

MINUTES

of the

139th meeting of the

ADMINISTRATIVE COUNCIL

Munich, 27 and 28 March 2014

The summary of decisions has been issued separately as CA/28/14.

9.1 Social democracy at the European Patent Office (CA/4/14 + Add. 1)

60. The President explained that the HR Roadmap (CA/110/11) approved by the Council in December 2011 set out a series of measures designed to modernise social policy at the EPO and help to ensure the Office's continued success by promoting staff-management dialogue. Throughout its history, the Office had been marred by staff-management conflict. Since taking up office on 1 July 2010, he had sought to establish a basis for social dialogue. Regrettably, however, his efforts had come to nothing because the staff representatives systematically obstructed them. The proposals in CA/4/14 were simply a transposition of best practice in the outside world. As things stood, the Office's Service Regulations were very vague on the appointment and role of staff representatives. The different sites and staff categories were not represented in a balanced way. The regulations for electing staff representatives differed from one site to another and from one election to the next. It was difficult under such circumstances to achieve compromise. The defining principle in the proposals in CA/4/14 was that the staff representatives' mandate should stem from a democratic and transparent election process. Since Article 10 EPC stipulated that "The European Patent Office shall be managed by the President, who shall be responsible for its activities to the Administrative Council", it was management's responsibility to manage the elections and to handle the logistics. Every employee, unionised or not, should be entitled to stand for election. Elected representatives would have a clear mandate, and the resources to exercise it. A very clear distinction would be made between the respective remits of the Central Staff Committee and the local committees. The consultation process would be streamlined and the General Consultative Committee (proposed new name for the General Advisory Committee) would deal exclusively with issues relating to working conditions. However, management could inform it of decisions not directly related to working conditions but likely to affect them. If the Council approved the draft decision in Part II of CA/4/14, elections would take place Office-wide in June, and the staff representatives chosen would take up office on 1 July. The staff rules would also have to be amended. Draft circulars had been sent in advance to delegations for initial opinion. The President thanked the delegations that had submitted some very interesting advance suggestions on the social democracy project; they had been taken into account. Concluding, he reiterated that management needed to be able to conduct dialogue with sound partners who had a clear remit and not, as hitherto, with people who turned down all its proposals point blank.
61. The Swiss delegation welcomed the Office's proposals; they were balanced and sensible. It saw nothing in them that would curtail staff representatives' rights. Employers and employees were bound to have different interests. At the Office, however, both sides had a common higher goal – the success of

the Organisation. The Swiss delegation had carefully analysed the current situation and its shortcomings. The main problem at the moment was that the staff representatives could interpret the existing provisions to mean that the Office could be jointly managed, but that was definitely not the case. Article 10 EPC, which the President had cited in his introduction, was quite clear. But that did not mean that the President should not listen to staff, and management style clearly played a role. It might sometimes be necessary to make concessions to the staff, but these should be negotiated. Another problem was the regulation frenzy at the Office, which had far too many rules and regulations of all kinds. The proposals now before the Council were a first step in the right direction. The Council should approve them now, and certainly not postpone its decision.

62. The Irish delegation said the Council, in approving the HR Roadmap submitted by the President in 2011, had clearly recognised that the Office's staff policy needed to change. Apparently the EPO's social democracy project had been put to the General Advisory Committee, and in principle the staff representatives had been prepared to discuss it. Regrettably, these negotiations had not taken place, for the reasons set out in a letter from the chairman of the Central Staff Committee to the Council chairman and copied to all the delegations. There were obviously communication problems between the Office's management and staff. This should not be happening at an international organisation like the Office. Obviously, staff policy in international organisations could not be the same as in national administrations. Yet social dialogue worthy of that name was essential. CA/4/14 contained a number of interesting proposals which were probably beneficial to the staff as a whole. It suggested postponing the decision till the next Council meeting to give both sides a chance to restore genuine dialogue and calmly discuss the aspects of the proposed reform that were problematic for the staff representatives; each side needed to be willing to make concessions.
63. The Monegasque delegation said that every reform process went through three phases: deliberation, discussion and decision. That last phase had now come. The Office's proposal was clear and balanced, and created the

legal framework necessary to ensure the legitimacy of the staff representatives and staff rights. So the decision should not be postponed.

