe 7

Re: GAC/DOC 7/2014  
Social Democracy

- Amendment to the Service Regulations
- Circular on election rules
- Circular on resources and facilities granted to the staff committee

Dear Mr Casado,

Please find attached GAC/DOC 7/2014.

The President requests the GAC to discuss the document and to deliver a reasoned opinion on 7 March 2014 at the latest.

Best Regards



J.P. Robin

**CA/4/14**

Orig.: en

Munich, 10.02.2014

DRAFT

SUBJECT: Social democracy at the European Patent Office

DRAWN UP BY: President of the European Patent Office

ADDRESSEES: Administrative Council (for decision)

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SUMMARY

The Office proposes to reform the legal framework governing social dialogue at the Office with the aim of improving social democracy and representation of the staff.

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**PART I****I. STRATEGIC/OPERATIONAL**

1. Operational.

**II. RECOMMENDATION**

2. The Administrative Council is requested to approve changes to the Staff Regulations as proposed in part II of the present document.

**III. MAJORITY NEEDED**

3. Three-quarters of the votes.

**IV. CONTEXT**

4. International Organisations have a wide scope of subjects of social interest to decide upon. They act not only as an employer, but have also to regulate on many labour and social issues, which in a Member State are otherwise regulated by governmental structures and ministries. These issues range from working conditions to providing various forms of social insurance and pensions and other human resources related matters. Adapting to internal and external challenges and expectations is a key factor in maintaining the Office's success and ensuring its long-term social and financial sustainability.
5. The European Patent Office is an international organisation in charge of promoting innovation and delivering high added-quality added-value services, so its main asset is its staff. Constructive dialogue between staff and management is therefore of paramount importance.
6. Historically, staff-management relations at the EPO have been characterised by mistrust and conflicts. Their typically confrontational nature has also been encountered by successive generations of EPO management and documented by historians. In 1997, an external study published in the European Journal of Industrial Relations, stated: "Hostile management - labour relationships have a long tradition in EPO and have survived one change of presidency".
7. Several attempts to create a framework for a constructive social dialogue have been made in the past to address the situation, all to no avail.

8. During the first three years of the current presidency, further efforts were made to build a strong social partnership with staff representation by, for example, appointing high-ranking managers to the General Advisory Committee (GAC), holding regular meetings with Central Staff Committee (CSC), establishing ad hoc working groups with staff representatives on all strategic projects, etc. Recently the right to strike was officially regulated to clarify the rules on industrial action and to increase its democratic legitimacy.
9. There are several reasons for this conflictual relationship. Some elements may be of cultural origin and others can be explained by the EPO specific environment. Highly specialised scientists and engineers perform the same examiner duties year-in, year-out, for most of their career. The vast majority of staff work in core business, with over 60% having an expatriate status, often aggravating the feeling of isolation. Also to be taken into account is the peculiarity of working for an international organisation having a distinct legal framework, which is not always comparable to the national laws.
10. There are also structural explanations. Social dialogue is not governed by clear rules. The current legal framework regulating staff representation, its functions and role are dated and vague. What might be acceptable in an Office of 700 staff members is not appropriate for an Office of 7000 staff members. The rules in force at the EPO are much less developed than in many comparable international organisations and have been replaced by practices or rules decided on by general assemblies of staff, sometimes attended by fewer than 100 staff members. They leave little room for intervention by the Administration and are not harmonised Office-wide. At the same time, some rules have never been actually implemented and have been superseded by auto-regulated practices.
11. Those discussing with management on behalf of the staff are many in number and not always clearly identifiable. Their legitimacy may not correspond to the importance of their role (e.g. in the GAC, the main consultative body, members are simply appointed by the CSC; the members of which are not directly elected themselves). The mechanisms to ensure representativeness (according to staffing per place of employment, grades, etc.) do not meet national and international standards.
12. Almost 200 staff are involved in staff representation activities. The equivalent of 41 staff working full time are engaged in staff representation activities (figure in 2013). Of these only about 15% have been elected.



13. The number of elected (or non-elected) staff representatives per site bears no relation to the number of staff at that site. There is the issue of time spent on staff representative activities: Berlin claimed about 20% of the total time allocation in 2012, even though it accounts for less than 5% of total EPO staff.
14. There is also a lack of clarity surrounding the designation and role of non-elected experts. The experts appointed in many working groups and committees do not have a clear role or mandate. Experts participating in working groups often openly admit that they are expressing only their own personal opinions.
15. This situation makes any possible agreement or compromise difficult, causes undue delays and is not conducive to the taking of coherent positions and responsibility in further discussions/consultations at CSC or GAC level. The lack of accountability and stability is exacerbated by the fact the same people often hold positions on different bodies (working groups, Local Staff Committees, Central Staff Committee, General Advisory Committee, SUEPO). Staff committee members identify with the leading structures of one union (SUEPO), so staff representatives adopt a dual approach towards the Administration: dialogue through the Staff Committee and disruption through SUEPO. This undermines the principle of good faith in any dialogue, increases the mistrust and de facto prevents any possible recognition of the unions as social partners.
16. The main consultative body, the GAC, which should be the forum for a constructive review of proposals, is weakened by the gap between the level of representativeness and the responsibility its members have: the management is represented by Vice Presidents and Principal Directors (this is being challenged through litigation by the staff representatives), but the staff representatives are non-elected experts appointed by the CSC on the basis of unclear criteria. The consultation process has become a purely formal exercise (where formalities and procedures are more discussed than substance), thus hindering any meaningful contribution to the decision-making process.
17. Having no consistent, clearly identifiable and truly representative partner in the discussions makes it impossible to develop a structured social dialogue enabling collective bargaining. This leaves the Office with no alternative but to take unilateral responsibility for the decision-making process and means that agreement on a global package is not possible.
18. As a result, the various bodies for social dialogue are ineffective and are not representative: some of the 24 joint bodies rarely or never meet during the year.

19. In keeping with long-standing practice, and in contravention of the regulations, the election rules and the number of staff representatives to be elected are determined by local general assemblies.
20. This has produced a situation where the rules for the election of local committees differ from place to place. These rules are not even always available.
21. There is no direct secret ballot for CSC elections, leading to a lack of transparency and democracy in the way that CSC members are appointed. This issue has been raised by the staff representatives themselves on various occasions.
22. The CSC does not disclose a full list of its members and sends different ones to each meeting. These members say they are unable to discuss the substance of the reforms without experts (who are actually other staff representatives), despite the time and training resources allocated to them by the Office. This system does not permit continuity in ongoing dialogue with the staff side.
23. The Administration has no role in organising or supervising the election process of local staff committees and the CSC. While the Administration should not interfere in any way in the internal matters of the staff representatives, it is a fact that the President can be held accountable in the event of perceived procedural flaws. If candidates represent different factions and/or unions, the current rules and practices do not guarantee equal treatment and pluralism. This has led in the past to several internal appeals and complaints, in which candidates who have felt unfairly treated have turned to the President as a neutral party to have him enforce democratic principles.

## **V. ARGUMENTS**

24. The proposed reform aims to establish a framework for a strong social partnership based on the direct election of all staff representatives by staff in line with transparent and democratic procedures.
25. Goals and principles of the reform:

**26. A - Reinforcing the representation of staff:**

27. Firstly, staff representation will be reinforced through general and direct election of the local staff committees and CSC. This will guarantee that the staff representatives elected by their colleagues to represent them in the discussions with the Office -their employer- are truly representative. It also implies that the staff representatives are accountable to staff as to how they execute their mandate.
28. The rules governing the election of staff representatives will be harmonised Office-wide and published through a circular, thus ensuring full transparency of the electoral process. The proposed new legal framework will ensure the representation of all sites and all grades at local and central levels.
29. The number of staff representatives in the local staff committees will be proportionate to the staffing levels at each site. General elections for the Central Staff Committee and the local staff committees will be organised Office-wide every three years. The Office will bear overall responsibility for the elections to ensure equality of opportunity and resources for the candidates. To guarantee neutrality, the organisation of the elections will be supervised by a Supervisory Committee composed of members of the Administration and staff representatives. It will be responsible, inter alia, for checking that the elections are conducted according to the rules and for handling complaints from staff about the elections procedure. This system has already proven to be effective in the organisation of strike ballots by the Office.
30. As a result of this reform, the number of staff representatives involved in the dialogue with the administration will be around 44 staff representatives (representing around 30 FTE). Additional non-elected experts may be appointed by the Central Staff Committee for selection boards (5 FTE in 2013) and the Disciplinary Committee (in view of the range of procedures and/or the need to appoint many different representatives to these specialist committees).

**31. B - Clarifying the roles and functions of staff representation bodies:**

32. The second set of measures proposed for Council approval is intended to clarify the role and function of the staff representatives on the various statutory bodies and committees set up under the EPO legal framework, i.e. so as to strengthen their ability to be an interlocutor of choice for staff and management alike.

33. Staff representatives will be elected to either local or central level. They will not be entitled to hold a position concurrently at both levels. As their legitimacy is given by the elections, the staff representatives will be accountable only to their electors, thus ensuring their independence when exercising their mandate and the need for them to represent staff interests effectively.
34. The roles of the central and local staff committees will be clearer in order to avoid any overlap in membership and remit between the two.
35. The responsibilities of local staff committees will be extended and they will be in charge of holding regular discussions on the conditions of employment with local management. This role will be reinforced in the reform through:
  36. - the organisation of at least two meetings a year with the local management;
  37. - a new consultative role for subjects of local relevance.
38. The Central Staff Committee's legitimacy will be strengthened through being directly elected and being independent of the local staff committees. It will have a central role in the discussions with the highest levels of management and in the consultative process.
39. The CSC will continue to be responsible for appointments to the various statutory bodies and paritary committees. Unlike the current situation, all interlocutors of the Administration on these bodies will be drawn from the local staff committees or the Central Staff Committee. Again, their legitimacy to represent the staff on these bodies will be reinforced by having been elected directly.
40. **C - Streamlining of the consultative process**
41. The proposal also aims to improve the effectiveness of the consultative process by reducing overlaps and duplications between the various bodies. The principle of direct elections as well as the streamlining of the consultative process should increase the accountability of staff representatives and their ability to provide a more unified and coherent opinion to the Administration.
42. To emphasise the more comprehensive role to be played by the General Advisory Committee in the consultation procedure, it is proposed to rename it the General Consultative Committee (GCC).

43. The GCC will remain a joint committee, with the number of members increased from six to ten full members and six to ten alternates. To emphasise its prominent role in the consultative process, this new committee will be chaired by the President of the Office. In view of the latter's decision-making role under the EPC and the Service Regulations, the latter cannot participate to the vote, he will only be entitled to vote on procedural issues.
44. The scope of the consultation on topics of Office-wide importance will be clarified and focus on proposals concerning the conditions of employment. In addition to the current consultation process, the President may inform the new General Consultative Committee about topics not subject to compulsory consultation.
45. The GCC will have the power to create sub-committees composed of full or alternates GCC members. It is intended that these committees will supersede some of the 24 committees currently in existence, allowing time for a more expert and detailed examination of subjects of particular importance to staff, such as social security, pensions, salaries, training, etc.
46. **D - Additional considerations:**
47. The new framework will be supported by a clarification of the resources allocated to the staff representatives (e.g. time, secretariat, rooms, IT facilities, smartphones, training and travel budget, etc.), to be managed by them. The current level of resources, which is very generous by comparison with other international organisations, will be maintained.
48. The amendments to the Service Regulations will be completed by two circulars issued by the President of the Office:
49. - the regulations for Staff Committee elections;
50. - facilities and resources to be allocated to the staff representatives.
51. To ensure full transparency for our member states, the two circulars are annexed for information to the present document.
52. Repeated attempts to discuss this reform since September 2013, and thus involve staff representatives in the analysis and the developments of the present proposal have failed because, for reasons not made clear, the staff representation has opposed the very principle of any reform on this matter.
53. In view of the important issues at stake for the Office's future, it is unacceptable that the refusal to discuss some sensitive topics should become a veto right for staff representatives.

54. Based on a clear legal framework and on the principle of the responsibility borne by social partners, the social democracy reform set out above will provide the basis for a new culture of dialogue where the interests of the staff are duly represented.

## **VI. FINANCIAL IMPLICATIONS**

55. None

## **VII. LEGAL BASIS**

56. Articles 10(2)(c) and 33(2)(b) of the European Patent Convention.
57. Articles 2, 33 to 38a and 111 of the Service Regulations for permanent employees of the European Patent Office.
58. Article 5 of the Implementing rules for Articles 106 to 113 of the Service Regulations for permanent employees of the European Patent Office.
59. Implementing Rule for Article 38 of the Service Regulations.

## **VIII. DOCUMENTS CITED**

60. None.

## PART II

Draft

DECISION OF THE ADMINISTRATIVE  
COUNCIL of [date of decision]  
amending Articles 2, 33 to 38a and 111  
of the Service Regulations for  
permanent employees of the European  
Patent Office, and amending Article 5 of  
the Implementing rules for Articles 106  
to 113 of the Service Regulations for  
permanent employees of the European  
Patent Office

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THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT  
ORGANISATION,

Having regard to the European Patent Convention, and in particular  
Articles 10(2)(c) and 33(2)(b) thereof,

Having regard to the Service Regulations for permanent employees of the  
European Patent Office (hereinafter referred to as "the Service Regulations"),  
and in particular Articles 2, 33 to 38a and 111 thereof,

Having regard to the Implementing rules for Articles 106 to 113 of the Service  
Regulations for permanent employees of the European Patent Office, and in  
particular Article 5 thereof,

On a proposal from the President of the European Patent Office, submitted  
after consulting the General Advisory Committee,

HAS DECIDED AS FOLLOWS:

## I. Amendments to the Service Regulations

### Article 1

Article 2(1)(b) of the Service Regulations shall read as follows:

"(b) a General Consultative Committee,"

### Article 2

Article 2(2) of the Service Regulations shall read as follows:

"(2) Permanent employees and employees on contract referred to in Article 1 may act under the same conditions as members or chairmen of the bodies defined in paragraph 1."

### Article 3

Article 2(4), (5) and (6) of the Service Regulations shall read as follows:

(4) Where applicable the chairmen and deputy chairmen of the bodies referred to in paragraphs 1 (b) to (h) shall be appointed by the President of the Office.

