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14.6.2013

To the governments of the member states of the European Patent Organisation

**European Patent Organisation is seeking to limit Freedom of Association for Staff
(decision planned on 26 June 2013 by the Administrative Council)**

Dear «PMArede» «PMName»,

The Staff Union¹ of the European Patent Office² (SUEPO) wishes to draw your attention to the risk associated with the proposed introduction of regulations which limit freedom of association within the EPO. These regulations are the latest in a series of limitations of staff rights and will further escalate an already heated internal conflict. The measures are not consistent with ECtHR jurisprudence on fundamental rights, national legislation of most members states, or the jurisprudence of the ILOAT.

The proposed measures engage the responsibility of your country as represented by your delegation to the Administrative Council (AC) of the European Patent Organisation to protect fundamental rights of staff, including the right to strike. If introduced, the measures will result in legal challenges against member states of the EPO for breach of obligations set out under international conventions to enforce such fundamental rights, and will likely draw the attention of a wide range of media. This attempt by the President to depart from the *acquis communautaire* would appear to be at odds with the values and assumptions underlying the recent decision to entrust the EPO with the practical implementation of the Unitary Patent.

Since Mr Battistelli joined the EPO as its President, a series of changes to the Service Regulations have been introduced which, in combination with backlogs within the internal appeals process and at the Administrative Tribunal of the International Labour Organization, have led to a situation where no effective legal protection of staff rights exists. The delays for new appeals are expected to be in excess of 15 years meaning that it is no longer possible to obtain a judicial review of the acts of the Office within reasonable time.

Several of the measures which have been put in place in our view contravene fundamental rights, such as the right not to self-incriminate or the inviolability of the home and family. The most recent initiative, the planned introduction of strike regulations (cf. Annex 1), raises such clear violations of fundamental rights that the proposed introduction will engage the positive obligation of the member states to protect such rights under the ECHR.

1 50% of EPO staff, i.e. 3300 people, are member of SUEPO
2 www.epo.org

The President of the Office is seeking powers to strictly and unilaterally *regulate* industrial actions within the EPO. He is doing so at a time of social unrest, where the staff of the EPO are engaging in actions to oppose other measures introduced by the President. The Staff Committee was informed by the President of his intention on 16 May 2013 at which time he indicated that he would start formal procedures to implement the measures and submit the proposal to the Administrative Council for decision during its meeting on 26 and 27 June 2013.

The proposal was subject of formal consultation of the EPO's General Advisory Committee on 13 June. However, in the past two years the President has consistently disregarded that body's opinions. Furthermore, the complexity of the issues and very short time frame for preparation raised questions regarding the bona fide nature of the formal consultation process. A comparison with practice in member states shows that detailed discussions between Staff Unions and employer would be required before reaching a viable *agreement*.

The new regulations contain passages which give carte blanche to the President, enabling him to introduce further change without the need for approval by the Administrative Council. If the regulations are passed, the President will assume that he may define unilaterally the duration of strikes and the procedures that must be followed before strikes are permitted (cf. Annex 2 "Circular on Strike"). The proposed circular - which the President is not presenting to the Administrative Council - is so restrictive that the right to strike will be rendered ineffective. The Administrative Council cannot provide the President with powers that the AC itself does not have, such as reducing the right to industrial action for Unions.

A list of 13 measures which we consider to violate the fundamental rights of staff is provided in an annex to this letter (cf. Annex 3). Although a more in depth legal study is still required some key points are clear, and a preliminary comparison with national practice and recent developments in the case law of the ECtHR regarding Article 11 ECHR (Freedom of Association) indicates serious grounds for concern (cf. Annex 4).

In our view, the limitations of the fundamental rights contained within the proposal engages the obligations of the member states to act to protect these rights. This is particularly true since the EPO's (internal) legal system (independent from national jurisdictions) does not provide for timely justice any more. We also bring to your attention that the potential violations of fundamental rights are not limited to the EPO legal order, but also affect the rights of third parties, such as the Staff Unions, which have no standing before the internal legal system and are therefore denied the right of access to court to protect their rights.

An approval by the national delegations at the Administrative Council of the proposed strike regulations will have far reaching consequences. Not only will it result in an escalation of the internal conflict, but it will also present a significant risk of disputes external to the EPO legal order, and is likely to result in discussions in public fora, drawing the attention of European, national and international media.

We would much appreciate if the responsible ministries could conduct, a proper evaluation of the obligations of your country under international conventions before any decision is taken in the Administrative Council of the EPO that impacts on the rights of EPO staff.

We respectfully point out that your attention to this matter is urgently required since the President of the EPO has declared that he intends to submit his proposal to Administrative Council of the European Patent Organisation for decision on 26 June 2013.

Thank you very much in advance for your consideration.

Respectfully yours,

Desmond Radford
Chairman
Central Executive
Committee of SUEPO

Wolfgang Manntz
Chairman
Executive Committee of SUEPO
Local Section Berlin

Malika Weaver
Vice-Chairwoman
Executive Committee of SUEPO
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Copies to:

«Min1Anrede» «Min1Name», «Min1Title»

«Min2Anrede» «Min2Name». «Min2Title»

«Min3Anrede» «Min3Name», «Min3Title»

Mr Martin Schulz, President of the European Parliament

Ms Carola Fischbach-Pyttel, General Secretary European Federation of Public Service Unions

Mr Jesper Kongstad, Chairman of the Administrative Council of the European Patent Organisation

