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14.6.2013

To the governments of the member states of the European Patent Organisation

**European Patent Organisation is seeking to limit Freedom of Association for Staff
(decision planned on 26 June 2013 by the Administrative Council)**

Dear «PMArede» «PMName»,

The Staff Union¹ of the European Patent Office² (SUEPO) wishes to draw your attention to the risk associated with the proposed introduction of regulations which limit freedom of association within the EPO. These regulations are the latest in a series of limitations of staff rights and will further escalate an already heated internal conflict. The measures are not consistent with ECtHR jurisprudence on fundamental rights, national legislation of most members states, or the jurisprudence of the ILOAT.

The proposed measures engage the responsibility of your country as represented by your delegation to the Administrative Council (AC) of the European Patent Organisation to protect fundamental rights of staff, including the right to strike. If introduced, the measures will result in legal challenges against member states of the EPO for breach of obligations set out under international conventions to enforce such fundamental rights, and will likely draw the attention of a wide range of media. This attempt by the President to depart from the *acquis communautaire* would appear to be at odds with the values and assumptions underlying the recent decision to entrust the EPO with the practical implementation of the Unitary Patent.

Since Mr Battistelli joined the EPO as its President, a series of changes to the Service Regulations have been introduced which, in combination with backlogs within the internal appeals process and at the Administrative Tribunal of the International Labour Organization, have led to a situation where no effective legal protection of staff rights exists. The delays for new appeals are expected to be in excess of 15 years meaning that it is no longer possible to obtain a judicial review of the acts of the Office within reasonable time.

Several of the measures which have been put in place in our view contravene fundamental rights, such as the right not to self-incriminate or the inviolability of the home and family. The most recent initiative, the planned introduction of strike regulations (cf. Annex 1), raises such clear violations of fundamental rights that the proposed introduction will engage the positive obligation of the member states to protect such rights under the ECHR.

1 50% of EPO staff, i.e. 3300 people, are member of SUEPO
2 www.epo.org

The President of the Office is seeking powers to strictly and unilaterally *regulate* industrial actions within the EPO. He is doing so at a time of social unrest, where the staff of the EPO are engaging in actions to oppose other measures introduced by the President. The Staff Committee was informed by the President of his intention on 16 May 2013 at which time he indicated that he would start formal procedures to implement the measures and submit the proposal to the Administrative Council for decision during its meeting on 26 and 27 June 2013.

The proposal was subject of formal consultation of the EPO's General Advisory Committee on 13 June. However, in the past two years the President has consistently disregarded that body's opinions. Furthermore, the complexity of the issues and very short time frame for preparation raised questions regarding the bona fide nature of the formal consultation process. A comparison with practice in member states shows that detailed discussions between Staff Unions and employer would be required before reaching a viable *agreement*.

The new regulations contain passages which give carte blanche to the President, enabling him to introduce further change without the need for approval by the Administrative Council. If the regulations are passed, the President will assume that he may define unilaterally the duration of strikes and the procedures that must be followed before strikes are permitted (cf. Annex 2 "Circular on Strike"). The proposed circular - which the President is not presenting to the Administrative Council - is so restrictive that the right to strike will be rendered ineffective. The Administrative Council cannot provide the President with powers that the AC itself does not have, such as reducing the right to industrial action for Unions.

A list of 13 measures which we consider to violate the fundamental rights of staff is provided in an annex to this letter (cf. Annex 3). Although a more in depth legal study is still required some key points are clear, and a preliminary comparison with national practice and recent developments in the case law of the ECtHR regarding Article 11 ECHR (Freedom of Association) indicates serious grounds for concern (cf. Annex 4).

In our view, the limitations of the fundamental rights contained within the proposal engages the obligations of the member states to act to protect these rights. This is particularly true since the EPO's (internal) legal system (independent from national jurisdictions) does not provide for timely justice any more. We also bring to your attention that the potential violations of fundamental rights are not limited to the EPO legal order, but also affect the rights of third parties, such as the Staff Unions, which have no standing before the internal legal system and are therefore denied the right of access to court to protect their rights.

An approval by the national delegations at the Administrative Council of the proposed strike regulations will have far reaching consequences. Not only will it result in an escalation of the internal conflict, but it will also present a significant risk of disputes external to the EPO legal order, and is likely to result in discussions in public fora, drawing the attention of European, national and international media.