(5) If any, the rules of procedure of the bodies referred to in paragraph 1(b) to (h) shall be adopted by the President of the Office.

(6) The staff shall be represented on the bodies referred to in paragraph 1(b) to (f) and (h)."

### Article 4

Article 33 of the Service Regulations shall read as follows:

#### **"Article 33**

#### **Staff Committee**

(1) The Staff Committee shall comprise a Central Staff Committee and Local Staff Committees.

(2) Staff shall be represented by a local staff committee where more than fifty staff members are in active status in a place of employment. If fewer than fifty staff members are in active service in a place of employment, the President of the Office may provide for its representation by another existing local staff committee."



## Article 5

Article 34 of the Service Regulations shall read as follows:

### **"Article 34 Functions of the Staff Committee**

- (1) The Staff Committee shall represent the interests of all staff and maintain suitable contacts with the administration. It shall contribute to the smooth running of the service by providing a channel for the expression of opinion by the staff.
- (2) The duties undertaken by members of the Staff Committee and by their nominees to the bodies set up under these Service Regulations or by the Office shall be deemed to be part of their normal service. The fact of performing such duties shall in no way be prejudicial to the person concerned.
- (3) The President of the Office shall determine the resources and facilities to be accorded to the members of the Staff Committee to enable them to exercise their functions."

## Article 6

Article 35 of the Service Regulations shall read as follows:

### **"Article 35 Composition and Election of the Staff Committee**

- (1) All members of the Staff Committee shall be directly elected by staff.
- (2) The President of the Office shall ensure appropriate representation of all categories of employees and all places of employment in the Staff Committee.
- (3) The Central Staff Committee shall consist of ten full and ten alternate members.
- (4) The President of the Office shall determine the number of Local Staff Committee members, taking into account the number of staff members in active status in each place of employment.
- (5) The following shall apply to the election of Staff Committee members:
  - (a) Elections by secret ballot shall be organised by the Office and take place at the same time for the Central and all Local Staff Committees.
  - (b) All employees referred to in Article 1 in active status with at least three months' service, shall be entitled to vote and to be elected. Employees standing for election shall have a term of employment compatible with the Staff Committee's term of office.
  - (c) The President of the Office shall determine the detailed conditions relating to the Staff Committee elections.

(6) Subject to the above provisions, the members of staff of each category shall have complete freedom in the choice of their representatives.

(7) The term of office of a Staff Committee member shall be three years with a possibility of two consecutive re-elections. The staff member cannot however serve three consecutive terms on the same Committee.

(8) A staff member cannot be at the same time a member of the Central and Local Staff Committee."

#### Article 7

Article 36 of the Service Regulations shall read as follows:

#### **"Article 36 Competence of the Central Staff Committee**

(1) All Central Staff Committee full members shall represent the staff in the General Consultative Committee. If any full member is unable to perform his duties, he shall be replaced by an alternate.

(2) The Central Staff Committee shall be responsible for:

(a) making statutory nominations as provided by these Service Regulations or requested by the President of the Office. Save for the membership in Disciplinary Committees and Selection Boards, the respective nominations shall be made among elected Staff Committee members at either local or central level.

(b) making, at the request of the President of the Office or on its own initiative, suggestions relating to the organisation and working of departments or the collective interests of the whole or part of the staff.

(c) examining any difficulties of a general nature relating to these Service Regulations or any Implementing Rules thereto and, where appropriate, addressing them in the General Consultative Committee."

## Article 8

Article 37 of the Service Regulations shall read as follows:

### **"Article 37 Competence of the Local Staff Committee**

(1) Each Local Staff Committee shall be:

(a) consulted on any proposal to make rules and, in general, except in cases of obvious urgency, any proposal which concerns the conditions of employment of the whole or part of the staff at the place of employment concerned;

(b) consulted on any question of a local nature submitted to it by the President of the Office or his representative;

(c) competent to raise site specific issues only, in so far as they are not subject to LOHSEC consultation;

(d) responsible for maintaining suitable contacts with local administration.

(2) Each site manager shall set up meetings with the Local Staff Committee at least twice a year."

## Article 9

Article 38 of the Service Regulations shall read as follows:

### **"Article 38 General Consultative Committee**

(1) The General Consultative Committee shall consist of:

- the President of the Office as Chairman. The President may delegate his chairmanship;

- all full members of the Central Staff Committee and in their absence their alternates;

- an equivalent number of full members appointed each year by the President and in their absence their alternates;

(2) The General Consultative Committee shall in addition to the specific tasks given to it by the Service Regulations, be consulted on:

- any proposal to amend these Service Regulations or the Pension Scheme Regulations, any proposal to make implementing rules and, in general, except in cases of obvious urgency, any proposal which concerns the conditions of employment of whole or part of the staff to whom these Service Regulations apply or the recipients of pensions;

- any question of a general nature submitted to it by the President of the Office;

- any question which the Staff Committee has asked to have examined and which is submitted to it by the President of the Office in accordance with the provisions of Article 36.

(3) Following the consultation process, the members of the General Consultative Committee shall express their opinion by voting in session for or against each proposed measure or abstaining. The Chairman shall not vote save on procedural questions.

(4) Besides, the President may inform the General Consultative Committee on any other question of a general nature which is not subject to compulsory statutory consultation.

(5) The General Consultative Committee's debates are recorded and summarised in minutes.

(6) The President of the Office may set up sub-committees within the General Consultative Committee to prepare the discussions of the General Consultative Committee through their special knowledge such as, inter alia, social security, training and salary. He shall appoint a chairman to each sub-committee.

(7) The General Consultative Committee shall meet at least four times per year, when convened by the Chairman. In addition, the Chairman may convene the General Consultative Committee for extraordinary sessions."

#### Article 10

Article 38a(2), second indent, of the Service Regulations shall read as follows:

"- members and alternates appointed at the same time by the President of the Office and by the Staff Committee pursuant to article 36(2)(a) of the Service Regulations."

#### Article 11

Article 38a(5) of the Service Regulations shall read as follows:

"(5) The Committees shall be responsible for occupational health, safety and ergonomics policy. In the event that they draw up recommendations

concerning the staff on their own initiative, these Committees shall not replace the General Consultative Committee."

#### Article 12

Article 111(3) of the Service Regulations shall be deleted.

## **II. Amendments to the Implementing rules for Articles 106 to 113 of the Service Regulations for permanent employees of the European Patent Office**

#### Article 13

Article 5 of the Implementing rules for Articles 106 to 113 of the Service Regulations for permanent employees of the European Patent Office shall read as follows:

#### **"Article 5 Composition of the Appeals Committee**

(1) For the purposes of Article 111(1)(a) of the Service Regulations, which concerns appeals against decisions of the President, and Article 111(1)(b) of the Service Regulations, which concerns appeals against decisions of the Administrative Council, the President of the Office shall appoint, among employees in active employment:

- (a) the chairman and
- (b) a deputy chairman of the Committee.

(2) For the purposes of Article 111(1)(a) of the Service Regulations, the President of the Office shall appoint, among employees in active employment:

- (a) two full members and
- (b) two alternate members of the Committee.

(3) For the purposes of Article 111(1)(a) and (b) of the Service Regulations, the Staff Committee shall appoint, among its members in active employment:

- (a) two full members and
- (b) two alternate members of the Committee.

(4) For the purposes of Article 111(1)(b) of the Service Regulations, the Administrative Council shall appoint:

- (a) two full members and
  - (b) two alternate members of the Committee.
- (5) The term of office of the chairman, deputy chairman, members and alternate members shall be one calendar year. They may be reappointed.
- (6) For the purposes of Article 111(1)(a) and (b) of the Service Regulations, the deputy chairman and alternate members shall take part in the proceedings of the Committee if the chairman or full members are not able to act.
- (7) The Appeals Committee shall act in the same composition throughout the procedure, except in justified cases."

### **III. Entry into force and transitional provisions**

#### Article 14

This decision shall enter into force on 1 April 2014.

#### Article 15

- (1) The elections of the Central and Local Staff Committees pursuant to the Service Regulations as amended by this decision shall take place in June 2014.
- (2) The results of these elections shall take effect on 1 July 2014.
- (3) Until 30 June 2014, the provisions applicable to the Central and Local Staff Committees will remain in force.

#### Article 16

- (1) The General Consultative Committee will be constituted as from 1 July 2014.
- (2) Until 30 June 2014, the General Advisory Committee in its current composition will continue to function in accordance with Article 38 as applicable prior to the entry into force of this decision.
- (3) References to the General Advisory Committee in the applicable provisions of the internal legal framework shall be replaced by a reference to the General Consultative Committee as from 1 July 2014.
- (4) The Implementing Rule for Article 38 of the Service Regulations shall be repealed as of 1 July 2014.
- (5) The Local Advisory Committees will be abolished as from 1 July 2014.

Article 17

(1) The appointment of new members to the bodies referred to in Article 2(1)(c), (e) and (h) of the Service Regulations as adopted by the present decision and all other bodies shall be made by 1 October 2014 in accordance with Article 36(2)(a) of the Service Regulations. Said appointments will be made in accordance with the Service Regulations as amended by this decision.

(2) These bodies will continue to function in their current composition pursuant to the applicable provisions in force prior to the entry into force of this decision until they are newly composed in accordance with paragraph 1 above.

Article 18

The President of the Office shall take any further appropriate measures to ensure a smooth transition between the provisions in force at the date of this decision and the provisions adopted by this decision.

Done at Munich, [date of decision]

For the Administrative Council  
The Chairman

Jesper KONGSTAD

## **ANNEX 1 DETAILED REASONS FOR THE PROPOSED AMENDMENTS TO ARTICLES 33 TO 38a AND 111 OF THE SERVICE REGULATIONS AND ARTICLE 5 OF THE IMPLEMENTING RULES OF ARTICLE 106 TO 113 OF THE SERVICE REGULATIONS**

### **INTRODUCTION**

The present changes to the provisions under Chapter 2, Staff Representation aims at increased transparency, accountability and stability in the relationship between the Office and its staff and strives to foster a constructive dialogue and enhanced cooperation.

### **STRUCTURE**

In the following, the envisaged changes to the Service Regulations (ServRegs) will be explained Article by Article in order to ensure a sound understanding and overview of the new rules.

### **CHANGES IN THE SERVREGS**

#### **Article 2 – Bodies under the Service Regulations**

Article 2 ServRegs in general clarifies on which bodies staff are represented.

In paragraph 1, section (b), the former reference to joint committees was replaced by the General Consultative Committee (GCC) which will be the main consultation committee in the future. Sub-committees dedicated to specific topics will be created under the umbrella of the GCC. More details concerning this Committee will be explained when elaborating on the respective provision.

Since one of the main goals of the reform was to ensure a principle of a direct representativeness (i. e. people appointed to different bodies), the second sentence in paragraph 2 has been deleted. In future, elected staff representatives should be the only interlocutors between management and staff. The concept of having formal experts on bodies has proven to be inefficient since those experts to bodies were often appointed on an ad hoc basis and participation of different people varied widely.

A new paragraph 4 was introduced which stipulates that chairmen and deputy chairmen of any of the above bodies should be appointed by the President. The President has a general responsibility under article 10 EPC to ensure the smooth functioning of the Office. This includes also the functioning of the consultation process and in particular the normal functioning of the statutory committees and the joint committees. Under the chairmanship of the staff representation, the lead on the agenda and procedural steps have been



sometimes used to impose unjustified delay or adopt rules of procedure in contradiction with the regulatory framework.

Paragraph 5 provides that the President will in the future adopt the Rules of Procedures (RoPs) of each of the bodies in Article 2(1) ServRegs which deems such RoPs necessary. This is to ensure that, based on past experience, the RoPs will not interfere or run counter any other higher ranked law and simultaneously ensures systematical coherent linguistic. It further safeguards a unified approach to set-up RoPs in order to align them and to have the same structure Office wide.

The new paragraph 6 corresponds to the current Article 37. The latter was deemed to simply repeat the ratio legis of Article 2(1) ServRegs. The provision of this Article should however be incorporated already at this early stage.

### **Article 33 – Staff Representation**

Paragraph 1 of this Article defines the bodies under the umbrella of the general Staff Committee:

- One Central Staff Committee responsible for tasks on a central level; meaning issues which concern all staff or parts of staff but at different duty stations.
- Additionally to the Central Staff Committee, as provided for in paragraph 2, there will remain Local Staff Committees at Munich, The Hague, Berlin and Vienna; the local committees will exclusively deal with issues at the respective place of employment from a geographical scope. If, however, the duty station's number of staff is below 50, the President can decide on its representation through another existent Local Staff Committee of the Office (e.g. Brussels is represented through the Local Staff Committee Munich) to safeguard the system of an anonymous election process and a confidentiality of the vote.

### **Article 34 – Functions of the Staff Committee**

Paragraph 1 brings no substantial change to the previous ServRegs. It has been clarified that all staff should be represented in order to cover all three categories of staff members (A, B and C). The wording of this paragraph has been further improved to clarify that suitable contacts should be maintained with the entire administration, formerly referred to as “competent administrative authorities”, and not with individual units. A sound constructive dialogue between each and every one on both sides, be it the Administration or the Staff Representation, is considered to be crucial for this reform.

In line with the approach to keep nominations as transparent as possible, paragraph 2 has been slightly reviewed and the wording has been clarified. Persons acting on behalf of the Staff Representation but not being elected staff representatives in accordance with the exception in Article 36(2)(a) ServRegs (Disciplinary Committees and Selection boards) are considered to

be such nominees. Non elected representatives may also be appointed by the CSC for ad hoc procedures (such as conciliation procedures or supervisory committees for elections or strike ballots).

Paragraph 3 corresponds to the former Article 35(5)(b) ServRegs. This paragraph has not been changed and is the legal basis for the resources to be accorded to the members of the Staff Committee which will be laid down in a circular by the President.

### **Article 35 – Composition of the Staff Committee**

This Article has been substantially changed and adapted to the needs of a constructive dialogue. The structure clearly outlines the difference between Staff Representation at central and local level. Further, following problems and litigations involving the election procedures on local sites, the elections and voting procedure for the Staff Committees will in future be organised by the Office to ensure an office wide harmonised election procedure with consistent and transparent rules at every place of employment.

