

CA/57/13

Orig.: en

Munich, 07.06.2013

SUBJECT: Amendment of the Service Regulations concerning strikes and unauthorised absence

SUBMITTED BY: President of the European Patent Office

ADDRESSEES: Administrative Council (for decision)

SUMMARY

Deriving from the freedom of association, the Office recognises and respects its employees' right to strike. This right is nevertheless not absolute and its exercise has to be subject to minimum requirements. Those requirements shall serve to balance the interest of the service with the interest of the employees under consideration of the principle of proportionality. The right to strike is not currently regulated in the Service Regulations. Therefore, and as a further step towards providing a solid basis for social dialogue in the Office, it is proposed to provide for a clear legal framework in which this right may be exercised and to amend the regime for unauthorised absence, for harmonisation purposes.

Note: This document is being published prior to the meeting of the General Advisory Committee (GAC). The GAC is to be consulted at its next meeting, scheduled on 13 June 2013. The President will inform the Council of the opinion of the GAC and of any action taken following this opinion.

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PART I

I. STRATEGIC/OPERATIONAL

1. Operational.

II. RECOMMENDATION

2. The Administrative Council is requested to approve the draft decision set out in Part II below.

III. MAJORITY NEEDED

3. Three-quarters of the votes.

IV. CONTEXT

4. Based on Article 30 ServRegs, that provides for freedom of association, the Office recognises and respects its employees' right to strike.
5. However, the current statutory framework does not expressly provide for the right to strike and for the conditions to exercise this right. The Office has no collective agreements with the staff representation in place either.
6. Aspects such as registration of strike participation and deduction of remuneration have been regulated by the President and the administration in different administrative notes.

V. ARGUMENTS

7. Based on principles applied in many European countries, as well as acknowledged by the International Labour Organization, the right to strike may be subject to fulfilling certain minimum requirements. It is proposed to introduce in the Service Regulations a legal framework balancing the right to strike with the principles of sound organisation of the public service. This implies that, whilst respecting the right to strike, rules shall be set to ensure the minimum functioning of the Office, the respect of security and freedom and the self-determination of all employees.

8. For this purpose, a new Article 30a ServRegs shall be introduced that lays down the following principles which will be applicable to all employees, regardless of their appointing authority:
- definition of a strike as a collective and concerted work stoppage for a limited duration related to the conditions of employment, thereby drawing a clear distinction from other possible forms of industrial action;
 - acknowledgement of the right to call for strike for Staff Committee (Central or Local), for an association of employees or for a group of employees;
 - a vote by the employees is required before starting a strike;
 - a strike shall be notified in advance to the President of the Office;
 - all participating employees are obliged to inform the Office about their strike participation, otherwise they may risk that unauthorised absence is established;
 - strike participation shall lead to a deduction of remuneration;
 - the President may also issue, with regard to all staff, requisition orders and take any appropriate measures to guarantee the minimum functioning of the Office, as well as the security of the staff and the Office's property;
 - further terms and conditions with regard to all employees, regardless of their appointing authority, may be laid down by the President of the Office.
9. A deduction of remuneration at a rate of 1/20th of the monthly remuneration will apply per strike participation in a working day. Articles 63 and 65 ServRegs governing unauthorised absence and payment of remuneration will thus be amended accordingly for the purpose of harmonisation.

VI. ALTERNATIVES

10. None

VII. FINANCIAL IMPLICATIONS

11. None

VIII. LEGAL BASIS

12. Articles 10(2)(c) and 33(2)(b) EPC

IX. DOCUMENTS CITED

13. None

X. RECOMMENDATION FOR PUBLICATION

14. Yes

PART II

Draft

DECISION OF THE ADMINISTRATIVE COUNCIL
of [date of decision]
inserting an Article 30a and amending Articles 63
and 65 of the Service Regulations for permanent
employees of the European Patent Office

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the European Patent Convention, and in particular Article 10(2)(c) and Article 33(2)(b) thereof,

Having regard to the Service Regulations for permanent employees of the European Patent Office (hereinafter referred to as "the Service Regulations"), and in particular Articles 63 and 65 thereof,

On a proposal from the President of the European Patent Office, submitted after consulting the General Advisory Committee,

HAS DECIDED AS FOLLOWS:

Article 1

The following new Article 30a of the Service Regulations shall be inserted:

"Article 30a

Right to strike

(1) All employees have the right to strike.

