

# **MINUTES**

of the

136th meeting of the

## **ADMINISTRATIVE COUNCIL**

Munich, 26 and 27 June 2013

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The summary of decisions has been issued separately as CA/63/13.

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The Administrative Council of the European Patent Organisation held its 136th meeting in Munich on 26 and 27 June 2013, with Jesper Kongstad (DK) presiding. The chairman welcomed the participants (see list in Annex 1), especially Uta Rothfuss as new member of the German delegation.

## 1. AC AND GENERAL AFFAIRS

### 1.1 Adoption of the agenda (CA/51/13)

1. First, the Council unanimously decided to keep on the agenda CA/55/13 Corr. 1 + 2 ("Social report for 2012", item 9.1), and CA/59/13 ("Functioning of the Administrative Tribunal of the International Labour Organization", submitted by the Central Staff Committee via the President under Article 9(2.2)(b) of the rules of procedure), even though all three documents (for information) had been published between the 8- and 16-day deadlines under Article 9(2.3) and (2.1) of those rules.
2. Next, the Council unanimously approved the list of "A" items in CA/51/13. It thus noted the information in:
  - CA/15/13 e ("Exchange of information on current trends in activity at national patent offices and the EPO"; item 1.6)
  - CA/53/13 ("Status of ratification procedures"; item 3.3)
  - CA/16/13 + Corr. 1 + Add. 1 ("Progress report on co-operation with member states"; item 4.2)
  - CA/36/13 ("Opinion given by the RFPSS Supervisory Board pursuant to Article 7 RFPSSRegs"; item 8.2)
  - CA/5/13 and CA/6/13 ("Quarterly RFPSS management reports (3/2012 + 4/2012)"; item 8.3)
  - CA/9/13 ("Report on the EPO's staff home loans scheme"; item 10.1)
  - CA/43/13 "Daily cost of an A- and B/C-grade" (= item 11.5), and
  - CA/11/13 and CA/12/13 ("Quarterly financial statements (4/2012 + 1/2013)"; item 11.6)

and unanimously approved

- the draft working agreements on search co-operation with San Marino and Lithuania set out in Annexes 1 and 2 of CA/54/13, thereby authorising the President to sign them on behalf of the Organisation (= item 3.4), and
  - the draft decision in Part II of CA/34/13 ("Amendment of Article 50 FinRegs"; item 11.8) [see CA/D 8/13].
3. In accordance with the policy set out in CA/26/12 Rev. 1 and unanimously approved at its June 2012 meeting, the Council also unanimously decided that CA/15/13, CA/43/13, CA/53/13 and CA/54/13 should be published on the EPO website, but not CA/6/12, CA/11/13, CA/12/13, CA/16/13 + Corr. 1 + Add. 1 and CA/34/13.
4. The Council then agreed to the chairman's suggestion that, after discussion of item 9.1 ("Social report for 2012"), the staff representatives be given a brief opportunity to present the results of a study commissioned by the Central Staff Committee.
5. In the light of the above, the Council unanimously adopted the agenda in CA/51/13.

#### **1.2 Approval of the minutes of the 135th meeting (CA/47/13)**

6. The Council unanimously approved the draft minutes of its 135th meeting, as set out in CA/47/13 [see CA/PV 135].

#### **1.3 Chairman's activities report (B28/4/13 e)**

7. The chairman gave an oral report on the 53rd meeting of the Council's Board, held in Amsterdam on 27 May 2013 primarily in preparation for the present meeting (see B28/4/13 e, "Summary of conclusions").
8. The Council noted this oral report.

#### **1.4 President's activities report**

9. Before giving his presentation on recent developments at the Office, the President referred to the recent staff unrest. From his point of view, it was important to reconcile the staff's legitimate right to expression, including, where appropriate, demonstrations, and the need to guarantee the proper functioning of the Office along with that of the Administrative Council and its various bodies. That was why

Office management had authorised staff to do what they were doing before the start of the present meeting. It had at the same time imposed very strict conditions to prevent any danger of things getting out of hand. At the present meeting, the Council would be called on to vote on a draft decision establishing a – hitherto non-existent – legal framework to exercise the right to strike. He made it very clear that this right was not being called into question (see item 9.3 below).

10. After these opening remarks the President reviewed developments since the last meeting, when he presented his written activities report for 2012 (see CA/44/13).
11. The trends observed in 2012, a record year, had lasted on into the first quarter of 2013, and the number of European patent filings had continued to increase. Between April 2012 and March 2013, the Office had received 260 600 filings, 5.2% more than the figure for the period April 2011 to March 2012. At the end of May 2013, examiner productivity was up 2% on the end of May 2012, and according to the estimates, the Office had published 3.7% more patents in the first half of 2013 than in the first half of 2012. 32% of these grants had been made in the 36 months following filing, or an increase of 1% on the same period in the preceding year. It therefore seemed that the total duration of the procedure had remained stable in spite of the increased workload, which showed that the strategy to boost efficiency was paying off. One aim of this strategy was to manage a growing workload by redeploying resources to activities directly connected to the patent grant process. That was why the recruitment of new examiners was a top priority. In 2013, to fill the 4 121 budget posts for examiners, the Office had to recruit 210 examiners, 82 to fill vacancies owing to retirement or other departures, and 128 to fill new posts. By comparison, in 2012, there were 102 recruitments, 70 to fill posts that had become vacant and 32 to fill new posts. The Office had recruited 40 new examiners by the end of May.
12. Maintaining and improving quality was just as important as the production figures. To that end the Office had:
  - restructured the Principal Directorate Quality Management so that it could provide better operational support
  - set ambitious quality goals
  - devised a quality policy for the EPO
  - published a draft of the EPO's Quality Manual
  - updated the 'Handbook of Quality Procedures'.

13. DG 3's production in terms of appeals settled had continued to increase, in spite of the growing number of appeals filed. Over the first five months of 2013, 1 248 technical appeals had been filed, a slight increase on the corresponding period in 2012. The number of appeals settled in the same period had risen 7.6% compared with the number of appeals settled between January and May 2012. At the end of May, there were 7 661 appeals pending before the technical boards. Aside from its overall increase in production, DG 3 had kept up its efforts to improve efficiency, in particular through recruitment and reviewing the caseload distribution between the different boards. A new technical board would be set up in autumn 2013, while another one was planned for 2014.
14. In the areas of personnel and general administration, the priority during the first half of 2013 had been the re-organisation of the Principal Directorate Human Resources. This had made it possible to resolve certain longstanding problems through the implementation of the new internal appeals system approved by the Council in December 2012, and the entry into force of the EPO investigation guidelines and the code of conduct. The discussions on improving well-being at work had resulted in the proposal for consideration at the present meeting (agenda item 9.2), and the talks with staff on the reform of the career system, performance management and promotions were ongoing in various working parties. Inevitably, raising delicate, long-overlooked subjects met with opposition. The draft strike rules, on which the Council would be called on to vote at the present meeting, was a case in point. In spite of the opposition, it was essential to end the laxness and anarchy which had reigned for too long, and to move towards a balanced solution tailored to the Office's needs.
15. In the area of general administration, significant progress had been made on the implementation of measures set out in the buildings roadmap, in Berlin (in co-operation with the German authorities), Vienna and, last but not least, The Hague.
16. 2013 was the second year in which the strategy defined in the co-operation roadmap was being implemented. Over the first months of this year, bilateral co-operation plans had been signed with the national offices of Croatia, Germany, Hungary and Malta, bringing to 13 the number of plans signed to date. 19 others were in the process of being drafted. The President reiterated the commitment made when new co-operation policy was being introduced, i.e. that the projects in the national action plans concluded under the former co-operation policy should be seen through to their conclusion.
17. One of the most important projects in terms of technical co-operation was the introduction of a machine translation system. Significant progress had been made recently, and the aim of supporting the national languages of all the EPO member

states by the end of 2013 would be met. In parallel, the machine translation system was already operational for Japanese, via "Patent translate", and Russian would follow very soon.

