



21 March 2014  
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## Concerning: “Social Democracy” - Mr Battistelli's reform of the Staff Representation - Up-date on other important developments within the EPO

Dear Head of Delegation, dear Member of the Administrative Council,

The EPO Administration has been filtering the information they provide to the Council: for example, the President regularly fails to provide GAC opinions or other important background documents that in our view would be needed for the Council to take a genuinely informed decision.

Given this history and the fact that the President has not forwarded the most recent documents prepared by the Staff Representation (a proposed CA document on the Governance of our organisation), the Staff Union has taking it upon itself to provide you with this information and up-date you on other important developments within the EPO.

We remind you of our previous communications to the Council members:

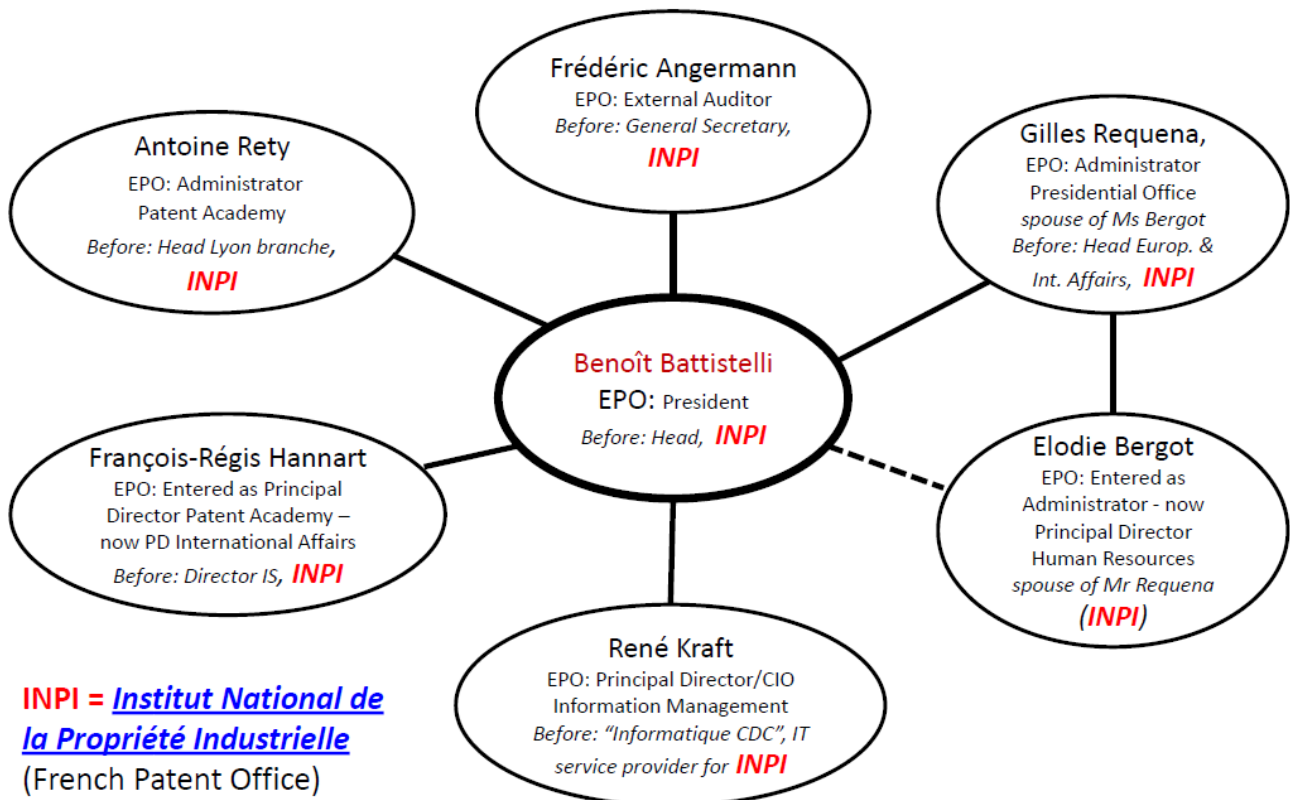
- 31 January 2014 on public documents critical of the EPO's social policy from the CSC – part I
- 3 March 2014 on further legal proceedings against the EPO in domestic courts, from us.
- 17 March 2014 on public documents critical of the EPO's social policy from the CSC – part II

This communication is a follow-up, including the latest news on these issues.