Mr Benoît Battistelli, President of the European Patent Office

4 Annexes

Country	PMName	PMGiven	PMArede	PMTitle	PMStreet
Albania	Berisha	Sali	Prof. Dr.	Prime Minister	Bulevardi "Dëshmorët e Kombit" Nr. 1
Austria	Faymann	Werner	Mr	Bundeskanzler	Bundeskanzleramt, Ballhausplatz 2
Belgium	Di Rupo	Elio	Mr	Prime Minister	Wetstraat 16
Bulgaria	Raykov	Marin	Mr	Prime Minister of the Republic of Bulgaria	Council of Ministers of the Republic of Bulgaria, 1 Dondukov Blvd
Switzerland	Maurer	Ueli	Mr	Bundespräsident	Bundeshaus West
Cyprus	Anastasiades	Nicos	Mr	The President of the Republic	Presidential Palace
Czech Republic	Zeman	Miloš	Mr	President of the Czech Republic	Pražský hrad
Germany	Merkel	Angela	Dr.	Bundeskanzlerin	Bundeskanzleramt, Willy-Brandt-Straße 1
Denmark	Thorning-Schmidt	Helle	Mr	Prime Minister	Christiansborg, Prins Jørgens Gård 11
Estonia	Ansip	Andrus	Mr	Prime Minister	Stenbocki maja, Rahukohtu 3
Spain	Rajoy	Mariano	Mr	Prime Minister	Palacio de la Moncloa, Avd Puerta de Hierro s/n
Finland	Katainen	Jyrki	Mr	Prime Minister	Snellmaninkatu 1 A, Helsinki
France	Hollande	Francois	Mr	President of the Republic	Palais de l'Elysée, 55 rue du Faubourg Saint-Honoré
United Kingdom	Cameron	David	The Right Honourable	Prime Minister	10, Downing Street
Greece	Samaras	Antonis	Mr	Prime Minister of the Hellenic Republic	Irodou Attikou 19
Croatia	Josipović	Ivo	Mr	President	Pantovčak 241
Hungary	Orbán	Viktor	Mr	Prime Minister	The Prime Minister's Office
Ireland	Kenny	Enda	Mr	Taoiseach	Department of the Taoiseach, Government Buildings, Upper Merrion Street
Iceland	Gunnlaugsson	Sigmundur Davíð	Mr	Prime Minister	Stjornarradshusid vid Laekjartorg
Italy	Letta	Enrico	Mr	Presidenza del Consiglio dei ministri	Palazzo Chigi, Piazza Colonna 370
Liechtenstein	Hasler	Adrian	Mr	Regierungschef	Regierungsgebäude, Peter-Kaiser-Platz 1
Lithuania	Butkevičius	Algirdas	Mr	Prime Minister	Gedimino pr. 11
Luxembourg	Juncker	Jean-Claude	Mr	Premier Ministre	Ministère d'Etat, Hôtel de Bourgogne
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Romania	Ponta	Victor-Viorel	Mr	Prime Minister	Palatul Victoria, Piața Victoriei nr. 1
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Slovenia	Bratušek	Alenka	Ms	Prime Minister	Gregorčičeva 20, 25
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San Marino	Valentini	Pasquale	Mr	Minister for Foreign and Political Affairs	Palazzo Begni Contrada Omerelli, 31
Turkey	Erdoğan	Recep Tayyip	Mr	Prime Minister	Vekaletler Caddesi Başbakanlık Merkez Bina
Republic of Mac	Gruevski	Nikola	Mr	President of the Government of the RM	Bldv. Ilinden No.2

The French Government received a similar letter previously, so this letter has so far not been sent to them.

PMCode	PMCity	Min1Name	Min1Anrede	Min1Title
1000	Tiranë	Aldo Bumçi	Mr	Minister of Foreign Affairs
1010	Wien	Doris Bures	Ms	Bundesministerin für Verkehr, Innovation und Technologie
1000	Brussel	Johan Vande Lanotte	Mr	Minister for Economic Affairs
1594	Sofia	Kristian Vigenin	Mr	Minister of Foreign Affairs of the Republic of Bulgaria
3003	Bern	Simonetta Sommaruga	Ms	Bundesrätin des Eidgenössischen Justiz- und Polizeidepartement
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15161	Tallinn	Hanno Pevkur	Mr	Minister of Justice
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10 000	Zagreb	Zoran Milanović	Mr	Prime Minister
1357	Budapest, Pf. 6.	Tibor Navracsics	Dr.	Minister of Public Administration and Justice
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150	Reykjavik	Ragnheiður Elin Árnadóttir	Ms	Minister of Industry and Commerce
00187	Roma	Flavio Zanonato	Mr	Ministero dello Sviluppo Economico
9490	Vaduz	Thomas Zwiefelhofer	Dr.	Minister für Inneres, Justiz und Wirtschaft
01103	Vilnius	Juozas Bernatoniš	Mr	Minister of Justice
2910	Luxembourg	Etienne Schneider	Mr	Ministre de l'Économie et du Commerce Extérieur
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Minister for Foreign Affairs and External Trade	Raudararstigur 25	150	Reykjavik	Hanna Birna Kristjánsdóttir	Ms
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Minister of Foreign Affairs	7. juniplassen / Victoria Terrasse	0032	Oslo	Grete Faremo	Ms
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Minister of Justice	Eteläesplanadi 10, Helsinki	00023	Government
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Minister van Veiligheid en Justitie	Turfmarkt 147	2511 DP	Den Haag
Minister of Justice and Public Security	Gullhaug Torg 4A	0030	Oslo
Minister for Justice	Ministry of Justice, Rosenbad 4	103 33	Stockholm

CA/57/13

Orig.: en

Munich, 07.06.2013

SUBJECT: Amendment of the Service Regulations concerning strikes and unauthorised absence

SUBMITTED BY: President of the European Patent Office

ADDRESSEES: Administrative Council (for decision)

SUMMARY

Deriving from the freedom of association, the Office recognises and respects its employees' right to strike. This right is nevertheless not absolute and its exercise has to be subject to minimum requirements. Those requirements shall serve to balance the interest of the service with the interest of the employees under consideration of the principle of proportionality. The right to strike is not currently regulated in the Service Regulations. Therefore, and as a further step towards providing a solid basis for social dialogue in the Office, it is proposed to provide for a clear legal framework in which this right may be exercised and to amend the regime for unauthorised absence, for harmonisation purposes.

Note: This document is being published prior to the meeting of the General Advisory Committee (GAC). The GAC is to be consulted at its next meeting, scheduled on 13 June 2013. The President will inform the Council of the opinion of the GAC and of any action taken following this opinion.