18. Regarding the Federated Register, another important project, deep links with 25 national offices were now in place.
19. Sign-off on the EPOQUE rebuild project was imminent, and would happen just as soon as deployment of the most recent version was complete.
20. Eight national offices had already taken up the training offered in the Organisation's three official languages, within the framework of the agreements signed at the start of the year with the Goethe Institut, the British Council and the Institut français, and eight other national offices had expressed their interest in this type of training.
21. The information day on co-operation, held in Munich on 6 March, followed by the annual meeting on co-operation, taking place in Reykjavik at the start of June, had provided a new opportunity to promote interactive, constructive, open and transparent dialogue with the member states on project implementation and co-operation activities.
22. The PATLIB conference, which took place in Munich at the end of April, had once again been a big success, and had drawn over 150 patent-information professionals.
23. One of the biggest patent-information events would be the conference organised in Bologna in October.
24. Recent months had been marked by series of very fruitful contacts with users, SACEPO, FICPI (International Federation of Industrial Property Attorneys), FEMIP (European Federation of Agents of Industry in Industrial Property), as well as other groups, including users from other parts of the world. The Office had recently conducted an online survey to gather the views of users on a number of political questions, and the outcome would feed into the development of concrete proposals on rules and fees. At any event, all the contact with users had shown that they attached great importance to the quality of the Office's products and services. This could only strengthen the Office's resolve to build on its quality, while at the same time increasing its efficiency.
25. The EPO's Academy was continuing to deliver on the agreed activities, with a particular focus on supporting EQE candidates, especially those from countries where the number of professional representatives was low.
26. Regarding classification, after the entry into force of the CPC, on 1 January 2013, a new important step had been taken in April with the publication of the first revised version of the CPC scheme. The training of staff at national offices in this new classification scheme was ongoing.



27. As for international co-operation, rapid progress had been made in the first half of the year under the framework of IP 5 co-operation. The sixth annual meeting of the heads of the five Offices involved in this co-operation had taken place at the start of June, with meetings with industry representatives on the margins. The Chinese and the Korean Offices had indicated their intention to switch to the CPC classification very soon, which would then make it the *de facto* world standard in patent classification.
28. Brazil was one of the fastest growing emerging economies, and its influence in the IP world was set to develop. Under an agreement recently concluded between the Office and the national office of Brazil (INPI), the INPI would start classifying newly filed documents according to the CPC scheme in certain technical fields for a pilot phase from 1 July to 1 September. The plan was to sign a memorandum of understanding on the introduction of the CPC at the INPI at the end of 2013.
29. Another strand of the strategy on bilateral co-operation was the negotiation and conclusion of validation agreements. In keeping with the mandate it had been given by the Administrative Council at the previous meeting, the Office had received a delegation from Georgia with which it had agreed a work programme for 2013 to 2014 with a view to concluding a validation agreement. The legislation ratifying the agreement validating European patents in Morocco had passed before the Council of Government, the last step before its final ratification by the Moroccan parliament. And finally, the negotiations on a validation agreement with the OAPI were progressing well, and the President expected to be able to submit this agreement to the Council for approval at its next meeting.
30. There were no recent developments to report in the area of international harmonisation of substantive patent law. The Office experts had analysed the findings of the user consultation exercise launched as part of the "Tegernsee process". These results would be sent to the member states in sufficiently good time for them to be discussed at the next meeting of the Committee on Patent Law in mid-September. It was planned to hold the next meeting of the heads of Office involved in the Tegernsee process on the sidelines of the next meeting of the WIPO Assemblies in Geneva at the end of September.
31. Concluding, the President mentioned the great response to this year's European Inventor Award ceremony, held in Amsterdam on 28 May. Responding to a question from the Italian delegation at the end of the 106th meeting of the Budget and Finance Committee, he said that in terms of the attention received, from the media in particular, and the visibility of the European patent system, the return on this event, covered by 60 journalists and attended by senior European politicians, was double what it had cost to organise it.

32. The UK delegation, followed by the Swedish, Slovak, Turkish, Italian, Serbian and Polish delegations, thanked the President for this very comprehensive report, and congratulated him, along with his management team and the Office's staff, on the excellent results achieved again in practically all areas over the recent period.
33. The Bulgarian delegation endorsed these compliments. The results the President had just presented were impressive. It added that stepping up activities should continue to go hand in hand with the pursuit of the policy on quality. Machine translation and language training programmes were also very important, particularly for small countries like Bulgaria. The Bulgarian delegation also thought that staff policy was being taken in the right direction, and it found it fairly difficult to understand why staff were dissatisfied.
34. The German delegation in turn thanked the President for his report, and congratulated him, along with his management team and the Office's staff, on the excellent results achieved. In particular it welcomed the drive to recruit new examiners.
35. The Portuguese delegation took the floor to add its praise to that of the other delegations. In spite of the economic crisis, firms were continuing to invest in R&D and innovation, and that was why it was crucial that the Office continue to provide high-quality services.
36. The Spanish delegation, after extending its thanks and compliments to the President, his management team and the staff, said that it had picked up on a comment in the President's report to which it fully subscribed: that the Office should be open to users. That was very important for users and for the national offices of the member states.
37. The Council noted the President's presentation of his activities report.

<b>1.5 Request by Montenegro for observer status on the Technical and Operational Support Committee and Committee on Patent Law (CA/37/13 e)</b>
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38. The chairman tabled CA/37/13 e.
39. The Council unanimously decided to give Montenegro observer status on these two committees.

<b>1.6 Exchange of information on current trends in activity at national patent offices and the EPO (CA/15/13 e)</b>
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40. "A" item – see item 1.1 above.

## **1.7 Any other strategic and personal issues (restricted composition)**

41. Meeting in restricted composition, without the observers and staff and Office representatives (apart from the President), the Council
- noted the outcome of a recent independent enquiry by Internal Audit concerning Vice-President DG 4, a Council appointee, and noted with great satisfaction that the enquiry had shown that all allegations against him were unfounded, and expressed every sympathy for him
  - addressed various questions relating to the social situation and social dialogue, and reiterated its full support for the President in searching for reasonable and balanced measures.

## **2. APPOINTMENTS/ELECTIONS**

### **2.1 Council appointments 2013**

42. The chairman pointed out that two important elected officials would need to be replaced soon on the expiry of their terms of office, namely the deputy chairmen of the Council (currently Miklós Bendzsel, head of the Hungarian delegation) and Budget and Finance Committee (currently Friedrich Rödler, head of the Austrian delegation). A document would be issued shortly inviting the delegations to propose candidates. Ideally, the elections should take place at the Council's next meeting (15 and 16 October 2013).
43. The Council noted this.

### **2.2 Board of Auditors – composition**

44. The chairman explained that, as mentioned at the previous meeting, the Council would have to appoint, at its December 2013 meeting at the latest, a successor to Michel Camoin (FR), whose term as member of the Board of Auditors ended on 31 December 2013. To help find potential candidates, on 9 April he had sent the heads of delegation a note drawn up by the Council Secretariat in close co-operation with the board and setting out the desired profile for this extremely important function. So the delegations were requested to try to identify candidates and nominate them, via the Secretariat, by 15 August. They should bear in mind the three EPO official languages were English, French and German, and the two other board members (Hannes Schuh, AT, and Ola Hollum, NO) currently covered German and English respectively. Mr Camoin's successor should therefore be a French-speaker. So far, no nominations had been received.

45. The French delegation said France started looking for candidates with the right profile.
46. The Council noted this information.

