

Internal appeals reform

The President has withdrawn his document on the internal appeals reform from the agenda of the next Administrative Council meeting for re-submission in October. We would prefer it if the document were to disappear forever. It is not clear what - if anything - positive can be achieved with it. The alleged aim is to oblige decision makers to reflect on and reason their decisions. But:

- a) a reasoning is already required according to Art. 106(1) ServRegs.,
- b) an early review is actually foreseen in the present procedure. It just isn't done, and
- c) the only obligations are on the staff member who has to request such a review before being able to file an appeal.

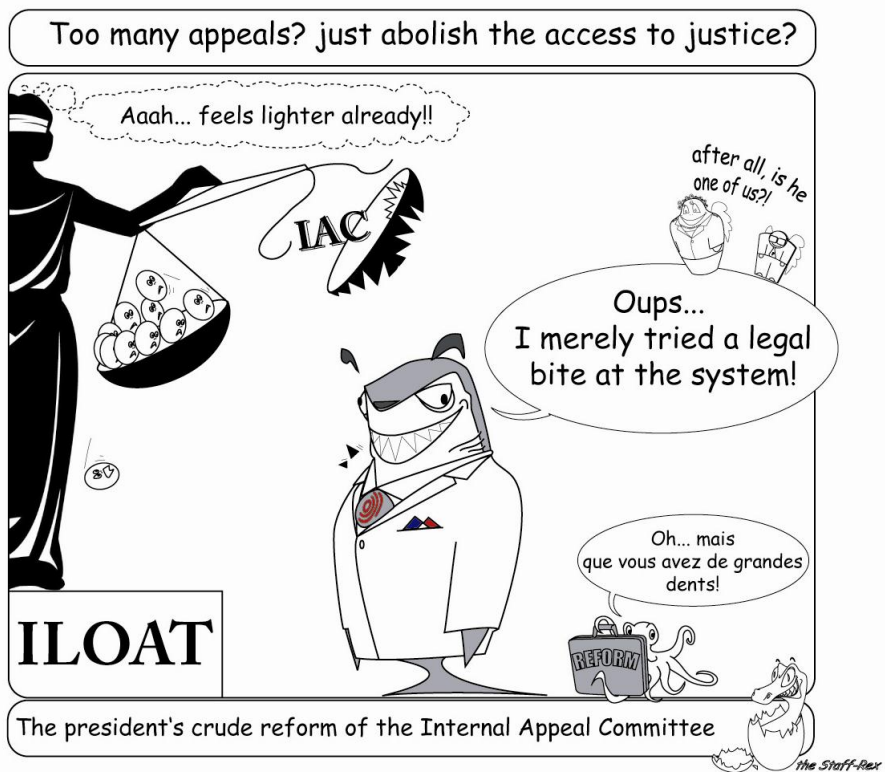
This seems inconsistent with the alleged aim. The true aim of the reform appears to be the suppression of the possibility of appealing general decisions. CA/52/12 illustrates the point. The judgments cited in the document have been carefully selected to support the position of the administration¹. The President further proposed the abolition of the Administrative Council's Appeal Committee, the appeals body responsible for our colleagues who are appointed by the Council, mainly the Members and Chairmen of the Boards of Appeal. Unsurprisingly the association of Members of the Boards of Appeal (AMBA) has also expressed its dissatisfaction with the proposed reform. We expect the President to seek a satisfactory solution for the Administrative Council's Appeal Committee but to leave the rest. In this case our opposition will continue. We count on staff support.

We cannot tolerate any further weakening of our already weak jurisdictional system!

ABOLISHING ACCESS TO JUSTICE = JUSTICE DENIED

Contents:

Internal appeals reform.....	- 1 -
Pension matters.....	- 2 -
No fraud in the EPO ?	- 3 -
Outsourcing continued.....	- 3 -
The new dignity policy.....	- 3 -
A bonus or better not?	- 4 -
Warning letters	- 4 -
Improving the EPO's IT competence	- 5 -
Sick of change	- 5 -
Another home match for our President.....	- 5 -
Non-renewable contracts..	- 6 -
PA Bullshit Bingo latest version	- 7 -
Interesting links (or not)...	- 8 -
Our performance assessment	- 8 -
Mirror, mirror on the wall...	- 8 -

