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Amsterdam, 21 September 2015

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Dear Ms Bergot,

I represent Mr J. Michels in the matter of the publication of an email concerning an investigation to which a chairperson of Suepo is currently subjected. The said email was published on the website.suepo.org.

I take note of your letters to my client dated 10 and 15 September 2015.

Allow me to point out the following.

Someone has apparently felt the need to share the said email with Suepo Central Executive Committee. Contrary to your standpoint, however, it is immaterial to know who has done so.

Even if a letter is marked as “confidential”, this does not mean that it is necessarily so. You seriously err that publication of the email in question amounts to a violation of the obligation of staff, including those who are subjected to an investigation, to safeguard the interests of the EPO and to protect the integrity of the investigative process.

In the first place, confidentiality during investigations cannot be imposed unless this is strictly required. Two purposes may legitimize confidentiality.

The first is to protect the accused, since (s)he is presumed innocent. In this respect, the obligation of confidentiality applies to the investigators, not the investigated.

The second is to protect the integrity of the investigation, namely to ensure that potential witnesses are not intimidated and, in some cases, to ensure that the accused or his accomplices do not destroy evidence. The said email does not reveal however information about the enquiry itself.

Merely making known the notification of an investigation has nothing to do with interference with the integrity of the investigation. A different interpretation of Circular 342 would be incompatible with the fundamental rights of the accused and of witnesses. The public character of the investigation protects subjects against the administration of justice in secret with no public scrutiny. It is also one of the means whereby confidence in the proceedings can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of due process, the guarantee of which is one of the fundamental principles.

In the second place, the particular circumstances of this case matter. Your office has deemed it necessary and wise to subject a chairperson of Suepo to an investigation. It is no more than normal, indeed it is imperative that staff and members of Suepo are informed of this decision as it may impact their interests as well. They have a legitimate right to know that the EPO is investigating and interrogating their representatives. The investigation against my client should especially not be kept secret as the allegations may be of a political nature.

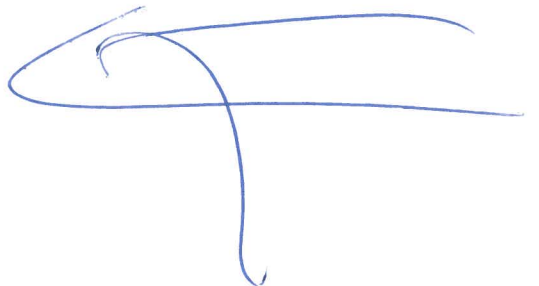
I conclude that the disclosure and publication of the email concerning the investigation of a Suepo chairperson, do not contravene any obligation of confidentiality under EPO's legal framework as defined, and limited, by general principles of law.

I urge you for these reasons to desist from further threats of legal measures against my client.

Finally, I should point out that no privilege attaches or can attach to your letter dated 15 September. It does not reveal anything about pending investigations, and there is no legal basis to hold it secret.

Kind regards,

Liesbeth Zegveld

A handwritten signature in blue ink, consisting of a large, stylized 'L' shape with a horizontal line extending to the right and a vertical line extending downwards from the end of the horizontal line.