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PARLIAMENTARY INQUIRY

From Dr Gabriela Moser, Member of Parliament, and colleagues

To the Federal Minister for Transport, Innovation and Technology (BMVIT)

Concerning matters in urgent need of clarification in relation to the Patent Office and the Secretary General of the BMVIT

As can be seen from the version of the BMVIT telephone directory, which was updated on 21 September 2004, and which is for example publicly accessible via the Internet, under "Department for Industrial Property Protection", the now retired section head Dr. Weber was "provisionally" appointed as director of this institution. On the other hand, according to the version updated on 2 November 2004 - that is to say the version currently visible via www.bmvit.gv.at - the director of this body (i.e., the Director of the Austrian Patent Office) is listed as "The Secretary General" - without any further information.

This would lead to the assumption that "The Secretary General" - that is, evidently the Secretary-General of the BMVIT, Dr. Friedrich Rödler - occupies this function in a permanent capacity - unlike his predecessor who was "provisionally" appointed. However, according to the law relating to official notices, the obligation to publish a vacancy notice for this position is expressly prescribed.

Furthermore, the version of the Patent Act that came into force in autumn 2004 provided for the "appointment of the Director by the Federal President [of Austria]". Since the summer of 2004, nothing has been known about either a vacancy notice for this important position or an act of appointment by the then or now Federal President.

Despite numerous strange appointment procedures under the responsibility of the ÖVP-FPÖ governments, in particular in the BMVIT and its sphere of influence, it cannot be assumed that such an important function is filled by means of a blatant circumvention of legal provisions.

Information according to which the appointment of Dr. Friedrich Rödler was (so far?) only of an interim/provisional nature, has now been confirmed. On 21 January 2005, a vacancy notice for the position of Director of the Patent Office was indeed published. However, the text of the vacancy notice is so narrow and selective in several points ("... several years of management of an organization of comparable size ...", "... several years of practical experience in ... administrative management") that almost no one except the BMVIT Secretary General [Rödler] is eligible.

The General Secretary of the BMVIT, who previously worked in the Court of Auditors, was appointed in spring 2001 at the instigation of the then Vice Chancellor to support the then Minister Ms Forstinger, who - among other things - had difficulties involving a

telecommunications ordinance and the activities of a head of cabinet which are still pending before the courts. Soon after, the Secretary General had an initial confrontation with the then Director of the Austrian Patent Office, that in July 2001 led to the loss of the company car for the Austrian Patent Office, which the Secretary General then proceeded to use for himself. From this point onwards, the Patent Office became the constant focus of the (institutional) interest of the Secretary General.

In autumn 2001, at the request of the Secretary General, a management consultancy firm (TPAC) began to review the Patent Office with a view to more economical management. A few months later, the contract to the consulting company was suddenly expanded in the direction of outsourcing and privatization. In the spring of 2002, the consulting firm's activities were terminated very quickly, following a Supreme Court judgment in relation to banking supervision, according to which the sovereign activities of a public authority could not be carried out by an outsourced company. The final report from this consulting firm turned out to be of extremely poor quality despite the high level of costs incurred.

The involuntary retirement of the then Director of the Patent Office took place in October 2002. Soon afterwards, rumours about the Patent Office's relocation from the federal building on Kohlmarkt [in the centre of Vienna] took on concrete form, as locations were examined in close collaboration with the Secretary General.

At the beginning of December 2002, the then Minister Mr Reichhold decided to move the Patent Office to Dresdnerstrasse [a northern suburb of Vienna]. Various aspects of the extremely questionable circumstances surrounding this action have already been addressed in parliamentary questions such as 23/J, 135/J or 136/J.

In addition to this, it is worth mentioning multiple logo design and "corporate identity" processes, e.g. due to a missing federal eagle [logo], which gave rise to considerable - albeit avoidable - financial consequences for the taxpayer and also involved copyright problems - most surprising in the case of the state institution charged with the legal protection of intellectual property!

In the spring of 2003, under the authority of the Secretary General, conditional tenders were issued regarding the relocation of the cabling and office furniture, which were signed on the basis of his written instructions by the then Vice-Director. It is not known whether the failure to comply with the legal obligation under the Federal Procurement Act to entrust the Federal Procurement Agency with this was unintentional or for personal reasons. Perhaps it was believed that they could bypass the Federal Procurement Act by constructing lease agreements. In any case, in view of the Secretary-General's former activities as an auditor, it seems unlikely that this was due to ignorance [of the legal requirements].