We would much appreciate if the responsible ministries could conduct, a proper evaluation of the obligations of your country under international conventions before any decision is taken in the Administrative Council of the EPO that impacts on the rights of EPO staff.

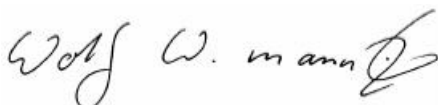
We respectfully point out that your attention to this matter is urgently required since the President of the EPO has declared that he intends to submit his proposal to Administrative Council of the European Patent Organisation for decision on 26 June 2013.

Thank you very much in advance for your consideration.

Respectfully yours,



Desmond Radford
Chairman
Central Executive
Committee of SUEPO



Wolfgang Manntz
Chairman
Executive Committee of SUEPO
Local Section Berlin



Malika Weaver
Vice-Chairwoman
Executive Committee of SUEPO
Local Section Munich



François Brévier
Chairman
Executive Committee of
SUEPO Local Section The
Hague



Joachim Michels
Chairman
Executive Committee of
SUEPO Local Section Vienna

Copies to:

«Min1Anrede» «Min1Name», «Min1Title»

«Min2Anrede» «Min2Name». «Min2Title»

«Min3Anrede» «Min3Name», «Min3Title»

Mr Martin Schulz, President of the European Parliament

Ms Carola Fischbach-Pyttel, General Secretary European Federation of Public Service Unions

Mr Jesper Kongstad, Chairman of the Administrative Council of the European Patent Organisation

Mr Benoît Battistelli, President of the European Patent Office

4 Annexes

Country	PMName	PMGiven	PMArede	PMTitle	PMStreet
Albania	Berisha	Sali	Prof. Dr.	Prime Minister	Bulevardi "Dëshmorët e Kombit" Nr. 1
Austria	Faymann	Werner	Mr	Bundeskanzler	Bundeskanzleramt, Ballhausplatz 2
Belgium	Di Rupo	Elio	Mr	Prime Minister	Wetstraat 16
Bulgaria	Raykov	Marin	Mr	Prime Minister of the Republic of Bulgaria	Council of Ministers of the Republic of Bulgaria, 1 Dondukov Blvd
Switzerland	Maurer	Ueli	Mr	Bundespräsident	Bundeshaus West
Cyprus	Anastasiades	Nicos	Mr	The President of the Republic	Presidential Palace
Czech Republic	Zeman	Miloš	Mr	President of the Czech Republic	Pražský hrad
Germany	Merkel	Angela	Dr.	Bundeskanzlerin	Bundeskanzleramt, Willy-Brandt-Straße 1
Denmark	Thorning-Schmidt	Helle	Mr	Prime Minister	Christiansborg, Prins Jørgens Gård 11
Estonia	Ansip	Andrus	Mr	Prime Minister	Stenbocki maja, Rahukohtu 3
Spain	Rajoy	Mariano	Mr	Prime Minister	Palacio de la Moncloa, Avd Puerta de Hierro s/n
Finland	Katainen	Jyrki	Mr	Prime Minister	Snellmaninkatu 1 A, Helsinki
France	Hollande	Francois	Mr	President of the Republic	Palais de l'Elysée, 55 rue du Faubourg Saint-Honoré
United Kingdom	Cameron	David	The Right Honourable	Prime Minister	10, Downing Street
Greece	Samaras	Antonis	Mr	Prime Minister of the Hellenic Republic	Irodou Attikou 19
Croatia	Josipović	Ivo	Mr	President	Pantovčak 241
Hungary	Orbán	Viktor	Mr	Prime Minister	The Prime Minister's Office
Ireland	Kenny	Enda	Mr	Taoiseach	Department of the Taoiseach, Government Buildings, Upper Merrion Street
Iceland	Gunnlaugsson	Sigmundur Davíð	Mr	Prime Minister	Stjornarradshusid vid Laekjartorg
Italy	Letta	Enrico	Mr	Presidenza del Consiglio dei ministri	Palazzo Chigi, Piazza Colonna 370
Liechtenstein	Hasler	Adrian	Mr	Regierungschef	Regierungsgebäude, Peter-Kaiser-Platz 1
Lithuania	Butkevičius	Algirdas	Mr	Prime Minister	Gedimino pr. 11
Luxembourg	Juncker	Jean-Claude	Mr	Premier Ministre	Ministère d'Etat, Hôtel de Bourgogne
Latvia	Dombrovskis	Valdis	Mr	Prime Minister	36 Brīvības Boulevard
Monaco	Roger	Michel	Mr	Minister of State	Place de la Visitation
Malta	Muscat	Joseph	Dr.	Prime Minister	Auberge de Castille
Netherlands	Rutte	Mark	Mr	Minister-president	Ministerie van Algemene Zaken, Binnenhof 19
Norway	Stoltenberg	Jens	Mr	Prime Minister	The Office of the Prime Minister, Glacisgata 1
Poland	Tusk	Donald	Mr	Prime Minister	Kancelaria Prezesa Rady Ministrów, Al. Ujazdowskie 1/3
Portugal	Passos Coelho	Pedro	Mr	Prime Minister	Rua da Imprensa à Estrela, 4
Romania	Ponta	Victor-Viorel	Mr	Prime Minister	Palatul Victoria, Piața Victoriei nr. 1
Serbia	Dacic	Ivica	Mr	Prime Minister and Minister of the Interior	Nemanjina 11
Sweden	Reinfeldt	Fredrik	Mr	Prime Minister	Prime Minister's Office, Rosenbad 4
Slovenia	Bratušek	Alenka	Ms	Prime Minister	Gregorčičeva 20, 25
Slovakia	Fico	Robert	Mr	Prime Minister	Námestie slobody 1
San Marino	Valentini	Pasquale	Mr	Minister for Foreign and Political Affairs	Palazzo Begni Contrada Omerelli, 31
Turkey	Erdoğan	Recep Tayyip	Mr	Prime Minister	Vekaletler Caddesi Başbakanlık Merkez Bina
Republic of Mac	Gruevski	Nikola	Mr	President of the Government of the RM	Bldv. Ilinden No.2

