



## Governing Body

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Programme, Financial and Administrative Section

PFA

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**FOR INFORMATION**

## Functioning of the Administrative Tribunal of the ILO

### An update

**Summary:** The document provides an update on the situation regarding the impact that the number of complaints filed against the European Patent Organisation (EPO) has on the functioning of the Tribunal, measures taken by the EPO, the ILO and the Tribunal to address that situation and the current caseload of the Tribunal.

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**Related documents:** GB.326/PFA/12/1; GB.326/PFA/12/2; GB.329/PFA/11/1; GB.331/PFA/15; and GB.331/PV/Draft.



## Introduction

1. At its 331st Session (October–November 2017) the Governing Body approved the recognition of the jurisdiction of the ILO Administrative Tribunal by the ASEAN+3 Macroeconomic Research Office (AMRO) and confirmed the withdrawal of the World Meteorological Organization (WMO).<sup>1</sup> The withdrawal of the Permanent Court of Arbitration had been considered at the 328th Session (October–November 2016) of the Governing Body. Some concerns were expressed about possible reasons for the recent withdrawals from the Tribunal's jurisdiction and the Office was requested to provide information to the Governing Body at its March 2018 session on the status of the backlog of complaints in the ILO Administrative Tribunal; ongoing efforts by the Director-General to work with the European Patent Organisation (EPO) to reduce that backlog; and possible measures to enhance the functioning of the Tribunal.

## Update on efforts regarding the European Patent Organisation (EPO)

2. In its capacity as the host organization of the Tribunal, and in the interest of preserving the Tribunal's capacity to effectively serve all 60 organizations recognizing its jurisdiction, the ILO has, over the past few years, devoted considerable attention to addressing the situation arising from the disproportionate number of complaints persistently filed against one single organization.
3. The Tribunal itself has pointed out that the large number of complaints filed against the EPO represents the main challenge to its effective functioning.<sup>2</sup> The Director-General first brought this issue to the attention of the Governing Body at its 325th Session (October–November 2015).<sup>3</sup> Subsequently, the Director-General was requested by the Governing Body to engage in discussions with the EPO in order to identify a solution to the difficulties caused by the number of complaints generated within the EPO and which threaten the ability of the Tribunal to serve all other organizations, and to report to the Governing Body at its next session. Reports on the follow up were submitted to the 326th (March 2016) and 329th (March 2017) Sessions of the Governing Body.<sup>4</sup>
4. The excessively large number of complaints filed against the EPO has been the subject of discussions between the Director-General and the EPO President in one direct meeting and numerous exchanges of letters, and has been regularly followed up by the relevant services of the ILO and the EPO.
5. The Director-General offered ILO expertise on social dialogue to assist the EPO in the dialogue between the administration and staff union but this was not taken up.
6. In the latest update of 30 January 2018, the EPO President indicated, among other things, that the Administrative Council of the EPO had approved, in June 2017, a reform of the EPO's internal appeals system and related amendments to the Service Regulations for

<sup>1</sup> [GB.331/PFA/15](#).

<sup>2</sup> [GB.325/PFA/9/1\(Rev.\)](#), para. 13.

<sup>3</sup> [GB.325/PFA/9/1\(Rev.\)](#).

<sup>4</sup> [GB.329/PFA/11/1](#).

permanent employees of the Office. In particular, the reform provides for the appointment of an external Chair and Vice-Chairs to the Appeals Committee and to the Disciplinary Committee respectively, which is intended to increase the perception of independence and professionalism of these committees. The three appointees to the Appeals Committee, whose role and procedural prerogatives as Chair and Vice-Chairs of the Appeals Committee were strengthened, started their three-year mandate in October 2017. Other measures introduced with a view to enhancing the effectiveness of the internal appeals system include: a guided amicable settlement procedure, a “test-case” procedure aimed at setting a precedent for similar appeals; the consolidation of internal appeals; the possibility for the Appeals Committee to sit in parallel chambers in reduced composition to accelerate the treatment of internal appeals; the introduction of a registration fee for internal appeals, which may be reimbursed if the appeal is successful; and the possibility to award procedural costs and damages. In 2018, ten sessions are planned of each of the three chambers of the Appeals Committee with the aim of treating 400 cases which would reduce the time for processing an internal appeal to a maximum of one year.

7. According to the EPO President, the reform efforts appear to have already led to a significant drop in the number of internal appeals, and are expected to result, in due course, in a decrease in the number of complaints lodged with the Tribunal. Relevant statistics show that 110 complaints were filed with the Tribunal against the EPO in 2015, 163 in 2016 and 91 in 2017.
8. The Tribunal confirms the declining trend in the number of new complaints filed against the EPO. Its share of the total number of new complaints filed went from 74 per cent at the beginning of 2016<sup>5</sup> to 39 per cent in 2017. However, this is mainly due to the procedural consequences of Tribunal Judgments 3694, 3785 and 3796. These Judgments dealt with the composition of the internal appeals body of the EPO and the authority competent to deal with the appeals and resulted in the withdrawal of several hundred final decisions taken by the EPO President and the EPO’s Administrative Council. The related internal appeals were re-submitted to the EPO President and the EPO’s newly composed internal appeals body. Consequently, fewer final decisions were being taken by the EPO President, and fewer complaints were therefore filed with the Tribunal. However, the Tribunal has indicated that several new complaints challenge the legality of the new composition of the Appeals Committee with respect to the members appointed by the staff and it is committed to examining this issue shortly.
9. Although decreased, the proportion of EPO-related complaints remains high. It appears that the large volume of complaints filed against the EPO cannot be solely attributed to weaknesses in its internal appeal mechanism but may also be symptomatic of the industrial relations climate within the organization. In this regard, while a Memorandum of Understanding recognizing trade unions present at the EPO as social partners and creating a collective bargaining framework was signed in March 2016 with one of the staff unions, the European Civil Service Federation (FFPE), it has not yet been signed by the most representative staff union, the Staff Union of the European Patent Office (SUEPO).