Paragraph 1 establishes the democratic principle of direct elections of representatives. This newly inserted paragraph should strengthen the Staff Representation's mandate vis-à-vis the staff. It is a fundamental change. In order to have the full support of the Office's staff and to ensure that staff know who is representing them in the dialogue with the administration, the principle of direct elections is introduced for the first time which fosters transparency and accountability. Staff Representation, as they are directly elected, are the only spokespersons who defend the staff's interest.

Paragraph 2 of the new provisions clarifies that staff should appropriately be represented on the Staff Committee. The principle of sound representation as regards categories (A, B and C) and places of employment is implemented at the level of the ServRegs.

Paragraph 3 is based on the former Article 35(5)(a) and Article 35(2) ServRegs. It now sets out the number of elected staff representatives at central level (it has been increased to 10 full and 10 alternate members of the CSC, instead of 6 under the previous rules) which had already been foreseen under the old rules but had never been determined by the President.

In paragraph 4 the number of members of Staff Representatives at local level is implemented. Since the number of staff at the different sites of the Office tends to vary, only the principle of representativeness as compared to the number of staff is set out. In this regard, authority is given to the President to rule upon it in a respective Circular. Currently foreseen for each duty station are four LSC members to represent the first 1,000 staff in active employment plus one further member for each additional 500 staff in active employment. This leaves room for flexibility in case the number of staff at any site will change significantly.

Paragraph 5 sets out the basic principles for Staff Representatives' elections. The main points are:

1. The elections for both the Central and the Local Staff Committees are organised by the Office
2. The elections for all Committees take place at the same time
3. The entitlement to vote

The paragraph further includes the legal basis for a circular which will lay down the election rules in detail. The election rules will be based on the different election rules initially drawn up by the local sections of the Staff Representation at the Office's duty stations.

Experience has shown that elections at some duty stations led to disputes which were not sufficiently solved. The present paragraph aims at avoiding such disputes and at implementing a coherent structure of voting for both the Central and the Local Staff Committees. It is also deemed to be more transparent for the people entitled to vote if elections rules correspond across the Office's duty stations and are also the same at central and local level.

Paragraph 6 ensures that the staff member in active service eligible to vote and to be elected can exercise his or her right in complete freedom, without any interference. As one of the highest principles of a democratic system, this remains regulated at the level of the ServRegs.

As mandates are usually only temporary, paragraph 7 clarifies their maximum length. As a general rule, the term of office is three years. There will be the possibility of two re-elections (i. e. three terms of office). Consequently, each individual cannot serve longer than 9 years as a Staff Representative. A further restriction in this respect is that a person cannot hold the same mandate, namely member of either the central or one of the local staff committees, in three consecutive terms. After two terms with the same mandate, the person needs to stand for election for a different Committee. The possibilities therefore are as follows:

- LSC – LSC – CSC
- LSC – CSC – CSC
- LSC – CSC – LSC
- CSC – LSC – LSC
- CSC – LSC – CSC
- CSC – CSC – LSC

Since the new roles and competences of Central Staff Committee and Local Staff Committees are clearly separated, paragraph 8 clarifies that a double mandate is excluded. They must either stand for elections at central level or at the respective local level, dependant on their place of employment. Obviously, one can not stand for elections at a place of employment where he or she is not serving.

After three consecutive mandates in one or the other of the committees, an elected staff member will have to reintegrate a working unit full time, this in order to maintain a suitable link with the work performed at the Office.

### **Article 36 – Competence of the Central Staff Committee**

In the new rules, this Article only regulates the competences of the Central Staff Committee. Formerly, this Article also included the competences of the local sections. The structure has changed here in order to draw a clear line between the committees and to highlight their respective importance in the entire system.

The highest competence of the members of the Central Staff Committee is established in paragraph 1 of the Article. All members of the Central Staff Committee are at the same time members of the newly created General Consultative Committee (GCC) which replaces the General Advisory Committee.<sup>1</sup>

Paragraph 2 outlines further competences of the Central Staff Committee. Whereas (b) and (c) have not changed in comparison to the previous rules, (a) again reflects the principle of the direct representativeness in the different bodies. All members appointed by the CSC to main bodies must have a direct mandate of staff. The first exception hereto is the Selection Boards. This body must rely on further appointees since the number of the elected Staff Representatives cannot satisfy the demand of members to such boards. Further, as second exception, the Disciplinary Committees are also excluded to safeguard their ad hoc appointment nature with varying members, without interfering in Staff Representative's daily duty.

### **Article 37 – Competence of the Local Staff Committees**

As indicated above, this Article now defines the exclusive competences of the Local Staff Committees. An important competence of the Local Staff Committees is to ensure that regular meetings between the Committee and the competent site manager take place.

To some extent such meetings with the highest line-manager will further replace the former Local Advisory Committee (LAC) consultation. The new consultation process for site specific envisaged changes is regulated in Paragraph 1 (a) and (b) and covers, inter alia, house rules, building issues, or crèches. However, compared to the GCC those consultation procedures should be less formal and should take place between the Local Staff Committee members and the site manager.

Letters (c) and (d) clarify that the LSCs also have the competence to raise any other site specific issues, with the only limitation that such issues must not be subject to LOHSEC consultation. This clarification serves the purpose of

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<sup>1</sup> Information concerning the GCC is to be found under Article 38 ServRegs.

efficiency and to avoid confusion between the competences of the different committees.

Paragraph 2 regulates the minimum number of meetings between the LAC and the site manager according to the concept above. However, since an enhanced cooperation should be promoted, the meetings should not be limited to this number.

### **Article 38 – General Consultative Committee**

Article 38 includes one of the main changes of the new consultation framework. The Article aims at replacing the current GAC with the new GCC. Experience has shown that GAC consultation did not fit the purpose of a constructive dialogue anymore. One of the biggest deficiencies noticed was that members of the GAC were not the same people involved in the initial discussions on changes which have an impact on staff. The result was diverging opinions among Staff Representatives and their experts on different bodies. Speaking with one voice was rendered impossible and a constructive dialogue between administration and Staff Representatives did not take place. In a decision making process for envisaged changes, the people in charge must remain the same in order to ensure a constructive dialogue. Therefore, the new GCC as the new main forum for discussions will also offer the possibility to discuss envisaged changes at a very early stage and not only in the framework of a final and compulsory consultation.

However, it is important to say that the principle of consultation remains unchanged. Staff will have the statutory possibility to have their say through this body. The GCC, comparable to the GAC, will provide the President with an opinion expressed through a vote on each topic presented for consultation. The President will take due account of this opinion before he takes his final decision on the envisaged and consulted change. As in the current legal framework, the opinion delivered in the consultative process is not binding for the Office.

Paragraph 1 sets out the composition of the GCC. As a consultative committee it remains of a paritary nature. The President will appoint his members to the GCC in equal numbers as the members of the Central Staff Committee being at the same time members of the GCC. The new committee will be chaired by the President or via delegation by an active employee on his behalf. Since it is the President who decides on the issue at stake after the consultation process, his direct involvement in the GCC sessions will allow him to hear all arguments directly and immediately reflect upon them. Nevertheless, considering his decision-making role under the EPC and the Service Regulations, he/she shall not vote, except on procedural issues.

Paragraph 2 covers the GCC's competences. It corresponds to the competences of the former GAC. However, indent 1 of the paragraph includes one change. The consultation will take place for any proposal which concerns "the conditions of employment of staff". This requirement has been added in light of ongoing disputes in relation to the limits of such consultation right. The

consultation right must focus on employment conditions. The right to consult derives from the ServRegs which exclusively deal with conditions of employment. Consequently, only the rights which have a direct impact on staff or part of staff are eligible for consultation. This ratio legis also derives from Article 13(1) EPC which precisely refers to such conditions (be it in the ServRegs or other terms of employment). However, not every indirect impact on staff is considered an employment condition. Decisions of a managerial nature, budgetary nature or working instructions are inter alia not covered by this wording.

Paragraph 3 introduces a vote in session immediately after the consultation process. Since the chairman will be the President or someone acting on his behalf, he is not entitled to vote, except for procedural issues.

A newly introduced paragraph 4 will establish the possibility for the President to inform the GCC of any question of a general nature which he deems important for staff. The topics here can vary broadly. The aim is to ensure a transparent flow of information to staff. This paragraph also provides for a constructive dialogue between administration and staff beyond the statutory consultation framework. It will foster mutual trust and cooperation.

For efficiency purposes, paragraph 5 provides for minutes of the consultation meeting to be drawn up after the meetings have been recorded. These minutes will replace the former GAC opinions. Similar to the GAC opinions, the minutes will be made available in an electronic library. The President in principle participates to the session. He knows the debates and the outcome of the vote. If he delegates, he should take the decision after receiving a report on the outcome of the vote, immediately after the session. The detailed procedure will be described in the rules of procedure.

If questions of a very detailed or specific nature are subject to the consultation process, paragraph 6 introduces the possibility to set up sub-committees within the GCC. They will be composed of members of the GCC who will make an in-depth analysis of the topics. The sub-committees may give a summary of their work on specific issues in preparation to the discussion of the GCC in its plenary composition. It is intended to describe more in details the role of the committees in the rules of procedure. The President will appoint the chairmen of the sub-committees. In future all sub-committees to be set up will work under this framework.

Finally, paragraph 7 provides that the GCC will meet at least four times a year but can also be convened by the chairman for extraordinary sessions. Further, it is clarified that the procedure for convening the GCC also applies to the sub-committees.

### **Article 38a – Occupational Health, Safety, and Ergonomic Committees**

This Article will remain unchanged in its content. Only for the purposes of consistency, the wording of its paragraph 2 (a), second indent has been changed to reflect the principle of the direct election of appointees to bodies

and paragraph 5 has been slightly reworded in order to refer to the GCC instead of the previous joint committees.

### **Article 111 – Appeals Committee**

In order to have a consistent approach under Article 2(5) ServRegs, paragraph 3 of this Article has been deleted. For a harmonised approach of all RoPs, the President will also adopt the rules of procedure of the Appeals Committee.

### **OTHER CHANGES**

#### **Article 5 Implementing rules of Article 106 to 113 ServRegs**

To ensure a consistent approach under Article 2(4) ServRegs, paragraphs 3 and 8 have been deleted. There will only be one deputy chairman appointed by the President. This is to remain consistent with the general principle that the President systematically appoints the chairman of the statutory bodies and joint committees.

Further, the new paragraph 3 (former paragraph 4) is adapted to the principle of a direct mandate. Only elected Staff Representatives can be members of the Appeals Committee.

**CA/4/14 Add. 1**

Orig.: en

Munich, 10.02.2014

SUBJECT: Social Democracy at the European Patent Office

SUBMITTED BY: President of the European Patent Office

ADDRESSEES: Administrative Council (for information)

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#### SUMMARY

In CA/4/14 the Office proposes to reform the legal framework governing social dialogue at the Office with the aim of improving social democracy and representation of the staff. This addendum provides a table to facilitate comparison between the existing and proposed provisions. The new wording is grey-hatched.

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## COMPARISON BETWEEN EXISTING AND NEW TEXTS

| Existing ServRegs  | New ServRegs   |
|--|--|
| <p><b>Article 2</b><br/> <b>Bodies under the Service Regulations</b><br/>           (1) There shall be set up within the Office:<br/>           (a) a Staff Committee,<br/>           (b) joint committees,<br/>           (c) Promotion Boards,<br/>           (d) Disciplinary Committees,<br/>           (e) an Appeals Committee,<br/>           (f) Selection Boards,<br/>           (g) a Medical Committee,<br/>           (h) Occupational Health, Safety and Ergonomics Committees,<br/>           which shall perform the functions assigned to them under these Service Regulations.</p> <p>(2) Permanent employees and employees on contract referred to in Article 1 may act under the same conditions as members or chairmen of the bodies defined in paragraph 1. They may also act as experts in these bodies.</p> <p>(3) A Medical Committee constituted under Article 89 shall consist of medical practitioners.</p> | <p><b>Article 2</b><br/> <b>Bodies under the Service Regulations</b><br/>           (1) There shall be set up within the Office:<br/>           (a) a Staff Committee,<br/>           (b) a General Consultative Committee,<br/>           (c) Promotion Boards,<br/>           (d) Disciplinary Committees,<br/>           (e) an Appeals Committee,<br/>           (f) Selection Boards,<br/>           (g) a Medical Committee,<br/>           (h) Occupational Health, Safety and Ergonomics Committees,<br/>           which shall perform the functions assigned to them under these Service Regulations.</p> <p>(2) Permanent employees and employees on contract referred to in Article 1 may act under the same conditions as members or chairmen of the bodies defined in paragraph 1. <del>They may also act as experts in these bodies.</del></p> <p>(3) A Medical Committee constituted under Article 89 shall consist of medical practitioners.</p> <p>(4) Where applicable the chairmen and deputy chairmen of the bodies referred to in paragraphs 1 (b) to (h) shall be appointed by the President of the Office.</p> <p>(5) If any, the rules of procedure of the bodies referred to in paragraph 1(b) to (h) shall be adopted by the President of the Office.</p> <p>(6) The staff shall be represented on the bodies referred to in paragraph 1(b) to (f) and (h).</p> |

| Existing ServRegs  | New ServRegs  |
|--|---|
| <p><b>Chapter 2</b><br/> <b>Staff representation</b></p> <p><b>Article 33</b><br/> <b>Staff Committee</b><br/>           The Staff Committee shall comprise a Central Committee and local sections for the different places of employment.</p> | <p><b>Chapter 2</b><br/> <b>Staff representation</b></p> <p><b>Article 33</b><br/> <b>Staff Committee</b><br/>           (1) The Staff Committee shall comprise a Central <b>Staff Committee</b> and <b>Local Staff Committees</b>.</p> <p>(2) Staff shall be represented by a local staff committee where more than fifty staff members are in active status in a place of employment. If fewer than fifty staff members are in active service in a place of employment, the President of the Office may provide for its representation by another existing local staff committee.</p> |