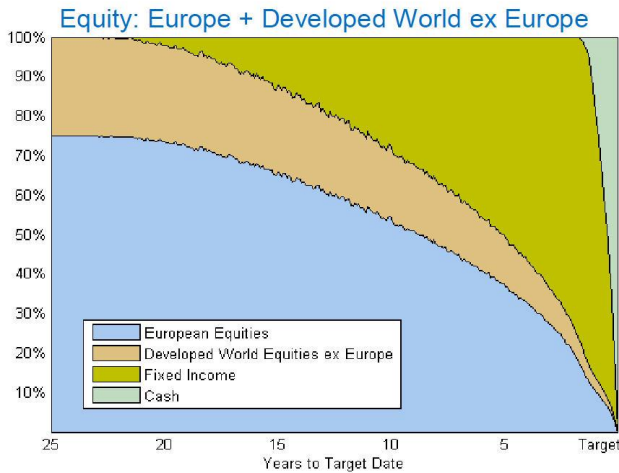


¹ A different position is found eg. in judgment 2919, point 5, confirming Judgments 1618 and 1451.

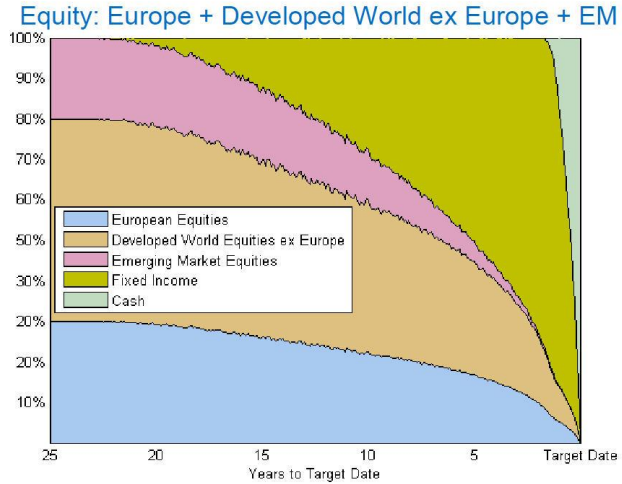
Pension matters

Fidelity, the firm managing a part of the pension of the "newcomers", has decided to reduce its investment in European Equities and increase the share of equities from the rest of the World, including equities from Emerging Markets, e.g. China or India (see the graphs below).

Current roll-down model



New roll-down model



Source: Fidelity

Fidelity stated during a recent meeting with EPO's management and Staff Representatives that this change will provide a higher return of investment while maintaining the same level of risk. By including other asset classes, such as emerging market equities, Fidelity hopes to diversify the portfolio in order to reduce the systematic risk arising from an over-exposure in one economic zone, in our case Europe. The benefits of a broad diversification of the investments are generally recognised in portfolio theory. Such diversification is thus state of the art in funds management.

Mr. Battistelli has repeatedly stated that he intends to bring all staff into a single defined benefit pension system. We can only agree. The pending discussions about "which new pension system?" have stalled, however, awaiting further developments on the Community patent court, which will define whether a diplomatic conference will be feasible or not.

In the mean time a German Court (3rd instance) has issued a judgment stating that it is not at the simple discretionary power of an employer to take away pension benefits acquired over a long period².

Similar positive judgments have been issued by ILO-AT. We refer in particular to ILO-AT judgment 1821, consideration 7, point (d): while the necessity of saving money may be one valid factor to be considered in adjusting salaries, provided the method adopted is objective, stable and foreseeable ... **the mere desire to save money at the staff's expense of is not by itself a valid reason for departing from established standards of reference ...**

We will have these judgments at hand next time we meet the President about pensions.



$$\begin{aligned}
 IR_p &= \frac{\bar{R}_p - \bar{R}_b}{\sigma(\bar{R}_p - \bar{R}_b)} = \frac{\bar{S}}{T} \\
 &= \sum_{i=1}^n \left(\frac{AA_i + SE_i}{T} \right) \\
 &= \sum_{i=1}^n \sum_{m=1}^2 \left(\frac{\bar{X}_{im}}{T} \right) \\
 X_{i1} &= AA_i, \quad X_{i2} = SE_i
 \end{aligned}$$

² [German judgment on acquired pension benefits](#)

No fraud in the EPO ?