64. The Bulgarian delegation said it approved of the changes proposed in CA/4/14 because they clarified the roles and rights of the staff representatives and should promote staff-management dialogue, which in turn would calm things down so that the Office could continue providing excellent quality services for the European economy.
65. The French delegation said it would like to see a legal framework in place that met international standards and promoted staff-management dialogue. It thought that the measures proposed in CA/4/14 met these two criteria; it could therefore agree to them.
66. The German delegation said that generally, like all the delegations, it was well aware how sensitive the "social democracy" issue was for staff. There had been no real staff-management dialogue at the Office for some time. The President had outlined the reasons for this very regrettable situation, but it gathered from talking to the staff representatives – as other delegations had no doubt done – that the staff took a very different view. It was difficult for third parties like Council members to grasp all the ins and outs of the situation. It could only urge both sides – EPO management and staff – to keep on trying to talk to each other. All the delegations, not least the German one, knew how hard it was to bring about change in large administrations. To succeed, it was essential to involve the staff, provide clear and convincing reasons for change, and give them a chance to present their arguments. That required a big effort in terms of communication. The staff, and more particularly their representatives, also bore great responsibility. They could not simply reject all change out of hand, and stick rigidly to extreme positions. That deprived them of any possibility of influencing change, let alone negotiating acceptable alternatives. The Council could not intervene in the necessary dialogue between staff and management. Its role was to see whether the Office's wide-ranging proposals were appropriate and in line with its legal framework, but not to scrutinise every detail.
67. The German delegation then turned to the measures set out in CA/4/14. Having studied them carefully, it thought they were balanced. In particular, it

was wise to try to put staff representation on a sound legal footing. However, some points could have made it difficult for it to approve these proposals. For example, the committee hearing appeals against Council decisions needed close attention. The original provision, i.e. that the President alone would lay down its rules of procedure and appoint its chairman, had given cause for concern. However, it was pleased to hear the President say that this objection would be taken into account. The appeal system was not up for discussion right now, but the Council should continue to talk about it, and especially the rules governing it. As for the proposals now in CA/4/14, the German delegation welcomed the announcement the President had just made: that in future all decisions about the election process – and especially the validation of nominations – would be taken by a specially appointed panel of experts. That was important for guaranteeing the complete independence of the election procedure. In view of that amendment, and its positive assessment overall of the changes proposed in CA/4/14, the German delegation could approve them.

68. The UK delegation said it agreed with everything the German delegation had just said. From the outside, it was hard to understand what was really going on at the Office. The current situation was clearly unsatisfactory and would have to change. Clearly, views differed as to what should change, and how. The UK delegation was pleased that the President had made proposals designed to achieve change. Obviously, the staff representatives needed democratic legitimacy and a clear and transparent mandate. The President's stated intention to amend his proposals in the light of certain delegations' suggestions was also welcome. It was essential that a decision be taken without delay, taking account of the amendments announced. After that, staff and management would have to accept the new situation and see to it that the new system worked. It would also be good if the Office reported after a while on how the new system was working, to see if it had improved matters.
69. The Swedish delegation said it too was well aware of the need for change in staff-management relations at the Office. The current structures and practices for staff representation on the consultative bodies under the

Service Regulations were indeed very vague. If a general lack of trust was the main cause of dysfunction at the Office, the regulatory framework for ensuring the staff representatives' legitimacy contained weaknesses that definitely needed to be put right. Like other delegations, it did not think that now – when staff-management relations at the Office were far from ideal – was the best time to be dealing with this issue. On the substance, it thought that the proposals in CA/4/14 were fully justified, and that it was regrettable that the current tensions between staff and management were blocking constructive reform. All concerned, and especially the staff, would benefit from this reform. It did not see how the proposed measures could endanger staff's rights of association, and in particular the right to set up and join unions. But whilst it had no real objections as to the substance, it did have some reservations about the proposed regulatory framework, which gave the President wide-ranging powers over organising, supervising and monitoring the elections. It welcomed the President's announcement that adjustments could be made. Even so, it still had some objections to the proposals. Draft Article 35(5)(c) ServRegs in the decision in Part II of CA/4/14 stipulated that "The President of the Office shall determine the detailed conditions relating to the Staff Committee elections." This provision was supposed to serve as the legal basis for the draft circular in Annex 2. Given the importance and sensitivity of the circular's provisions, it might perhaps be better to make them part (or at least an annex) of the Service Regulations, which would shift regulatory responsibility to the Council. On mature reflection, it had concluded that this was not necessary, and would even have disadvantages. Yet the circular still contained some elements which it would have preferred to see in the Service Regulations. Perhaps the most important of these was the creation and role of the supervisory bodies. Article 3(3) of the draft circular stated that "The elections shall be supervised by an ad hoc Supervisory Committee composed of two employees and the Chairman designated by the President and two employees designated by the Central Staff Committee. ...". It was perfectly legitimate, and indeed vital, to have such a committee, and its role should not be confined to supervising the elections; the committee should also be involved in the counting of votes and any challenge to the election outcome. Supervision of the elections was so

important for the legitimacy and efficiency of the electoral procedure that it thought the ad hoc committee should be enshrined in Article 35 ServRegs, and its precise role also defined there. That would help to create confidence in the new system. However, having heard the President and the other earlier speakers, it realised that very few were prepared to accept amendments, however minor, to the proposed wording. Therefore, as it still had serious reservations about some parts of the proposal, it had decided to abstain from the vote.