| Existing ServRegs   | New ServRegs  |
|---|---|
| <p><b>Article 34</b><br/><b>Functions of the Staff Committee</b></p> <p>(1) The Staff Committee shall represent the interests of the staff and maintain suitable contacts between the competent administrative authorities and the staff. It shall contribute to the smooth running of the service by providing a channel for the expression of opinion by the staff.</p> <p>(2) The duties undertaken by members of the Staff Committee and by the permanent employees appointed by the Committee to the bodies set up under these Service Regulations or by the Office shall be deemed to be part of their normal service. The fact of performing such duties shall in no way be prejudicial to the person concerned.</p> | <p><b>Article 34</b><br/><b>Functions of the Staff Committee</b></p> <p>(1) The Staff Committee shall represent the interests of <b>all</b> staff and maintain suitable contacts <b>with the administration</b>. It shall contribute to the smooth running of the service by providing a channel for the expression of opinion by the staff.</p> <p>(2) The duties undertaken by members of the Staff Committee and by <b>their nominees</b> to the bodies set up under these Service Regulations or by the Office shall be deemed to be part of their normal service. The fact of performing such duties shall in no way be prejudicial to the person concerned.</p> <p>(3) <b>The President of the Office shall determine the resources and facilities to be accorded to the members of the Staff Committee to enable them to exercise their functions.</b></p> |

| Existing ServRegs   | New ServRegs   |
|---|--|
| <p><b>Article 35</b><br/><b>Composition and Election of the Staff Committee</b></p> <p>(1) The Staff Committee shall consist of full members and, where appropriate, alternates. They shall be elected by secret ballot. Their term of office shall be two years.</p> <p>(2) The membership of the Staff Committee shall be such that all categories of employees shall be represented thereon. This principle shall apply to the local sections only to the extent that employees in the various categories are employed in the places in question.</p> <p>(3) All permanent employees with at least three months' service, save those assigned to non-active status as provided in Article 42, shall be entitled to vote and to be elected.</p> <p>(4) Staff shall be represented by a local section where more than fifty staff members are in service in a place of employment. If fewer than fifty staff members are in service in a place of employment, the President of the Office may, after consulting the General Advisory Committee referred to in Article 38, paragraph 1, authorise the establishment of a local section.</p> | <p><b>Article 35</b><br/><b>Composition of the Staff Committee</b></p> <p>(1) All members of the Staff Committee shall be directly elected by staff.</p> <p>(2) The President of the Office shall ensure appropriate representation of all categories of employees and all places of employment in the Staff Committee.</p> <p>(3) The Central Staff Committee shall consist of ten full and ten alternate members.</p> <p>(4) The President of the Office shall determine the number of Local Staff Committee members, taking into account the number of staff members in active status in each place of employment.</p> <p>(5) The following shall apply to the election of Staff Committee members:</p> <p>(a) Elections by secret ballot shall be organised by the Office and take place at the same time for the Central and all Local Staff Committees.</p> <p>(b) All employees referred to in Article 1 in active status with at least three months' service, save those assigned to non-active status as provided in Article 42, shall be entitled to vote and to be elected. Employees standing for election shall have a term of employment compatible with the Staff Committee's term of office.</p> |

(c) The President of the Office shall determine the detailed conditions relating to the Staff Committee elections.

| Existing ServRegs   | New ServRegs  |
|---|---|
| <p>(5)<sup>2</sup> The President of the Office shall, after consulting the General Advisory Committee, determine:</p> <p>(a) the total number of members referred to in paragraph 1;</p> <p>(b) the facilities to be accorded to members of the Committee.</p> <p>(6) The following shall apply to the election of staff representatives:</p> <p>(a) Election of members of a local section: the regulations regarding the election of a local section shall be determined by a general meeting of the permanent employees of the Office in service at that place of employment;</p> <p>(b) Election of members of the Central Committee: the regulations regarding the election of the members of the Central Committee for each place of employment shall be determined by a general meeting of the permanent employees of the Office in service at the place of employment in question. At least half of those elected must also be members of the local section concerned and all of them must be permanent employees of the Office in service at the place of employment in question. The Central Committee shall be deemed to have been validly constituted upon election of the majority of its members.</p> | <p>(6) Subject to the above provisions, the members of staff of each category shall have complete freedom in the choice of their representatives.</p> <p>(7) The term of office of a Staff Committee member shall be three years with a possibility of two consecutive re-elections. The staff member cannot however serve three consecutive terms on the same Committee.</p> <p>(8) A staff member cannot be at the same time a member of the Central and Local Staff Committee.</p> |

| Existing ServRegs  | New ServRegs |
|--|--------------|
| <p>(c) Elections shall be valid only if two-thirds of those entitled to vote have participated. However, if this quorum is not achieved, a second vote shall be held which shall be deemed valid if the majority of those entitled to vote have participated. If the necessary quorum is not achieved in the second vote, this vote shall be invalid and it shall be assumed that the staff concerned do not wish to have staff representatives.</p> <p>(7) Subject to the above provisions, the members of staff of each category shall have complete freedom in the choice of their representatives.</p> |              |

| Existing ServRegs  | New ServRegs   |
|--|--|
| <p><b>Article 36</b><br/><b>Competence of the Staff Committee</b></p> <p>(1) The Central Committee shall be responsible for:<br/>(a) making, at the request of the President of the Office or on its own initiative, suggestions relating to the organisation and working of departments or the collective interests of the whole or part of the staff;</p> <p>(b) examining any difficulties of a general nature relating to the interpretation and implementation of these Service Regulations or any Implementing Rules thereto and, where appropriate, requiring the President of the Office to arrange for such difficulties to be examined by the relevant joint committee.</p> <p>(2) The Central Committee shall participate in the management and control of bodies of a social character set up by the Office in the interests of the staff. It may set up any service of this type with the consent of the Office.</p> <p>(3) The local sections shall have the same competence as referred to in paragraphs 1 a) and 2 insofar as it relates exclusively to matters affecting the place of employment in question.</p> | <p><b>Article 36</b><br/><b>Competence of the Central Staff Committee</b></p> <p>(1) All Central Staff Committee full members shall represent the staff in the General Consultative Committee. If any full member is unable to perform his duties, he shall be replaced by an alternate.</p> <p>(2) The Central Staff Committee shall be responsible for:<br/>(a) making statutory nominations as provided by these Service Regulations or requested by the President of the Office. Save for the membership in Disciplinary Committees and Selection Boards, the respective nominations shall be made among elected Staff Committee members at either local or central level.</p> <p>(b) making, at the request of the President of the Office or on its own initiative, suggestions relating to the organisation and working of departments or the collective interests of the whole or part of the staff</p> <p>(c) examining any difficulties of a general nature relating to these Service Regulations or any Implementing Rules thereto and, where appropriate, addressing them in the General Consultative Committee.</p> |



| Existing ServRegs   | New ServRegs  |
|---|---|
| <p><b>Article 37</b><br/><b>Other Bodies</b></p> <p>.</p> <p>The staff shall be represented on the following bodies:</p> <ul style="list-style-type: none"> <li>(a) the joint committees,</li> <li>(b) the Disciplinary Committees,</li> <li>(c) the Appeals Committee,</li> <li>(d) the Promotion Boards and</li> <li>(e) the Selection Boards and</li> <li>(f) the Central and Local Occupational Health, Safety and Ergonomics Committees</li> </ul> | <p><b>Article 37</b><br/><b>Competence of the Local Staff Committees</b></p> <p>(1) Each Local Staff Committee shall be:</p> <ul style="list-style-type: none"> <li>(a) consulted on any proposal to make rules and, in general, except in cases of obvious urgency, any proposal which concerns the conditions of employment of the whole or part of the staff at the place of employment concerned;</li> <li>(b) consulted on any question of a local nature submitted to it by the President of the Office or his representative;</li> <li>(c) competent to raise site specific issues only, in so far as they are not subject to LOHSEC consultation;</li> <li>(d) responsible for maintaining suitable contacts with local administration.</li> </ul> <p>(2) Each site manager shall set up meetings with the Local Staff Committee at least twice a year.</p> |

| Existing ServRegs   | New ServRegs  |
|---|---|
| <p><b>Article 38<sub>2</sub></b><br/><b>Joint committees</b></p> <p>(1) The joint committees shall consist of:<br/>- a General Advisory Committee,<br/>- Local Advisory Committees.</p> <p>(2) They shall comprise:<br/>- a Chairman who shall be appointed each year by the President of the Office and who shall not vote save on procedural questions;<br/>- members and alternates appointed at the same time in equal numbers by the President of the Office and by the Staff Committee.</p> <p>These members, the number of whom shall be laid down in the Implementing Rules, shall be selected in such a way as to ensure appropriate representation of the various places of employment and of the various departments of the Office.</p> <p>Permanent employees or employees on contract referred to in Article 1 at the place of employment concerned may be selected as members of the relevant Local Advisory Committee.<sup>3</sup></p> <p>(3)<sup>4</sup> The General Advisory Committee shall, in addition to the specific tasks given to it by the Service Regulations, be responsible for giving a reasoned opinion on:</p> <ul style="list-style-type: none"> <li>- any proposal to amend these Service Regulations or the Pension Scheme Regulations, any proposal to make implementing rules and, in general, except in cases of obvious urgency, any proposal which concerns the whole or part of the staff to whom these Service Regulations apply or the recipients of pensions;</li> </ul> | <p><b>Article 38</b><br/><b>General Consultative Committee</b></p> <p>(1) The General Consultative Committee shall consist of:<br/>- the President of the Office as Chairman. The President may delegate his chairmanship;<br/>- all full members of the Central Staff Committee and in their absence their alternates;<br/>- an equivalent number of full members appointed each year by the President and in their absence their alternates;</p> <p>(2) The General Consultative Committee shall in addition to the specific tasks given to it by the Service Regulations, be consulted on:</p> <ul style="list-style-type: none"> <li>- any proposal to amend these Service Regulations or the Pension Scheme Regulations, any proposal to make implementing rules and, in general, except in cases of obvious urgency, any proposal which concerns the conditions of employment of whole or part of the staff to whom these Service Regulations apply or the recipients of pensions;</li> </ul> |

| Existing ServRegs  | New ServRegs  |
|--|---|
| <p>- any question of a general nature submitted to it by the President of the Office;</p> <p>- any question which the Staff Committee has asked to have examined and which is submitted to it by the President of the Office in accordance with the provisions of Article 36.</p> <p>(4) Each Local Advisory Committee shall be responsible for giving opinions on:</p> <ul style="list-style-type: none"> <li>- any proposal to make rules and, in general, except in cases of obvious urgency, any proposal which concerns solely the whole or part of the staff at the place of employment concerned;</li> <li>- any question of a local nature submitted to it by the President of the Office or his representative;</li> </ul> <p>- any question submitted to it for an opinion by the General Advisory Committee;</p> <p>- any question which the Staff Committee has asked to have examined and which is submitted to it by the President of the Office in accordance with the provisions of Article 36.</p> <p>(5) Opinions of the joint committees which are required in respect of administrative decisions must be delivered within the time limits laid down in each case by the President of the Office, such time limits being not less than fifteen working days. Once the time limit has expired, the opinion shall no longer be required.</p> | <p>- any question of a general nature submitted to it by the President of the Office;</p> <p>- any question which the Staff Committee has asked to have examined and which is submitted to it by the President of the Office in accordance with the provisions of Article 36.</p> <p>(3) Following the consultation process, the members of the General Consultative Committee shall express their opinion by voting in session for or against each proposed measure or abstaining. The Chairman shall not vote save on procedural questions.</p> <p>(4) Besides, the President may inform the General Consultative Committee on any other question of a general nature which is not subject to compulsory statutory consultation.</p> <p>(5) The General Consultative Committee's debates are recorded and summarised in minutes.</p> <p>(6) The President of the Office may set up sub-committees within the General Consultative Committee to prepare the discussions of the General Consultative Committee through their special knowledge such as, inter alia, social security, training and salary. He shall appoint a chairman to each sub-committee.</p> <p>(7) The General Consultative Committee shall meet at least four times per year, when convened by the Chairman. In addition, the Chairman may convene the General Consultative Committee for extraordinary sessions.</p> |

| Existing ServRegs   | New ServRegs  |
|---|---|
| <p><b>Article 38a</b><br/> <b>Occupational Health, Safety and Ergonomics Committees</b><br/>                     (1) The advisory Occupational Health, Safety and Ergonomics Committees shall consist of:</p> <ul style="list-style-type: none"> <li>- a Central Committee which shall present its opinions and recommendations to the President of the Office;</li> <li>- Local Committees which shall present their opinions and recommendations to the person appointed by the President of the Office as the site manager.</li> </ul> <p>(2) They shall comprise:</p> <ul style="list-style-type: none"> <li>- a Chairman who shall be appointed each year by the President of the Office and who shall not vote except on procedural questions;</li> <li>- members and alternates appointed at the same time by the President of the Office and by the Staff Committee.</li> </ul> <p>These members, the number of whom shall be laid down in Implementing Rules, shall be selected in such a way as to ensure appropriate representation of the various places of employment and of the persons concerned with questions of occupational health, safety and ergonomics. In particular, the occupational health physicians and occupational health and safety experts shall be ex officio members of the Local Committees. The occupational health physicians and the occupational health and safety experts in Munich and The Hague shall be ex officio members of the Central Committee.</p> | <p><b>Article 38a</b><br/> <b>Occupational Health, Safety and Ergonomics Committees</b><br/>                     (1) The advisory Occupational Health, Safety and Ergonomics Committees shall consist of:</p> <ul style="list-style-type: none"> <li>- a Central Committee which shall present its opinions and recommendations to the President of the Office;</li> <li>- Local Committees which shall present their opinions and recommendations to the person appointed by the President of the Office as the site manager.</li> </ul> <p>(2) They shall comprise:</p> <ul style="list-style-type: none"> <li>- a Chairman who shall be appointed each year by the President of the Office and who shall not vote except on procedural questions;</li> <li>- members and alternates appointed at the same time by the President of the Office and by the Staff Committee pursuant to article 36(2)(a) of the Service Regulations.</li> </ul> <p>These members, the number of whom shall be laid down in Implementing Rules, shall be selected in such a way as to ensure appropriate representation of the various places of employment and of the persons concerned with questions of occupational health, safety and ergonomics. In particular, the occupational health physicians and occupational health and safety experts shall be ex officio members of the Local Committees. The occupational health physicians and the occupational health and safety experts in Munich and The Hague shall be ex officio members of the Central Committee.</p> |