### **2.3 Supervisory Board of the Academy of the European Patent Organisation – composition (CA/58/13)**

47. The chairman said he had perhaps been slightly optimistic to say, at the previous meeting, that at the present one it might be possible to put forward solutions, drawn up together with the chairman of the Academy's Supervisory Board, to put right the flaws in the Academy's regulations which had led to recurrent difficulties in appointing the board's members or alternates. In any event, as stated in CA/58/13, one position as alternate member remained vacant and no names had been put forward.
48. The Council noted this.

### **2.4 Boards of appeal – appointments and reappointments (CA/C 4/13)**

49. Meeting in restricted composition, without the observers and the staff and Office representatives (apart from the President and the Vice-President DG 3), the Council unanimously decided to make the following appointments:
- Andreas Haderlein (AT), as technically qualified member of the boards with effect from a date to be fixed in consultation with Vice-Presidents DG 1 and DG 3;
  - Ambrogio Usuelli (IT), as technically qualified member of the boards with effect from a date to be fixed in consultation with Vice-Presidents DG 1 and DG 3;
  - Klaus Schenkel (ES), as technically qualified member of the boards, subject to Article 8 ServRegs and with effect from a date to be agreed between him and the President;
  - Paula San-Bento Furtado (PT/GB), as technically qualified member of a new board to be created in the field of electricity and with effect from a date to be fixed in consultation with Vice-Presidents DG 1 and DG 3;
  - Ronald de Man (NL), as technically qualified member of a new board to be created in the field of electricity and with effect from a date to be fixed in consultation with Vice-Presidents DG 1 and DG 3.

### 3. LEGAL AND INTERNATIONAL AFFAIRS

#### 3.1 Unitary patent and related developments – status report

50. The head of the Irish delegation, representing the country holding the EU presidency until 30 June 2013, said it was better if this status report on the unitary patent was given by the chairman of the Select Committee; that was where the main developments were now occurring.
51. The Council noted this.

#### 3.2 Report of the chairman of the Select Committee on its 2nd meeting

52. The chairman of the Select Committee reported not only on its 2nd meeting, held in The Hague on 29 May 2013, but also on the 3rd, which had taken place just before the present meeting. The discussions at both had focused on institutional matters, but some substantive issues were now also in hand. The committee had for example adopted its rules of procedure, work programme plus timeline, and communication policy.
53. On communication policy, it had decided that all non-confidential documents submitted to it would be made available, once discussed, to all the Council delegations, on a new, separate database called "Micado U". The procedure for confidential documents would be the same as for the Council's "C" documents.
54. Regarding the timeline, the committee aimed to take final decisions in June 2014 on the level and apportionment of renewal fees, the unitary patent implementing regulations, and the compensation mechanism for translation costs. But its work programme was not set in stone, and could be updated as required.
55. The committee had also received a number of requests for observer status, from various organisations and from EPC contracting states not taking part in enhanced co-operation on unitary patent protection.
56. Under its rules of procedure, as adopted at its 3rd meeting, the European Commission already had observer status, in accordance with the EU regulations on the unitary patent. So did the Board of Auditors and EPO staff representatives. The committee had also decided that *epi* and BusinessEurope could be observers.

57. As regards the requests from four EPC contracting states not taking part in enhanced co-operation, the committee had decided to consider only Switzerland's and Turkey's; Spain and Albania had submitted theirs too late. An initial exchange of views had identified a number of objective parameters to be applied to such requests, namely: the respective powers of the Select Committee, Administrative Council and Budget and Finance Committee; the legitimate needs of the EPC contracting states, both those taking part in enhanced co-operation and of those that were not; and various legal criteria such as EU membership. It was also important not to discriminate between EPO member states. After this exchange of views, the committee had concluded that before any formal decision on the requests from Switzerland, Turkey and the other contracting states, there should be talks with their representatives to get a better idea of the reasons behind their requests, and to decide whether and how to meet them given the various objective parameters just mentioned.
58. On the substantive issues, the committee had conducted an initial discussion of draft unitary patent implementing regulations submitted by the Office, and asked the delegations to submit any questions and comments in writing.
59. The committee had agreed to hold its next meeting on 18 September 2013 (the day after the 43rd meeting of the Committee on Patent Law). Also, a workshop would be organised just before or after the Budget and Finance Committee's 107th meeting (29-30 October 2013), with the Office providing statistics and financial data enabling the committee to define a methodology for drawing up financial projections to fixing fee levels.
60. The Swiss delegation was pleased that its own request, and those of other EPC contracting states, were being considered. It hoped the dialogue just announced by the committee's chairman would be fruitful.
61. The representatives of the *epi*, BusinessEurope and EPO staff said they were pleased to have been given observer status.
62. The Croatian delegation said its country would become the 28th member state of the European Union on 1 July 2013, and had already requested observer status on the committee.
63. The Turkish delegation stressed the need to maintain the Office's performance and ensure its financial sustainability. That made it indispensable for non-EU countries which were EPC contracting states to be observers on the Select Committee.
64. The Council noted the oral report given by the chairman of the Select Committee.

### **3.3 Status of ratification procedures (CA/53/13)**

65. "A" item – see item 1.1 above.

### **3.4 Working agreements on search co-operation – request for mandates to conclude agreements with San Marino and Lithuania (CA/54/13)**

66. "A" item – see item 1.1 above.

## **4. TECHNICAL CO-OPERATION/INFORMATION**

### **4.1 Report of the chairman of the Technical and Operational Support Committee on its 77th meeting**

67. The TOSC chairman reported orally on its 77th meeting, held in Munich on 23 April 2013 (for draft minutes, see CA/T 12/13).

68. The UK delegation was pleased to hear that there would be a transition period when moving to the new online filing system. That was very important for the member states, whose own systems were closely interconnected with the Office's.

69. The Council noted this.

### **4.2 Progress report on co-operation with member states (CA/16/13 + Corr. 1 + Add. 1)**

70. "A" item – see item 1.1 above.

## **5. AUTOMATION**

## **6. AWARD OF CONTRACTS**

## **7. BUILDING MATTERS**

### **7.1 Award of contract to design and construct a New Main building at the EPO's Rijswijk site (CA/XP 1/13 Rev. 1)**

71. Meeting in restricted composition, the Council unanimously authorised the President to enter into negotiations with the TBI consortium New Main, 3000 BJ Rotterdam, Netherlands, led by HEVO BV, to conclude a design and construct contract for a new main building on the EPO's Rijswijk site, under the conditions specified in CA/XP 1/13 Rev. 1.

**7.2 Authorising the President to conclude amendments to the contract for a New Main building at the EPO's Rijswijk site without the prior approval of the Budget and Finance Committee (CA/XP 2/13)**

72. Meeting in restricted composition, the Council unanimously approved the measures proposed in CA/XP 2/13.

**8. RESERVE FUNDS FOR PENSIONS AND SOCIAL SECURITY (RFPSS)**

**8.1 Report of the Chairman of the RFPSS Supervisory Board (CA/22/13 + CA/48/13)**

73. The deputy chairman of the RFPSS Supervisory Board reported that the 2012 results had been very good. The same was true for 2013, with a performance up to the end of May of 5.7%, which was 0.8% above benchmark. The Funds held almost EUR 5bn in assets now. Over the last 10 years, the long-term actuarial objective had been 5.4% and the Funds had reached a performance of 6.4%. ppc metrics, an external consultant, had reviewed the Funds' strategic asset allocation. The new strategy adopted by the Board was designed to reach the long-term objective over 20 years. Nevertheless, there was a risk of 21.3% of not reaching the objective. Such a level of risk was, however, normal for a fund which had to invest in shares. The external performance measurement services provider WM had once more confirmed that the Fund Administration had exceeded the benchmark and that the information ratios were positive and in the upper range compared to other pension funds. Lastly, the delegations were invited to contribute to achieve the special tax status of the Organisation with regard to the financial transaction tax. In the absence of a tax exemption, the Funds stood to lose 2m euros per year.