70. The Icelandic delegation said it saw the need for change, and therefore supported the Office's proposals.
71. The Turkish delegation said it too supported the proposals. However, like the UK delegation, it would like the Office to present an implementation report in due course so that the Council could make any adjustments necessary.
72. The Hellenic delegation endorsed the favourable comments made by most of the other delegations, but also understood some delegations' reservations about aspects of the procedures. The President's proposal was a step in the right direction. The ball was now firmly in the staff's court. Like the Turkish and UK delegations, it called for a report after a certain period.
73. The Spanish delegation said it supported the proposed reform, which it hoped would ease the tension in staff-management relations at the Office.
74. The Netherlands delegation expressed support for the President's modernisation efforts, in line with the strategic thrust of the HR Roadmap. It agreed with the reform proposed in CA/4/14 as an important step in the right direction. It was absolutely essential to ease the current tensions at the Office. That required a sustained effort by all concerned to improve communication. It called on EPO staff to face up to their responsibilities and to respect the institutionally defined roles of the President and Council.
75. The Finnish delegation said it too supported the proposed reform. The current situation was totally unacceptable and untenable. EPO staff and

management should return to frank and open dialogue. The staff also had to realise that the world had changed.

76. The Polish delegation was broadly in favour of the proposed reform. Its doubts about supervision of the elections had been assuaged by the adjustments announced by the President. It would therefore be voting in favour.
77. The Danish delegation endorsed the positive views expressed by the other delegations. It still fully supported the measures set out in the HR Roadmap.
78. The Slovenian delegation said the reform proposed in CA/4/14 had been discussed at length in its country, but no definite position had yet been reached. It would therefore be abstaining.
79. The staff representatives disputed the assertion that the staff were hostile to all change on principle. That was not the case. On the contrary, the staff representatives supported the HR Roadmap and any measures that improved things for both the Office and its staff. They also stressed that contrary to what some people regularly claimed, they were not demanding – nor had they ever demanded – co-management of the Office. They then successively took issue with each of the President's arguments for the proposed reform. The legal framework was anything but vague, and there were precise rules on staff representation. These rules had evolved over the course of the Office's history, which despite frequent conflict was nevertheless a success story to this day. There was no other company or administration in which the management organised and supervised the elections of staff representatives, as was now being proposed. The Administrative Tribunal of the ILO, in a judgment actually mentioned by the President, had held that these elections were a matter for the staff representatives themselves. The current version of Article 35(6) ServRegs stipulated that the regulations governing the election of the local and central staff committees were determined by a general meeting of the permanent employees of the Office. It was not accurate to say, as the President had done, that the staff representatives had refused to enter into any discussion on this reform. The reality was that they had not been given the time to discuss it. Consulted at general assemblies held at the different Office sites, the staff had practically unanimously rejected the proposed reform. However, the staff representatives could see a way out of the current impasse. There was still some scope for discussion and compromise on certain points that

as they stood were unacceptable for staff. In conclusion, the delegations should listen to the staff – so often described as the Office's chief asset and the reason for its forty years of uninterrupted success, and put off their decision until the next meeting. They could then expect to see a revised proposal that would be the result of a compromise achieved through mediation or genuine dialogue.

80. The President thanked the delegations that had expressed support for the substance of his proposed reform. From a legal point of view, the Swiss delegation's analysis of the respective remit and powers of the President, Council and staff representatives was quite right. The Swedish delegation's fears about the President's proposed powers over the organisation of elections were exaggerated. As for strike ballots, a joint committee would be set up to organise and supervise these elections. In all democratic countries, the state had the power to organise elections; that was not problematic. EPO management had done everything possible to hold a dialogue with staff about the social democracy project, but all its efforts had come to nothing. There were now two options: either decide straight off; or defer the decision, and organise new meetings with the staff representatives in the hope that they could see their way to attending them and trying to reach a compromise. However, the reality was that the staff representatives did not want to enter into discussions, and everything they proposed was a stalling tactic. Moreover, postponing the decision would amount to giving the staff a veto they did not have on a proposal that the President was institutionally entitled to submit and the Council institutionally entitled to approve. He therefore urged the Council to decide now, so that the Office could move forward and undertake other important and vital reforms.
81. The Council unanimously approved the draft decision in Part II of CA/4/14 (present: 37; for: 32 – BG, BE, CZ, DK, DE, EE, GR, ES, FR, HR, IS, CY, LV, LI, LT, LU, HU, MK, MT, MC, NL, PL, PT, RO, SM, CH, AL, SK, RS, FI, TR, GB; abstentions: 5 – IE, IT, NO, AT, SE) [see CA/D 2/14] and noted the information provided in CA/4/14 Add. 1.
82. The Council endorsed the Office's recommendation that both documents be published.