| Existing ServRegs   | New ServRegs   |
|---|--|
| <p>Only permanent employees at the place of employment concerned may be selected as members of the relevant Local Committee, except for members whose duties are not performed by a permanent employee at that place of employment. The alternate members shall participate only when they replace full members.</p> <p>(3) The Central Occupational Health, Safety and Ergonomics Committee shall be responsible for:</p> <ul style="list-style-type: none"> <li>- formulating, on its own initiative and on an unrestricted basis, proposals on all aspects of occupational health, safety and ergonomics affecting the staff at more than one place of employment;</li> <li>- giving a reasoned opinion on all measures and reports relating to occupational health, safety and ergonomics on all premises of the Office.</li> </ul> <p>(4) The Local Occupational Health, Safety and Ergonomics Committees shall be responsible for:</p> <ul style="list-style-type: none"> <li>- formulating, on their own initiative and on an unrestricted basis, proposals on all aspects of occupational health, safety and ergonomics affecting the staff at the place of employment concerned;</li> <li>- giving a reasoned opinion on all measures and reports relating to occupational health, safety and ergonomics on the premises of the place of employment concerned.</li> </ul> <p>(5) The Committees shall be responsible for occupational health, safety and ergonomics policy. In the event that they draw up recommendations concerning the staff on their own initiative, these Committees shall not replace the advisory bodies referred to in Article 38.</p> | <p>Only permanent employees at the place of employment concerned may be selected as members of the relevant Local Committee, except for members whose duties are not performed by a permanent employee at that place of employment. The alternate members shall participate only when they replace full members.</p> <p>(3) The Central Occupational Health, Safety and Ergonomics Committee shall be responsible for:</p> <ul style="list-style-type: none"> <li>- formulating, on its own initiative and on an unrestricted basis, proposals on all aspects of occupational health, safety and ergonomics affecting the staff at more than one place of employment;</li> <li>- giving a reasoned opinion on all measures and reports relating to occupational health, safety and ergonomics on all premises of the Office.</li> </ul> <p>(4) The Local Occupational Health, Safety and Ergonomics Committees shall be responsible for:</p> <ul style="list-style-type: none"> <li>- formulating, on their own initiative and on an unrestricted basis, proposals on all aspects of occupational health, safety and ergonomics affecting the staff at the place of employment concerned;</li> <li>- giving a reasoned opinion on all measures and reports relating to occupational health, safety and ergonomics on the premises of the place of employment concerned.</li> </ul> <p>(5) The Committees shall be responsible for occupational health, safety and ergonomics policy. In the event that they draw up recommendations concerning the staff on their own initiative, these Committees shall not replace <del>the advisory bodies referred to in Article 38</del> <b>the General Consultative Committee.</b></p> |

| Existing ServRegs   | New ServRegs  |
|---|---|
| <p>(6) The Committee members shall have access to all information necessary for their work. To that end, the President of the Office shall keep the Central Committee or the relevant Local Committee informed of any projects envisaged or implemented affecting its area of competence. He shall inform the relevant Local Committee if an accident occurs on Office premises, in accordance with the national legislation in force in the country concerned, or if an incident occurs which could have had serious consequences.</p> | <p>(6) The Committee members shall have access to all information necessary for their work. To that end, the President of the Office shall keep the Central Committee or the relevant Local Committee informed of any projects envisaged or implemented affecting its area of competence. He shall inform the relevant Local Committee if an accident occurs on Office premises, in accordance with the national legislation in force in the country concerned, or if an incident occurs which could have had serious consequences.</p> |

| Existing ServRegs   | New ServRegs   |
|---|--|
| <p><b>Article 111<br/>           Appeals Committee</b></p>  | <p><b>Article 111<br/>           Appeals Committee</b></p>   |
| <p>(1) The Appeals Committee shall consist of:</p> <p>(a) a chairman and four members, when dealing with appeals against decisions of the President of the Office;</p> <p>(b) a chairman and four members, when dealing with appeals against decisions of the Administrative Council.</p> <p>(2) The President of the Office shall provide the staff necessary for the Appeals Committee to carry out its functions. Such staff, together with the chairman and members of the Committee, shall be bound to secrecy.</p> <p>(3) The Appeals Committee shall adopt its rules of procedure.</p> | <p>(1) The Appeals Committee shall consist of:</p> <p>(a) a chairman and four members, when dealing with appeals against decisions of the President of the Office;</p> <p>(b) a chairman and four members, when dealing with appeals against decisions of the Administrative Council.</p> <p>(2) The President of the Office shall provide the staff necessary for the Appeals Committee to carry out its functions. Such staff, together with the chairman and members of the Committee, shall be bound to secrecy.</p> <p><del>(3) The Appeals Committee shall adopt its rules of procedure.</del></p> |

| Existing ServRegs  | New ServRegs   |
|--|--|
| <p><b>Article 5 (Implementing rules for Articles 106 to 113 of the Service Regulations for permanent employees of the European Patent Office)<br/>Composition of the Appeals Committee</b></p> <p>(1) For the purposes of Article 111(1)(a) of the Service Regulations, which concerns appeals against decisions of the President, and Article 111(1) (b) of the Service Regulations, which concerns appeals against decisions of the Administrative Council, the President of the Office shall appoint, among employees in active employment:</p> <p>(a) the chairman and</p> <p>(b) a deputy chairman of the Committee.</p> <p>(2) For the purposes of Article 111(1)(a) of the Service Regulations, the President of the Office shall appoint, among employees in active employment:</p> <p>(a) two full members and</p> <p>(b) two alternate members of the Committee.</p> <p>(3) For the purposes of Article 111(1)(a) of the Service Regulations, the Staff Committee shall appoint, among employees in active employment, a deputy chairman of the Committee.</p> | <p><b>Article 5 (Implementing rules for Articles 106 to 113 of the Service Regulations for permanent employees of the European Patent Office)<br/>Composition of the Appeals Committee</b></p> <p>(1) For the purposes of Article 111(1)(a) of the Service Regulations, which concerns appeals against decisions of the President, and Article 111(1)(b) of the Service Regulations, which concerns appeals against decisions of the Administrative Council, the President of the Office shall appoint, among employees in active employment:</p> <p>(a) the chairman and</p> <p>(b) a deputy chairman of the Committee.</p> <p>(2) For the purposes of Article 111(1)(a) of the Service Regulations, the President of the Office shall appoint, among employees in active employment:</p> <p>(a) two full members and</p> <p>(b) two alternate members of the Committee.</p> <p><del>(3) For the purposes of Article 111(1)(a) of the Service Regulations, the Staff Committee shall appoint, among employees in active employment, a deputy chairman of the Committee.</del></p> |



| Existing ServRegs   | New ServRegs   |
|---|--|
| <p>(4) For the purposes of Article 111(1) (a) and (b) of the Service Regulations, the Staff Committee shall appoint, among employees in active employment:</p> <p>(a) two full members and</p> <p>(b) two alternate members of the Committee.</p> <p>(5) For the purposes of Article 111(1)(b) of the Service Regulations, the Administrative Council shall appoint:</p> <p>(a) two full members and</p> <p>(b) two alternate members of the Committee.</p> <p>(6) The term of office of the chairman, deputy chairmen, members and alternate members shall be one calendar year. They may be reappointed.</p> <p>(7) For the purposes of Article 111(1)(a) and (b) of the Service Regulations, the deputy chairmen and alternate members shall take part in the proceedings of the Committee if the chairman or full members are not able to act.</p> <p>(8) Notwithstanding paragraph 7, for the purposes of Article 111(1)(a) of the Service Regulations, the deputy chairmen shall alternate at each Committee session.</p> <p>(9) The Appeals Committee shall act in the same composition throughout the procedure, except in justified cases.</p> | <p>(3) For the purposes of Article 111(1)(a) and (b) of the Service Regulations, the Staff Committee shall appoint, <u>among its members</u> in active employment:</p> <p>(a) two full members and</p> <p>(b) two alternate members of the Committee.</p> <p>(4) For the purposes of Article 111(1)(b) of the Service Regulations, the Administrative Council shall appoint:</p> <p>(a) two full members and</p> <p>(b) two alternate members of the Committee.</p> <p>(5) The term of office of the chairman, deputy chairman, members and alternate members shall be one calendar year. They may be reappointed.</p> <p>(6) For the purposes of Article 111(1)(a) and (b) of the Service Regulations, the deputy chairman and alternate members shall take part in the proceedings of the Committee if the chairman or full members are not able to act.</p> <p><del>(8) Notwithstanding paragraph 7, for the purposes of Article 111(1)(a) of the Service Regulations, the deputy chairmen shall alternate at each Committee session.</del></p> <p>(7) The Appeals Committee shall act in the same composition throughout the procedure, except in justified cases.</p> |

**DRAFT – 31.1.2014**  
**Circular No. xxx**

Annex 4.1

## **REGULATIONS FOR THE STAFF COMMITTEE ELECTIONS** **(Article 35(5)(c) ServRegs)**

### **Article 1** **Entitlement to vote**

(1) All employees referred to in Article 1 of the Service Regulations in active status with at least three months' service shall be entitled to vote and to be elected at the elections of the Central Staff Committee.

(2) The same requirements shall apply for the elections of a Local Staff Committee save that this entitlement to vote and to be elected is limited to the employees employed at the corresponding duty station.

### **Article 2** **Composition of the Staff Committee**

(1) The Central Staff Committee shall consist of ten full and ten alternate members and be composed as follows:

- four full members and four alternates representing the Munich and The Hague staff respectively. The full members for both Munich and The Hague shall include at least one representative of A category and one representative of B or C category staff;
- one full member and one alternate representing the Vienna and Berlin staff respectively.

(2) Subject to Article 33(2) ServRegs, there shall be appointed in each duty station four Local Staff Committee members to represent the first 1,000 staff in active employment plus one further member for each additional 500 staff in active employment. Each Local Staff Committee shall include at least one representative of B or C category staff. The Munich section of the Staff Committee shall represent staff in Brussels.

(3) The positions of chairman and deputy chairman of the Local Staff Committees shall be designated to the members who have received the highest and second highest number of votes respectively. Should a Staff Committee member holding such position resign, the positions of chairman and deputy chairman shall be re-designated as necessary, so that they are held by the remaining members who received the highest and second highest number of votes respectively.

### **Article 3** **Organisation of the elections**

(1) The elections of the Central and all Local Staff Committees shall take place at the same time.

(2) The elections shall be organised by the Office. The Office may appoint election assistants who shall not be at the same time candidates for election.

(3) The elections shall be supervised by an ad hoc Supervisory Committee composed of two employees and the Chairman designated by the President and two employees designated by the Central Staff Committee. The members of the Supervisory Committee shall be entitled to vote, but shall not be candidates for the elections.

#### **Article 4 Notice of elections**

The President, after consulting the Supervisory Committee, shall declare the elections open at least six weeks before the vote by publishing inter alia:

- (a) the list of those entitled to vote;
- (b) the start and end of the vote;
- (c) any practical arrangements for voting;
- (d) the number of full members and, if applicable, alternates to be elected;
- (e) invitation to submit candidatures, and stipulating the form in which nominations must be lodged, the recipient of the nominations and the closing date;
- (f) when the counting of votes will take place.

#### **Article 5 Nomination of candidates and campaigning**

(1) Each candidate must submit his candidature by means of a signed form as provided for in the notice of elections. The candidate may indicate that he is supported by a union or association of employees.

(2) In addition to Article 35 (5)(b) of the Service Regulations, a candidate cannot submit his candidature at the same time for the Central Staff Committee and a Local Staff Committee. The candidate's term of employment shall be compatible with the Staff Committee's term of office.

(3) The President, upon proposal of the Supervisory Committee, shall reject all nominations which do not meet the conditions laid down in the applicable provisions or in the notice of elections referred to in Article 4 of these Regulations.

(4) The list of candidates shall be published at least one month before the vote.

(5) Any election campaigning shall be conducted in a fair and non-derogatory manner in accordance with standards befitting international civil service. The President shall take the necessary measures to allow the candidates to participate in the campaign, such as:

- (a) make available a dedicated intranet site administered by the Office;
- (b) allow for dispatch of up to two e-mails to the electorate per candidate;
- (c) provide upon request room facilities for a public presentation of the candidates;
- (d) allow for reasonable printing and distribution facilities, to be decided by the Supervisory Committee.

#### **Article 6 Voting**

(1) Elections shall be by a secret vote.

(2) Voters submitting their votes shall use the valid ballot forms provided for the elections of the Central and the relevant Local Staff Committee.

- (3) Any voter unable to vote in person may alternatively vote by a proxy. An employee can be given only one proxy.
- (4) Candidates shall be listed on the ballot form in order of the receipt of candidatures. Each candidate's name shall be followed by at least his category and organisational unit.
- (5) The voter is entitled to vote for one candidate to the Central Staff Committee and for one candidate to the relevant Local Staff Committee and shall mark the name of the candidates for whom he wishes to vote.

### **Article 7**

#### **Counting of the votes, election results**

- (1) The Office shall count the votes and draw up for the Central and each Local Staff Committee a list of candidates in descending order of the number of votes received. Where two or more candidates have received the same number of votes, they shall appear on the list in descending order of length of service. In the case of equal length of service, lots shall be drawn.
- (2) For all the Committees, the required number of candidates who have obtained the greatest number of votes shall be deemed elected as full members. The Hague and Munich representatives to the Central Staff Committee and all Local Staff Committees shall include at least one permanent employee in categories A and B or C, provided there were nominations from these categories. If this composition has not been achieved, in order to determine the full members, the last elected candidate in order of number of votes in the represented category shall yield his place to the candidate with the highest number of votes from the non-represented category.
- (3) For the Central Staff Committee, the required number of candidates with the most votes after the candidates who have become full members under the above procedure shall be considered elected as alternates, together with any candidates required to yield their places under the above procedure. In case a full member resigns he shall be replaced for the remaining term by the first available alternate who obtained most votes.

### **Article 8**

#### **Notice of election results**

The President shall publish the election results as soon as possible after the end of the vote. The relevant notice shall state inter alia:

- (a) number of persons entitled to vote;
- (b) number of persons who voted;
- (c) number of spoilt and blank ballot forms;
- (d) number of votes obtained by each candidate;
- (e) candidates declared elected to each Staff Committee as full members and, if applicable, alternates.

### **Article 9**

#### **Invalidity of elections**

- (1) In case of an irregularity in the vote or count that might have an effect on the result of elections, a substantiated objection may be addressed to the President within two working

days following the date of publication of the election results. The objection does not suspend the constitution of the Staff Committee.

