

EPO FLIER No. 36

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

Trust is broken & quality in decline CA/3/18 to create further damage

Thanks to the intervention of some delegations during the last Board 28 meeting, the introduction of a new Article 53(1)(f)¹ into the Service Regulations evaporated into nothing.

But don't be fooled, the current proposal CA/3/18 still contains many harmful elements. If it enters into force, EPO management will be free to abolish permanent employment for all new recruits. CA/3/18 will further lower the attractiveness of the EPO as an employer² and the quality of the services it delivers to the users of the patent system. Coming on the heels of many other reforms, we have the impression that the President is trying to create as much damage as possible before he leaves office at the end of June. Despite an Administrative Council resolution and an expert study³ *commissioned by the President* that concluded the pace of change was too high, he just continues. Instead of fixing some of the massive damage he has created, he carries on creating more.

EPO staff have lost the trust in their employer

While the unrest caused by the original proposal has settled after the *last minute fix* by Board 28, a strong feeling amongst staff remains that the EPO cannot be trusted as an employer. "*The words of Art. 53(1)(f) will not be in our Codex, but are engraved in everybody's mind.*"⁴ By proposing Article 53(1)(f), the Office has given the clear signal to present and future staff that it does not intend to fulfil the promises it makes when hiring them. Staff are disappointed and disillusioned. Some colleagues, even young recruits, are desperate. In particular, it is the expatriates and staff who have invested in a new home who feel insecure.

For years, the staff have ceased to feel respected for their skills and the work they deliver. Many expect to be exploited while the Office needs them, and then dropped. It worries them that the Office has, for years, proposed one "reform" after the other, unilaterally

1 The previous version of CA/3/18 would have allowed dismissal of permanent employees "if the exigencies of the service require abolition of their post or a reduction in staff."

2 Resolution of the employees of the European Patent Office in Munich (22.02.2018)

3 In its January 2017 study prior to the DG1-DG2 Reorganisation, Boston Consulting Group pointed out that EPO top management had signaled a phase of consolidation after several years of accelerated change and significant growth of production, in line with the recommendations of several other studies (including the 2016 Social Study by *pwc*, 15.09.2016)

4 *Destroying trust - for a long time.* (SUEPO The Hague, 05.03.2018)

cancelling mutual agreements⁵ and voted by a Council which does not verify whether they are acceptable to staff⁶ and beneficial to the Organisation.

No matter what our skills are and how much experience we have, the President thinks he knows better how to do our jobs. This arrogance has led to an EPO falling apart wherever you look: DG1 (including Patent Administration) is in chaos, HR management is a disaster, IM is spending millions and producing nothing that moves us forward. This is NOT the fault of the staff that works at the EPO, but the fault of a President who lames us rather than leading us. His claims of glorious achievements look impressive, but scratch below the surface and you find a desperate, demoralised, and intimidated body of staff.

Most of us have joined the EPO because the administration promised us job security and stable working conditions. This allowed us to fully commit ourselves to assimilating special skills which have only a limited market outside the Office, and to dare a future in another country together with our families. But the present administration seems to be obsessed with abolishing promised benefits⁷ and denying us even basic rights. This attitude is incompatible with the needs of an international organisation and a patent office.

Employees no longer have access to timely legal redress. The competent tribunal, the ILOAT, does not meet modern standards of independence⁸. Many colleagues feel imprisoned in a system where unlawful actions are unpredictable, irreversible, and practically unchallengeable. Democracy depends on the rule of law. In a country, when you lose your faith in the judicial system, you lose your faith in functioning society. The EPO is an international organisation, not a country, but the same logic applies. The perspective of presumably having to file complaints to claim what is due to you, but with little hope of justice⁹, makes the EPO unattractive as an employer. Some colleagues, including younger recruits, have started looking for alternatives.

Service quality in decline

While the atmosphere inside the Office is tense, critical outside observers^{10,11} have noticed a significant drop in the quality of the services delivered by the EPO.

That quality slip is an inevitable consequence of the EPO's current HR policies. In a recent petition¹² to the Council, more than 900 examiners complain that they are '*submitted to constraints that are no longer compatible with fulfilling appropriately our duties within the*

5 eg the new career system (CA/D 10/14), the DG1/DG2 reorganisation (CA/65/17), and the "reform" of the internal justice system (CA/D 7/17) allowing for easy dismissal for professional incompetence.