74. The Council noted the oral report of the deputy chairman of the RFPSS Supervisory Board on its 80th and 81st meetings.

75. The Council congratulated the deputy chairman and the Fund Administrator on the excellent work.

**8.2 Opinion given by the Supervisory Board of the RFPSS pursuant to Article 7 of the RFPSS Regulations (CA/36/13)**

76. "A" item – see item 1.1 above.

**8.3 Quarterly RFPSS management reports (3/2012 + 4/2012) (CA/5/13 + CA/6/13)**

77. "A" item – see item 1.1 above.



## 9. PERSONNEL/POLICY MATTERS

### 9.1 Social report for 2012 (CA/55/13)

78. The President introduced the document, stressing the need for transparency. Times had changed. An international public organisation had a duty to inform the public. The Office informed on its accounts and published an activities report on the internet. It offered extremely favourable conditions, which were a cause of pride. It had nothing to hide, as conditions matched the staff's professional qualifications and quality of work. The employment package was entirely self-financed, resulting from the Office's capacity to generate the necessary income. A self-financing organisation was in fact an exception among international public institutions. Lastly, the report might contain imperfections. In the coming year, it would be even more complete and accurate and would be submitted to Council meetings in March, based on the preceding year's data.
79. The French delegation believed that the report permitted an objective reading of the social performance of the Organisation, enabling the Council to see the efficiency of the human resources roadmap as well as important axes of progress, such as tackling absenteeism and preventing occupational disease. The Office was to be congratulated for having taken the initiative. It was important to publish such reports yearly.
80. The German delegation believed the report to be one of the most important documents, giving objective information, enabling the Council to consider developments and furnishing an indicator of the success of existing measures as well as the need to take new ones. The last social report dated back to 1991. It would welcome regular reports, if possible yearly, and believed that updating an existing report was not as much work as providing an initial one.
81. The Swedish delegation regarded the report as being equally important as reports that related to the Office's financial performance and other such documents. Information on staff performance was critical in order to recruit and retain, among other things. The report formed a very good basis for work in the HR area and was a good complement to the HR roadmap. Yearly publication was much appreciated, by way of a complement to all other reports which the Council received. Information on gender and nationality distribution in the Office, sick leave days, staff representation activities, internal appeals etc was important to follow and monitor. The report on the current year would reveal what progress had been made and what had actually happened in the various areas.

82. The Italian delegation welcomed yearly publication of such reports, as a further initiative around the human resources or social roadmap. It was pleased to read that Italy ranked fourth in terms of number of staff.
83. The Polish delegation was pleased to receive such comprehensive information, which had normally been limited to financial matters only. For the first time in 20 years, the Council had the opportunity to analysis the Office's social environment. It hoped that the collective reward would be supplemented by additional performance criteria, if it were to be granted again. The Polish delegation expressed its support for the policy adopted and presented in the report.
84. The Swiss delegation agreed with previous speakers, especially the French and German delegations. It remarked that the Table 9 showed that Switzerland was underrepresented in terms of staff numbers, whereas other countries, such as the Netherlands and France, were overrepresented. This was normal phenomenon in host countries, though. There could be no doubt that qualifications, not quotas, were the most important recruitment criteria. However, if a table such as table 9 was provided, then population size should be supplemented by other criteria such as patent activity, meaning where patents came from and where they were validated. If this were the case, Switzerland would in fact be massively underrepresented in terms of staff numbers.
85. The Hellenic delegation thanked the President and encouraged him to enhance social reports in the years to come. It would like to see the more indexes being elaborated, as that was a way to monitor dynamics and developments, which was more important than outlining the status quo.
86. The Portuguese delegation welcomed the very clear and transparent report, which was a very important management instrument for both the Office and the Council. This type of information had been missing in the past. Annual distribution was much welcomed. In Portugal, it was obligatory to draft such a report, which was made available to the public.
87. The President confirmed that annual publication and submission to March Council meetings was in fact the Office' s intention. The Office also wished to make such reports public beyond the realms of the Council. He explained that the table on nationality distribution and population of EPC countries had been included at the frequent demand of delegations. All recruitment decisions were based on qualification and quality only. No quotas applied and statistics were published for information purposes only. But as some countries needed some support, the Office had put into place a programme which enabled candidates with the necessary technical qualifications who lacked the language requirements, to be employed on a three year contract first.

88. The staff representatives gave a presentation of the CSC Staff Survey 2013. This had revealed a reduction of autonomy and an increase in job strain compared to the last survey. While the staff's confidence in their immediate superiors was relatively high, confidence rates reduced dramatically further up the hierarchy. Trust in the President had decreased since the last survey. The staff's perception was that top management was not interested in a constructive dialogue with the staff. Staff also perceived that the importance of qualitative compared to quantitative objectives had deteriorated. Staff identified with the information provided by the staff representatives, which was considered relevant. There were strong indications of staff discord and staff's communication means were being strongly limited.
89. The President remarked that the methodology underlying the CSC Staff Survey was questionable. The Office had carried out a staff survey with good response rates and objective questions. It would conduct a new staff survey in 2014.
90. The Council noted CA/55/13 + Corr. 1 d+f as well as the President's explanations and looked forward to receiving such reports on a more continuous basis.
91. The Council decided to make CA/55/13 + Corr. 1 d+f available to the public.
92. The Council noted a presentation given by the staff representatives on a staff survey which they had conducted.

## **9.2 Improving working conditions and well-being (CA/56/13)**

93. The President introduced the document. He highlighted that the Office offered a very competitive salary and a work package with very favourable conditions. Flexibility was ever increasing through flexitime and part-time home working. The Office also supported social activities through AMICALE. Sick leave levels amounted on average to 50% of annual leave days, which was too high for an organisation like the EPO. The legal basis of the intended measures set out in CA/56/13 would be explained to the delegations. Medical examinations would be carried out by external doctors.
94. The Principal Director 5.3 (Legal Affairs) explained that the Service Regulations already foresaw a number of control possibilities. The employer owed a duty of care and provided paid sick leave. As a corollary, the employee had a duty to cooperate. With the proposed new measures, more emphasis would be placed on how this control could shape out. Visits to an employee's home were foreseen. In

the German national system, this was a discretionary decision enforced through health insurance companies, who paid an employee's salary after a certain time of sick leave. Control visits of this type were not unknown in national legislations, especially in Germany. The inviolability of the home and the right to privacy were protected through the Declaration of Human Rights and, in the case of Germany, the Basic Law for the Federal Republic of German ("Grundgesetz"). It was not proposed to force entry into an employee's home. It was up to the discretion of the employee whether or not to accept entry. The Office clearly acknowledged the limitations to its powers in the Service Regulations and the EPC. The new measures would not affect existing conditions: a full salary would be paid for up to 250 days. No medical certificate was needed for the first three days of sick leave. The preservation of full medical confidentiality would continue.

