

EPO FLIER No. 13

The EPO-FLIER wants to provide staff with uncensored, independent information at times of social conflict.

The spirit of the regulations

“We are not here trying to build a reform which is compatible with each of your nation's, with each of your state's law. We are trying to build something which is useful for the Office, for the Organisation. So, if in some cases, it is not compatible with the German law, or the UK law, or the French law, this is not the issue. The issue is: is it useful for the Organisation?”¹

This statement of the president raises a number of questions:

1. **If Mr Battistelli thinks that a (career) reform does NOT need to comply with national law, does he take care that it respects any other (labour) law standard, such as the European Convention on Human Rights, or conventions of the International Labour Organization?**

There is no evidence that he does.

Modern democracies usually work by the **rule according to a higher law**. It means that no law may be enforced unless it conforms with certain universal (written or unwritten) principles of fairness, morality, and justice ².

Mr Battistelli does not see a need to respect this general rule ³:

During the past two years, the president has repeatedly demonstrated that he respects no standards other than his own. He has managed to win the delegations over to support regulations which can only survive in the context of the Office's immunity ⁴. He undertakes a structural dismantling of legal recourse. He introduced investigation guidelines that would have made Securitate, Stasi or NSA happy. He undermined the right to freedom of association. When the president introduced the strike regulations, he showed that **international conventions** ratified by the Member States do not count. He muzzles unions and staff representatives. He abuses powers to discipline dissenting voices ⁵. He shows a complete disregard for (even unanimous) opinions of the Internal Appeals Committee or the Disciplinary Committees by passing harsher judgment than recommended ^{4,6}. He repeatedly demonstrated that neither the letter nor the **spirit of the Service Regulations** count ⁷. This applies to those parts of the regulations he inherited and even to those he wrote himself ⁸.

¹ Mr Battistelli, commenting on the career reform during the BFC meeting on 20 November 2014

² https://en.wikipedia.org/wiki/Rule_According_to_Higher_Law

³ SOCIAL CONFLICT AT THE EUROPEAN PATENT OFFICE, <http://www.suepo.org/public/su14294cp.pdf>

⁴ EPO-FLIER No. 8 – Balancing views, Annex: “Des Sonnenkönigs neue Kleider”

⁵ <http://www.worldipreview.com/news/epo-suspends-former-committee-member-7363>

⁶ Letter of Union Syndicale Fédérale to the Administrative Council's chairman (21.03.2014),

<http://suepo.org/public/su14076cp.pdf>

⁷ Communiqué No. 41 and IFLRE strike notification, www.suepo.org/archive/sc13173cl.pdf

⁸ <http://www.sueddeutsche.de/muenchen/europaeisches-patentamt-beschaefigte-begehren-auf-1.1826233>

The above clearly shows that - for Mr Battistelli - **standards for legal recourse** as defined for instance by the European Court of Human Rights do not count.

Also public observers, represented by newspapers⁹ and patent attorneys' homepages¹⁰, come to realise that – under the presidency of Mr Battistelli – there is an absence of the rule of law at the EPO.

2. Is the proposed reform useful for the Organisation? Can the EPO examiners - in the absence of the rule of law - still correctly and consistently apply the EPC and Guidelines to patent examination? Can the EPO still fulfill its mandate of providing legal certainty to the public?

The SUEPO Central Committee recently posed a similar question:

“If the EPO is granting patent rights to inventors and European industry, how credible are those rights if delivered by an institution that is ostensibly unable to comply with the rule of law in its own internal affairs?”³

Let's try to find an answer to these questions. Mr Battistelli recently said:

*“Most of our managers have **not** been chosen for their managerial capacities. They have been chosen because they were acknowledged experts in their field. We have to transform these managers into real managers.”¹*

What does the president have in mind when he talks about “real managers”? Technical expertise is obviously no longer required. Are “real managers” expected to follow the example of our VPs and PDs, who (already) obey and blindly follow our larger-than-life president?¹¹ An entirely performance-based career system puts managers and employees under pressure to increase production. With the rule of law being absent, and in a working environment being dominated by fear and intimidation, not only ill-motivated managers but also weak and intimidated ones are tempted to put their subordinate employees under pressure to fulfill even the most unrealistic targets. And in the presence of threats, many of them will fulfill these expectations, while lowering the search and examination standards.