TABLE OF CONTENTS

Subject	Page
PART I	1
I. STRATEGIC/OPERATIONAL	1
II. RECOMMENDATION	1
III. MAJORITY NEEDED	1
IV. CONTEXT	1
V. ARGUMENTS	1
VI. ALTERNATIVES	2
VII. FINANCIAL IMPLICATIONS	2
VIII. LEGAL BASIS	3
IX. DOCUMENTS CITED	3
X. RECOMMENDATION FOR PUBLICATION	3
PART II	4
ANNEX 1 COMPARISON BETWEEN EXISTING AND NEW TEXT	8

PART I

I. STRATEGIC/OPERATIONAL

1. Operational.

II. RECOMMENDATION

2. The Administrative Council is requested to approve the draft decision set out in Part II below.

III. MAJORITY NEEDED

3. Three-quarters of the votes.

IV. CONTEXT

4. Based on Article 30 ServRegs, that provides for freedom of association, the Office recognises and respects its employees' right to strike.
5. However, the current statutory framework does not expressly provide for the right to strike and for the conditions to exercise this right. The Office has no collective agreements with the staff representation in place either.
6. Aspects such as registration of strike participation and deduction of remuneration have been regulated by the President and the administration in different administrative notes.

V. ARGUMENTS

7. Based on principles applied in many European countries, as well as acknowledged by the International Labour Organization, the right to strike may be subject to fulfilling certain minimum requirements. It is proposed to introduce in the Service Regulations a legal framework balancing the right to strike with the principles of sound organisation of the public service. This implies that, whilst respecting the right to strike, rules shall be set to ensure the minimum functioning of the Office, the respect of security and freedom and the self-determination of all employees.

8. For this purpose, a new Article 30a ServRegs shall be introduced that lays down the following principles which will be applicable to all employees, regardless of their appointing authority:
- definition of a strike as a collective and concerted work stoppage for a limited duration related to the conditions of employment, thereby drawing a clear distinction from other possible forms of industrial action;
 - acknowledgement of the right to call for strike for Staff Committee (Central or Local), for an association of employees or for a group of employees;
 - a vote by the employees is required before starting a strike;
 - a strike shall be notified in advance to the President of the Office;
 - all participating employees are obliged to inform the Office about their strike participation, otherwise they may risk that unauthorised absence is established;
 - strike participation shall lead to a deduction of remuneration;
 - the President may also issue, with regard to all staff, requisition orders and take any appropriate measures to guarantee the minimum functioning of the Office, as well as the security of the staff and the Office's property;
 - further terms and conditions with regard to all employees, regardless of their appointing authority, may be laid down by the President of the Office.
9. A deduction of remuneration at a rate of 1/20th of the monthly remuneration will apply per strike participation in a working day. Articles 63 and 65 ServRegs governing unauthorised absence and payment of remuneration will thus be amended accordingly for the purpose of harmonisation.

VI. ALTERNATIVES

10. None

VII. FINANCIAL IMPLICATIONS

11. None

VIII. LEGAL BASIS

12. Articles 10(2)(c) and 33(2)(b) EPC

IX. DOCUMENTS CITED

13. None

X. RECOMMENDATION FOR PUBLICATION

14. Yes

PART II

Draft

DECISION OF THE ADMINISTRATIVE COUNCIL
of [date of decision]
inserting an Article 30a and amending Articles 63
and 65 of the Service Regulations for permanent
employees of the European Patent Office

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the European Patent Convention, and in particular Article 10(2)(c) and Article 33(2)(b) thereof,

Having regard to the Service Regulations for permanent employees of the European Patent Office (hereinafter referred to as "the Service Regulations"), and in particular Articles 63 and 65 thereof,

On a proposal from the President of the European Patent Office, submitted after consulting the General Advisory Committee,

HAS DECIDED AS FOLLOWS:

Article 1

The following new Article 30a of the Service Regulations shall be inserted:

"Article 30a

Right to strike

(1) All employees have the right to strike.

- (2) A strike is defined as a collective and concerted work stoppage for a limited duration related to the conditions of employment.
- (3) A Staff Committee, an association of employees or a group of employees may call for a strike.
- (4) The decision to start a strike shall be the result of a vote by the employees.
- (5) A strike shall be notified in advance to the President of the Office. The prior notice shall at least specify the grounds for having resort to the strike as well as the scope, beginning and duration of the strike.
- (6) Employees shall inform the Office about their participation in a strike.
- (7) The freedom to work of non-strikers shall be respected.
- (8) Strike participation shall lead to a deduction of remuneration.
- (9) The President of the Office may take any appropriate measures, including requisitioning of employees, to guarantee the minimum functioning of the Office as well as the security of the Office's employees and property.
- (10) The President of the Office may lay down further terms and conditions for the application of this Article to all employees; these shall cover inter alia the maximum strike duration and the voting process."

Article 2

Article 63(1) of the Service Regulations shall be amended to read as follows:

"(1) Except in case of incapacity to work due to sickness or accident, a permanent employee may not be absent without prior permission from his immediate superior. Any unauthorised absence which is duly established shall lead to a deduction of the remuneration of the permanent employee concerned pursuant to Article 65(1)(d)."

Article 3

Article 65(1) of the Service Regulations shall be amended to read as follows:

"(1)(a) Payment of remuneration to employees shall be made at the end of each month for which it is due.

(b) Where remuneration is not payable in respect of a complete month, the monthly amount shall be divided into thirtieths and

- where the actual number of days for which pay is due is fifteen or less, the number of thirtieths payable shall equal the actual number of days for which pay is due;

- where the actual number of days for which pay is due is more than fifteen, the number of thirtieths payable shall equal the difference between the actual number of days for which pay is not due and thirty.

(c) Notwithstanding the provisions of (b), where remuneration is not payable in respect of a complete month owing to participation in a strike, the monthly amount shall be divided into twentieths to establish the due deduction for each day of strike on a working day.

(d) Notwithstanding the provisions of (b), where remuneration is not payable in respect of a complete month owing to unauthorised absence, the monthly amount shall be divided into twentieths to establish the due deduction for each day of unauthorised absence on a working day.

(e) Where entitlement to any of the allowances provided for in Article 67 commences at or after the date of entering the service, the employee shall receive such allowance as from the first day of the month in which such entitlement commences, provided that any request for the allowance is submitted within six months of the date on which entitlement commences, unless otherwise provided in these Regulations. If an allowance is requested after expiry of the above six-month period, it shall be granted retroactively but only for the six months preceding the month in which the request was submitted, except in a duly substantiated case of force majeure. On cessation of such entitlement the employee shall receive the sum due up to the last day of the month in which entitlement ceases.