95. The Principal Director 4.3 (Human Resources) explained that the proposals concerned new measures of sick leave verification, to be conducted through an external company employing doctors. The Office already used a number of measures focussing on preventing sickness, extended sick leave and long-term invalidity.
96. The President explained that the measures reflected basic practice all over Europe. They were a way of modernising how the Office was dealing with sick leave and absences.
97. The Swedish delegation supported the work done in this area, as it supported the HR roadmap. The Office had grown and the Council, as owner of the Organisation, had tried to accommodate this growth by dealing with problems as they arose. That had led to a patchwork of measures as well as lack of structure and rules, which the Council was now trying to address. In such an environment, it was difficult to check whether any given measure had led to an improvement-a challenge for management and anyone working in the Organisation. It would be helpful to get a long-term view of the results obtained by the various measures proposed. The Council had to ensure a balance between good management and the efficient functioning of the Organisation on the one hand and a good working climate with good working conditions on the other hand. Sufficient time and opportunity had not been given thoroughly to investigate the proposals under items 9.2 and 9.3, so as to suggest alternative drafting, if necessary, or to consider the different alternatives that might have existed. Whilst Part I could be supported, Article 26(2) in Part II needed to be reworded. Article 62 was drafted too open-endedly. It concerned measures of an extraordinary nature, where other available means had been exhausted. The President's competence should be restricted by confining it to those singular cases where reasonable doubts existed that absence on grounds of incapacity was not claimed for bona fide reasons. Reference to medical examinations in connection with the President in Article 62 were

unnecessarily misleading. Article 6(15)(b) should be deleted. The Swedish delegation was prepared to work with the Office to find alternative wording. It was not in a position to support the current draft.

98. The French delegation outlined its national practice in the field of sick leave verification. In a relationship of confidence between employer and employee, verification of the state of health of a staff member at home could also serve to enhance solidarity in a team. The proposed measures were good ones, to be used as a last resort and with great discernment.
99. The Finnish delegation believed that clear rules governing working relationships had been very much needed. This was the case for strike and sick leave management alike. The Finnish delegation had had some issues with the detailed wording in some places. It based its opinion on the President's and the Office's assurances that the proposals were in conformity with international standards, ILOAT norms and the European Convention on Human Rights.
100. The Netherlands delegation reported on a drastic decrease in sick leave as a result of sick leave management measures, which were now common practice in the Netherlands. It, too, based its views on the reassurances from the Office that the proposed measures were drafted according to international standards. It also believed that the Council should be very careful with the wide wording in Article 26(2) ("the terms and conditions under which such medical examinations are performed shall be laid down by the President of the Office"). But with this remark, in general, it support the document.
101. The Swiss delegation would vote in favour of the proposal, which should indeed not be overregulated or try to cater for each individual case. The use of general terms as well as giving the President discretion, was sensible. Whether the term "Office" or "President of the Office" was used was a question of drafting only, which made no difference, as it was always the President who was ultimately responsible. The President should not have legislative powers. The general rules should be kept at Council level, with the President being given the power to decide on a case by case basis. Lastly, as had been said before, the topic at hand was a question of caring for the staff member and avoiding abuse.
102. The German delegation stressed that the topic was very sensitive. Medical examinations could only be justified in case of severe and reasonable doubts. When examining the various orders or measures, it had to be clear that the first priority should be to talk to the staff member in question and to those returning from sick leave, to study measures of prevention and look for reasons for sickness. The disciplinary side of things was the last resort, and it expected the Office only to make use of it when really necessary, and with caution. It had no

doubt that the measures would be put into practice according to these principles. It was content to hear that no rights would be given to enter a staff member's home, thus protecting the inviolability of the home. It could be worth discussing whether the measures would comply with German law, as the Office had said. Germany had not made the experience in this field which France clearly had. But what was important was that the measures complied with international standards, not national law.

103. The Irish delegation commented on the wording in Article 26 and was glad to hear that a discretionary approach would be taken. It also welcomed the President's oral assurances. Regarding visits at the staff member's home, it wondered whether the staff member could opt to visit the doctor at their premises instead of being examined at home. If yes, it could support the proposal.
104. The UK delegation stated that it was clear that there was a problem with sick leave levels that needed solving. It was helpful to hear that this decision was only part of a wider approach taken by the Office and maybe the Council was not so aware of this before, as it was focusing on the documents submitted to it. That linked in to the matter of discretion. The UK, for its part, followed a different approach, but that was not necessarily relevant. Drawing on good practice in different countries would surely help the Office to get the proposal right, which it supported.
105. The Danish delegation was surprised that rules to the extent presented in the document were not already in place in the Office. Studies showed that contact between employer and employee helped recovery and an earlier return to work. This was common practice in Denmark and beneficial to both sides alike. It was important to ensure that the proposal was in conformity with international rulings and the President's assurances on this was important to the Danish delegation. It would support the proposal, based on that assurance.
106. The staff representatives explained that they were equally concerned about the high levels of sickness. They had asked for a study on the causes to focus on prevention. That study had not taken place yet. The document was based on the premise of abuse. Whilst there might be abuse, it doubted that that was the main contributor to sickness levels. The staff representation shared some of the comments made that drastic measures to combat abuse needed a strong reason to suspect that there were ulterior motives in sick leave. Preventative measures had brought about a positive and visible trend. The staff representatives, like some delegations, felt that the proposal was excessive and in violation of fundamental rights. It was cynical, when discussing well-being, to focus on sick leave control. The way that the discussions had gone, did not turn out favourable for staff. The

main concern had been the requirement to stay at home in order to enable performance of sick leave control. This might go against sound medical advice even. There was a lack of need to justify why sick leave control took place. The violation of privacy rights was also of major concern. The duty to co-operate on the staff member was very broad. It had not been clear initially that a staff member could refuse access to his or her home or refuse a medical examination. The Office had not yet implemented the review schedules agreed initially. The measures would further harm the work climate, if implemented in their current form. The staff representation's main claim was not to support the measures now, as an important factor was missing, namely an occupational risk assessment, which should have come first. First one had to know how to prevent sickness, then implement other measures.

107. The President stressed that a good system of regulation was one where the general rules were fixed and not too detailed a provision for carrying them out was made. All cases would never be covered, or else the rules would become too detailed. A true contact between the manager, colleagues and a sick person was of course a given, as was the case for a "return to work chat" and other such measures, on which the Council had not been separately informed, as that was no Council business. The proposed measures were only part of a wider range of measures under discussion, making the medical advisory service more efficient, studying the invalidity system etc. Preventative measures were being taken and the Office had a very active policy on this, with doctors and nurses on site etc. It would be possible to go to see a doctor instead of a doctor coming to a staff member. The Office did not intend to implement a general rigorous control system where 100% of sickness absences were controlled by a doctor. Measures would only be taken in cases of doubt, at managerial level, based on the advice of a doctor. The Office respected the power sharing between Council and President and worked closely with the medical adviser. It did not wish to put into practice repressive measures and abuse was not the point of departure of the document. The Office had a level of absences much higher than that of other international organisations. There were no objective reasons for this. Psychological reasons and social climate were possible factors which the Office was looking into. Some improvements in sick leave levels had been witnessed already and the general policy was reaping fruits. The system of submitting documents to the Council allowed delegations to prepare sufficiently. The President guaranteed that the proposal was in conformity with best practice and international standards. The proposed measures were included in the HR roadmap which the Council had approved. The Office was simply putting them into practice here. The President again assured the Irish delegation that there was a choice between attending at the premises of a medical practitioner or undergoing a medical examination at home.

108. The Council unanimously adopted the draft decision set out in Part II of CA/56/13. (Present: 36; for: 34 – AL, AT, BE, BG, CH, CY, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, IS, IT, LT, LU, LV, MC, MK, MT, NL, NO, PL, PT, RO, SI, SK, SM, TR; abstentions: 2 – RS, SE) (see CA/D 4/13).
109. The Council decided to make CA/56/13 available to the public.