Finally, on May 5, 2003, the relocation of the Patent Office took place.

At the same time, an amendment to the Patent Act had been in preparation since 2002 which, in addition to the implementation of an EU Biotechnology Directive, also included a change in the application procedure for the appointment of the Director of the Patent Office. Until then, an application was only possible from the academically qualified staff of the Patent Office with certain mandatory qualifications (former Patent Act, §58 paragraph 4: "*The*

Director and his deputy must have the qualifications required for permanent members of the Patent Office (...)." . The amendment was intended to open up the position for applicants from the business world who did not need to have an academic qualification and who only "should" have knowledge of the property rights sector. For Deputy Directors, the new version of the Patent Act specified these already reduced qualifications as being only aspirational in nature; For the position of Director no qualifications whatsoever (!) were henceforth prescribed at the statutory level (New Patent law, §58, paragraph 5).

It was not until December 2003 that the head of Section II of the BMVIT (Weber) was entrusted with the provisional management of the Patent Office. Official - and not legally compliant - reason: Since the Patent Act amendment was blocked due to the Biotechnology Directive, the position of Director could not be advertised. This situation remained the same until Weber retired (October 2004) and (apparently) the Secretary General [Rödler] was entrusted by Minister Gorbach with the temporary management of the Patent Office.

Now all of a sudden (November 2004) it turned out that the Patent Act amendment could be divided and the part concerning the Biotechnology Directive could be postponed. The Patent Act amendment was passed in Parliament in December 2004; the Greens commented critically on the described, targeted changes in the qualification and appointment modalities for the senior management positions.

The amendment has been in force since the turn of the year and on 21 January 2005, the vacancy announcement for the Director was made, as mentioned above, in a somewhat more targeted manner and exploiting the scope of the amendment in a one-sided manner. All academic staff of the Patent Office have to complete a demanding additional training course of several months with a final service examination in order to master all facets of intellectual property rights issues, especially in the legal interpretation for patent law proceedings (appeal and nullity proceedings).

On the other hand, the sum of the Secretary General's experience in IP law is a mere two years of formal affiliation with the Supreme Patent and Trademark Senate, the final instance in patent litigation (for appeal and nullity proceedings), where he only had to draft a proposal (for a judgment) in a single case.

The Secretary General of the BMVIT has - for unknown reasons - an exceptionally highly remunerated special contract. However, his contract expires in spring 2006. A return to the Court of Auditors - regardless of whether this would be desired there - would be associated with high financial losses. The Secretary General has already applied several times for higher positions (e.g. Head of Section III of the BMVIT, Chairman of the Court of Auditors, Board of Directors of the Austrian Federal Railways), but was not offered any position. Given that the additional position of State Secretary of the same political affiliation was filled elsewhere three months ago (by Edouard Mainoni), it would appear that there is great interest to use at any price what is perhaps the last opportunity for a career move which would "befit his rank". Moreover, in December 2004 it became known that a request had been submitted to the Federal Chancellery for an upgrade of the post of the Director of the Patent Office from the current A(1)8 to A(1)9 (equivalent to a Section Head). Interestingly, the official car, which

was revoked by the Secretary General [Rödler] from the Director of the Patent Office, is now being used exclusively by the provisional Director [Rödler].

The patent system is of great economic and strategic importance, especially nowadays. In recent years, it has become increasingly common practice in the USA and in Europe to use patents not to protect inventions that have been described in detail, but to stake industrial or corporate policy claims (sometimes with retroactive effect). This, and the costly legal proceedings that follow in the event of patent disputes or exploitation interests, tend to benefit the biggest of the big in global (industrial and legal) business. In the meantime, the micro, small and medium-sized enterprises, which are typical of the Austrian economy, are in danger of falling behind, if only because of their more limited financial resources. All the more reason why both professional expertise and diplomatic tact both on the domestic and on the international stage are required especially at the head of the Austrian Patent Office.

In view of these requirements, the obvious intention that this position which is within the remit of Minister Gorbach should be filled in a manner tainted by political "cronyism" ["Versorgungs-Besetzung"] and involving increased costs is completely out of place and also unthinkable from the perspective of economic and innovation policy considerations .

