



EPO & Transparency

Summary

Transparency International (TI) critically examines how national political systems all around the world address corruption risks and foster integrity. They publish and encourage best practice in integrity and expose the effects of conflicts of interest and lack of transparency. Recently, TI also assessed how the EU institutions deal with ethics, how they ensure transparency and accountability, and how they ultimately prevent corruption. The Central Staff Committee suggested to the EPO Administrative Council that a similar study be done for the EPO. TI has signaled its interest in the matter. But until now the Council cloaks itself in silence.

The governance of the EPO

The EPO still has the governance system that it was created with. Oversight is in the hands of the Administrative Council. The Heads of the national delegations in the Administrative Council are almost without exception heads of national patent offices. The delegates are in a situation of conflict of interests since the EPO is at the same time the main competitor and a major source of income for the national patent offices. The meetings of the Administrative Council and the majority of its documents are not open to the public. Maybe significantly the Office has started to publish the salaries of its staff, but the salary and benefits of the President are not disclosed, not even to the Administrative Council.

The European Patent Organisation sets its own financial regulations, independent from national or European law¹. Adherence to these rules is controlled by a Board of Auditors of consisting of three individuals who are appointed by and reporting to the Administrative Council, on 5-year renewable contracts. Their reports (CA/20/yy) tend to be rather mild and the (few) critical comments are routinely ignored by the Office. The most recently appointed auditor is a close co-worker of Mr Battistelli from his time in the French patent office. Maybe not surprisingly, the most recent Audit report (CA/20/14) is even milder than usual. An attempt by the Brimelow administration to strengthen the audit system through the creation of an Audit Committee² was supported by Mr Battistelli in his function of Chairman of the Council, but annulled by him as soon as he became President of the Office³. Note that the Organisation's immunity blocks third parties from effectively challenging its financial decisions. The Staff Committee challenged the decision of the Office to use a direct placement procedure in favour of an external consultancy. The Board of Auditors even agreed that an invitation to tender would have been justified. Even if clearly justified, the complaint was recently dismissed by ILO-AT as

¹ [Article 50 EPC](#)

² Bossung, Otto. "[The Return of European Patent Law in the European Union](#)". *IIC* 27 (3/1996). Retrieved June 30, 2012.

³ [CA/140/08](#) «Audit Committee: possible models», resp. [CA/55/11](#), «Disbanding the audit committee»

irreceivable⁴.

Immunity, or impunity?

The lack of transparency and the lack of truly independent financial and political control would seem to pose a serious risk for the integrity of the EPO and consequently for the European patent system. This is particularly worrying at a time that the EPO is to be given the additional responsibilities for the Unitary Patent. The staff representation has repeatedly requested a discussion on, and a modernisation of, the governance of the Organisation⁵, thus far to no avail.

Transparency International

Transparency International is a global civil society organization that aims at stopping corruption and promoting transparency, accountability and integrity at all levels and across all sectors of society⁶. TI has developed a methodology to assess how well national governments ensure the integrity of their institutions. The beauty of the methodology is that it is systemic. It does not rely on leaks and/or scandals but assesses whether the necessary legislation and mechanisms are in place to prevent, detect and combat corruption, and abuse of power. They check how well these mechanisms function in practice. An adapted version of this methodology has been used to assess various EU institutions. For the EU institutions Transparency International found that the EU has done a lot to put their house in order in recent years, but that strong foundations are being undermined by complex rules, complacency, and a lack of follow-up⁷.

What is the Council waiting for?

With a letter dated 6 June 2014⁸ the Central Staff Committee (CSC) again raised the issue with the Chairman of the Administrative Council. The CSC drew the attention of the Council to the report of Transparency International on the EU Institutions and suggested that a similar study be done for the EPO. We note that *the EU institutions cooperated with the Transparency study*. Transparency International has reacted to the letter of the CSC⁹. It has offered its support and experience in promoting a culture of integrity and good governance in the EPOrg. Just recently Transparency International sent a reminder of its letter to the Council.

We are waiting for an answer by the Chairman of the Administrative Council, Mr Jesper Kongstad.

The Central Staff Committee

⁴ [ILO-AT 3343](#)

⁵ [CA/93/07](#) «Governance of the EPO: a staff perspective»,

⁶ <http://www.transparency.org/whatwedo?gclid=CJWu5eC5tsACFa7KtAodXRoa2A>

⁷ http://www.transparencyinternational.eu/wp-content/uploads/2014/04/EUIS_press_release.pdf

⁸ <http://www.epostaff.org/archive/sc14139cl.pdf>

⁹ see annex



**TRANSPARENCY
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Mr Jesper Kongstad
Chair of the Administrative Council
European Patent Organisation
Secretariat
Room 1041 - EPO Isar
Sent to: council@epo.org

23 July 2014

Dear Mr. Kongstad,

I am writing regarding the letter, addressed to you on 06 June 2014, from Mr. Joachim Michels (Chairman of the Central Staff Committee of the European Patent Office (EPO)), which was also received in copy by Transparency International's (TI) EU Office, TI Deutschland and TI Nederland.

As you may know, the TI Movement is comprised of nearly 100 Chapters, which share one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. We raise awareness of the devastating effects of corruption and work with governments, business leaders, local communities and other civil society organisations to fight against it. From global public opinion surveys to detailed sectorial analysis at the national level, we produce a wide array of research on a range of corruption topics.

As Mr. Michels mentions in his letter, the European Patent Organisation (EPOrg)'s governance has, at times, come under criticism. As the EPOrg plays an important leading role in developing an effective global patent system, TI would like to take the opportunity to offer the EPOrg our support and experience in promoting a culture of integrity and good governance.

I would therefore greatly welcome to hear your views on the letter and discuss how TI could potentially play a role in increasing EPOrg's institutional commitment to transparency and accountability, taking into account the expressed concerns by the EPO staff, as well as the institutional independence of the EPOrg.

Thank you for your attention and I look forward to hearing from you or a representative of the Administrative Council who would be willing to open a dialogue in due course.

Kind regards,



Cobus de Swardt
Managing Director

CC:
Joachim Michels, Chairman Central Staff Committee
Mr B. Battistelli, EPO President
Transparency International's EU Office
Transparency International Deutschland
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