### **9.3 Amendment of the Service Regulations concerning strikes and unauthorised absence (CA/57/13)**

110. The President introduced the document. The right to strike, as opposed to the right of association, was not formally set in the EPC or the Service Regulations. The absence of a solid legal basis had led to practices very special to the EPO: strikes lasting for a whole year were possible. There were situations in which it was not sure if staff member was on leave or strike. Like all fundamental rights, the right to strike had to be further regulated and required a legal framework. It had to be seen as a measure of last resort, and not a systematic measure for excessive use in labour disputes. A legal vacuum worked to the detriment of staff, who did not know under which circumstances to use the right. The Office's proposal was in conformity with international standards. There were many national differences: some countries provided no right to strike, some only to some civil servants, some to all. The Office's proposal balanced the right of expression and the Office's needs. In some countries, only a union could start a strike. The Office had proposed a different system, as it had a different set-up, namely staff unions, elected staff representatives, and staff in general. The Office was not suppressing the right to strike.
111. The Vice-President DG 5 set out the legal aspects of the main elements of the proposal. The President had a right and duty to safeguard the interests of the Organisation and the freedom of work for non-strikers. The new regulations had been proposed considering general legal principles, European rights and ILOAT standards.
112. The Portuguese delegation was surprised to find that there were no rules on the right to strike in the Office. Having rules was essential for both staff and management. It supported the proposal, with which it was very satisfied.
113. The Swiss delegation referred to a letter from IGEPa to the competent Swiss Federal Minister, which had been received and forwarded to the head of delegation. It had conducted its own legal analysis and believed that SUEPO's concerns were not justified. The proposals were compatible with ILOAT jurisprudence and principles and would be valid under Swiss law. The Swiss delegation had asked for years to introduce rules on strike. While the proposal was a step in the right direction, more work was expected on a functioning social partnership. The dialogue between employer and employee was impaired by fundamental flaws. On the staff side, there was no reliable partner who could take



responsibility, as union and staff representatives overlapped. This was a situation in which no final negotiation result could be reached, nor the all important social peace. The employer was in a weak position. Equality of arms would imply that the employer had lock-out rights ("Recht zur Aussperrung"). The missing structure thus impaired social dialogue. A dialogue conducted outside the pertinent bodies was not wise. The staff representation should address the President, and if, over and above that, there was a need to talk, then the Council chairman, but not individual delegations. A functioning social partnership on the basis of clear rules and responsibilities was needed. The Swiss model could serve as an inspiration, where strikes were the exception.

114. The Swedish delegation referred to its comments on CA/56/13. It was the Council's duty and responsibility to ensure a balance between management and staff and an efficient and good functioning of the Organisation. The Council also had to ensure that the Organisation fulfilled international conventions, such as the Human Rights Convention. It, too, had been astonished to find that the Office had no legal framework in relation to strikes yet. The Office's proposal included several good and necessary amendments to the Service Regulations. There were some problems with the detailed wording.
115. The Slovak delegation commented on some of the detailed drafting. On balance, it felt that the proposal was a good faith one, but not ideal. Having said that, it shared the understanding that a legal basis should be set and rules established. It would favour a review of the policy and its results, should the Office's proposal be adopted. It would like to see a fair and constructive, functioning social dialogue in the Office in future.
116. The French delegation supported the proposal. It, too, had taken into consideration the elements brought forward by other delegations.
117. The UK delegation could support the proposal. The current situation was not satisfactory. It was important that staff could strike, but also that management could manage the business. It was likewise important that staff were motivated. The Office was encouraged to consider how best to continue to review the development of policies in the all important HR area, as it was critical to the good functioning of the Office that the best use of staff was made as a resource and that staff could contribute in the best way. It hoped that there would be the opportunity in future discussions to place Council decisions in the wider context.
118. The German delegation declared that it would support the proposal, which it felt was not unproblematic. It had fundamental concerns, given that German civil

servants had no right to strike, based on special duties of loyalty on both sides, as set out in the Basic law for the Federal Republic of Germany ("Grundgesetz"). German courts were checking the applicability to German civil servants of a European Court of Human Rights decision which had recently been delivered in the context of strikes. The German delegation's positive vote was limited to the particular proposal at hand and not to be understood as a fundamental vote in favour of a right to strike for civil servants. Many countries recognised a right to strike for civil servants, as was the case in the EPO. It welcomed the fact that rules were to be set. However, it would have been better to agree with staff beforehand, as consensus was better in sensitive cases. A balanced solution was indeed necessary. The drafting consisted of some first and good proposals, but was not in line with what it would do in a national situation. Article 30a(10), for example, should have been drafted much more precisely. But the EPO was in a special situation of established rights, which had developed over time, and perhaps not for the best. It supported the proposal, with the expectation that international standards would be kept. The real aim, of course, was to reach social peace. Both sides had to talk and try harder to find solutions. Social partnership and its institutional backing was important. Lastly, the German delegation suggested to evaluate the rules within one or two years to ensure that the intended aims had indeed been reached.

119. The Italian delegation welcomed a clear legal framework, which was important to promote sound social dialogue. But it feared that some proposals might lead to a limitation of the right of staff to strike. It encouraged to review some parts of the draft.
120. The Netherlands delegation referred to the HR roadmap and the final goal to establish good staff relations. This could only work if both sides had a set of clear rules. These had so far not been available. It supported the proposal, but asked that it be evaluated at the end of 2014 or in 2015.
121. The Belgian delegation said that it would have liked to have more time, given the sensitivity of the topic and the need to study the international situation. It acknowledged that rules were needed, but would need to abstain for the reasons given.
122. The Maltese delegation supported the proposal, provided that a review took place in one or two years' time.
123. The Norwegian delegation supported the President in finding a balanced set of rules. For lack of consensus from the parties and a lack of confidence that the proposals complied with ILOAT regulations, it would, however, have to abstain.

124. The Hungarian delegation aligned itself with the Netherlands delegation.
125. The Spanish delegation stated that the proposal was part of the HR roadmap which the Council had endorsed. The right to strike existed, but, like all rights, had to be regulated. It would support the proposal.
126. The Danish delegation was surprised to see that there were no regulations on strike. It supported the proposal and thanked the President for the assurance that the proposed rules were in conformity with international rulings. In Denmark, strikes were not part of the behaviour in public administrations. It felt that communication increased understanding. Lastly, it endorsed the German delegation's proposal to review the new rulings.
127. The Irish delegation supported the proposal, as it was necessary to have clear rules. Its concerns related to the provisions in Article 30a(10) pursuant to which the President may lay down further terms and conditions. It would like these conditions to be brought to the attention of the Council, so that it may consider them. It agreed that the process should be reviewed.
128. The Turkish delegation supported the proposal on the basis of the explanations given by the Office.
129. The staff representatives agreed that they were not a negotiating partner, as they were only consulted. They would assume the proposal at hand to have been negotiated. Instead, their fundamental concerns had not been heard, a dialogue had not taken place and there was minimal consultation in the Office. They would prefer that a genuine dialogue ensued. It was premature to vote on the proposal. The Office lacked a reliable legal system with the national protection mechanisms. The Council should consider the effects on staff rights in an international context without a safety net. Even though the EPO might be a special case, a yes vote to the proposal meant that the Service Regulations would be changed. The explanations given made it sound as though the Office did not currently have ballots or let staff pass the picket line. The need for requisitioning was well understood by the staff representatives. Balloting all staff rather than the union membership, was problematic, as was the fact that the President wished to organise a ballot. The one-sided imposing of such matters on unions was completely inappropriate. The new rules aimed to settle a matter during a time of social unrest. The Council should vote against the proposal or allow more time for discussion. The staff representatives did not share the Office's legal analysis and had obtained legal advice. They might have to challenge the rules outside the

known legal circles. They believed that the President knew the proposals not to be in line with international standards.

