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PARLIAMENTARY INQUIRY

From Gabriela Moser, Member of Parliament, and colleagues

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

Concerning the Director of the Austrian Patent Office and his circle

The current Director and head of the Austrian Patent Office, Dr. Friedrich Rödler, was appointed during the term of the ÖVP-FPÖ coalition government.

From the very outset the circumstances surrounding this appointment were remarkable and the subject of parliamentary inquiries and media reports. In the run-up to the appointment, the Patent Act had to be amended by deleting all qualification requirements for the function of the Director of the Austrian Patent Office, since otherwise Dr. Rödler would have been excluded as an applicant from the outset. However, the advertisement for the function itself was then so narrowly defined that it could only be described as "tailor-made" for Dr. Rödler, who at the time was urgently to be removed as Secretary General of the FPÖ Minister Forstinger in the BMVIT, which was no longer under control of the blue faction [FPÖ] but had become orange [BZÖ] following the "[Knittelfeld Putsch](#)".

*[*Translator's Note: A conference of the Freedom Party of Austria (FPÖ) which took place on 7 September 2002 in the small Austrian town of Knittelfeld, Styria, called due to political differences within the party leadership.]*

Dr. Rödler's activity as Director of the Austrian Patent Office was characterized from the beginning by an unfortunate course of aggressive confrontation, both externally and internally.

Inappropriate attacks on the European Patent Office (EPO) and its staff regarding alleged inefficiency and - in line with FPÖ political priorities - purported privileges, prompted the then President of the EPO to respond in the form of an open letter. However, the Director of the Austrian Patent Office continued to act as a kind of self-appointed auditor of the EPO. In order to calm down the situation in 2007, the Director's ongoing *faux-pas* in the European arena made it necessary for the then responsible Federal Minister, now Prime Minister Werner Faymann, to send an apologetic written statement to the EPO staff representatives. Nevertheless, conflicts of this kind continually erupted between Dr. Rödler and EPO institutions and representatives.

With regard to the relationship with his own staff members at the Austrian Patent Office, the Director also likes to resort to highly unorthodox measures, which can only be explained by the fact that they were presumably intended to intimidate the staff. These range from private

legal charges against a staff member after a personal quarrel to disciplinary charges – which were later found to be not only incorrect in content, but even unlawful – directed against a staff representative who was involved in the defence of this staff member. All of the numerous proceedings initiated by him [Rödler] - like those mentioned here as examples - were discontinued by the competent authorities.

Recently, however, more subtle means have been used to make it clear to employees what is desired and what is not. At the Austrian Patent Office, for example, so-called "youngster retreats" are held for younger employees, at which the organizer, the psychiatrist Dr. Miriam S., who is bought in externally at taxpayers' expense, asks among other things - hardly without a mandate from "high up" - whether the employees would have a problem with the fact that Dr. Rödler is an "*self-professed member of the [FPÖ](#)*".

Dr. Rödler's activities, however, regularly reach and exceed the limits imposed by legal provisions, in addition to other limits. As early as 2007, the competent Supervisory Commission for Staff Representation at the Federal Chancellery found that Dr. Rödler's management as head of the Austrian Patent Office had unlawfully curtailed the rights of the staff representation and thus of the employees in a whole series of cases. In this respect - which is by no means the rule, but rather a rare exception at this level - all objections were upheld in full. However, this circumstance does not seem to be of any particular significance from the point of view of the then and now Social Democratic [[SPÖ](#)] departmental management, in particular given that, as a result of this finding, only a warning - the mildest form of punishment provided for in employment law - was issued.

Also in the area of the partially autonomous unit of the Austrian Patent Office ("serv.ip"), whose managing director is at the same time the Director of the Austrian Patent Office according to the Patent Act, developments and occurrences are continuously recorded which are difficult or impossible to reconcile with legal provisions. Under the management of Dr. Rödler, this partially autonomous unit continuously expanded its fields of activity. If the provisions of Sections 58a and 58b of the Patent Act, which regulate the entitlements of the partially autonomous unit, stand in the way of the plans of the managing director, they are simply ignored.

For example, Sec. 58a(1)(3) of the Patent Act stipulates that the partially autonomous unit is only authorized to assist in the preparation of prior art searches and opinions on patentability, and additionally restricts the circle of clients to states and international organizations concerned with tasks in the field of industrial property protection.

Contrary to this clear and unambiguous provision, however, the partially autonomous unit now offers searches and opinions to everyone. This procedure leads - quite apart from the fact that it is unlawful - to the fact that in the cases of an IP right application after the preparation of a search or an expert opinion by the partially autonomous unit, the official activity of the Patent Office is prejudiced to a non-negligible extent. This situation was obviously intended to be avoided by the legislator by means of the above-described limitations of the activities of the partially autonomous unit.

To make matters worse, however, Dr. Rödler has not succeeded in achieving positive financial results despite continuously expanding the activities of the partially autonomous unit. Since he took office, every annual financial statement shows operating losses that can only be compensated by a profit carried forward from earlier times, which has already shrunk considerably in the meantime. This means that instead of providing economic support for the activities of the Austrian Patent Office by the partially autonomous unit, which was the reason and motivation for the spin-off, the exact opposite is the case.