(f) All permanent employees in receipt of an allowance shall inform the President of the Office immediately in writing of any change which may affect their entitlement to that allowance."

Article 4

This decision shall enter into force on 1 July 2013.

Done at Munich, [date of decision]

For the Administrative Council
The Chairman

Jesper KONGSTAD

ANNEX 1 COMPARISON BETWEEN EXISTING AND NEW TEXT

Existing text	New text
	<p style="text-align: center;">Article 30a</p> <p style="text-align: center;">Right to strike</p> <p>(1) All employees have the right to strike.</p> <p>(2) A strike is defined as a collective and concerted work stoppage for a limited duration related to the conditions of employment.</p> <p>(3) A Staff Committee, an association of employees or a group of employees may call for a strike.</p> <p>(4) The decision to start a strike shall be the result of a vote by the employees.</p> <p>(5) A strike shall be notified in advance to the President of the Office. The prior notice shall at least specify the grounds for having resort to the strike as well as the scope, beginning and duration of the strike.</p> <p>(6) Employees shall inform the Office about their participation in a strike.</p> <p>(7) The freedom to work of non-strikers shall be respected.</p> <p>(8) Strike participation shall lead to a deduction of remuneration.</p>

<p style="text-align: center;">Article 63</p> <p style="text-align: center;">Unauthorised absence</p> <p>(1) Except in case of incapacity to work due to sickness or accident, a permanent employee may not be absent without prior permission from his immediate superior. Any unauthorised absence which is duly established shall be deducted from the annual leave of the permanent employee concerned. If he has used up his annual leave, he shall forfeit his remuneration for an equivalent period.</p> <p style="text-align: center;">Article 65</p> <p style="text-align: center;">Payment of remuneration</p> <p>(1) (a) Payment of remuneration to employees shall be made at the end of each month for which it is due.</p> <p>(b) Where remuneration is not payable in respect of a complete month, the monthly amount shall be divided into thirtieths and</p>	<p>(9) The President of the Office may take any appropriate measures, including requisitioning of employees, to guarantee the minimum functioning of the Office as well as the security of the Office's employees and property.</p> <p>(10) The President of the Office may lay down further terms and conditions for the application of this Article to all employees; these shall cover inter alia the maximum strike duration and the voting process.</p> <p style="text-align: center;">Article 63</p> <p style="text-align: center;">Unauthorised absence</p> <p>(1) Except in case of incapacity to work due to sickness or accident, a permanent employee may not be absent without prior permission from his immediate superior. Any unauthorised absence which is duly established shall be deducted from the annual leave of the permanent employee concerned. If he has used up his annual leave, he shall forfeit his remuneration for an equivalent period lead to a deduction of remuneration of the permanent employee concerned pursuant to Article 65(1)(d).</p> <p style="text-align: center;">Article 65</p> <p style="text-align: center;">Payment of remuneration</p> <p>(1)(a) Payment of remuneration to employees shall be made at the end of each month for which it is due.</p> <p>(b) Where remuneration is not payable in respect of a complete month, the monthly amount shall be divided into thirtieths and</p>
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<p>- where the actual number of days for which pay due is fifteen or less, the number of thirtieths payable shall equal the actual number of days for which pay is due;</p> <p>- where the actual number of days for which pay is due is more than fifteen the number of thirtieths payable shall equal the difference between the actual number of days for which pay is not due and thirty.</p>	<p>- where the actual number of days for which pay is due is fifteen or less, the number of thirtieths payable shall equal the actual number of days for which pay is due;</p> <p>- where the actual number of days for which pay is due is more than fifteen, the number of thirtieths payable shall equal the difference between the actual number of days for which pay is not due and thirty.</p> <p>(c) Notwithstanding the provisions of (b), where remuneration is not payable in respect of a complete month owing to participation in a strike, the monthly amount shall be divided into twentieths to establish the due deduction for each day of strike on a working day.</p> <p>(d) Notwithstanding the provisions of (b), where remuneration is not payable in respect of a complete month owing to unauthorised absence, the monthly amount shall be divided into twentieths to establish the due deduction for each day of unauthorised absence on a working day.</p>
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<p>(c) Where entitlement to any of the allowances provided for in Article 67 commences at or after the date of entering the service, the employee shall receive such allowance as from the first day of the month in which such entitlement commences, provided that any request for the allowance is submitted within six months of the date on which entitlement commences, unless otherwise provided in these Regulations. If an allowance is requested after expiry of the above six-month period, it shall be granted retroactively but only for the six months preceding the month in which the request was submitted, except in a duly substantiated case of force majeure. On cessation of such entitlement the employee shall receive the sum due up to the last day of the month in which entitlement ceases.</p> <p>(d) All permanent employees in receipt of an allowance shall inform the President of the Office immediately in writing of any change which may affect their entitlement to that allowance.</p>	<p>(c) (e) Where entitlement to any of the allowances provided for in Article 67 commences at or after the date of entering the service, the employee shall receive such allowance as from the first day of the month in which such entitlement commences, provided that any request for the allowance is submitted within six months of the date on which entitlement commences, unless otherwise provided in these Regulations. If an allowance is requested after expiry of the above six-month period, it shall be granted retroactively but only for the six months preceding the month in which the request was submitted, except in a duly substantiated case of force majeure. On cessation of such entitlement the employee shall receive the sum due up to the last day of the month in which entitlement ceases.</p> <p>(d) (f) All permanent employees in receipt of an allowance shall inform the President of the Office immediately in writing of any change which may affect their entitlement to that allowance.</p>
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DIRECTORATE 4.3.3

Munich, 21 May 2013

Mr E. Daintith
Chairman of the GAC
Room 8103

PschorrHöfe

re.: GAC/DOC 10/2013
Strikes and unauthorised absence

Dear Mr Daintith,

Please find attached GAC/DOC 10/2013.

The President requests the GAC to discuss the document and to deliver a reasoned opinion on 19 June 2013 at the latest.

Best regards,


J.-P. Robin

EUROPEAN PATENT OFFICE
DG 4

Munich, 21 May 2013

EXPLANATORY NOTE - GAC/DOC 10/2013

Subject : Strikes and unauthorised absence

1. Background

Deriving from the freedom of association (Article 30 ServRegs), the Office recognises and respects the right to strike. This right is nevertheless not absolute and its exercise has to be subject to minimum requirements.