130. The President set out his endeavours to reach social dialogue. It had never been possible to reach an agreement or compromise, in any area. Not a single decision had been left unappealed so as to change it, including individual appointments. He regretted that and would do his utmost to change the situation. The Office had the General Advisory Committee ("GAC") as the supreme consultation body. He had appointed the Vice-presidents to the GAC to enable social dialogue to be held at the highest level among those responsible. That had been explained to the staff, but in the GAC as interlocutor, the management faced individuals who voiced their own opinions. The system was not about sticking to one's position to enable one to file appeals later. The Office had filled legal vacua, but the proposal had no chance of ever being accepted by the staff representatives, no matter how much time was taken over it. It was very precise. Naturally, the Office would evaluate the decision and wished to do that with the staff representatives and then bring to the Council's attention the results. The proposal was in line with international norms that applied to the Office.
131. The chair summarised that the issues involved would be looked at again in due course in close co-operation with the President.
132. The Council unanimously adopted the draft decision set out in Part II of CA/57/13. (Present: 35; for: 28 – AL, AT, BG, CH, CY, DE, DK, EE, ES, FI, FR, GB, GR, HR, IE, IS, LT, LU, LV, MC, MK, MT, NL, PL, PT, RO, SM, TR; abstentions: 7 – BE, IT, NO, SI, SK, RS, SE) (see CA/D 5/13)
133. The Council decided to make CA/57/13 available to the public.

## **10. PERSONNEL/OPERATIONAL MATTERS**

### **10.1 Report on the EPO's staff home loans scheme (CA/9/13)**

134. "A" item – see item 1.1 above.

### **10.2 Requests for review of Administrative Council decisions CA/D 34/07, CA/D 9/12 and CA/D 17/12 (CA/39/13)**

135. The Vice-President DG 5 introduced the document and stressed that the Office's dispute resolution system was essentially a personal one. Requests misdirected to the Council should be referred to the President in accordance with ILOAT jurisprudence.
136. The chair added that under this agenda item the parties would not be heard. Instead, the Council was dealing with requests for review.

137. The Council unanimously decided to refer to the President the requests for review of CA/D 34/07.
138. The Council unanimously decided to refer to the President those requests for review of CA/D 17/12 which allege adverse personal effects and are not only concerned with the general decision in CA/D 17/12, and to reject the remainder as manifestly irreceivable.
139. The Council unanimously decided to reject the requests for review of CA/D 9/12 as manifestly irreceivable, to refuse the requests based on Article 109(6)(b) ServRegs, and to give a final decision creating the possibility of a complaint to the Tribunal.
140. The Council decided not to make CA/39/13 available to the public.
141. The Council noted CA/59/13, dealing with the "Functioning of the Administrative Tribunal of the International Labour Organization", and decided not to make this document available to the public.

## **11. FINANCIAL MATTERS/BUDGET/PLANNING**

### **11.1 Report of the chairman of the Budget and Finance Committee on its 106th meeting (CA/49/13)**

142. The chairman of the Budget and Finance Committee reported orally on its 106th meeting (The Hague, 29 and 30 May 2013).
143. The Council noted his report.

### **11.2 Accounts for 2012 (CA/10/13 + CA/60/13)**

144. The President presented CA/10/13 and CA/60/13, illustrated by a PowerPoint presentation.
145. The main aim of CA/10/13 was to describe the Office's implementation of its 2012 budget as adopted by the Council in December 2011. 2012 had ended with a budget surplus of EUR 294m – more than double the original estimate – thanks to EUR 75m in over-budget operating income, savings of EUR 72m on operating expenditure, and under-budget capital spending. The 2012 budget surplus was also EUR 50m higher than the 2011 figure (EUR 245m) – or indeed EUR 74m higher if the collective reward paid to staff at the end of 2012 were excluded.
146. CA/60/13 contained the EPO's IFRS-compliant financial statements, showing that in 2012 the Office had continued to perform well, achieving a highly positive

operating result (over EUR 111m). Rigorous efficiency measures had led to big budget savings and the best operating result in the EPO's entire history. However, the Office's IFRS-compliant financial statements reflected some factors over which it had no control, such as developments in interest rates and on financial markets. The financial result was the outcome of the RFPSS' excellent performance in 2012 (EUR +245m, compared with the budget estimate of EUR -140m), but also of plunging interest rates on financial markets which had led to actuarial losses of EUR 3.47bn on the EPO's defined benefit obligations. Mainly as a result of these actuarial losses, total comprehensive income for 2012 had been negative (EUR -3.15bn), leading in the balance sheet to an increase in negative equity (EUR 5.1bn at year's end).

147. Under Article 49(4) EPC, the Council unanimously approved the budget implementation statement for 2012 as set out in CA/10/13 and the financial statements as set out in CA/60/13.

148. The Council decided to make CA/60/13 available to the public, but not CA/10/13.

### **11.3 Performance management – unit-cost results for 2012 (CA/45/13)**

149. The President tabled CA/45/13, and gave a PowerPoint presentation.

150. The Council noted this information.

151. It decided not to make CA/45/13 available to the public.

### **11.4 Auditors' report on 2012, and explanations and reasons supplied by the President (CA/20/13)**

152. With the help of a PowerPoint presentation, the spokesman for the Board of Auditors began, as every year, by describing their role and duties. He then explained how the 2012 audit had been organised, and summarised the main points of CA/20/13. Most importantly, the auditors had been able, as in all previous years, to certify without qualification the Office's accounts for 2012; they therefore recommended that the Council approve them and discharge the President and Fund Administrator. Overall, the EPO was being soundly managed, and its finances were stable. The auditors had noted nothing untoward in its procurement transactions and awards of contract, in particular for the New Main construction project at The Hague; here the rules had been complied with during the audit

period. However, it would probably be necessary to strengthen the in-house team overseeing the project. On governance, the Office had responded to their comments about internal audit in their previous report; a reorganisation was under way, and was a move in the right direction. One point they had looked at this year was whether or not the partial tax compensation paid by the EPO to its pensioners was itself taxable in certain member states. If so, the Office might ultimately have to make special provision for this. Another issue requiring close monitoring was renewal fees remitted by member states. This was an ongoing problem; it was not always easy to identify patents still in force in different countries. A further question was capitalisation of IM spending; it was hard to know whether these costs would ultimately be booked as assets. Similarly, the Office should start thinking about how it valued its real estate. As in previous years, they had noted the EPO's negative equity. This did not call for particular comment, other than to point out that the Office's real financial situation could not and should not be assessed solely on the basis of the balance-sheet figures. But if negative equity worsened, the President and the Council should perhaps draw up rules for transferring part of the EPO's operating surpluses to the RFPSS. The auditors had also looked into the principal directorate for human resources (PD HR) and the Academy. PD HR's costs were significantly higher than at comparable organisations. The situation was not alarming, but should not be allowed to get any worse. The Academy, meanwhile, was probably not deriving the full benefits of the direct back-up available from the Office; a lot of purely administrative work done by Academy staff could be done instead by other EPO departments, whilst many core Academy tasks were being done by external personnel. Lastly, the Academy's annual report was a bit too concise.

153. The President was pleased that for 2012 the Board of Auditors had once again certified the Office's accounts without qualification. The Office attached the greatest importance to the auditors' recommendations, and always tried to respond effectively. It understood and shared the auditors' concern about the substantial increase in negative equity, and was already conducting systematic sensitivity analyses and studying different scenarios based on changed parameters (e.g. discount rates or financing levels), as they had recommended. And of course it was also continuing to look into ways of improving its financial

situation. Lastly, he completely agreed with their comment on page 22 of their report that, when considering the Office's financial position, future cashflows to be generated by pending applications should also be taken into account. The main thing was not to over-react to isolated developments; what counted was the long-term dynamic.