- (2) A strike is defined as a collective and concerted work stoppage for a limited duration related to the conditions of employment.
- (3) A Staff Committee, an association of employees or a group of employees may call for a strike.
- (4) The decision to start a strike shall be the result of a vote by the employees.
- (5) A strike shall be notified in advance to the President of the Office. The prior notice shall at least specify the grounds for having resort to the strike as well as the scope, beginning and duration of the strike.
- (6) Employees shall inform the Office about their participation in a strike.
- (7) The freedom to work of non-strikers shall be respected.
- (8) Strike participation shall lead to a deduction of remuneration.
- (9) The President of the Office may take any appropriate measures, including requisitioning of employees, to guarantee the minimum functioning of the Office as well as the security of the Office's employees and property.
- (10) The President of the Office may lay down further terms and conditions for the application of this Article to all employees; these shall cover inter alia the maximum strike duration and the voting process."

Article 2

Article 63(1) of the Service Regulations shall be amended to read as follows:

"(1) Except in case of incapacity to work due to sickness or accident, a permanent employee may not be absent without prior permission from his immediate superior. Any unauthorised absence which is duly established shall lead to a deduction of the remuneration of the permanent employee concerned pursuant to Article 65(1)(d)."

Article 3

Article 65(1) of the Service Regulations shall be amended to read as follows:

"(1)(a) Payment of remuneration to employees shall be made at the end of each month for which it is due.

(b) Where remuneration is not payable in respect of a complete month, the monthly amount shall be divided into thirtieths and

- where the actual number of days for which pay is due is fifteen or less, the number of thirtieths payable shall equal the actual number of days for which pay is due;

- where the actual number of days for which pay is due is more than fifteen, the number of thirtieths payable shall equal the difference between the actual number of days for which pay is not due and thirty.

(c) Notwithstanding the provisions of (b), where remuneration is not payable in respect of a complete month owing to participation in a strike, the monthly amount shall be divided into twentieths to establish the due deduction for each day of strike on a working day.

(d) Notwithstanding the provisions of (b), where remuneration is not payable in respect of a complete month owing to unauthorised absence, the monthly amount shall be divided into twentieths to establish the due deduction for each day of unauthorised absence on a working day.

(e) Where entitlement to any of the allowances provided for in Article 67 commences at or after the date of entering the service, the employee shall receive such allowance as from the first day of the month in which such entitlement commences, provided that any request for the allowance is submitted within six months of the date on which entitlement commences, unless otherwise provided in these Regulations. If an allowance is requested after expiry of the above six-month period, it shall be granted retroactively but only for the six months preceding the month in which the request was submitted, except in a duly substantiated case of force majeure. On cessation of such entitlement the employee shall receive the sum due up to the last day of the month in which entitlement ceases.

(f) All permanent employees in receipt of an allowance shall inform the President of the Office immediately in writing of any change which may affect their entitlement to that allowance."

Article 4

This decision shall enter into force on 1 July 2013.

Done at Munich, [date of decision]

For the Administrative Council
The Chairman

Jesper KONGSTAD

Existing text	New text
	<p style="text-align: center;">Article 30a</p> <p style="text-align: center;">Right to strike</p> <p>(1) All employees have the right to strike.</p> <p>(2) A strike is defined as a collective and concerted work stoppage for a limited duration related to the conditions of employment.</p> <p>(3) A Staff Committee, an association of employees or a group of employees may call for a strike.</p> <p>(4) The decision to start a strike shall be the result of a vote by the employees.</p> <p>(5) A strike shall be notified in advance to the President of the Office. The prior notice shall at least specify the grounds for having resort to the strike as well as the scope, beginning and duration of the strike.</p> <p>(6) Employees shall inform the Office about their participation in a strike.</p> <p>(7) The freedom to work of non-strikers shall be respected.</p> <p>(8) Strike participation shall lead to a deduction of remuneration.</p>