The current statutory framework does not expressly provide for the right to strike and for the conditions to exercise this right.

As a further step towards providing a solid basis for social dialogue in the Office, it is proposed to provide for a clear legal framework in which this right may be exercised and to amend the regime for unauthorised absence, for harmonisation purposes.

2. Identification of the key principles

The following key principles regarding the right to strike have been identified in common practices in Europe and in most international organisations:

- strike is a serious action and should be used only as a last resort
- the possibility of calling a strike should be widely open (e.g. Central and/or Local Staff Committees, trade unions or groups of employees)
- a strike should be the outcome of a democratic decision process and must be supported by a representative and significant group of employees
- time needed to organise the strike should be treated as a cooling-off period to encourage discussion and de-escalation
- registration should be compulsory for the sake of security and transparency and to ensure the proper functioning of the Office
- the EPO is entitled to deduct remuneration for participation in a strike. Remuneration is due for service rendered. A deduction of 1/20th of the monthly remuneration should apply for strike participation for a full working day.

3. Proposed legal framework

In order to integrate these key principles in the EPO's legal framework, following adjustments are proposed:

- amendments to the ServRegs (Articles 30a, 63 and 65 ServRegs);
- introduction of a circular which specifies the implementation details.

3.1. Amendments to the ServRegs

It is proposed to introduce a new Article 30a ServRegs on the right to strike. This provision should be applicable to all employees, regardless of their appointing authority. It should enclose the following points:

- all employees have the right to strike (Art. 30a(1) ServRegs);
- definition of a strike as a collective and concerted work stoppage for a limited duration related to the conditions of employment, thereby drawing a clear distinction from other possible forms of industrial action (Art. 30a(2) ServRegs);
- acknowledgement of the right to call for strike for Staff Committee (Central or Local), for an association of employees or for a group of employees (Art. 30a(3) ServRegs);
- a vote by the employees is required before starting a strike (Art. 30a(4) ServRegs);
- a strike shall be notified in advance to the President of the Office (Art. 30a(5) ServRegs);
- all participating employees are obliged to inform the Office about their strike participation, otherwise they may risk that unauthorised absence is established (Art. 30a(6) ServRegs);
- the freedom to work of non-strikers shall be respected (Art. 30a(7) ServRegs);
- strike participation shall lead to a deduction of remuneration (Art. 30a(8) ServRegs);
- the President may also issue, with regard to all staff, requisition orders and take other appropriate measures to guarantee the minimum functioning of the Office, as well as the security of the staff and the Office's property (Art. 30a(9) ServRegs);
- further terms and conditions with regard to all employees, regardless of their appointing authority, may be laid down by the President of the Office (Art. 30a(10) ServRegs).

Furthermore, it is proposed to amend Article 65(1) ServRegs to introduce a deduction of remuneration at a rate of 1/20th of the monthly remuneration per strike participation in a working day.

Finally, it is proposed to amend Articles 63 and 65 ServRegs governing unauthorised absence and payment of remuneration accordingly for the purpose of harmonisation.

3.2 Introduction of a circular

It is proposed to introduce a circular to implement the principles laid down in the ServRegs.

Article 1 : scope and definition of a strike.

The right to strike is expressly recognised for all staff. As a result the employees on strike are covered by the protection granted by this right.

In line with Tribunal's case law the strike is defined as a collective and concerted work stoppage. A clear distinction from other industrial actions, which are not covered by the right to strike, is therefore made.

A strike has to be proportionate and is a last resort action. This is not only common place in members states and in international organisation, but also a basic element of the social dialogue.

Article 2 : call for a strike

As a parallel of the recognition of the right to strike, the possibility of calling a strike should be widely open (e.g. Central and/or Local Staff Committees, association of employees or a group of employees representing at least 10% of the staff).

Article 3 : start of a strike

Given that a strike is a serious matter potentially concerning the entire organisation, a democratic voting process is required before starting a strike.

Hence, to be valid, at least 50% of the employees entitled to vote shall participate in the ballot. And the decision to start the strike has to be approved by a majority of more than 50% of the voters.

The vote should be organised within one month by the office under the supervision of a committee composed of two employees designated by the President and two employees designated by the Central Staff Committee on an ad hoc basis. This should guarantee the fairness and transparency of the voting process.

Article 4 : prior notice and duration of a strike

A prior notice of a strike has to be given to the President at least five working days before the commencement of the strike action. The notice should also indicate which sites of the Office are concerned by the strike.

The time to organise the voting process and the prior notice should be seen together as a cooling-off period to encourage discussion and de-escalation on the topics at stake.

In order to ensure that the grounds of the strike are still relevant and actual, the duration of the strike is limited to one month. At the end of this period, a new strike can take place following a new vote, as regulated upon under the aforementioned provision.

Article 5 : declaration of participation in a strike

The very aim of a strike is to claim for social rights. It is therefore important for both parties to know to which extent the strike is supported. For the sake of security and to ensure the proper functioning of the Office, the Office has also to be informed of any absence of employees.

Employees participating in a strike shall inform their immediate superior and shall register via an electronic self-registration tool made available by the Office before or, at the latest, on the day of the strike. This also allows the employees participating in a strike to avoid being considered on unauthorised absence.

Article 6 : deduction of remuneration

The remuneration is due for service rendered. Therefore an organisation is entitled to make remuneration deductions for participation in a strike.

It is also entitled to adopt special rules on deductions for strike, which are different from the rules on absence from duty for other reasons. A deduction at a rate of 1/20 of the monthly remuneration will apply. This will waive as well any ambiguity concerning possible deductions for the weekend.

In view of the above, the present GAC/DOC 10/2013 is submitted to the GAC for opinion.