According to a recent survey by the Association of Certified Fraud Examiners (<http://www.acfe.com/RTTN>), businesses around the world lose an estimated 5% of their annual revenues to fraud, the total loss being more than \$3.5 trillion. Despite its weak governance and high turn-over (some 100 million / year) the EPO seems to be immune to fraud. The external auditors that check our Organisation every year has never found anything except for trivial mistakes (CA/20/11, CA/20/12 etc.). Or is it *because of its weak governance* that no fraud is detected in the EPO? If so then this is unlikely to change under our present President. One of Mr. Battistelli's first acts in the Office was the abolition of the Audit Committee that could have strengthened our governance. The President has agreed to introduce a Code of Conduct for the EPO. But we guess that this Code will conveniently aim at reducing perceived fraud at the lowest levels of the Organisation, i.e. by ordinary staff, although it is well-known that high-level fraud does much more damage. The above report estimates that the median loss among frauds committed by owner/executives, by managers and by employees was \$573,000, \$180,000 and \$60,000 respectively. Part of the reason may be that most fraud is detected through tips, i.e. a whistle-blowing system. The Office never had any whistle-blowing system, let alone an independent whistle-blowing system that allows anonymous tips. The only possibility is to report to the President or to Internal Audit – which in turn reports to the President. We do not know whether any ordinary staff members have ever tried to report suspected fraud to the President and what the result was. But attempts by staff representatives to have potentially dubious practices investigated have either been ignored or resulted in threats with disciplinary procedures. Mr. Battistelli has already informed us that he does not believe in an independent whistle-blower system. So the official fraud records are likely to remain low.

Outsourcing continued

The Office's outsourcing policy has been another topic of discussion between the administration and the staff representation. Early this year the President ditched the work of a project group and put his own proposal³ on the table. This was to be discussed between the President and the CSC on 24 May. To remind all in the room what an outsourcing policy should encompass, the staff representation distributed a 2-page document with the essential information regarding what ILO-AT considered that such a document should look like. Our hand-out was not well received by the President who refused any further discussion and announced that he would simply submit his policy document "as is" to the GAC. This has now happened. We will obviously inform the Tribunal and trust that they will find that this policy does not respect its judgment⁴.

The new dignity policy

Under President Kober a staff dignity policy was negotiated between the staff representation and the administration. This policy was introduced by President Pompidou – and subsequently (illegally) abolished by him. Since then we have been promised a new policy, but progress have been excruciatingly slow. We expect President Battistelli to submit a document to the Council either in October or in December – probably again ignoring most of the input of the staff representation. One of the points on which we disagree with the President is that the President has decided that any investigation should be performed by Internal Audit. We very much respect the work and the integrity of our colleagues in Internal Audit. But their skills are mostly in financial and legal matters, not in human psychology. Moreover, Internal Audit takes its orders directly from the President and reports exclusively to the President. It is not clear how the independence of the investigation can be guaranteed under such circumstances. Our suspicions about the intentions of the administration and/or VP1

³ [GAC/DOC 09/2012 outsourcing document](#)

⁴ [ILO Judgement 2919 on outsourcing](#)

have further increased with the nomination of Mr. Lokere as “Advisor on conflict resolution matters⁵” through the usual completely intransparent transfer procedure. It is not clear what this title means. But Mr. Lokere does not have the reputation of being staff friendly. We therefore cannot advise staff to put their fate in the hands of Mr. Lokere in case they have problems with the Office. Please contact your staff representatives instead.

A bonus or better not?

One of the latest proposals of our President, informally communicated to us, is the introduction of a bonus scheme for staff. The idea is that if in any given year the Office has an excess IFRS operational result, the excess will be invested for 1/3rd in Office projects (e.g. buildings), 1/3rd in the social security reserve funds and 1/3rd will be paid to staff. Obviously it is hard to say “no” to a bonus. Nevertheless the Munich staff representation (both SUEPO and MSC) has some reserves. One is a very fundamental one: the EPO should not aim at making a profit, its budget is supposed to be balanced (Art. 40 EPC). Refusing patent applications is furthermore less favorable for the Office’s finances than granting patents. Linking staff pay to EPO operating results thus puts staff, in particular examiners, in a conflict of interest. Patent offices world-wide are already under criticism for granting too easily in order to make money. A bonus system would make things worse. Introducing such a bonus system at this moment in time may furthermore not even be in the financial interest of staff since it risks having a negative impact on the review of the salary system that is due next year. Finally: it seems unlikely that the Administrative Council will agree to pay a bonus on the basis of positive operating results when the total IFRS results are negative. We could thus be squandering our reputation and putting our basic salary (which is also the basis of our pensions) at risk for little real benefit. The Munich staff representation therefore wholeheartedly supports investing 1/3rd, or even the whole of last year’s approx. 80 million Euros operating excess in the social security funds. We would also support investing excess

money in recruiting staff where needed. But we do not support the introduction of a bonus system based on excess operating results.