154. The UK delegation congratulated the Office and its President on their good results for 2012, as shown by the operating surplus. They showed that the EPO was being well run – as the auditors had confirmed – and that the courageous steps initiated some time ago were now bearing fruit. Particular welcome was the President's stated intention of drawing on the auditors' recommendations, and in particular of conducting more studies of negative equity's sensitivity to variations in discount rates. This long-term deficit was a serious problem. The Council needed to monitor it closely, and the UK delegation was eagerly looking forward to the results of the Office's planned systematic sensitivity analyses. It also endorsed the auditors' recommendation that parts of future operating surpluses should go into the RFPSS.
155. The Netherlands delegation too congratulated the Office on its good results and the auditors' unqualified certification. It had taken special note of one point made in their report, namely possible future fiscal charges for the Office deriving from its staff liabilities. This was an ongoing problem, regularly discussed with national tax authorities but rarely with satisfactory results, leading to further difficult debate on the Council. The Office should therefore continue its negotiations with the national tax administrations – however difficult they might be – and try to find satisfactory solutions to the problem.
156. The French delegation agreed with the Netherlands delegation. It also wanted the Office to provide the Council with an in-depth analysis of the effects of the system of partial compensation for the national income tax payable by EPO retirement pensioners.
157. Endorsing the comments made by the delegations which had spoken earlier, the Swedish delegation said it particularly appreciated the Office's efforts to act on the recommendations made in earlier auditors' reports.
158. Under Article 49(4) EPC, the Council unanimously approved the auditors' report in CA/20/13, and discharged the President in respect of implementation of the 2012 budget (Article 80(5) FinRegs) and the Fund Administrator in respect of fund management in 2012 (Article 7(1)(c) RFPSSRegs + Article 80(4) FinRegs).



### **11.5 Daily cost of an A- and B/C-grade (CA/43/13)**

159. "A" item – see item 1.1 above.

### **11.6 Quarterly financial statements (4/2012 + 1/2013) (CA/11/13 + CA/12/13)**

160. "A" item – see item 1.1 above.

### **11.7 Initial 2014 budgetary orientations (CA/25/13)**

161. The President rapidly tabled CA/25/13, illustrating his remarks with some PowerPoint slides showing the main thrust of the budget planned for 2014:

- stable staff complement (no more than 7 075 budget posts); recruitment limited to examiners (planned total number: 4 201, 80 more than in 2013)
- 271 000 filings in 2014 (Euro direct and PCT), up from 264 000 expected for 2013
- estimated operating income up 6% over 2013
- operating expenditure up 4.8% over 2013
- stable fees, apart from the two-yearly inflation adjustment with effect from 1 April 2014 (currently estimated at + 4.8%)
- capital spending mainly for buildings (EUR 42m for The Hague in 2014) and IM (EUR 101m)
- positive operating result under IFRS: EUR 66m, up EUR 12m over 2013
- negative financial result (EUR -101m), but EUR 13m better than 2013
- overall result under IFRS: EUR -35m, EUR 25m better than 2013.

162. Concluding, the President said the 2014 budget would continue the efficiency policy approved by the Council and followed by the Office for some years now.

163. The UK delegation said that for all the uncertainty afflicting the European and world economies – and bound also to affect the EPO – the budget orientations outlined in CA/25/13 went in the right direction.

164. The Council gave a unanimous favourable opinion on the initial 2014 budgetary orientations outlined in CA/25/13.
165. It also decided to make CA/25/13 available to the public.

**11.8 Amendment to Article 50 Financial Regulations (CA/34/13)**

166. "A" item – see item 1.1 above.

**12. MISCELLANEOUS**

**12.1 Any other business**

167. The chairman and the President, on behalf of the Council and the Office respectively, paid tribute to Guus Broesterhuizen, head of the Netherlands delegation and former chairman of the Budget and Finance Committee (June 2009 to June 2012), who was attending his final Council meeting before retirement, and wished him well for the future (for the chairman's speech, see Annex 2).

The Administrative Council approved the minutes contained in this document on 16 October 2013.

Munich, 16 October 2013

For the Administrative Council  
The Chairman



Jesper KONGSTAD

**ANNEX 1 LIST OF PARTICIPANTS**

**CA/52/13 Rev. 1**

Orig.: de, en, fr

München/Munich, 03.07.2013

BETRIFFT: Teilnehmerliste der 136. Tagung des Verwaltungsrats  
(München, 26. und 27. Juni 2013)

SUBJECT: List of participants of the 136th meeting of the Administrative Council  
(Munich, 26 and 27 June 2013)

OBJET: Liste des participants de la 136<sup>e</sup> session du Conseil d'administration  
(Munich, les 26 et 27 juin 2013)

VORGELEGT VON: Ratssekretariat

SUBMITTED BY: Council Secretariat

SOU MIS PAR: Le secrétariat du Conseil

EMPFÄNGER: Verwaltungsrat (zur Unterrichtung)

ADDRESSEES: Administrative Council (for information)

DESTINATAIRES: Le Conseil d'administration (pour information)

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**ANNEX 2      SPEECH BY AC CHAIRMAN, JESPER KONGSTAD, TO MARK THE DEPARTURE OF GUUS BROESTERHUIZEN, HEAD OF THE NETHERLANDS DELEGATION**

Ladies and gentlemen,  
Dear colleagues,

The time has come for us to bid farewell to an eminent member of our Council, our dear friend and colleague, Guus Broesterhuizen, head of the Netherlands delegation who, due to his impending retirement, attended his last Council meeting this week.

In my imagination, Guus, you are a pop star and this is the final performance on the last leg of an extended farewell tour. The "tour" began last year, when I had the honour to pay tribute to you, on behalf of the Council, at the end of your term as chairman of the Budget and Finance Committee. By then, you had wisely decided not to run for a second term because, as you said, the countdown to the end of your professional career had already started. And now, the moment that once seemed so distant has finally arrived. It's time to say goodbye. But it's also a time to celebrate by re-visiting the major milestones of your long and illustrious career.

After graduating with a Masters in mathematics, economics and - if you please! - philosophy from the University of Nijmegen, you started your professional life at the Central Bureau of Statistics, before joining the Ministry of Home Affairs. After more than a decade there, you moved to the Ministry of Economic Affairs. You were Deputy Director General of Telecommunications and Postal Affairs at the Ministry of Economic Affairs when, in 2006, you were appointed Director of the Netherlands Patent Office. It was not long after that that we had the pleasure of welcoming you as head of the Netherlands delegation.

From your pertinent and witty contributions, drawn from a wealth of practical experience, it soon became clear to us that your presence was an invaluable asset for our Organisation. It was for that reason that the Council did not hesitate to elect you as member of its Board B 28 in March 2008 and, one year later, as chairman of the Budget and Finance Committee.

Under your chairmanship, you bolstered the Budget and Finance Committee's role as the "financial conscience" of this Organisation. You led its debates effectively, with a friendly but steady hand, and always with complete impartiality, never hesitating to express your opinion with a frankness which, I believe, is characteristic of Dutch people. And in your interventions, whether as BFC chairman or as Council member, you have always shown a great sense of humour. And that too is very important!

Last year, I wondered if you ever had time to start making plans for your life "afterwards". This seemed rather doubtful considering how engaged you remained in your professional activities as Director of the Netherlands Patent Office, but also, since October 2011, as

Acting Director General of the "NL Agency" and head of its "Innovation Agency", two positions you will hold for another few weeks: not bad for someone who has reached the stage when many tend to lean back. But that's not you, nor do I believe will it ever completely be you, whatever course you decide to follow in this new chapter of your existence. I just hope that, since last year, you have found some time to think a little about it ... but that's for the private man, Guus.

For now, let me, personally and on behalf of the Council, thank the public man, Guus Broesterhuizen, for his valuable contribution to our Organisation, and wish the private man, Guus, a long and happy retirement!