Željko Topić
Vice-President DG 4

CA/xx/13

Orig.: en

Munich, 17.05.2013

SUBJECT: Amendment of the Service Regulations concerning strikes and unauthorised absence

DRAWN UP BY: President of the European Patent Office

ADDRESSEES: Administrative Council (for decision)

SUMMARY

Deriving from the freedom of association, the Office recognises and respects its employees' right to strike. This right is nevertheless not absolute and its exercise has to be subject to minimum requirements. Those requirements shall serve to balance the interest of the service with the interest of the employees under consideration of the principle of proportionality. The right to strike is not currently regulated in the Service Regulations. Therefore, and as a further step towards providing a solid basis for social dialogue in the Office, it is proposed to provide for a clear legal framework in which this right may be exercised and to amend the regime for unauthorised absence, for harmonisation purposes.

TABLE OF CONTENTS

Subject	Page
I. STRATEGIC/OPERATIONAL	1
II. RECOMMENDATION	1
III. MAJORITY NEEDED	1
IV. CONTEXT	1
V. ARGUMENTS	1
VI. ALTERNATIVES	2
VII. FINANCIAL IMPLICATIONS	2
VIII. LEGAL BASIS	3
IX. DOCUMENTS CITED	3
X. RECOMMENDATION FOR PUBLICATION	3
ANNEX 1	8

I. STRATEGIC/OPERATIONAL

1. Operational.

II. RECOMMENDATION

2. The Administrative Council is requested to approve the draft decision set out in Part II below.

III. MAJORITY NEEDED

3. Three-quarters of the votes.

IV. CONTEXT

4. Based on Article 30 ServRegs, that provides for freedom of association, the Office recognises and respects its employees' right to strike.
5. However, the current statutory framework does not expressly provide for the right to strike and for the conditions to exercise this right. The Office has no collective agreements with the staff representation in place either.
6. Aspects such as registration of strike participation and deduction of remuneration have been regulated by the President and the administration in different administrative notes.

V. ARGUMENTS

7. Based on principles applied in many European countries, as well as acknowledged by the International Labour Organization, the right to strike may be subject to fulfilling certain minimum requirements. It is proposed to introduce in the Service Regulations a legal framework balancing the right to strike with the principles of sound organisation of the public service. This implies that, whilst respecting the right to strike, rules shall be set to ensure the minimum functioning of the Office, the respect of security and freedom and the self-determination of all employees.

8. For this purpose, a new Article 30a ServRegs shall be introduced that lays down the following principles which will be applicable to all employees, regardless of their appointing authority:
- definition of a strike as a collective and concerted work stoppage for a limited duration related to the conditions of employment, thereby drawing a clear distinction from other possible forms of industrial action;
 - acknowledgement of the right to call for strike for Staff Committee (Central or Local), for an association of employees or for a group of employees;
 - a vote by the employees is required before starting a strike;
 - a strike shall be notified in advance to the President of the Office;
 - all participating employees are obliged to inform the Office about their strike participation, otherwise they may risk that unauthorised absence is established;
 - strike participation shall lead to a deduction of remuneration;
 - the President may also issue, with regard to all staff, requisition orders and take other appropriate measures to guarantee the minimum functioning of the Office, as well as the security of the staff and the Office's property;
 - further terms and conditions with regard to all employees, regardless of their appointing authority, may be laid down by the President of the Office.
9. A deduction of remuneration at a rate of 1/20th of the monthly remuneration will apply per strike participation in a working day. Articles 63 and 65 ServRegs governing unauthorised absence and payment of remuneration will thus be amended accordingly for the purpose of harmonisation.

VI. ALTERNATIVES

10. None

VII. FINANCIAL IMPLICATIONS

11. None

VIII. LEGAL BASIS

12. Articles 10(2)(c) and 33(2)(b) EPC

IX. DOCUMENTS CITED

13. None

X. RECOMMENDATION FOR PUBLICATION

14. Yes

PART II

Draft

DECISION OF THE ADMINISTRATIVE COUNCIL
of [date of decision]
inserting an Article 30a and amending Articles 63
and 65 of the Service Regulations for permanent
employees of the European Patent Office.

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the European Patent Convention, and in particular Article 10(2)(c) and Article 33(2)(b) thereof,

Having regard to the Service Regulations for permanent employees of the European Patent Office (hereinafter referred to as "the Service Regulations"), and in particular Article 63 and Article 65 thereof,

On a proposal from the President of the European Patent Office, submitted after consulting the General Advisory Committee,

HAS DECIDED AS FOLLOWS:

Article 1

The following new Article 30a of the Service Regulations shall be inserted:

"Article 30a

Right to strike

(1) All employees have the right to strike.

- (2) A strike is defined as a collective and concerted work stoppage for a limited duration related to the conditions of employment.
- (3) A Staff Committee, an association of employees or a group of employees may call for a strike.
- (4) The decision to start a strike shall be the result of a vote by the employees.
- (5) A strike shall be notified in advance to the President of the Office. The prior notice shall at least specify the grounds for having resort to the strike, the scope, the beginning and the duration of the strike.
- (6) Employees shall inform the Office about their participation in the strike.
- (7) The freedom to work of non-strikers shall be respected.
- (8) Strike participation shall lead to a deduction of remuneration.
- (9) The President may take any appropriate measures, including requisitioning of employees, to guarantee the minimum functioning of the Office as well as the security of the Office's employees and property.
- (10) The President of the Office may lay down further terms and conditions, including the maximum duration and the voting process, for the application of this Article to all employees.

Article 2

Article 63(1) of the Service Regulations shall be amended to read as follows:

"(1) Except in case of incapacity to work due to sickness or accident, a permanent employee may not be absent without prior permission from his immediate superior. Any unauthorised absence which is duly established shall lead to a deduction of the remuneration of the permanent employee concerned, pursuant to Article 65(1)(d)."

Article 3

Article 65(1) of the Service Regulations shall be amended to read as follows:

"(1) (a) Payment of remuneration to employees shall be made at the end of each month for which it is due.

(b) Where remuneration is not payable in respect of a complete month, the monthly amount shall be divided into thirtieths and

- where the actual number of days for which pay is due is fifteen or less, the number of thirtieths payable shall equal the actual number of days for which pay is due;

- where the actual number of days for which pay is due is more than fifteen the number of thirtieths payable shall equal the difference between the actual number of days for which pay is not due and thirty.

(c) Notwithstanding the provisions of paragraph 1(b), where remuneration is not payable in respect of a complete month due to the participation in a strike, the monthly amount shall be divided into twentieths for establishing the due deduction for each day of strike on a working day.