The undersigned parliamentary delegates therefore submit the following

QUESTIONS:

1. What cost implications were associated with the services provided by the management consultancy firm (TPAC) to the Patent Office in 2001-2002, which were expanded by the Secretary General during the ongoing contract in the direction of privatization?
2. Why is the announcement for the position of Director of the Austrian Patent Office so narrowly and administratively specific in several points, although a broader announcement would be possible with the Patent Act amendment (after the amendment 2004, not only Patent Office staff but also patent attorneys could have applied)?
3. Why is it not taken into account in the vacancy notice that a specialist in biotechnology or software issues is sought, since these issues are of the highest priority internationally?
4. Why - in violation of the law on official notices (Section 5, Paragraph 3) - was at least one provisional manager not appointed within one month after the position became vacant (or after three months at the latest, if the re-appointment had to be checked)?
5. Why, more than a year after the post became vacant, was a provisional Director appointed [Dr. Weber] who was not an expert in IP matters and who was expected to retire in ten months?
6. Is it correct that an application has been registered to upgrade the position of Director of the Austrian Patent Office from its current level at A (1) 8 to A (1) 9?
If so, why is this upgrade to take place?
7. From whom did the application for this upgrade come from and when?

8. To what extent does the special agreement of Secretary General Dr. Rödler exist elsewhere a) in the BMVIT, b) in the federal ministries as a whole?
9. Is it correct that in the event that the current Secretary General of the BMVIT ultimately takes over the role of Director of the Patent Office and the application mentioned in questions 7 and 8 is successfully dealt with, the future income of the President will consist of a salary according to A (1) 9 plus a considerable additional endowment for reasons of partial legal capacity in the patent office?
10. In the case of a 50-year-old applicant with long previous employment in the federal service, what amount would this add up to per month?
11. Was the vacancy notice for the Director of the Austrian Patent Office which was published in the Wiener Zeitung on 21 January 2005 formulated in such a narrow or one-sided manner in order to accommodate the current Secretary General of the BMVIT, who is a member of the Supreme Patent and Trademark Senate, but has only participated in one hearing and is therefore certainly not an expert in IP matters?

If not, we request a detailed explanation of other credible reasons for the choice of the exclusionary formulations in the text of the vacancy notice, notwithstanding the theoretical expansion of the group of applicants for this position, which was guaranteed by law a few weeks ago.

12. Re the current Patent Office logo, a) who commissioned it and b) who designed it?
13. Re the current logo or "corporate identity" of the BMVIT, a) who commissioned it and b) who designed it?
14. Is it true that the logo of the Patent Office has been changed several times since Dr. Rödler took office as BMVIT Secretary General as a result of repeated logo design and corporate identity processes in and for the Patent Office, with all the subsequent costs (disposal of printed matter, etc.)?
15. Is it true that in the course of this there have also been copyright problems, for example because of non-original logos?
16. What were the individual costs associated with the activities mentioned in questions 12 and 14?
17. Why, during the relocation of the Patent Office in 2003, in disregard of the Federal Procurement Act (Federal Act on the Establishment of a Federal Procurement Company with Limited Liability, incl. the ordinances BGBl 208/2001, valid from June 2001, and BGBl 312/2002, valid from August 2002), was the Federal Procurement Agency bypassed in the invitation to tender for the relocation, the office furniture and the data and telephone cabling with rental contracts, despite the fact that the Federal Procurement Agency would certainly have obtained more favorable conditions with its framework agreements, all the more so because there would have been more than sufficient time between the decision to relocate in December 2002 and the actual relocation in May 2003?

18. Is it true that the office furniture procured in this questionable way was more expensive and of no better quality than that of a producer who also offered it, and if so, how do you explain this decision, which was obviously not based on objective factors, and who is responsible for it?
19. Is it true that there is an additional member of secretarial staff in the Patent Office to support the "provisional" Secretary General?
20. Is it true that Dr. Rödler was provided with an additional Internet access at the Patent Office, e.g. independent of the system administration, after all deputies and predecessors of Dr. Rödler in this function made do with the normal services offered by the BMVIT and the BRZ? How do you justify this procedure - which is not free of charge - and who initiated it?
21. Is it true that the period during which the questionable contracts were awarded under Minister Forstinger, which was also investigated by the Court of Audit, overlapped with the period of Dr. Friedrich Rödler's activity as Secretary General of the BMVIT?
22. What information do you have on the question of whether and, if so, to what extent the Secretary General was informed about the above-mentioned contract awards during this period?

Original text in German at:

https://www.parlament.gv.at/PAKT/VHG/XXII/J/J_02596/fnameorig_034683.html