(2) The President shall refer such an objection to the Supervisory Committee which shall provide to the President its substantiated opinion within ten working days therefrom. The Supervisory Committee shall consider whether the alleged irregularity has occurred and whether it had an effect on the result of the elections.

(3) The President shall take a decision on the objection within one month from the publication of the election results. He may take any necessary measures, including declaring the elections null and void either for all Committees or for a specific Staff Committee.

(4) If the elections are declared null and void the Office shall take all necessary measures to organise new elections at the earliest opportunity, in accordance with these Regulations.

(5) In the event of the elections being declared null and void the respective outgoing Staff Committee shall ad interim resume its duties until a new notice is published according to Article 8 of these Regulations. Any nominations for membership of statutory bodies made by the Staff Committee during this period can be subject to review by the next duly elected Staff Committee.

#### **Article 10 Delegation**

The President may delegate his powers under this Circular.

#### **Article 11 Entry into force**

These Regulations shall enter into force on 1.4.2014

EUROPEAN PATENT OFFICE  
DG4

Munich, 10 February 2014

## **EXPLANATORY NOTE – GAC/DOC 7/2014**

Subject: Regulations for the Staff Committee elections

According to the proposed revision in Article 35(5)(c) ServRegs, the President shall determine the detailed conditions relating to the Staff Committee elections. The purpose of the present draft proposal is thus to lay down uniform rules for the elections of the Central and Local Staff Committees.

It is intended that the Regulations shall enter into force on 1.4.2014 – to allow for the elections to take place in June 2014. In view of the changed regulatory framework, the present Election Regulations applicable to Local Staff Committees will be superseded. For the first time, all the Committees will be elected on the basis of consistent and transparent harmonised rules.

### **I. Composition of the Staff Committee**

The following main principles will apply for the composition of the Staff Committee:

- As regards the composition of the CSC, the rules strive towards appropriate representation of different sites and different categories of staff. The CSC shall consist of ten full and ten alternate members. From these members four full and four alternate members represent the Munich and The Hague staff respectively. The full members shall for both Munich and The Hague staff shall include at least one A and one B or C category representative.
- The composition of the LSC shall be determined in accordance with the size of the relevant duty station. For the first 1.000 staff, four LSC members are elected, to be complemented by one further member for each additional 500 staff. Each LSC shall include at least one representative of B or C category staff.

### **II. Organisation of elections**

The composition of all Committees is determined by means of direct democratic elections. The elections for the Central and Local Staff Committees take place at the same time. Elections shall be organised by the Office under the supervision of an ad hoc Supervisory Committee composed of members designated by the President and of the CSC.

The elections process shall open with the publishing of the elections notice, at least six weeks before the vote. This notice shall include the list of electorate, the time and practical arrangements of voting as well as count and provide details for the submission of candidates.

Nomination of candidates is by individual application, the candidate may however indicate that he is supported by a union or association of employees. The candidate may not stand at the same time for the LSC and CSC elections and his term of employment shall be compatible with the Staff Committee's term of office. The Supervisory Committee verifies the candidates' eligibility to stand for elections and may propose the President to reject candidatures.

For the purposes of election campaigning, the President shall take any necessary measures, such as provision of a dedicated intranet site, dispatch of e-mails, room arrangements for a public presentation of candidates, printing facilities.

Elections shall take place by a secret vote, each voter is entitled to vote for one candidate to CSC and for one candidate to LSC.

### **III. Counting of votes and election results**

The Office shall count the votes and publish the election results as soon as possible after the vote. The election results shall be established as follows:

- A list of candidates shall be set up in descending order of the number of votes received;
- In case of candidates with the same number of votes, they shall appear on the list in descending order of length of service. In case of equal length of service, lots will be drawn;
- The required number of candidates with greatest number of votes shall be deemed as elected full members;
- For all LSCs and for The Hague and Munich representatives to CSC, to ensure the representation of category A and category B or C employees, the last elected candidate in order of number of votes received in the represented category shall yield his place to the candidate with the highest number of votes from the non-represented category;
- The required number of candidates with the most votes after the elected full candidates shall become alternates

In case of irregularity in the vote or count that might have affected the result of elections a substantiated objection may be addressed to the President within two working days following the date of publication of the election results. The President refers such an objection to the opinion of the Supervisory Committee to be provided within ten working days. A decision on the objection shall be taken by the President within one month from the publication of the election results. The President may take any necessary measures, including declaring the elections null and void.

In view of the above, the present GAC/DOC 7/2014 is submitted to the GAC for opinion.

Elodie Bergot  
PD 43

**Draft – 05.02.2014**

Annex 4.2

**Circular No. xxx****Resources and facilities to be accorded to the Staff  
Committee****(Article 34(3) ServRegs)****Part I  
Introduction**

The statutory nature of the Staff Committee, as established in Articles 33 to 37 ServRegs, implies that the duties undertaken by Staff Committee members and their nominees shall be deemed to be part of their normal service. Such staff should be allowed to carry out their duties under the Service Regulations efficiently and effectively.

To this end Staff Committee members should be exempted from carrying out the duties of the posts to which they have been appointed for all or part of their working time. Furthermore, staff members who are nominated by the Staff Committee to take part in statutory bodies pursuant to Article 36(2)(a) ServRegs shall be entitled to make time deductions. Financial and additional human resources shall also be granted to the Staff Committee to enable it to exercise its statutory functions fully.

At the same time, it is necessary to have regard to the needs of the service and to ensure the continued and smooth running of the Office's core tasks. In accordance with Article 34(3) ServRegs, this Circular sets out the resources and facilities which shall be accorded to the Staff Committee. It also sets out the modalities according to which such resources may be used by the Staff Committee, in order to ensure a balance is achieved between the needs of the Staff Committee on the one hand and the interests of the service on the other.

**Part II  
General Provisions****Article 1  
Definitions**

For the purposes of this Circular, the following definitions shall apply:

- 1) A "member" or "Staff Committee member" is any employee elected as a member (whether full or alternate) of the Staff Committee pursuant to Article 35 ServRegs.
- 2) A "fully exempted member" is a member who has been exempted 100% from the duties to which he has been appointed in accordance with Article 3(1).



- 3) A “partially exempted member” is a member who has been exempted up to 50% from the duties to which he has been appointed in accordance with Article 3(2).
- 4) A “nominee” or “Staff Committee nominee” is any employee other than a member who is nominated by the Staff Committee to a statutory body pursuant to Article 36(2)(a) ServRegs.
- 5) “Staff representative” is a collective term referring to both members and nominees.

### **Part III Human Resources**

#### **Article 2 Composition of the Staff Committee**

- 1) The chairmen of the Central and Local Staff Committees shall inform the President in writing of the composition of their committee, stating in particular which members hold the positions of chairman, deputy chairman and secretary. This notification shall be made within five working days of the composition being established at a constituting meeting. Any changes to the composition shall be notified to the President within the same timeframe.
- 2) The chairmen of the Central and Local Staff Committees shall provide the President with a copy of their Rules of Procedure, if any, within five working days of adoption or amendment.

#### **Article 3 Exemptions for Staff Committee members**

- 1) The full members of the Central Staff Committee and the chairmen of the Local Staff Committees shall be exempted 100% from the duties to which they have been appointed. Whilst occupying such positions, fully exempted members are considered as detached from their professional duties on a full-time basis and shall dedicate themselves solely to staff representative activities.
- 2) All other Staff Committee members shall be exempted up to 50% from the duties to which they have been appointed (reduced pro rata for staff working part-time). This time exemption shall be used only for staff representative activities. Such members shall manage their working time efficiently to ensure a balance is maintained at all times between their staff representative activities on the one hand and the duties to which they have been appointed on the other. In case of any absence from the Office (for example due to sickness or leave), such members shall ensure that their remaining working time is evenly distributed between these two roles.

**Article 4**  
**Career of fully exempted staff**

- 1) No staff reports shall be issued for periods during which staff are fully exempted under Article 3(1). The fact of performing staff representative activities shall be neither prejudicial nor beneficial to the person concerned. Thus, for promotion purposes, fully exempted members shall be deemed to have been subject to an average career progression during such periods.
- 2) At the end of his mandate, the Staff Committee member concerned shall at once be reinstated in his post.

**Article 5**  
**Time deductions for Staff Committee nominees**

Staff Committee nominees appointed in accordance with Article 36(2)(a) ServRegs shall be entitled to deduct the reasonable time incurred for their statutory duties as follows:

- (a) For each disciplinary procedure in which a nominee participates, up to three working days subject to the approval of the Chairman of the relevant Disciplinary Committee;
- (b) For each selection procedure in which a nominee participates, up to two working days subject to the approval of the Chairman of the relevant Selection Board;

Additional time deductions may be granted following a reasoned written request (supported by the appropriate Chairman) to the Principal Director Human Resources.

**Article 6**  
**Time recording**

- 1) All Staff Committee members and nominees (including fully exempted members), shall record their time spent on staff representative activities using the electronic tool provided by the Office in accordance with the workflows established for that purpose.
- 2) Partially exempted members and nominees shall inform their line managers in advance of any absence due to staff representative activities.
- 3) The Chairmen of the Central and Local Staff Committees shall be sent a quarterly report of the time recorded.

## **Part IV Other Resources**

### **Article 7 Premises**

The Office shall make premises available to the Staff Committee to set up sufficient working space for Staff Committee members. Such premises shall not be used for trade union activities.

### **Article 8 Equipment**

- 1) The Office shall provide the relevant departments with a complete list of the office, computer and mobile communication equipment to be issued to the Staff Committee and its members.
- 2) Staff Committee members shall return all such equipment issued to them personally at the end of their mandate.

### **Article 9 Duty travel**

- 1) The Office shall set an annual budget envelope to cover the cost of all duty travel required for the performance of staff representative activities.
- 2) The Chairman of the Central Staff Committee shall be responsible for ensuring that the budget under paragraph 1 is not exceeded. To this end he shall receive a monthly report of the costs so incurred.
- 3) Duty travel shall be organised and reimbursements made in accordance with the provisions of Articles 77 to 79 ServRegs and Circular 319.

### **Article 10 Training**

- 1) The Office shall allocate the Staff Committee an annual budget for training purposes.
- 2) Each Staff Committee member shall be granted up to five days for training per year. In the case of partially exempted members, these five days, if used, shall be deducted from the 50% time exemption granted under Article 3(2).

### **Article 11 Communication**

- 1) The Office shall make available to the Staff Committee dedicated intranet sites and bulletin boards in communal spaces. The Staff Committee may also request the Office to print and distribute reasonable amounts of documents to facilitate the exercise of its statutory duties.

- 2) The Staff Committee shall observe all rules in force with regard to communication, including those governing the use of mail, telecommunications and electronic communications.
- 3) The Staff Committee shall ensure that all of its communications are professional and respectful and meet the standards befitting the international civil service.

**Article 12**  
**Use of Office premises**

- 1) If the Staff Committee wishes to use Office premises (other than those covered by Article 7) for the exercise of its statutory functions, it shall obtain the prior written approval of the Vice President Administration.
- 2) Whenever meetings are held for the purpose of informing staff at large or holding a general assembly, the Staff Committee shall ensure that they take place outside the Office's core hours.

**Part V**  
**Final Provisions**

**Article 13**  
**Delegation**

The President may delegate his powers under this Circular.

**Article 14**  
**Entry into force and transitional provisions**

- 1) This Circular shall enter into force on 1 July 2014. It replaces Communiqué 45 (Decision of the President on Article 35(5) ServRegs).
- 2) For employees who are elected as members of the Staff Committee pursuant to Article 35 ServRegs with effect from 1 July 2014, the provisions of this Circular shall apply as from that date.
- 3) For employees who have not been so elected, but who were involved in staff representation activities up to 30 June 2014, the following transitional measures shall apply:
  - a) Time spent on staff representation activities which have been commenced but not completed by 30 June 2014 may be deducted in accordance with Communiqué 45 until 31 July 2014;
  - b) Notwithstanding paragraph (a), members of the Appeals Committee, Selection Boards and Disciplinary Committee and conciliation experts under Circular 246 may continue to deduct their time in accordance with Communiqué 45 until their pending statutory tasks are completed, but in any event not beyond 31 December 2014.

- 4) The President may take any further measures necessary to ensure a smooth transition to the new system.

EUROPEAN PATENT OFFICE  
DG4

Munich, 10 February 2014

## **EXPLANATORY NOTE – GAC/DOC 7/2014**

Subject: Circular on resources and facilities to be accorded to the Staff Committee

According to Article 34(3) of the proposed revision of the ServRegs, the President shall determine the resources and facilities to be accorded to members of the Staff Committee to enable them to exercise their functions. This provision is similar to that currently contained in Article 35(5)(b) ServRegs, on which Communiqué 45 is based. It is now proposed to update Communiqué 45, replacing it with a new Circular which regulates these issues having regard to the suggested amendments to the ServRegs.

It is intended that the new Circular shall enter into force on 1.7.2014, once the Staff Committee elections have taken place. Transitional provisions have also been included, to allow a smooth handover of ongoing staff representative activities.

### **I. Human resources**

#### 1. Time exemptions for elected Staff Committee members

The full members of the Central Staff Committee and the chairman of each Local Staff Committee shall be exempted 100% from the duties to which they have been appointed. Such members are considered as detached from their professional duties on a full-time basis and shall devote themselves solely to staff representation activities. Given that no staff reports can be drawn up during such periods, 100% exempted members shall be deemed for promotion purposes to have been subject to an average career progression.

All other Staff Committee members shall be exempted from their duties for up to 50% (reduced pro rata for staff working part-time). Members exempted up to 50% shall ensure that they divide their available working time evenly between their staff representative activities on the one hand and the duties to which they have been appointed on the other.

#### 2. Time deductions for Staff Committee nominees

In addition, non-elected staff members who have been nominated by the Staff Committee to the Disciplinary Committee or a Selection Board (“nominees”) shall be entitled to deduct the time reasonably incurred in these statutory tasks. Up to three working days may be deducted for each disciplinary procedure in which a nominee participates and up to two working days for each selection procedure, subject always to the approval of the Chairman of the relevant Committee. Additional time

deductions may be granted following a reasoned request, supported by the appropriate Chairman.

### 3. Abolition of time allocations

The annual time allocation applicable under Communiqué 45 (covering “external” and “internal” activities) will be abolished, thus simplifying the procedure.