(d) Notwithstanding the provisions of paragraph 1(b), where remuneration is not payable in respect of a complete month due to an unauthorised absence, the monthly amount shall be divided into twentieths for establishing the due deduction for each day of unauthorised absence on a working day.

(e) Where entitlement to any of the allowances provided for in Article 67 commences at or after the date of entering the service, the employee shall receive such allowance as from the first day of the month in which such entitlement commences, provided that any request for the allowance is submitted within six months of the date on which entitlement commences, unless otherwise provided in these Regulations. If an allowance is requested after expiry of the above six-month period, it shall be granted retroactively but only for the six months preceding the month in which the request was submitted, except in a duly substantiated case of force majeure. On cessation of such entitlement the employee shall receive the sum due up to the last day of the month in which entitlement ceases.

(f) All permanent employees in receipt of an allowance shall inform the President of the Office immediately in writing of any change which may affect their entitlement to that allowance."

Article 4

This decision shall enter into force on 1 July 2013.

Done at Munich, [date of decision]

For the Administrative Council
The Chairman

Jesper KONGSTAD

ANNEX 1

Existing text	New text
	<p style="text-align: center;">Article 30a</p> <p style="text-align: center;">Right to strike</p> <p>(1) All employees have the right to strike.</p> <p>(2) A strike is defined as a collective and concerted work stoppage for a limited duration related to the conditions of employment.</p> <p>(3) A Staff Committee, an association of employees or a group of employees may call for a strike.</p> <p>(4) The decision to start a strike shall be the result of a vote by the employees.</p> <p>(5) A strike shall be notified in advance to the President of the Office. The prior notice shall at least specify the grounds for having resort to the strike, the scope, the beginning and the duration of the strike.</p> <p>(6) Employees shall inform the Office about their participation in the strike.</p> <p>(7) The freedom to work of non-strikers shall be respected.</p> <p>(8) Strike participation shall lead to a deduction of remuneration.</p>

<p style="text-align: center;">Article 63</p> <p style="text-align: center;">Unauthorised absence</p> <p>(1) Except in case of incapacity to work due to sickness or accident, a permanent employee may not be absent without prior permission from his immediate superior. Any unauthorised absence which is duly established shall be deducted from the annual leave of the permanent employee concerned. If he has used up his annual leave, he shall forfeit his remuneration for an equivalent period.</p> <p style="text-align: center;">Article 65</p> <p style="text-align: center;">Payment of remuneration</p> <p>(1) (a) Payment of remuneration to employees shall be made at the end of each month for which it is due.</p> <p>(b) Where remuneration is not payable in respect of a complete month, the monthly amount shall be divided into thirtieths and</p>	<p>(9) The President may take any appropriate measures, including requisitioning of employees, to guarantee the minimum functioning of the Office as well as the security of the Office's employees and property.</p> <p>(10) The President of the Office may lay down further terms and conditions, including the maximum duration and the voting process, for the application of this Article to all employees.</p> <p style="text-align: center;">Article 63</p> <p style="text-align: center;">Unauthorised absence</p> <p>(1) Except in case of incapacity to work due to sickness or accident, a permanent employee may not be absent without prior permission from his immediate superior. Any unauthorised absence which is duly established shall be deducted from the annual leave of the permanent employee concerned. If he has used up his annual leave, he shall forfeit his remuneration for an equivalent period lead to a deduction of remuneration of the permanent employee concerned, pursuant to Article 65(1)(d).</p> <p style="text-align: center;">Article 65</p> <p style="text-align: center;">Payment of remuneration</p> <p>(1) (a) Payment of remuneration to employees shall be made at the end of each month for which it is due.</p> <p>(b) Where remuneration is not payable in respect of a complete month, the monthly amount shall be divided into thirtieths and</p>
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<p>- where the actual number of days for which pay due is fifteen or less, the number of thirtieths payable shall equal the actual number of days for which pay is due;</p> <p>- where the actual number of days for which pay is due is more than fifteen the number of thirtieths payable shall equal the difference between the actual number of days for which pay is not due and thirty.</p>	<p>- where the actual number of days for which pay is due is fifteen or less, the number of thirtieths payable shall equal the actual number of days for which pay is due;</p> <p>- where the actual number of days for which pay is due is more than fifteen the number of thirtieths payable shall equal the difference between the actual number of days for which pay is not due and thirty.</p> <p>(c) Notwithstanding the provisions of paragraph 1(b), where remuneration is not payable in respect of a complete month due to the participation in a strike, the monthly amount shall be divided into twentieths for establishing the due deduction for each day of strike on a working day.</p> <p>(d) Notwithstanding the provisions of paragraph 1(b),, where remuneration is not payable in respect of a complete month due to an unauthorised absence, the monthly amount shall be divided into twentieths for establishing the due deduction for each day of unauthorised absence on a working day.</p>
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<p>(c) Where entitlement to any of the allowances provided for in Article 67 commences at or after the date of entering the service, the employee shall receive such allowance as from the first day of the month in which such entitlement commences, provided that any request for the allowance is submitted within six months of the date on which entitlement commences, unless otherwise provided in these Regulations. If an allowance is requested after expiry of the above six-month period, it shall be granted retroactively but only for the six months preceding the month in which the request was submitted, except in a duly substantiated case of force majeure. On cessation of such entitlement the employee shall receive the sum due up to the last day of the month in which entitlement ceases.</p> <p>(d) All permanent employees in receipt of an allowance shall inform the President of the Office immediately in writing of any change which may affect their entitlement to that allowance.</p>	<p>(e) (e) Where entitlement to any of the allowances provided for in Article 67 commences at or after the date of entering the service, the employee shall receive such allowance as from the first day of the month in which such entitlement commences, provided that any request for the allowance is submitted within six months of the date on which entitlement commences, unless otherwise provided in these Regulations. If an allowance is requested after expiry of the above six-month period, it shall be granted retroactively but only for the six months preceding the month in which the request was submitted, except in a duly substantiated case of force majeure. On cessation of such entitlement the employee shall receive the sum due up to the last day of the month in which entitlement ceases.</p> <p>(e) (f) All permanent employees in receipt of an allowance shall inform the President of the Office immediately in writing of any change which may affect their entitlement to that allowance.</p>
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CIRCULAR ON STRIKES

The President of the European Patent Office;

Having regard to the European Patent Convention, and in particular Article 10 thereof;

Having regard to the Service Regulations for permanent employees of the European Patent Office, and notably Articles 30, 30a, 63 and 65 thereof;

Having consulted the General Advisory Committee;

Recognising the right to strike, whilst having regard to the need for specific terms and conditions for its exercise in order to ensure a proper functioning of the Office;

Has decided as follows:

Guidelines applicable in the event of strike

1. Scope and definition of a strike

A strike as defined in Article 30a(1) of the Service Regulations should be a proportionate action of last resort.