The French Government received a similar letter previously, so this letter has so far not been sent to them.

PMCode	PMCity	Min1Name	Min1Anrede	Min1Title
1000	Tiranë	Aldo Bumçi	Mr	Minister of Foreign Affairs
1010	Wien	Doris Bures	Ms	Bundesministerin für Verkehr, Innovation und Technologie
1000	Brussel	Johan Vande Lanotte	Mr	Minister for Economic Affairs
1594	Sofia	Kristian Vigenin	Mr	Minister of Foreign Affairs of the Republic of Bulgaria
3003	Bern	Simonetta Sommaruga	Ms	Bundesrätin des Eidgenössischen Justiz- und Polizeidepartement
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119 08	Praha 1	Petr Nečas	RNDr.	Prime Minister
10557	Berlin	Sabine Leutheusser-Schnarrenberger	Ms	Bundesministerin der Justiz
1218	Copenhagen K	Annette Vilhelmsen	Ms	Minister for Business and Growth
15161	Tallinn	Hanno Pevkur	Mr	Minister of Justice
28071	Madrid	José Manuel Soria	Mr	Minister of Industry, Energy and Tourism
00023	Government	Jan Vapaavuori	Mr	Minister of Economic Affairs
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10 000	Zagreb	Zoran Milanović	Mr	Prime Minister
1357	Budapest, Pf. 6.	Tibor Navracsics	Dr.	Minister of Public Administration and Justice
	Dublin 2	Eamon Gilmore	Mr	Tánaiste and Minister for Foreign Affairs & Trade
150	Reykjavik	Ragnheiður Elin Árnadóttir	Ms	Minister of Industry and Commerce
00187	Roma	Flavio Zanonato	Mr	Ministero dello Sviluppo Economico
9490	Vaduz	Thomas Zwiefelhofer	Dr.	Minister für Inneres, Justiz und Wirtschaft
01103	Vilnius	Juozas Bernatoniš	Mr	Minister of Justice
2910	Luxembourg	Etienne Schneider	Mr	Ministre de l'Économie et du Commerce Extérieur
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813 70	Bratislava	Tomáš Borec	Mr	Minister of Justice of the Slovak Republic
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Minister for Europe	FCO Main Building, King Charles Street	SW1A 2AH	London	Damian Green	Mr
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Minister for Foreign Affairs and External Trade	Raudararstigur 25	150	Reykjavik	Hanna Birna Kristjánsdóttir	Ms
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Minister of the Interior	Sölvhólgata 7	150	Reykjavik
Minister van Veiligheid en Justitie	Turfmarkt 147	2511 DP	Den Haag
Minister of Justice and Public Security	Gullhaug Torg 4A	0030	Oslo
Minister for Justice	Ministry of Justice, Rosenbad 4	103 33	Stockholm