### 4. Time recording

All Staff Committee members (including those exempted 100%) and their nominees shall record their time spent on staff representative activities using the electronic tool provided by the Office.

Staff Committee members released 50% and Staff Committee nominees shall inform their line managers in advance of any absence due to staff representation activities.

## **II. Other resources**

In addition to the human resources allocated to the Staff Committee by way of time exemptions and deductions, the Circular also details how other resources shall be granted to the Staff Committee, namely:

- Premises;
- Equipment (including office, computer and mobile communication equipment);
- Duty travel budget;
- Training budget;
- Communication.

In view of the above, the present GAC/DOC 7/2014 is submitted to the GAC for opinion.

Elodie Bergot  
PD 43

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**From:** Central Staff Committee <be-41075@bigpulse.com>  
**Sent:** 12 February 2014 07:01  
**To:**  
**Subject:** REFERENDUM amongst all EPO Staff on Mr Battistelli's "SOCIAL DEMOCRACY"

Dear

The Central Staff Committee needs to hear your opinion about the "social democracy" proposal of the President, and for this purpose has organised this REFERENDUM. It is important that everyone expresses his/her opinion.

This is your personal invitation to vote. All necessary precautions have been taken to ensure full confidentiality. **Please take a moment to answer the single question of the referendum.** The issues in a nutshell and the detailed proposal can be found further below.

**Voting:** To access the Poll and vote [CLICK HERE](#).

**Voting is open until Tuesday, February 18th at 16:00.**

Considering the long period of time offered to take part in the referendum, you can **neither vote by proxy nor from a private email address**. If the above link does not work, copy and paste this link to your browser:

<https://www.bigpulse.com/rr?AhkDAPFQUyfDfrmt2GwShO6z4v3Z1Mb1Vy9egA>

**Help:** In case of any problems, send us an [email](#)

The issues in a nutshell:

- The President intends to change the Codex to reorganise the Local and Central Staff Committees, and the role of staff representative and their nominees to statutory bodies. Aside from the disciplinary boards and promotion/selection boards, all other functions have to be carried out by elected staff representative, who can no longer delegate experts in a specific field. The mandate and prerogative of staff representatives is also to be changed.
- He also intends to abolish Art. 35(6)(b), and lay down that the President (no longer staff) decides how staff representatives are to be elected. For this purpose, he intends to introduce a new circular.
- Through another circular, he also intends to change the rules concerning the facilities afforded to the Staff Representation. One of the important points is that all union activities are forbidden on Staff Representation premises – thus, also union consultation and coordination.



Detailed information:

All planned changes of the Codex and both draft circulars can be found under this **link**.

***The Central Staff Committee***

5 similar letters addressed to the Vice-Chairmen and the Secretary of the CSC - i.e. J. Areso, I. Brumme, J. Schaaf, M. Sampels, and S. Rolle

European Patent Office | 80298 MUNICH | GERMANY

To the Chairman of the CSC and members of the CSC

Mr J. Michels  
R. 316  
Vienna

European Patent Office  
80298 Munich  
Germany

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Fax +49 (0)89 2399 - 2892  
president@epo.org

Date: 14.02.14

Electronic referendum organised by the CSC via BigPulse

Dear Mr Michels,

I am writing to you in your capacity as Chairman of the Central Staff Committee with reference to a very serious incident which took place with regard to an electronic "referendum" organised by the CSC via an external company (BigPulse). On 12.02.2014 a mass e-mail was sent to all staff of the Office from the e-mail account be-41075@bigpulse.com inviting them to participate to an online "referendum on social democracy" (Annex).

We will analyse in due course whether this initiative complies, inter alia, with the applicable Guidelines for the protection of personal data in the EPO (especially Article 13), the relevant Communiqué No. 10 concerning the use of electronic communication and with the note to all staff dated 31.05.2013 limiting the number of recipients of electronic mails.

For the time being, the messages received so far by BigPulse are rather confusing and there is an urgent need to clarify the situation.

BigPulse is of the view that in the case at stake EPO is not directly their client and asks the Management of the Office to give them permission to forward a CIO's email to the CSC for comment. Given the nature of the CSC, which has no legal personality, the Office shall certainly not give permission to any third-party to act as an intermediary in a strictly internal matter raising very serious issues.

Since it appears from BigPulse's communication that the CSC is the client, you are hereby requested :

- to provide all the documents (including, inter alia, contracts and invoices) relating to this commercial relationship;

- to inform me on the exact type and amount of personal data that has been transmitted to BigPulse and any other external recipients as well as on the precise conditions and modalities of this transmission on behalf of the Central Staff Committee including the names of the staff members who have performed or otherwise facilitated this transmission.

I have to inform you that this situation is likely to lead to disciplinary proceedings for very serious misconduct and, as the case may arise, national proceedings.

You are requested at least at this stage to co-operate in full with the Office's services by aborting immediately this electronic survey and by providing all necessary information as above the latest by 19.02.2014.

In the meantime, the Office will take all necessary steps to mitigate the damage.

Yours sincerely,



Benoît Battistelli

(Annex)

# Call for a strike

Article 30a of ServRegs

Annex 7

Without acknowledging the lawfulness of the new strike regulations, we decided to constitute ourselves as a group of employees willing to start a new petition.

We need to remain anonymous because the cynical Christmas speech (especially in Munich) and the style of management of the President show that a contradictory debate cannot be guaranteed without being exposed to threats.

We acknowledge that the President successfully defends external projects such as IP5, the Unitary Patent and CPC, but we regret that his position regarding staff is less positive, not to say negative. The grounds for the strike are:

- **Presidential communication :**
  1. the President needs to clarify his remarks regarding Chinese prior art in the ManagingIP.com<sup>1</sup> interview via a Communiqué and to request a correction,
  2. the CSC should be allowed to publish one page in the Gazette to put into context the President's trivialisation<sup>2</sup> of the present social unrest as a situation normal at the EPO.
- **E-mails :** removal of the 50 recipients cap, abolishment of the block on all union e-mails to staff and withdrawal of the warning letters sent to staff.
- **Adoption of Social Democracy :** introduction of separation of powers and social dialogue<sup>3</sup>
- **Change of Disciplinary committee :** re-nomination of a DG3 member as Chairman in order to continue the 30-year independence of this body
- **Evolution of the Investigation Guidelines :** amendment of Circ. 341 and 342 in line with European Law
- **Strike Regulations :** withdrawal of Circ. 347 (new strike regulations)

The Central Staff Committee (CSC) or SUEPO Central shall be the interlocutor in order to negotiate with the President. There shall be a strike action for each of the above claims on all sites of the EPO, one of these being dropped when a claim is fulfilled.

The dates shall be defined after the results of the ballot. We request the ballot to be electronic in order to comply with the environmental objectives<sup>4</sup> of the EPO.

.....

| Name | Room | Signature |
|------|------|-----------|
|------|------|-----------|

<sup>1</sup> ManagingIP Article of 09.12.2013 by Simon Crompton : "Battistelli: unitary patent fee concern is exaggerated"  
<http://www.managingip.com/Article/3287629/Search/Battistelli-unitary-patent-fee-concern-is-exaggerated.html?Home=true&OrderType=1&Keywords=epo&Brand=Site&tabSelected=True>

<sup>2</sup> Special Gazette 12.2013 – Highlights of a memorable year – page 7  
[http://main23.internal.epo.org/projects/gazette/gazette.nsf/UNIDs/646851702AF21A47C1257C3C005300BD/\\$File/Gazette12\\_2013\\_special\\_issue\\_40yearsEPC.pdf](http://main23.internal.epo.org/projects/gazette/gazette.nsf/UNIDs/646851702AF21A47C1257C3C005300BD/$File/Gazette12_2013_special_issue_40yearsEPC.pdf)

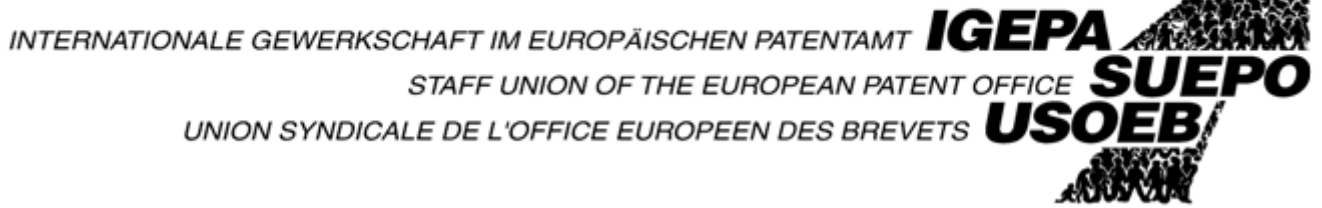
<sup>3</sup> Trias Politica - <http://www.suepo.org/archive/su13202cp.pdf>

<sup>4</sup> "Save ink and paper - print green"

Please send to your local Staff Committee Secretariat **until 21 January 2014 (included)**  
 MU (PH8 A1032), TH (Main 00.68), BE (30.25), VI (337) – Questions ? [peacesinitiative@yahoo.de](mailto:peacesinitiative@yahoo.de)

Signatures for supporting the **P.E.A.C.E.S.** initiative

| Name     | Room  | Signature |
|----------|-------|-----------|
| 01. .... | ..... | .....     |
| 02. .... | ..... | .....     |
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Zentraler Vorstand . Central Executive Committee . Bureau Central

05.02.2014

Su14020cl – 0.3.1/6.6

Mr Benoît Battistelli  
President of the EPO

ISAR - R.1081

### **Draft Proposal for a “Framework Agreement”**

Dear Mr President,

SUEPO represents nearly half of all EPO Staff.

It is a matter of both great concern and regret that the channels of communication between SUEPO and EPO Management have broken down. We trust you will agree that we cannot go on like this. Even though employers and unions naturally represent different perspectives, they should endeavor to cooperate as much as possible to ensure that the legitimate interests of both staff and organisation are protected and considered. In the current adversarial climate, we are all missing out on valuable opportunities to work together and further our collective interests.

We have heard your complaint that you are frustrated that SUEPO has not always spoken with one voice, and that it is therefore difficult to come to binding agreements. We take these concerns seriously and have carefully considered how SUEPO might better organize itself and interact more productively with the EPO.

To this end, please find attached a **draft proposal for a “framework agreement”** (“accord cadre”) that would regulate interactions between SUEPO and Management in a way that, we trust, will address many if not most of your concerns. This proposal is not entirely new: many elements result from previous working groups and decisions agreed between SUEPO and the EPO. For various reasons, it was not always possible in the past to bring such discussions to a conclusion. We hope that under your leadership and such a framework agreement this will now be possible.

We look forward to receiving your comments on this proposal by 19 February, wherein we ask that you indicate your willingness to enter into negotiations with SUEPO on this basis, should you approve it in principle.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'F. Brévier', written in a cursive style.

François Brévier  
Deputy Chairman SUEPO Central  
On behalf of SUEPO MU, TH, VI, BE

## FRAMEWORK AGREEMENT ON RECOGNITION AND PROCEDURE

between:

**The European Patent Office**  
represented by the President

and

**The Staff Union at the EPO**  
represented by the Central Chairman  
on behalf of the local sections TH, MU, BE, VI

### A. DEFINITION OF TERMS

1. *The EPO*: the European Patent Office or the European Patent Organisation
2. *The Council*: the Administrative Council of the European Patent Organisation
3. *The President*: the President of the EPO and any official holding a delegation of power from the same.
4. *The Union*: The Staff Union at the EPO (SUEPO), consisting of the local sections of VI, BE, MU, TH.
5. *The Union Representatives*: the SUEPO officials duly elected by their members
6. *The Union Experts*: staff members, other than Union Representatives, having special skills and assuming an advisory role to the Union Representatives.
7. *Members*: members of SUEPO
8. *Staff*: all employees of the EPO.
9. *JNC*: Joint Negotiating Committee

### B. COMMENCEMENT DATE

This Agreement commences on \_\_\_\_\_

### C. OBJECTIVES

1. In drawing up this Agreement, the EPO and the Union recognise that the EPO exists to serve its users. The purpose of this Agreement is to ensure that employment practices in the EPO are conducted to the highest possible standards within the resources



available, and that equal opportunities are offered to employees or prospective employees and that the treatment of staff will be fair and equitable in all matters, even if in dispute.

#### **D. GENERAL PRINCIPLES**

1. The EPO and the Union accept that the terms of this Agreement are binding.
2. The Union recognises the President's responsibility to plan, organise and manage the work of the EPO in order to achieve the best possible results in pursuing its overall aims and objectives.
3. The EPO recognises the Union's responsibility to represent the interests of its members and to work for improved conditions of employment for them, and all staff in general. Accordingly, and without prejudice to the stipulations set out in section H2 below, the EPO shall consult the Union on any change in the working conditions of EPO staff, including but not limited to any changes in the Service Regulations and other Conditions of Employment, and ancillary regulations.
4. The EPO and the Union recognise their common interest and joint purpose in furthering the aims and objectives of the EPO and in achieving reasonable solutions to all matters which concern them. Both parties declare their common objective to maintain good employment relations.
5. The EPO and the Union accept that their respective relationship must follow the principles laid down in:
  - ILO Convention No. 87, concerning Freedom of Association and Protection of the Right to Organize;
  - ILO Convention No. 98, concerning the Application of the Principles of the Right to Organize and Bargain Collectively; and
  - ILO Convention No. 151, concerning the Protection of the Right to Organize and Procedures for determining conditions of Employment in the Public Sector.

The decisions and principles of the Freedom of Association Committee of the Governing body of the ILO shall define the interpretation of the conventions.

#### **E. UNION REPRESENTATION**

1. The EPO recognises SUEPO as a Trade Union, and undertakes to consult and negotiate with SUEPO on all matters set out in Clause H (2) of this Agreement.
2. The EPO will inform all new employees of this Agreement, will inform them of the possibility to join the union, and will provide facilities for them to talk to a representative as part of their induction procedure.
3. The EPO accepts that the Union's Members will elect their Representatives in accordance with their Union Rules, to act as their spokespersons in representing their interests.