<p style="text-align: center;">Article 63</p> <p style="text-align: center;">Unauthorised absence</p> <p>(1) Except in case of incapacity to work due to sickness or accident, a permanent employee may not be absent without prior permission from his immediate superior. Any unauthorised absence which is duly established shall be deducted from the annual leave of the permanent employee concerned. If he has used up his annual leave, he shall forfeit his remuneration for an equivalent period.</p> <p style="text-align: center;">Article 65</p> <p style="text-align: center;">Payment of remuneration</p> <p>(1) (a) Payment of remuneration to employees shall be made at the end of each month for which it is due.</p> <p>(b) Where remuneration is not payable in respect of a complete month, the monthly amount shall be divided into thirtieths and</p>	<p>(9) The President of the Office may take any appropriate measures, including requisitioning of employees, to guarantee the minimum functioning of the Office as well as the security of the Office's employees and property.</p> <p>(10) The President of the Office may lay down further terms and conditions for the application of this Article to all employees; these shall cover inter alia the maximum strike duration and the voting process.</p> <p style="text-align: center;">Article 63</p> <p style="text-align: center;">Unauthorised absence</p> <p>(1) Except in case of incapacity to work due to sickness or accident, a permanent employee may not be absent without prior permission from his immediate superior. Any unauthorised absence which is duly established shall be deducted from the annual leave of the permanent employee concerned. If he has used up his annual leave, he shall forfeit his remuneration for an equivalent period lead to a deduction of remuneration of the permanent employee concerned pursuant to Article 65(1)(d).</p> <p style="text-align: center;">Article 65</p> <p style="text-align: center;">Payment of remuneration</p> <p>(1)(a) Payment of remuneration to employees shall be made at the end of each month for which it is due.</p> <p>(b) Where remuneration is not payable in respect of a complete month, the monthly amount shall be divided into thirtieths and</p>
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<p>- where the actual number of days for which pay due is fifteen or less, the number of thirtieths payable shall equal the actual number of days for which pay is due;</p> <p>- where the actual number of days for which pay is due is more than fifteen the number of thirtieths payable shall equal the difference between the actual number of days for which pay is not due and thirty.</p>	<p>- where the actual number of days for which pay is due is fifteen or less, the number of thirtieths payable shall equal the actual number of days for which pay is due;</p> <p>- where the actual number of days for which pay is due is more than fifteen, the number of thirtieths payable shall equal the difference between the actual number of days for which pay is not due and thirty.</p> <p>(c) Notwithstanding the provisions of (b), where remuneration is not payable in respect of a complete month owing to participation in a strike, the monthly amount shall be divided into twentieths to establish the due deduction for each day of strike on a working day.</p> <p>(d) Notwithstanding the provisions of (b), where remuneration is not payable in respect of a complete month owing to unauthorised absence, the monthly amount shall be divided into twentieths to establish the due deduction for each day of unauthorised absence on a working day.</p>
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<p>(c) Where entitlement to any of the allowances provided for in Article 67 commences at or after the date of entering the service, the employee shall receive such allowance as from the first day of the month in which such entitlement commences, provided that any request for the allowance is submitted within six months of the date on which entitlement commences, unless otherwise provided in these Regulations. If an allowance is requested after expiry of the above six-month period, it shall be granted retroactively but only for the six months preceding the month in which the request was submitted, except in a duly substantiated case of force majeure. On cessation of such entitlement the employee shall receive the sum due up to the last day of the month in which entitlement ceases.</p> <p>(d) All permanent employees in receipt of an allowance shall inform the President of the Office immediately in writing of any change which may affect their entitlement to that allowance.</p>	<p>(c) (e) Where entitlement to any of the allowances provided for in Article 67 commences at or after the date of entering the service, the employee shall receive such allowance as from the first day of the month in which such entitlement commences, provided that any request for the allowance is submitted within six months of the date on which entitlement commences, unless otherwise provided in these Regulations. If an allowance is requested after expiry of the above six-month period, it shall be granted retroactively but only for the six months preceding the month in which the request was submitted, except in a duly substantiated case of force majeure. On cessation of such entitlement the employee shall receive the sum due up to the last day of the month in which entitlement ceases.</p> <p>(d) (f) All permanent employees in receipt of an allowance shall inform the President of the Office immediately in writing of any change which may affect their entitlement to that allowance.</p>
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