Warning letters

June is traditionally the month for warning letters, in particular in DG1. Such warning letters are to be taken seriously: they open the way to a negative report. If you receive any unjustified or partially unjustified warning letters you should react. Again: our conciliators are available for advice and support.

In the mean time we would like to remind everybody of the following:

The productivity figure "P" provided by MUSE is only a starting point on which the director can further build to come to a fair and true picture of the actual contribution of the examiner in the framework of PAX. Focusing on the MUSE productivity "P" is contrary to the PAX Guidelines and PAX Implementation Handbook: "[...] *one of the objectives of PAX is to move away from the general tendency whereby mere numbers play too dominant a role, and whereby the same numbers also tend to overshadow the other three elements of a professional performance: Quality, aptitude and attitude.*" (PAX-Implementation Handbook, point 4.1, p. 5).

In the framework of PAX, the reporting officer, i.e. the director, awards a box marking for productivity as foreseen in Circular 246, meaning that - given the comparative principle of our reporting procedure - examiners should be compared to their peers. This necessitates a judgement from the director in how far the reference examiner is relevant for a group of examiners working in a specific field falling under that reference examiner.

A "P" value of 70% of the reference examiner lies in the **middle range of good**. This fact is confirmed by ILO jurisprudence. Issuing Warning Letters and threatening examiners with a less than good in Productivity simply because they have a P below 70% of the reference examiner is wrong and likely to be counterproductive

⁵ [Transfer of Mr. Lokere](#)

Improving the EPO's IT competence

Past experience has made the majority of the staff and the staff representation of the EPO *extremely* wary about promises of a better IT future for the Office. As a consequence we are still hedging our bets on what Mr. René Kraft, the newly appointed PD and CIO in IM, will achieve. But at least some of what he says makes more sense than anything we have heard in the past decade. One important concept that Mr. Kraft stresses is the avoidance of "provider dependence". Mr. Kraft insists that the EPO should actually **import** all essential knowledge so that it can, at any time, either change provider or in-source again. We fully agree.

Sick of change

Since the departure of President Kober eight years ago, the EPO is in constant state of change. With a cryptic terminology and acronyms such as *change process, automation, outsourcing, PAX, SPP, IT roadmap, HR roadmap, e-file, AoCs, holistic approach* or a "reasoning" such as "*doing nothing is not an option*", the EPO top management tries to sell its decisions. Obviously nobody is against change *for the better*. But on the work-floor disillusioned colleagues observe and report that the changes implemented often do not fulfill their needs or worse: that these decisions are creating problems where none existed. The old saying "*if it ain't broken don't fix it*" still applies. But good administration is not glorious enough for would be "leaders" trying to justify their existence and forward their career.

This continuous disruption affects all EPO areas. DG1 is struggling with AoCs. The IT and DG4 departments are anxiously awaiting a consultancy-imposed reorganisation. DG5 is suffering from a high staff turn-over and often a bad atmosphere. Staff in Patent Administration is amongst those worst affected. They have been subjected to more changes than any other department. PA management nevertheless discusses "how to overcome staff resistance to change" (sic!). Contractors are dismissed and colleagues retiring into pension are not replaced. Their

workload remains. Overloaded colleagues are cynically told that "*job diversification is motivating and helps against routine*", meaning that they have to take over the additional work.

The short-term beneficial effect of staff- and cost-cutting are greater financial benefits for the EPO, from which the Member States have also profited. The price to pay is a high and probably increasing sick-leave rate for staff - for which they are subsequently blamed. The administration plans more aggressive ("less bureaucratic ") sick leave control and possibly even salary deductions for sick staff. The Members of the Boards of Appeal in DG3 also have a very low sick leave, despite their average higher age. DG3 has thus far escaped badly accepted restructurings. The Board Members are, at least until now, treated with respect. From the literature we know that (lack of) respect / (poor) restructurings and (poor) staff health these are related. Maybe there is a lesson to be learned from these observations?

Another home match for our President

Mr. Battistelli elegantly combines EPO politics with local ambitions. We already reported on a "trilateral" (EPO, USPTO and JPO) meeting in Saint Germain-en-Laye, the town of which he is deputy major. More recently our President was going back to his roots and organized an IP5 meeting (including Korea and China) in Corsica. The Corsicans were jubilant.