6 or are at least in line with international civil service law standards

7 *Introducing flexibility in the employment framework* (slide show, Elodie Bergot, 05.10.2017)

8 The Tribunal's judges are appointed on three-year renewable contracts. Note that the ILOAT had several bilateral talks with the EPO administration - a party in the dispute - without informing or inviting representatives of the employees ([ILO-AT: 90 years old and in need of repair](#), 03.05.2017, su17040cp)

9 This feeling has grown after the publication of the [second batch of judgments of the 125th ILO session](#) which confirmed the authority of the President to ignore even unanimous recommendations of the Disciplinary Committee

10 *JUVE Patent Survey 2016* (<https://suepo.org/public/ex17003cpe.pdf>, English translation)

11 *The EPO's Vision (III) - Quality* (Thorsten Bausch, Kluwer Patent Blog, 05.03.2018)

12 [Patent quality has fallen, confirm Euro examiners](#) (theregister, 15.03.2018)

Search and Examination divisions. We are far too often put in front of the dilemma of either working according to the European Patent Convention (EPC) and respecting the Examiner's Guidelines, or issuing "products" as our hierarchy demands.'

Future reforms need careful consideration

The most important thing now is to rebuild the trust of the staff and of the users of the European patent system. To stop the disintegration, all changes that affect staff *must* meet the following requirements:

- Reform proposals must be the result of a genuine consultation with the CSC
- Proper benchmarking with other patent offices (not just with other international organisations)
- Proper legal checks by truly independent experts
- A staff survey measuring the impact of past "reforms" on staff health and motivation
- Independent external monitoring of the impact of reforms on the service quality
- Reforms must be compatible with improving the management-staff relationship
- No reforms by an administration which has lost the trust of staff and users

Proposal CA/3/18 does not fulfil any of these requirements. Its likely detrimental consequences on the EPO's service quality have been explained in recent publications^{13,14}.

What in particular is wrong with the current proposal CA/3/18?

The proposal still contains harmful elements, some of them have been heavily criticised by several delegations¹⁵. These harmful elements are:

- Five-year fixed-term contracts for all new recruits, including examiners, up to 20% of the total workforce.
- In effect, recruitment solely on contract for the next 10 years or more, i.e. the *de facto* abolition of permanent employment at the EPO.
- This is incompatible with Article 5(1) Service Regulations (General recruitment criteria):

"Recruitment shall be directed to securing for the Office the services of **permanent** employees of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of the Contracting States." (emphasis added)
- Disrespectful and discriminatory limitation of 10 years' employment for administrative and technical staff.
- Failure to take into account staff's personal situation due to the EPO's particular status as an international organisation, and the needs of a patent office.

13 EPO-FLIER No. 33 *The final straw for patent quality?* (www.epostaff4rights.org)

14 EPO-FLIER No. 35 *What else is wrong with CA/3/18 ?* (www.epostaff4rights.org)

15 eg during the Budget and Finance Committee (BFC) meeting in October 2017 (see CA/109/17)

- The introduction of an additional staff category conflicts with the alleged aim to harmonise the conditions of employment of all employees⁷.
- Outsourcing of recruitment and excluding staff representatives from the recruitment process allows a further lowering of the bar for recruitment standards. While this might help to compensate for the loss of attractiveness of the EPO as an employer, is it incompatible with the Office's alleged priority of providing high quality services.
- Vice-Presidents (VPs) will be allowed to sit in the General Consultative Committee (GCC). This is an attempt to legalise the current practice, which is in conflict with the Service Regulations: the current President expects his nominees to the GCC, including the VPs, to give a positive opinion on and to vote in favour of all his proposals¹⁶. And they have done that for years, making a mockery of the consultation process.

Can CA/3/18 still be stopped?

"The EPO's latest idea to generate 'more flexibility' by employing more examiners on the basis of five-year contracts rather than permanently is ... completely counter-productive to quality and should be firmly rejected by the Administrative Council."

Thorsten Bausch¹¹

Staff and users want the EPO to return to a situation of mutual trust between management and staff, and where users are satisfied with the quality of the EPO's services.

The moment for the delegations to send a signal to the staff and the public that this is desired, or will at least not be impossible, is now.

The member states can still stop the proposal. They can vote against CA 3/18 in the Administrative Council meeting on 21&22 March.

In its resolution of 22 February 2018, Munich staff demands "the rejection of document CA 3/18 by the Administrative Council".²

We entirely agree.

EPO Flier Team

¹⁶ [CSC Report of the 238th meeting of the GAC on 28.02.2012 in Munich](#): "As reported earlier in our report of the 236th GAC, the so-called "HR Roadmap" talks of "involvement of higher management" in the GAC in 2012, in order to "strengthen" it. Additionally, in a meeting with the staff representation the President declared that if he wants an opinion from his managers he will ask them, but that once a proposal comes to the GAC he expects his nominees to defend it."