Mr Battistelli's management style and policies are exacerbating what is without doubt the worst social crisis in the history of the EPO.

1. **There is clear evidence of cronyism and an over-representation of French nationals in higher management and other influential positions:** this represents a danger for a multicultural organisation such as the EPO which can erode transparency and accountability.

## Mr Battistelli's Inner Circle



2. **The President blocked an opinion poll on “social democracy”**

Mr Battistelli will ask you to approve a new “social democracy” model that would lead to a radical change in the composition of and election processes for staff representation. However, in accordance with Art 35(6) ServRegs it is for **staff** to choose how to elect its representatives. Therefore, another part of the President’s proposal is to change this article, and thereby place the electoral procedure entirely in his hands.

From a legal perspective, it is questionable whether this decision can be taken at all without seeking the approval of the staff, since it is their representatives who are being elected. There is also a principle of law that to undo a decision, one must follow the same procedure that was used to take it<sup>1</sup>. Finally, when being asked its opinion on such an important matter, the staff committee would feel bound to consult with the staff as to their views before taking a position.

1 *Quomodo oritur, ejusdem modo dissolvitur*

Consequently, the Central Staff Committee organised (in accordance with Art 34(1) ServRegs) an opinion poll (“referendum”) on the matter. To be efficient, the CSC collected the names, user IDs and email addresses of all staff from the EPO’s on-line phonebook and initiated an electronic ballot using one of the world’s best and most highly secure web-based platforms<sup>2</sup>. The Staff Committee was forced to use a third-party service provider since polling software available on the CSC’s own server has been rendered unusable by e-mail restrictions imposed by the President.

Less than three hours after the CSC launched the poll, the President ordered that access to the site be jammed and demanded that the poll be immediately aborted, threatening the service provider with litigation. He alleged “very serious misconduct” on the part of the organisers, claiming there had been a breach of data protection rules, and threatened them with disciplinary measures as well as civil lawsuits under domestic law.

Please note that we are advised that the accusations would not stand up to scrutiny in any institution or country where the rule of law and fundamental rights prevail, but we doubt this will not deter Mr Battistelli from asserting otherwise and continuing to impose illegal sanctions).

### **3. EPO Staff massively rejects Mr Battistelli’s « social democracy »**

Faced with the impossibility of carrying out the opinion poll by electronic means, the CSC organised General Assemblies in all EPO branches. Several thousand staff gathered to voice their opinion, and by a massive majority<sup>3</sup> in all sites they rejected the President’s proposal.

The latest strike ballot demonstrates conclusively another vote of no-confidence in Mr Battistelli. In December 2013, an ad-hoc proposal from staff launched a new petition to organize further strikes: the PEACES initiative. The Administration reluctantly organised the ballot, which only finally took place on 13 March, nearly 2.5 months after the initiative was started. 60% of all staff members participated, of whom a clear majority of 93% voted in favour of a series of strikes.

These are scheduled for 21, 24, 25 March and 14 - 17 April 2014.

It is no exaggeration to say that the atmosphere within the EPO remains tense and the level of staff’s confidence in Mr Battistelli (and his team) continues to sink to an all-time low.

### **4. Management by intimidation and threat**

Mr Battistelli has summarily suspended for two months a colleague who provided technical advice and assistance to the CSC on how to organize the opinion poll in the most effective and secure way. Instead of addressing the body that was responsible for the decision to organise the referendum, and for its practical implementation, the President decided to pursue a non-elected individual whose only alleged “crime” is to have provided professional help to the CSC.

To date, no less than 12 (!) representatives/unionists have received a disciplinary sanction<sup>4</sup>. Such actions on such a scale are absolutely unprecedented in the 34 years of the EPOs

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<sup>2</sup> The services of BigPulse have used in the past on several occasions (e.g., for organising staff committees elections) to the full satisfaction of the EPO.

<sup>3</sup> barring a handful of abstentions; no opponents

<sup>4</sup> a petition of support by EPO Staff to their sanctioned representatives is currently circulating office-wide.

existence. The motive is again spurious: their “crime” is to have sent emails (with staff representation content) to more than 50 staff members.