We cite a local newspaper article:
*"Parmi les présidents de cinq des plus importants offices de brevets au monde réunis, Benoît Battistelli préside celui de l'Europe. Rencontre avec un Corse certifié conforme à son job."*⁶.

No doubts the heads of the other patent offices appreciate seeing a little more of Europe. But questions about whether it is appropriate for Mr. Battistelli to use EPO money to stimulate local economies in which he has a personal interest seem justified.

⁶ [Article on the IP5 meeting in Corsica](#)

Non-renewable contracts

The Office is increasingly relying on non-renewable contracts for permanent work. The latest NRC⁷ vacancy notice⁸ that we spotted is for a lawyer in Directorate 5.2.1 (Patent Law). Not only is the work of permanent nature, but amongst his or her tasks will be “*acting as a legally qualified examiner on examination and opposition cases.*” This would seem to be doubly against Codex Part 2c Art. 1(2) that stipulates that “Contracts may only be concluded in response to temporary needs” and “Non-renewable contracts may not be concluded for recruiting examiners”.

There is also a practical reason why using non-permanent staff in examination and opposition proceedings is not wise: after hearings the same division that took the decision must sign the decision. This may take quite some time. If the non-permanent member leaves in the mean-time then the hearing must be re-held. It is disappointing to see that the DG that is supposed to be the guardian of our law is not leading by example.

We have asked Mr. Lutz (VP5) to comment. Mr. Lutz' answer thus far (“*this is not an examiner, it is a lawyer*”) is not entirely satisfactory. Both technical and legal members of an examining division are examiners (see Arts. 18(2) and 19(2) EPC). We have pointed this out and are now awaiting the next steps.



⁷ Non-Renewable Contract

⁸ [Vacancy notice](#)

Informes déchaîné

PA Bullshit Bingo latest version

Do you tend to fall asleep during unit meetings? Or what about those boring seminars? Here's one way to change things!

How to play? Cross a block when you hear the corresponding expression during a meeting, a seminar or a video-conference. As soon as you have crossed out 5 fields in a horizontal, vertical or diagonal row you stand up and shout: **"BULLSHIT!!"**

Get it right first time	Positive Attitude	Change Management Team	Paralegals	Re-skilling exercise
Rotation	IT Roadmap	Paratechnicals	EURO-Contractors	Refund Exercise
PA Change Readiness Survey	Outsourcing	Staff Well-Being	Internal Customers	Virtual Pool
Internal Job Market	Certification	Strategic Quality Goal	Job Mobility	Customer Relations Management
Health Action Plan	Rebalancing	Your Future Our Future	Operational Quality Control	Efficiency

Statements of enthusiastic players:

"I won after just 5 minutes in a meeting." (M.P., The Hague)

"My attention during meetings has gone up dramatically." (K.A., Munich)

"Since my first game, meetings aren't anymore what they used to be!" (O.P., Berlin)

"The atmosphere during the last meeting was highly charged when there were 8 of us waiting for the last field." (T.S., The Hague)

"Our manager was left speechless when 5 of us shouted " Bullshit " for the third time during a two hour meeting." (W.G., Munich)

Interesting links (or not)...

How AoCs really came about: <http://www.jokes2go.com/jokes/5926.html>

Our performance assessment

<input type="checkbox"/> <i>ausgezeichnet</i> <i>outstanding</i> <i>excellent</i>	<input type="checkbox"/> <i>sehr gut</i> <i>very good</i> <i>très bien</i>	<input type="checkbox"/> <i>gut</i> <i>good</i> <i>bien</i>	<input type="checkbox"/> <i>ausreichend</i> <i>less than good</i> <i>passable</i>	<input type="checkbox"/> <i>unzureichend</i> <i>unsatisfactory</i> <i>insuffisant</i>
To all colleagues working in the Amicale for organising events and activities that improve our quality of life in the EPO	To the directors who resist the pressure from some PDs to give warning letters	To the Administrative Council for moving towards more transparency by making (most) Council documents public.	To the PDs and directors who do not respect the AoC "Best Practice"	To DG1 for using the examiner's name on replies to enquiries about when a communication can be expected, where the examiner has never seen the enquiry.



A clue: How many pictures of Mr. Battistelli can you find in the latest **Gazette**?

I wish to become a member of the SUEPO		
Name:	Room:	Tel:
Grade..... Signature:		
Cut out or copy this form and send it back to SUEPO room A1035 BT8		