

Detailed information

We, staff members of the European Patent Office (EPO) and the signatories of this petition, perceive that the development of the European Patent Organization (EPOrg) has increasingly departed from the structure and its mission as foreseen under the EPC.

It appears that the EPO is being more and more transformed into a profit center, which is - in our view - inappropriate for a public service with quasi-judicial bodies responsible for granting monopoly rights by sovereign acts, which have a wide impact on their owners, their competitors and on the public. The fact that almost all management decisions are made on the basis of financial figures calculated according to the accounting standards applicable to the private sector (IFRS) rather than to the public sector (IPSAS) has led to reforms focused on savings on the expense of staff and downsizing of staff in core business to an amount which endangers the good functioning of the EPO. Core tasks are evaluated increasingly more on a financial perspective, wherein internally a link between the number of patents granted and the financial health of the EPO is openly communicated. The EPO career system further adds to an individual preference for granting of a patent over refusing a patent application.

Internal quality control mechanisms have been implemented, by which the President of the European Patent Office has increasingly assumed the position of an additional higher ranking, but hidden instance in the patent granting procedure above the Divisions defined pursuant to Articles 15, 18 and 19 EPC. This not only questions the authenticity and legal validity of the Division's decisions but also leads to strong influence to quickly grant patents. While surveys among external "stakeholders" ran by the EPO appear to show a high quality of the EPO patents, internal audits disclose that since years more than 20% of the European Patents have severe deficiencies and shouldn't have been granted.

Backlogs in examination and search are increasing and it appears that for tackling the problems the current line management is tempted to return to outdated management approaches like "challenging people" measures and management "by fear", which are unworthy of a modern organization like the EPO with highly qualified personnel. At the same time the EPO plans to reduce the staffing level in core tasks even further. This adds to current plans squaring with a large-scale decentralization of EPO tasks, including transfer of tasks to NPOs. Such significant amendments of the Organization's structure fall outside the prerogatives of the President or the Administrative Council as defined in Articles 10 and 33 EPC. Furthermore, such a decentralization of EPO tasks would also affect the legal certainties of the validity of the patents granted by the EPO.

Apart from that, virtually all reforms of employment law since 2013 have been legally challenged, a number of which were already considered as null and void by the ILOAT (see e.g. Judgments 4430 to 4435 or 4482) or even in breach of fundamental rights; no significant investments have been made for reviewing the other reforms at stake. The EPO has obviously been unable to develop and apply new policies in line with legal constraints as defined by the ILOAT, so that further embarrassing judgments are to be expected.

All these issues have not been appropriately tackled due to the long-lasting failure of the EPO Administration to engage in a genuine social dialog with the staff representation and trade unions, who have drawn attention to them repeatedly to no avail.

Therefore, we consider an external review of the EPO's situation by a Conference of Ministers of the Contracting States under Article 4a EPC to be expedient; such a Conference is anyway long overdue in view of Article 4a EPC.

We call on you to have anew a close look:

- at the development and administration of the organization's resources, in particular the alarming reduction of staffing levels in the core tasks;
- at the development of EPO employment law, at the (absence of) internal dialogue with social partners; and
- at hidden attempts to de-centralize the EPO towards National Patent Offices and weaken the roles and competencies of the various organs defined under the EPC

We also call you to reflect on whether the strategic governance of the EPO is compatible with the long-term continuity of the Organization's existence and with the future fulfillment of its mission, also in the context of its role in the Unitary Patent system.

We ask you to transmit this petition to your Ministries in order to convene such Conference without delay.

The non-exhaustive list of signs of derailment of the EPO includes:

Management of core business and Quality:

- Staffing level in core business has been reduced significantly during the past years and the office plans to continue the reduction of staffing level in core tasks by 25% of examiners and by 50% of formalities officers;
- Since the beginning of 2021 until the end of April 2022 an increase of the examination backlog by about 12% and search backlog by 5% is visible;
- Rather than adapting the recruitment plans in core business to the actual situation the Office continues to focus on prioritizing and re-shuffling examiners tasks in examination and search;
- The latest figures of the internal quality audit disclose a decreasing trend of quality of grant decisions from an already low compliance rate of 80% in April 2021 down to less than 75% at the end of March 2022.

Decentralisation initiatives:

- The EPO has proposed a new „mobility“ program which includes secondment of patent examiners between the EPO and NPOs without limitations; it further focuses on harmonization of IT structures between NPOs and the EPO rather than primarily investing in the tools to support the core work;
- By the reorganization of 1 April 2022, EPO examining divisions and EPO formality officers were artificially separated geographically to different sites, without any added value for the EPO work procedures;

- The Office has departed from long-term and permanent employment towards high rotation short-term contract jobs for the members of the Divisions defined pursuant to Articles 15, 18 and 19 EPC.

Legal Certainty of Sovereign acts:

- Over the past years the President of the European Patent Office has issued instructions by which he increasingly assumed the position of an additional higher ranking, but hidden instance in the patent granting procedure above the Divisions defined pursuant to Articles 15, 18 and 19 EPC. Every notified action of the Division like a communication, summons to oral proceedings, refusal decision or grant of a patent application requires approval of the line manager in substance, although she or he is not a member of the Division;
- No legal means are available for the members of the Divisions for redressing interferences, like unlawful orders of the line manager to issue a communication instead of a decision to refuse an application as no legal instance is available (see e.g., Judgment 4417);
- The current electronic file and workflow system systematically implements resulting interference by management with the Division's responsibilities and tasks and does not ensure an appropriate authentication of signatures of the responsible members of the Division.