In Munich a staff representative/unionist was recently downgraded (from A4 to A3) by a direct decision of the president, despite there being a unanimous recommendation of the disciplinary board in her favour. This act is not only a blatant abuse of power, but it also undermines any confidence in the current “quasi-judicial” processes within the EPO as well as discrediting the opinion of the disciplinary board and its members.

## **5. No access to justice**

It is widely recognised that the two key elements required to ensure “social democracy” are the rule of law and respect of fundamental rights. These issues were first raised with the President in 2010. However, rather than address staff concerns, the President has instead “reformed” the internal conflict resolution system in a manner that has only exacerbated the problems. Only recently and despite enormous backlogs of cases, the President has cut the staff resources assigned to the internal appeals process, only serving to increase further the backlog and delays that have long since reached unacceptable levels. There have been some improvements in case pendency at the ILOAT, but this still remains in excess of 3 years, and are likely to only increase further in the next 2-3 years.

The backlogs in the internal appeals process is around 700 cases, while current resources can manage 80-90 cases annually at most.

The Staff Union has also received repeated complaints about the current conflict-resolution system. Even when the Internal Appeals Committee issues a unanimous recommendation in favour of the complainant, the President ignores it and rejects any form of relief. Unsurprisingly, complainants then bring their cases before the Tribunal – but this is also overburdened; we estimate that between the internal appeals process and the ILO-AT, a complainant must expect a delay of 9-10 years for a decision between filing a complaint and receiving a judgement.

There are also many other problems with regard to the proper functioning of the justice system. Of particular note, the ILOAT recently declared that it is “not a trial court for staff grievances, and that it is ill equipped to fulfil this role” (Judgement 3287 Consideration 13). This constitutes a stunning admission which only confirms the long held view that the Tribunal is no longer fulfilling its function, but relies instead on internal dispute resolution mechanisms, which within the EPO are advisory bodies who make recommendations and lack some key elements of a fair trial system.

Under these circumstances, it is clear that there is no real access to justice for staff and it is only a matter of time until national Courts realise this and will be obliged to assert jurisdiction in order to safeguard staff’s fundamental right to effective justice.

## **6. Bad press for the EPO: the tip of the iceberg?**

Despite millions of Euro invested each year by Mr Battistelli in PR, the internal situation cannot be kept under wraps and away from the eyes of the outside-world. A series of very critical articles have recently appeared in the Press, this at a time when we already have trouble recruiting the examiners we need.

Letter to the French Ministry on public blog:  
<http://www.suepo.org/public/CorderyLetterFr-En-De.pdf>

Süddeutsche Zeitung: Conflict escalates at the EPO  
[http://www.suepo.org/public/Streit\\_eskaliert\\_de\\_en\\_nl.pdf](http://www.suepo.org/public/Streit_eskaliert_de_en_nl.pdf)

Letter to EPO from the UNION SYNDICALE FEDERALE (USF):  
[http://www.suepo.org/public/Letter\\_usf-epo.pdf](http://www.suepo.org/public/Letter_usf-epo.pdf)

Who knows what will be discovered when prying eyes start to look under the carpet?

## 7. Conclusions

As a member of the Administrative Council, you have given Mr Battistelli the mandate to introduce reforms into the social package. Depending on their scope, the consequences of these reforms could be beneficial or adversarial for staff. We are nevertheless convinced that any reform can be carried out by engaging in a genuine and mutually respectful dialogue with staff. However, it is a matter of principle that staff cannot and will not accept to have changes imposed upon them which so blatantly contradict both European labour law standards and universal fundamental rights.

Moreover, Staff cannot and will not accept threats and disciplinary measures taken against their Staff Representatives carrying out their duties. We bring it to your attention that unjustified disciplinary actions against Staff Representatives are punishable by law in all EPO Member States. In the EPO, since no such accountability mechanisms seem to exist, the person you have elected as the head of the EPO is now abusing your trust. You have given him a "carte blanche" to use as a basis for his actions. Only you are able to correct this course of events.

The Staff Representation will always welcome any initiative that might lead to a better future for the EPO and its staff and can be a reliable negotiation partner. It's the current unilateral implementation of measures with only a notional consultation of the staff representation (if any) and their blatant contradiction to European labour law standards, national standards and universal fundamental rights which both created and continues to add heat to this conflict.

Staff is counting on the Council to address these problems and put the EPO on a course that will both resolve the internal conflicts and re-enable it to fulfil its role effectively.

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

Yours sincerely,

SUEPO Central