4. The Union agrees to inform the EPO of the names of all elected Representatives in writing within five working days of their election, and to inform the EPO in writing of any subsequent changes, each time within five working days of the change having taken place. Persons whose names have been notified to the EPO shall be the sole Representatives of the SUEPO membership.
5. The Union may avail itself of the services of a reasonable number of Experts, whose knowledge and skills are essential to the good functioning of the Union and the provision of its services to the members and the EPO. The Union shall provide to the EPO a list of such Experts and notify any changes within five working days.
6. The EPO recognises that Union Representatives and Experts fulfill an important role, and that the discharge of their Union duties will in no way prejudice their career prospects or employment with the EPO.
7. The EPO recognizes that an important role of the Union is that of disseminating information: to Union members, but also all Staff members and, where appropriate, the Council and the President himself. The EPO undertakes not to interfere with reasonable use of office services for the purpose of maintaining communication with Union members and EPO staff.. The Union recognizes that, whilst enjoying a wide freedom of expression and communication, it must keep its information within the bounds of what is lawful, and must endeavour not to tarnish the reputation of the EPO where it is not warranted. The Union may report on any actions of the EPO and express their views on such actions.

## **F. UNION MEETINGS AND OTHER FACILITIES**

1. Meetings of Union Members may be held on the EPO premises outside core working hours and there shall be no restriction on the frequency or duration of such meetings.
2. Union meetings may be held on the EPO premises inside core working hours provided that the Union seeks the consent of the EPO. Such consent shall not be withheld without reasonable grounds. The Union shall provide the EPO with a timetable of regular Union meetings or give at least three working days notice of the intention to hold a meeting as appropriate.
3. The EPO agrees to provide reasonable and defined facilities to the Union Representatives to enable them to discharge their duties including the provision of suitable office space, notice boards and reasonable use of telephones, photocopiers, computers, internal email and internal post and communication services.
4. Subject to at least seven days notice and the agreement of the EPO, Union Representatives and Experts will be granted special leave without loss of pay to attend training courses run by the Union or other appropriate bodies which are relevant to the discharge of their Union duties. Such special leave may be subject to reasonable limits which are agreed between the EPO and the Union.

5. Union Representatives and Experts will be permitted to take reasonable paid time release from their normal duties to enable them to carry out their duties under this Agreement. Such time release may be subject to reasonable limits which are agreed between the EPO and the Union.
6. Subject to reasonable prior notice and the consent of the EPO which shall not unreasonably be withheld, Union Representatives will be afforded reasonable paid time release during working hours for the purpose of taking part in Trade Union activity.
7. In all other respects, elected Union Representatives and Experts shall conform to the same working conditions as all other employees.
8. Union Representatives and Experts shall be protected from negative measures as a consequence of their status as officials of the Union or actions undertaken on behalf of the Union.

#### **G. SUPPORT FOR GRIEVANCE AND DISCIPLINE PROCEDURES**

1. The EPO recognises the Union's right to assist or represent the interests of all or any of its members at any stages during grievance and disciplinary procedures, and to call in Union advisors who are not employees of the EPO wherever this is considered appropriate.
2. The EPO undertakes to inform the any staff member faced with an investigation, disciplinary action, or other negative measures, of the possibility to seek Union representation. Failure to comply with this requirement will constitute a formal flaw in the disciplinary proceedings.

#### **H. JOINT NEGOTIATING COMMITTEE**

1. The EPO and the Union agree to set up a joint Negotiating Committee consisting of representatives of both sides.
2. The joint Negotiating Committee is competent to negotiate and find an agreement on:
  - Working time (e.g. hours of work, part-time home working, flexi-time)
  - Holiday, Leave and Sickness Arrangements
  - Remuneration and allowances
  - Career perspectives and structure
  - Pensions and Social Security
  - Health and safety
  - Working Tools
  - Staff Amenities
  - Career, Training and Recruitment
  - Redundancy and Redeployment
  - Equal Opportunities Policies

- Disciplinary, Grievance and Litigation Procedures
- Any other item which both sides agree to refer to the JNC.

3. The Negotiating Committee shall consist of:
  - (a) up to seven members appointed by the President
  - (b) up to seven members appointed by the Union, wherein:
    - at least four members must be Representatives with the mandate and power to negotiate and, if negotiations are successful, enter an agreement,
    - up to three members can be Experts nominated by the Union to assist the representatives by providing their advice and knowledge in particular areas to be discussed.
4. The composition of the Negotiating Committee may vary depending on the subject to be discussed.
5. The JNC is to establish a code of practice. Lack of adherence to the code of practice can be construed as prima facie evidence of lack of co-operation or bad faith in dispute procedures.

## I. NEGOTIATIONS

1. The EPO and the Union recognize that negotiation is a dialogue with the intention to reach agreement or understanding or to resolve differences. Negotiated agreements support the goals of social peace and are therefore in the interests of all parties. Negotiation is most effective where it takes place in an environment of open dialogue between independent parties acting in good faith.
1. A shared understanding of problem perspective is an essential requirement for effective dialogue, therefore any party presenting a problem undertakes to provide complete supporting evidence. Where statistics and data are required to transparently assess the problem, the EPO undertakes to provide this and permit the Union adequate time to analyse the data, or alternatively permit a jointly selected external auditor to provide such an analysis.
2. Negotiations may be initiated by either the EPO or the Union.
3. Successful negotiations will result in a joint **agreement which is binding on both parties**, The agreement will normally address the following :
  - a) The principles underlying the agreement including the issues it seeks to resolve.
  - b) The measures agreed.
  - c) How the EPO will implement the agreement including translation into internal regulations, guidelines or instructions.
  - d) Any special agreements regarding how disputes regarding implementation of the agreement will be resolved.
  - e) That the Union is bound to support the terms of the agreement and not to organise or support actions seeking to challenge the agreement whether by legal means or through industrial action.
  - f) The duration of the agreement

g) The terms under which the agreement may be terminated prematurely.

4. In the event of a **breakdown in the negotiations**, or if it is impossible to reach a reasonable settlement, either party may request dispute resolution measures in accordance with section K below.

## J. INDUSTRIAL ACTIONS

1. The EPO recognizes that employees have the right to participate in industrial actions without fear of retribution or sanctions. The EPO may make reasonable deduction of emoluments corresponding to any labour withheld in the course of a strike.
2. The Union is entitled to call for and organize general or local industrial actions, including but not limited to strikes. Industrial actions shall be undertaken only after a positive ballot by the Union respective members. The Union is required to ensure that ballot is witnessed by an independent observer who will prepare a report on the ballot. The EPO is to be provided with a copy of this report. Industrial actions shall be considered approved, if a quorum of at least 30% of the Union members cast a vote, and a simple majority of the votes cast are in favour of industrial action. The organisation and modalities of the ballot are at the discretion of the Union.
3. Paragraph J(2) applies mutatis mutandis to the local sections of the Union, whereby, any industrial actions so organised are limited to the site represented by that local section.
4. The Union, or local section, shall inform the President of any industrial action so planned. Barring force majeure or other serious cause, the Union shall inform the President in advance of a strike, with a period of notice of no less than 5 days.
5. The President may requisition personnel, but not more than absolutely necessary for:
  - ensuring the security of the EPO premises or persons;
  - guaranteeing the minimum maintenance of facilities and equipment, so that work can resume immediately after the strike has ended;
  - providing essential services to the EPO's customers, to secure rights that would otherwise be lost (incoming patent applications).
6. For SUEPO and its members, this agreement, in particular paragraphs J(1) and (2), supersedes any other general provision regulating the right to organise and participate in industrial actions. This agreement does not invalidate or otherwise affect those provisions in so far as SUEPO and its members are not concerned.

## K. RESOLUTION OF DISPUTES

1. Where either party has a dispute with regard to:
  - a. The implementation of this agreement
  - b. Any dispute arising during negotiation or the refusal of either party to enter into negotiation.
  - c. The implementation of any agreement entered into by both parties
  - d. Industrial actions
 either party may request recourse to mediation or arbitration procedures.
  
2. Mediation
  - a. Either party may submit to the other party a motivated request for mediation. Such a request shall not be unreasonably refused and both parties shall cooperate towards a swift resolution of the matter.
  - b. The mediator shall be a recognised professional mediator chosen jointly by the EPO and the Union.
  - c. The place and format of the mediate shall be jointly agreed by both the EPO and the Union.
  - d. Mediation shall be confidential and without prejudice to either party.
  - e. Any statement or offer made during mediation procedures shall not be binding on either party.
  - f. Successful mediation will result in a joint agreement between both parties which resolve the matter under dispute.
  - g. Unless the both parties agree otherwise, mediation procedures are exhausted where: a party refuses mediation; or the procedures have not resulted in an agreement within 3 months from the date on which the reasoned request was submitted.
  
3. Arbitration
  - a) Where mediation is exhausted and a dispute has not been resolved to the satisfaction a party, either party may submit the dispute to binding arbitration, an arbitration board which must be established jointly by the EPO and the Union and conducted in accordance with Annex A to this agreement.
  - b) The Arbitration procedure must be completed within 6 months from a reasoned request for Arbitration submitted by either party. In exceptional circumstances with the agreement of both parties, the 6 month time limit may be extended up to maximum of a further 6 months.
  - c) During dispute procedures under this agreement, neither party shall undertake unilateral actions with regard to the issue under dispute, barring exceptional and grave circumstances such as force majeure, risk to the health and safety of individuals, serious and irreparable harm to either party
  - d) No decision of the EPO is considered final until all dispute procedures under this agreement are exhausted.
  
4. Other proceedings
  - a. Where the fundamental rights of either party are in jeopardy, relief can be sought from a domestic Court or the ATILO.
  - b. If a party does not faithfully follow and implement the decision on arbitration, the other party may seek relief from a domestic Court or the ATILO.

- c. Individual union members, when personally affected by an adverse decision, retain the right to address their grievance internally and to the ATILO.

**L. MISCELLANEOUS PROVISIONS**

5. This Agreement may be amended at any time with the consent of both parties.
6. The Agreement shall not terminate except by mutual consent.
7. In the unlikely event of a dispute on the interpretation of this Agreement that cannot be resolved through a mutual agreement, the procedures and standards defined in Clause K shall apply *mutatis mutandis*. For this purpose, industrial action under Clause J shall be excluded.

for SUEPO

SIGNED \_\_\_\_\_

DATE \_\_\_\_\_

for EPO

SIGNED \_\_\_\_\_

DATE \_\_\_\_\_

## ANNEX A Arbitration Procedures

Arbitration is the submission of the matter under dispute to an independent judicial board for binding decision.

- I) Establishment of the arbitration board.
  1. All decisions with regard to the establishment of the Arbitration Board are to be taken jointly between the EPO and the Union.
  2. The Arbitration Board may be established by:
    - a) a permanent board
    - b) an ad-hoc board
    - c) access to a competent national court
- II) Selection of Members
  1. Where option a or b above are selected the following will apply: The Arbitration Board will consist of 5 members, 2 legal members, 2 lay/advisory members, and a Chairman.
    - The legal members must be qualified jurists in the area of labour law or industrial relations
    - The Chair must have at least 5 years experience as a judge or substantial equivalent experience as a Chair of arbitration boards, both must be in the area of labour law.
    - Lay members will have thorough knowledge of the EPO and labour law / labour relations within an international organisation. Lay members may be serving or retired staff members of the EPO. Where the members are serving staff of the EPO paid time release will be provided.
  2. Each party will nominate one legal member and one lay member. The Chair shall be nominated by the other 4 members.
  3. All arbitrators shall be bound to act independently and impartially, they shall neither seek nor take instructions.
- III) Proceedings:
  - Public, oral hearings must be provided if requested by either party
  - Power to investigate and order disclosure
  - Witnesses may be heard
  - All presentations to the Arbitration Board must be truthful and compete. Knowingly incorrect or misleading statements may result in disciplinary proceedings.
  - The reasoned findings of the Board will be published



**IV) Governing law**

- Customary law including fundamental rights
- Service regulations of the EPO
- Case law of the ILOAT
- If applicable, procedural rules of the relevant national Court selected under I.c).
- Insofar as applicable, the laws governing the juridical personality of SUEPO

**V) Forms of relief**

- annulment
- declaratory relief (statement on legality / consistency with fundamental rights)
- orders and injunctions
- specific performance
- damages (including moral and punitive damages)

**VI) Limitation of liability**

- Personal liability of individual Union members or Union representative is excluded except where provided by the relevant laws other than the Service Regulations of the EPO.

**VII) Costs**

- The costs of the arbitration procedure are to be paid by the EPO
- The cost of the parties are to be borne by the parties themselves.
- The arbitrator may, for grave and duly substantiated reasons, make an exceptional award of costs against one party. Such awards shall be reasonable and proportionate.

**Subject:**Fwd: Letter on “Social Democracy” - Mr Battistelli's reform of the Staff Representation

**Date:**2014-03-03 19:34

**From:**central@suepo.org

**To:**elvin.lako@dppm.gov.al, friedrich.roedler@patentamt.at, jerome.debrulle@economie.fgov.be, kveselinov@bpo.bg, roland.grossenbacher@ipi.ch, skokkinos@drcor.mcit.gov.cy, jkratochvil@upv.cz, ernst-ch@bmj.bund.de, jko@dkpto.dk, matti.paets@epa.ee, patricia.garcia-escudero@oepm.es, rauni.hagman@prh.fi, ylapierre@inpi.fr, john.alty@ipo.gov.uk, serafeim.stasinos@gmail.com, ljiljana.kuterovac@dziv.hr, miklos.bendzsel@hipo.gov.hu, gerard.barrett@patentoffice.ie, borghildur@els.is, mauro.masi@consap.it, Isabel.frommelt@llv.li, rimvydas.naujokas@vpb.gov.lt, Lex.Kaufhold@eco.etat.lu, sandris.laganovskis@lrpv.gov.lv, ekheng@gouv.mc, safet.emruli@ippo.gov.mk, godwin.warr@gov.mt, derk-jan.degroot@agentschapnl.nl, pfo@patentstyret.no, aadamczak@uprp.pl, leonor.trindade@inpi.pt, ionel.muscalu@osim.ro, btotic@zis.gov.rs, susanne.sivborg@prv.se, vesna.stankovic@uil-sipo.si, lubos.knoth@indprop.gov.sk, silvia.rossi.ubm@pa.sm, habip.asan@tpe.gov.tr

**Cc:**president@epo.org

Dear Sir, Madam,

Please find attached a letter from SUEPO Central addressed to all AC delegations on “Social Democracy” - Mr Battistelli's reform of the Staff Representation.

With kind regards,

SUEPO Central