<sup>5</sup> [GB.326/PFA/12/2](#), para. 7.

## Managing the Tribunal's caseload

10. Faced with the increase in the number of complaints (112 in 2002 to 234 in 2014), the Tribunal adopted several measures to deal with its relatively recently created backlog.
11. At its 116th Session, in autumn 2013, the Tribunal increased the number of cases normally dealt with in a session (from 50 to 78 cases). In February 2014 the Tribunal organized an extraordinary one-week session to deal with 27 cases (the 117th Session).
12. Since its 119th Session, in autumn 2014, the Tribunal has extended the length of its ordinary sessions from three to four weeks. As expected, this has enabled the Tribunal to adjudicate an increased number of cases per session:
  - 119th Session (October 2014–February 2015): <sup>6</sup> 90 cases in 77 judgments (and, in addition, recorded 11 withdrawals);
  - 120th Session (April–June 2015): 95 cases in 90 judgments (and, in addition, recorded eight withdrawals);
  - 121st Session (October 2015–February 2016): 77 cases in 72 judgments (and, in addition, recorded 16 withdrawals);
  - 122nd Session (April–July 2016): 91 cases in 85 judgments (and, in addition, recorded ten withdrawals);
  - 123rd Session (October 2016–January 2017): 102 cases in 97 judgments (and, in addition, recorded eight withdrawals);
  - 124th Session (April–June 2017): 105 cases in 80 judgments (and, in addition, recorded 18 withdrawals); and
  - 125th Session (October 2017–January 2018): 137 cases in 87 judgments (and, in addition, recorded 15 withdrawals).
13. The Tribunal has also reformed the work of the Registry, which is now better focused on assisting the judges. It is also managing an unprecedented level of correspondence with the parties more effectively.
14. Recently, two new judges joined the Tribunal replacing two former presidents and long-time judges of the Tribunal and they took a short time to adapt to the Tribunal's method of work and the style of its judgments, also familiarizing themselves with the case law, which consists of nearly 4,000 judgments. The Tribunal judges, who devote considerable time to the individual review of case files from their home country and the panel deliberations during their stay in Geneva, have made an extra effort to deal with an increased number of cases, notwithstanding the fact that many hold high judicial office in their respective countries or have numerous professional commitments, if retired.
15. In dealing with the list of cases, the Tribunal has needed to balance competing choices. The first was how to deal with the disproportionately large number of cases filed against the EPO while not neglecting other organizations which either had only few complaints filed against them (such as the Intergovernmental Organization for International Carriage by Rail (OTIF) or the WMO), or who had gone through restructuring resulting in changes in the structure of

<sup>6</sup> The latter month reflects the month/year of the public delivery of the judgment.

posts (such as Eurocontrol) or in the abolition of posts and termination of employment (such as the World Health Organization or the International Criminal Court). The second was how to prioritize action depending on the nature of the cases, for example, cases of dismissal and non-renewal of contract were given priority over the cases contesting a non-payment of an amount allegedly due.

16. The Tribunal has also deployed considerable effort to deal expeditiously with complaints that are manifestly irreceivable or devoid of merit in accordance with the summary procedure set out in its Rules. It also now deals promptly with all applications for review, interpretation or execution, ruling on those applications at the first available session.
17. All of this was achieved without an increase in the number of judges or Registry staff. The cost per judgment and the annual overhead cost of the Tribunal were also reduced during this period.
18. As a result of these efforts, the Tribunal has reduced its non-EPO backlog (the number of cases for which the written procedure is completed and can be assigned to a session) to 84 cases at the end of December 2017.
19. There was an EPO backlog of 155 cases representing 64 per cent of the total backlog. Many of the EPO cases are linked and require consideration at the same Tribunal session.
20. It is clear that the statistics of the Tribunal are distorted by the EPO cases, either as the “backlog cases” or newly filed cases (for example, one former EPO official filed 97 complaints against the EPO; in October 2015 some 660 complaints were filed against a single decision of the EPO). To reduce the EPO backlog more rapidly would call for entire Tribunal sessions to be devoted exclusively to the EPO.
21. The non-EPO situation for the period 2015–17 is shown below:

Year	Number of non-EPO cases received	Number of judgments delivered on non-EPO cases	Number of cases covered by the judgments * (including withdrawal)
2015	173	98	131
2016	138	129	158
2017	108	136	162

\* One judgment could sometimes cover several cases of a similar nature.

22. It should be noted that the cases received in a given year do not necessarily result in a judgment during the same year. Once received, the cases follow a written procedure with an exchange of pleadings the duration of which depends on the parties.

## Possible future measures regarding the functioning of the Tribunal

23. The experience and commitment of the judges, assisted by the Registry, appears to have resulted in significant efficiency gains and such efforts need to be supported and sustained.
24. The main challenge to the functioning of the Tribunal remains the large number of EPO complaints. If these were to be reduced to a reasonable level, the Tribunal would be able to function more efficiently and maintain a good level of service for all organizations. In the short term therefore, it is important to be able to assess the results of the measures taken to

date by the EPO. While the EPO seems committed to improving the functioning of its internal appeal procedures, it is still too early to assess the impact of its reforms in terms of preventing excessive litigation and reducing the Tribunal's caseload. Should there be no significant change for the better within a reasonable time frame, and if, for example, final decisions in all of the EPO cases currently subject to its internal procedures result in a large number of complaints to the Tribunal, other, more fundamental, measures would need to be foreseen.