It is surprising that, despite all these abuses, neither the BMVIT Section Head Mr Weissenburger, who is entrusted with the direct supervision of the Director of the Austrian Patent Office, nor the responsible Federal Minister consider it appropriate to take corrective action.

A possible explanation for this impressive forbearance of the superior towards the various illegalities and other misconduct over years and changes of ministers could be the friendly relationship of the two gentlemen and the role of Dr. Rödler during his time as Secretary General of the BMVIT in the - during this time quite successful - career development of Mr Weissenburger.

Whether and to what extent the appointment of the life partner of the BMVIT section head to a post in the partially autonomous unit of the Austrian Patent Office is conducive to correct action on the part of those entrusted with the supervisory oversight of said person is at least questionable. The post now held by the life partner of Mr Weissenburger did not exist before and was - as it seems - created "ad personam" and filled without advertisement.

At the level of the Federal Ministry, in view of the situation described above, it seems that instead of the desire to clean up the situation and bring it into line with the law, there is now more of a desire to subsequently remedy at least the unlawfulness of the partially autonomous unit by adapting and extending its powers accordingly. According to reports, a corresponding amendment to the law is imminent.

The fact that no independent expert opinion on the planned amendment has been obtained, probably so that the relevant provisions can be concealed in an extensive amendment to the Patent Act to avoid raising any dust, fits "optimally" into the overall picture.

The undersigned parliamentary delegates therefore submit the following

QUESTIONS:

1. What a) have you done b) will you do to stop inappropriate and intimidating questions such as the one requesting a statement from employees concerning the party-political affiliation of the Director of the Austrian Patent Office?
2. How was it possible for such questions to arise at the Austrian Patent Office?
3. What monitoring and control measures have been set up in your department to check and ensure the quality of services purchased from external consultants in the department's area of responsibility - such as for the aforementioned "youngster retreats" at the Austrian Patent Office?
4. What steps have been taken within the framework of official and technical supervision vis-à-vis Dr. Rödler in order to ensure compliance with the relevant legal provisions in the future following the discovery of various violations of the Federal Staff Representation Act by the Staff Representation Supervisory Commission?
5. Do you consider this action within the framework of official and technical supervision to be appropriate in view of the repeated relevant problems in the area of the Director of the Austrian Patent Office?
6. Your predecessor in office announced in writing in response to international criticism of the Patent Office Director's continued *faux-pas* on the European stage that he would ensure an improved communication structure within the framework of the BMVIT's internal allocation of responsibilities and that the activities of the individual organizational units in terms of content and media would be coordinated within this framework.

Notwithstanding this, there continued to be similar disputes with the EPO instigated by the Director of the Austrian Patent Office and his spokesperson with strong accusations such as "a quagmire of debt". How do you explain this fact? Were the very specific announcements made by your predecessor in the context of direct service and technical supervision not implemented and enforced vis-à-vis the top management of the ÖPA? If so, who was responsible for this?
7. The preparation of prior art searches and patentability opinions by the partially autonomous unit of the Patent Office (serv.ip) is outside the limits of Section 58a(1)(3) of the Patent Act and is clearly unlawful. Why has it been neglected to stop this activity?
8. Why should the powers of the partially autonomous unit in this regard now be extended ?
9. What concrete, in particular economic, advantages for the Austrian Patent Office are supposed to result from this, having regard to the intended purpose of the partially autonomous unit at the time of its establishment?

10. Why should the amendment of the Patent Act referred to in question 8 be carried out without an expert opinion on this intended new regulation?
11. Do you consider this procedure to be transparent and desirable in terms of democratic policy?
12. The position now held in the partially autonomous unit of the Austrian Patent Office by the partner of the head of section in your ministry was not advertised before it was filled.

Although there was no unconditional obligation to advertise: Do you consider an appointment of the partner of the immediate superior of the head of the department responsible [the Patent Office] to be justifiable without a call for applications and a comprehensible selection procedure? If so, on what grounds?

13. What measures a) have you taken, b) will you take, to counter the impression of a lack of official and professional supervision by a high-ranking representative of your institution in return for possible personal favors?
14. The friendly relationship between the Director of the Austrian Patent Office and his immediate superior, the highest-ranking representative of your institution, is widely known. In view of the abuses described above, do you consider the impartial exercise of official and technical supervision over Dr. Rödler to be guaranteed?

If so, on what grounds?

15. The partially autonomous unit of the Patent Office only recently had to settle a VAT back payment of several hundred thousand euros in the wake of a tax audit. Is it correct that plans a) existed b) still exist to include a provision in the Patent Act for a comprehensive sales tax exemption for the partially autonomous unit?
16. Were you aware of the abuses described above concerning Dr. Rödler's management of the Patent Office?
 - a) If yes: Is the hesitant or complete lack of intervention a pilot test for a possible upcoming SPÖ-FPÖ party-political cooperation?
 - b) If not: How could such abuses have remained hidden from the departmental leadership?

Original text in German at:

https://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_03503/fnameorig_170301.html