Mr Battistelli further said:

“Except an exceptional professional conscience and personal motivation, nothing incents them to work harder or to work less.” ... “By opening this technical career ... we will provide incentives until the very last day of their professional life.”¹

Mr Battistelli has apparently no respect for the professional attitude of EPO employees which made the European patent system a success. The EPO is not listed at the stock exchange. It is a public service provider. And blotting out professional conscience and ethics produces adverse effects. Some examiners already started distancing themselves from their work. This leads to a lower examination quality, and – consequently – to less legal certainty of the granted patents.¹² A consequence of a lack of dialogue. The New Career System was developed without acknowledging receipt of, without discussing, and certainly without taking account of any of the elements and arguments of the career counterproposal of the CSC.

⁹ [Revolte an der Isar, FAZ am Sonntag, 23.11.2014, http://www.suepo.org/public/ex14289cp.pdf](http://www.suepo.org/public/ex14289cp.pdf)

¹⁰ <http://www.fosspatents.com/2014/12/european-patent-office-pays-for-health.html>

¹¹ EPO-FLIER No. 11 - “You break every rule of good man-management”

¹² *Patent examiners more likely to approve marginal inventions when pressed for time*
http://news.illinois.edu/news/14/0813patent_examiners_MelissaWasserman.html

If voted by the Administrative Council this week, the New Career System will be introduced without any transitional period. All current EPO staff will be exposed to a radical change of their working contract. For the examiners, this means that - due to the entirely income-based incentives – the EPO abruptly stops rewarding efforts for compliance with the EPC mandate. Being pushed by their managers, they will be forced to fulfill unrealistic targets, and many will react to this pressure by lowering their quality standards for search and examination.

Mr Battistelli can consult the **spirit of the regulations** whenever he runs out of arguments ⁷. But it would possibly lead to some irritation amongst the patent applicants if examiners – being pressed for time – would rather generally refer to **the spirit of the EPC**, instead of developing a sound reasoning based on the Articles and Rules of the EPC.

Mr Battistelli's decision to introduce a fully performance-based career system has either been taken on the ground of wrong assumptions, or for ulterior motives. He still insists to introduce this system, against the will of staff, and in an environment where the rule of law is absent. It is already difficult to deliver high quality work in the current hostile working climate. If the New Career System is introduced in its current form, the EPO will no longer be able to fulfill its mandate of providing legal certainty to the public.

3. Is Mr Battistelli good for the Office, for the Organisation?

The EPO employees have already given their answer. During a staff union General Assembly held on 4 March 2014 in Munich, 750 staff members voted for the following resolution:

"The staff has lost trust in Mr Battistelli and is concerned not only about its own future, but also about the negative repercussions on the functioning of the European patent system as a whole. It has become clear that the proper performance of the tasks of the individual staff members, and therefore of the European Patent Office, is incompatible with the continuing presidency of Mr Battistelli." ¹³

The answer to this question should normally be given by the members of the Administrative Council who are responsible for ensuring good governance in the Organisation. Voting for the New Career System on 11 December would implicitly confirm a mandate to the president to continue on a destructive course. At least some delegations seem to share the discomfort of staff and interested circles. And the EPO employees are not the only ones waiting for their answer. Also the stakeholders of the European patent system and others being interested in intellectual property rights expect an answer to this question ¹⁴.

The attached Open Letter to the delegations in the Administrative Council, of 5 December 2014, elaborates on the implicit change of patent law entailed in the New Career System.

¹³ <http://munich.suepo.org/archive/su14047ml.pdf>

¹⁴ <http://ipkitten.blogspot.de/2014/12/in-suspense-about-european-patent.html>