

# Kluwer Patent Blog

## Petition for ministerial conference on European Patent Organisation

Kluwer Patent blogger · Friday, June 17th, 2022

Ahead of their meeting late June, a petition calling for a conference of ministers of contracting states under [Article 4a EPC](#) has been sent to the members of the Administrative Council of the EPO.

The petition is an initiative of the EPO's trade union SUEPO, which has invited all staff members to sign it.



According to the petition: ‘the development of the European Patent Organization (...) has increasingly departed from the structure and its mission as foreseen under the EPC and it appears that no appropriate countermeasures will be taken.

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.'

A document with more detailed information accompanying the petition ([available here](#)) reads:

'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. (...)

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search are increasing and it appears that for tackling the problems the current line management is tempted to return to outdated management approaches like "challenging people" measures and management "by fear", which are unworthy of a modern organization like the EPO with highly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. (...)

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. (...)’

## Every five years?

According to the European Patent Convention, meetings under Article 4a are due to be held ‘at least every five years’ but since 2000, when the article was introduced, such conference has never been held.

The AC meeting of 29 and 30 June 2022 is especially interesting as a decision will be made about the re-appointment of president António Campinos, who started in office in 2018, for a second five-year term.

The petition and developments at the EPO over the past period have shown that Campinos has clearly failed to achieve one important goal. Although agreements were reached with several people who had been fired or punished unlawfully by Campinos’ predecessor Benoit Battistelli, hope he would restore social peace at the EPO has vanished.

The relation between management en staff is tense. Since February industrial actions have been held, there was a day of strike and late April the Central Staff Committee reported about an outburst of anger of Campinos during a meeting described as ‘*abysmal*’, in which the EPO president ‘used foul language throughout (...) and insulted most of the speakers.’ The EPO declined to comment.

It remains to be seen what the AC’s reaction will be to the petition, which is a sign of the troubled relations at the EPO as well. Kluwer IP Law contacted several members of the Administrative Council about the performance of Antonio Campinos during his first term, but non of them wanted to comment.

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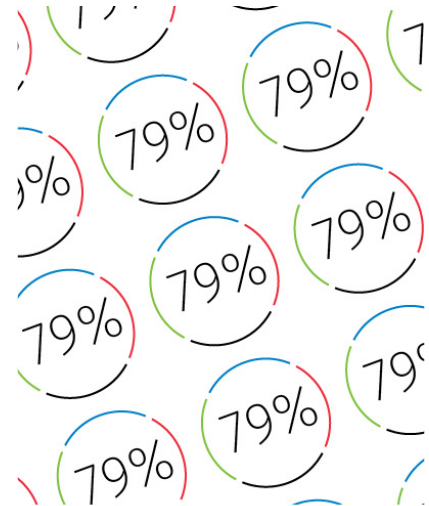
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