Industrial actions which are not a collective and concerted work stoppage, such as go-slow or work-to-rule actions, shall not be considered as a strike.

The protection granted by the right to strike does not apply to employees participating in industrial actions other than a strike.

2. Call for a strike

A Staff Committee (Central Staff Committee or a local section), an association of employees or a group of employees representing at least 10% of all employees may decide to call for a strike.

3. Start of a strike

The start of a strike shall be the result of a vote by the active employees either office-wide or at sites concerned by the strike which has been called for.

The voting process shall be organised by the Office within one month following the call for strike. The voters' confidentiality shall be guaranteed. Employees not able to vote personally shall have the possibility to vote by proxy. An employee can be given only one proxy vote.

The voting process shall be supervised by a committee composed of two employees designated by the President and two employees designated by the Central Staff Committee on an ad hoc basis.

To be valid, at least 50% of the employees entitled to vote shall participate in the ballot. The decision to start the strike has to be approved by a majority of more than 50% of the voters.

4. Prior notice and duration of a strike

Pursuant to Article 30a(5) of the Service Regulations, prior notice of a strike shall be given to the President at least five working days before the commencement of the strike action.

As regards the scope of the strike, the notice shall indicate which sites of the Office are concerned.

The duration of the strike shall not exceed one month. Beyond this maximum duration, any new strike shall be organised in compliance with Article 30a of the Service Regulations.

5. Declaration of participation in a strike

Employees participating in a strike shall inform their immediate superior and shall register via an electronic self-registration tool made available by the Office. The immediate superior will have access to the self-registration tool.

The registration shall occur before or, at the latest, on the day of the strike.

Employees may be considered on unauthorised absence within the meaning of Article 63 of the Service Regulations if they were not at their workplace

during a strike action, did not register and did not inform their immediate superior of their absence from work.

6. Deduction of remuneration

For each working day during which an employee participated in a strike, the Office will apply a deduction of the monthly remuneration, in accordance with Article 65(1)(c) of the Service Regulations.

For participation in a strike for more than four hours in a single working day, the Office will apply a deduction of 1/20th of the monthly remuneration.

For participation in a strike for four hours or less in a single working day, the Office will apply a deduction of 1/40th of the monthly remuneration.

For staff working part-time, the deduction will be adjusted proportionally.

The basis for calculating the deduction is the remuneration defined in Article 64(2) of the Service Regulations.

A strike participant remains covered by the social security scheme during strike and therefore continues to contribute in full to the scheme.

7. Entry into force

This decision shall enter into force on 1 July 2013.

Measures which violate the fundamental rights of staff

- Limitation of staff association/union calling for strike to those representing 10% of all staff thereby excluding associations of smaller groups of staff. Also raising issues of data protection regarding the validation of membership.
- Ballot procedures that require 1 month notice and involve the management of the EPO in the procedure.
- Voting will be organised and supervised by the President.
- Defining participation in the ballot procedure to be all staff, which interferes with the autonomy of the association or unions right to organise an industrial action.
- All members of the staff will be entitled to vote in a Ballot, including non-members of a union and all members of the management. Not only does this interfere with the autonomy of the staff association/union seeking to organise actions, but it creates an effective closed shop.
- The power of the President to set the quorum and voting thresholds for the Ballot
- A notice period of at least 5 days before actual strike.
- Defining only one form of industrial actions (“work stoppage”) to be strike and excluding ‘work to rules actions’, which in future shall be treated as violations of the working contract.
- Procedures and criteria for requisitioning staff not permitted to strike which are much broader than those permitted by national and international standards and open to abuse.
- Limitation to the length of a strike to a time frame of one month only, continuation of strike will require a complete restart of the procedure.
- Compulsory use of automated registration tools defined by the President for strike participants
- Delegation of legislative authority from the Administrative Council (AC) to the President, permitting the President broad discretion to amend the regulations and further regulate industrial actions without any control of the AC.
- Treatment of participation in a legal strike in the same manner as „unauthorized absence“ with respect to the deduction of remuneration, whereas participation in legal strikes should be comparable to other legally justified situations where the remuneration is not payable for a whole month. This results in a disproportionate penalty for participation in a strike.

Preliminary findings and list of references

A comparative study of Strike Rules in 27 EU member states shows that, whilst there are specific limitations in some states, the actions undertaken by the Staff Union in the EPO are legal and/or protected in a large proportion of EU member states, including UK and Ireland. Furthermore, recent jurisprudence of the ECtHR has both clarified the interpretation of Article 11 ECHR (Freedom of Association) and added specific essential criteria.

In *Demir and Baykara v Turkey* App No 34503/97 dated 12 November 2008 the Court stipulates that the interpretation of Art 11 "can and must" take into account elements of international law other than the ECHR and the interpretation of these by competent organs, and the practice of European states (*Demir* para 85, 86). According to the Court, this includes the content of ILO conventions including C87, C98 and C151 (*Demir* para 147). Many of the rights contained in these Conventions are not respected within the EPO, the proposed Strike Regulations contain further limitations.

References:

Demir and Baykara v Turkey App No 34503/97 dated 12 November 2008

Enerji Yapi-Yol Sen v Turkey Application No 68959/01 dated 21 April 2009

ILO Convention C 87 - Freedom of Association and right to organise

ILO Convention C 98 - Collective Bargaining

ILO Convention C 151 - [Labour Relations \(Public Service\) Convention](#)

Strike rules in the EU27 and beyond - A comparative overview - Wiebke Warneck - European Trade Union Institute for Research, Education and Health and Safety (ETUI-REHS) Brussels, 2007

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