

## AMBA Statement on the Reform of the BoA

On 30 June, the Administrative Council adopted the reforms in “[CA/43/16 Rev.1](#)”. The concerns expressed by AMBA, the Presidium and others, most recently the [IP Federation](#) and [CIPA](#), apply, for the most part, to this reform just as the previous proposals.

The reform appears to improve the independence of the BoA vis à vis the President of the Office in some respects:

- The delegation of administrative tasks to the President of the BoA is more formal than the previous customary arrangement. That it can be withdrawn only in exceptional circumstances and with the involvement of the Administrative Council, is to be welcomed.
- The delegation attributes to the President of the BoA (and thus also to the Chair of the EBoA) the proposal of the budget of the BoA and the initiative of disciplinary proceedings against BoA members.
- The foreseen new function of the President of the BoA has more limited administrative responsibilities than the present VP3 and, thus, any possible involvement of the former in general management committees of the EPO appears implicitly excluded: this fact would of course prevent the situation that led to the finding in R 19/12.

However, the reform also contains measures that reduce the independence of the BoA and falls way short of what should and could have been achieved:

- Instead of safeguarding members’ security of tenure, the link between re-appointment and performance evaluation and the goodwill of the President of the BoA ends the customary re-appointment by default and, thus, effectively limits the security of tenure to 5 years. This may be seen as licensing the exercise of pressure on individual members.
- Despite talk of a “consensus with the Administrative Council”, the reform document states the glaring weakness that the President of the Office retains his power to propose the candidate for Chairman of the EBoA, who will become the President of the BoA.
- Instead of increasing the autonomy of the BoA, the removal of the Presidium and the EBoA roles even in adopting rules of procedure goes in the opposite direction and is a further means of applying undue pressure.
- Instead of providing a career system appropriate to a judicial body, the link between grade and performance evaluation for the Technical

and Legal members may result in substantial differences in remuneration for members doing essentially the same work. This sort of substantial monetary reward for productivity is unknown in Member States (two or three do have a very small fraction of judges' salary dependent on appraisal, and they are strongly criticised for it by the CCEJ).

Finally, other measures in the reform appear either at odds with the EPC or to improve only marginally the independence of the BoA for far too high costs:

- The delegation of the power to make proposals for appointment as members (Art. 11(3) EPC) to the President of the BoA, (i.e. a function within and under the complete control of the AC) means the Administrative Council is the sole organ involved in this key judicial function. This appears to be at odds with the prescription of Article 11(3) itself.
- Similarly, the adoption of Rules of Procedure is now fully under the control of the AC, whereas Article 23 EPC (which significantly is entitled "Independence of the members of the Boards") clearly states that the Administrative Council's role is one of giving or withholding its approval.
- Finally, the aspects of the reform associated with the aim of improving the efficiency of the BoA are based on an erroneous assessment of quality and quantity of their work. It must first be asked why substantial extra expenditure is planned to provide an unnecessary separate building, rather than to ensuring appropriate staffing levels.

Much depends on the how the BoAC and the President of the BoA choose to act. This could lead either to an increase in independence, or the opposite. For 40 years, the President of the Office and the Vice President of DG3 have enjoyed broad discretionary powers. The BoAC and the President of the BoA have similar powers, and their decisions could lead to problems similar to those underlying R19/12. The reform, rather than transferring the problem, should rather have set new guarantees in the written text of the law (albeit secondary law).

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