

# Conflict in the European Patent Office: Black eye for Battistelli

**Benoît Battistelli is staying on in office - for now. But the Administrative Council of the European Patent Office has given the President clear warnings about how the Office is to be run from now on, according to a press release issued yesterday. For the first time, the supervisory body of the Office has publicly acknowledged a deep-rooted conflict between President Battistelli and the staff unions, and has called on both parties to come to a mutually acceptable solution.**



Benoît Battistelli

Battistelli is embroiled in a bitter conflict with the staff union Suepo. Four controversial disciplinary proceedings against three union members and an Irish judge have been laid at his door. As well as that, the Office is battling for structural reform which will give more independence to its “court”, known as the Boards of Appeal.

The focus of the two-day meeting of the 38 Member States of the European Patent Office, which ended yesterday, was plainly on speculation about Battistelli’s resignation, following the evident increase in pressure on Battistelli imposed internally by the Presidium of the Council in February. The German and Dutch press were reporting that his departure was simply a matter of his golden handshake. Conversely, JUVE had learned from sources close to influential elements that the Council was again striving to reach a peaceful solution with Battistelli – but with some clear provisos imposed, which has now been confirmed.

## **Warning to both social parties**

“The resolution imposes obligations on the President, and makes it clear that responsibility rests on him to restore peace within the EPO”, was the response to the outcome by Dr. Philip Scholz, spokesman for the Federal Ministry of Justice and Consumer Protection. However, according to the resolution, the obligation rests not only on Battistelli, but also on the main staff union Suepo, which is deeply hostile to him. Neither party have recently made any effort to talk seriously to each other. The conflict came to a head when in January Battistelli suspended three leading union members, among them the Dutch citizen Elisabeth Hardon.

The EPO Member States are now calling on the President to seek an agreement with the unions, without prior conditions being set or certain topics being excluded. The unions have repeatedly demanded investigation proceedings against their executives must be stopped, before they are ready to come to some agreement. The Administrative Council is taking the

open criticism of the proceedings seriously, in particular with regard to the actions of the internal investigation unit, and has called on Battistelli “to ensure that disciplinary measures and proceedings are not only fair, but also that they are seen to be fair”. According to information provided to JUVE, external monitoring of these proceedings, conciliations, and mediation have recently also been imposed on the President. This proposal is now also included in the press release, although in a somewhat mild formulation.

Specifically, the Administrative Council has also insisted that the President work out proposals as to how these proceedings can be improved, and to keep them informed in an appropriate manner of disciplinary situations. This also includes an instruction that the status of officials and investigation guidelines be reviewed.

Battistelli told JUVE: “The Office will in its turn begin with the requested revision of the internal investigation rulings and disciplinary procedures. In parallel with this, a study of the reforms of the past few years will now be set in motion by a firm of consultants, with the participation of the staff representatives. Our aim is to discuss the results of this study at a conference in the autumn, together with the personnel representatives and the staff unions of the EPO, the Member States, and other interested parties.”

The Administrative Council also made its views clear with regard to the unions. They should work towards reaching agreement with the Office management, without prior conditions, constructively and rapidly. The Suepo staff union has still to discuss internally its position with regard to the new outcomes, and could not be reached for an official comment. Sources close to the union did indicate, however, that the proposal to engage an external mediator for disciplinary proceedings is seen as a step in the right direction.

### **Court reform should be speeded up.**

The structural reform of the Boards of Appeal should now also be pushed ahead. The EPO’s own in-house court decides on the legality and correctness of the issue of patents. Recently, however, it has been shown too little independence by the Office. Battistelli is now supposed to present the Administrative Council, by June, with new proposals for a reform, and in this context take account of five guidelines which were laid out by the Administrative Council in December, as well as the results of an expert legal opinion by Prof. Dan Sarooshi. Thereafter, the reform is supposed to be put in hand rapidly.

As other outcomes of the meeting, the Administrative Council has appointed two Chairpersons and four further members of the Boards of Appeal, as well as an external member of the Extended Boards of Appeal. These posts have been vacant for some considerable time. As well as this, the Chair of the Administrative Council, Jesper Kongstad, has been confirmed in office for a further three years as from July 2016. (Christina Schulze, Mathieu Klos)