

Reply
of the federal government

**regarding the brief inquiry of member of parliament Roman Müller-Böhm, Stephan Thomae, Grigorios Aggelidis, other members of parliament, and parliamentary party FDP
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Position and Procedure of the European Parliament

Preliminary Note of the Inquirer

The European Patent Office (EPO) is the executive body of the European Patent Organization (EPOrg) with headquarters in Munich and has the function to check patent applications and to grant European patents. The EPO was created by international agreement and is a multinational institution with the status of a legal entity (https://www.epo.org/about-us/foundation_de.html). It was agreed that the EPO will have legal immunity and that only the special rights created by the member countries is legally binding for the EPO (cf. [Article 8 of the European Patent Agreement](#)). The competence for legally binding decisions rests with the member countries of the organization in the course of a corresponding conference (https://www.epo.org/about-us/governance_de.html).

In the recent past, the EPO was confronted with widespread criticism. This varied from the announced use of financial means, to the quality standards of patents, to the treatment of employees, and to insufficient independence of the complaint's offices (<https://suepo.org/public/ex18052cdp.pdf>, p. 4 and 5). A group of 924 employees criticized that the accelerated procedure during the evaluation of patents would be performed at the expense of quality. In their opinion, this is due to the requirements regarding productivity of the employees of the old management. Correspondingly, the international union within the EPO, the Staff Union of the European Patent Office (SUEPO), especially criticized that the introduced scoring system would incentivize the examiners to produce masses of patents with low quality (<https://www.heise.de/newsticker/meldung/Europaeisches-Patentamt-Patentpruefer-rebellieren-gegen-Qualitaetsverluste-3997082.html>).

Besides that, the Federal Audit Office last year criticized the decision by the EPO that the assets of the office are supposed to be used in a financially speculative way (<https://www.wiwo.de/politik/europa/rechnungshof-scharfe-kritik-an-finanzgebaren-des-europaeischen-patentamts/22722052.html>). In the view of the Federal Audit Office, this is not necessary and may entail higher risks. Additionally, it is objected that through the investment transactions of the EPO, a "shadow budget" is managed in an international agency with public funds that is not covered by the international constitutive act of the member countries and violates democratic principles

(Petra Sorge, Die unheimliche Wette, WirtschaftsWoche vom 22. Juni 2018, S. 35). This continues in a general criticism regarding the state of labor and the legal controls of the EPO (http://www.deutschlandfunk.de/europaeisches-patentamt-deutsches-arbeitsrecht-gilt-hier.724.de.html/?dram:article_id=347579).

Moreover, employee policy was criticized for some time. Employees of the EPO mostly appeared anonymously towards the press, according to their own statements due to fear of sanctions (Petra Sorge, Die unheimliche Wette, WirtschaftsWoche vom 22. Juni 2018, S. 36). Besides that, the right to strike for employees were limited by internal regulations and sick employees were ordered to stay home. Furthermore, measures against critical employees were introduced, such as key logger. There is also talk about an EPO internal investigation unit for employee matters (Petra Sorge, Wo kein Richter ..., Cicero vom 3. Mai 2018). The former judge at the Federal Constitutional Court, Dr. Siegfried Broß, says that there are substantial deficits concerning the employment status of the employees. There are employee representatives, but they do not have any constitutive participation rights. Instead, they could only issue recommendations to which the president is not bound (https://www.deutschlandfunk.de/europaeisches-patentamt-deutsches-arbeitsrecht-gilt-hier.724.de.html?dram:article_id=347579).

The Federal Republic of Germany, as member country of the EPO, has a joint responsibility for the EPOrg. With the changed conditions caused by the change within management as of 1st July 2018 (<https://www.heise.de/newsticker/meldung/Europaeisches-Patentamt-Chef-Battistelli-tritt-ab-Campinos-tritt-an-3857253.html>) and in light of the previous events regarding the EPOrg, according to the inquirer, the question arises, whether and to what extent from the perspective of the federal government, the situation at the EPOrg has changed with the new management.

1. Did the federal government have knowledge about the published accusation in the press of a loss in quality during the patent application examination and the granting of patents as compared to the previous management of the EPO, and how does the federal government assess it?

For the federal government, the quality of the patent assessment by the European Patent Office (EPO) is an important issue. Quality management and quality control must be secured sustainably within the workflow of the EPO. The federal government therefore welcomes the goals, the new president of the EPO has set himself in his strategy plan for 2019 to 2023. The achievement of these goals will be evaluated by the federal government on the basis of annual quality reports performed by the president of the EPO.

2. Did the federal government have knowledge about the published accusations in the press of the “shadow budget” and the financial risk management as compared to the former management of the EPO, and how does the federal government evaluate it?

The cited press reports are known to the federal government. The EPO issues a budget annually, in which also financial investments are considered and explained transparently. A so-called shadow budget does not exist. An appropriate risk management is in place.

Germany had voted against the new investment guideline for the management of cash funds during the 156th meeting of the supervisory board dated 27th/28th of July 2018 on the basis of the statement issued by the Federal Audit Office.

3. According to the federal government, are there deficits in terms of financial management and the treatment of employees at the EPO?
 - a) If so, what measures would the federal government assume then?
 - b) If no and from the point of view of the federal government, are the existing rules at the EPO regarding financial management and treatment of employees sufficient?

According to the federal government, there are no deficits as regards financial management at the EPO. The federal government welcomes that the new president of the EPO wants to improve the social climate and treatment of employees, and has introduced initial measures in the course of the strategy plan 2019 to 2023.

4. Did the federal government have knowledge about the published accusation in the press of a violation of rights of employees caused by surveillance and curtailing of labor laws as compared to the former management of the EPO, and how does the federal government assess this?
5. According to the federal government, were there any complaints filed with police with respect to the EPO?
6. Did the federal government have knowledge about the published accusation in the press of employee surveillance by internal investigation groups of the former EPO management, and how does the federal government assess this?
7. Did the federal government have knowledge about the published accusation in the press of a curtailing outsourcing of the complaint's office under the former EPO management (Petra Sorge, Wo kein Richter ..., Cicero vom 3. Mai 2018), and how does the federal government assess this?

Questions 4 to 7 are answered together.

The questions involve confidential disciplinary procedures to which the federal government does not take position. This also applies to the procedures before the internal complaint's offices.

8. In the view of the federal government, is there a "legal" control that was itself instituted by the EPO, (Petra Sorge, Wo kein Richter ..., Cicero vom 3. Mai 2018) which itself ensures an effective legal protection?
9. In the view of the federal government, is the current of the complaint's offices task as an authority, without being bound to restrictions, sufficiently met?

10. In the view of the federal government, is there a necessity to change the “legal” control system at the EPO?
- a) If so, how should it be restructured in the view of the federal government?
 - b) If no, is it the opinion of the federal government that a legal control at the EPA is sufficient?

Questions 8 to 10 will be answered together.

It is the view of the federal government that an effective legal protection exists against decisions by the EPO. The federal government does not see any need for reform at the moment.

The European Patent Organization (EPOrg) was granted immunity by the national jurisdictions of the member countries as an international organization in the course of its official activity. This corresponds to a normal approach in all international organizations. Consequently, international organizations are not bound to national jurisdictions.

The EPO is a body of the EPOrg (cf. Article 4, Section 2a) of the European Patent Agreement (EPA). The employees of the EPO have the right for an appropriate legal protection before international courts (Administrative court of the International Labor Organization (ILOAT)) (cf. Article 13, Section 1 EPA).

For disputes that affect patent decisions of the EPO, the independent complaint’s offices are responsible. The employees of the complaint’s offices are not bound to instructions during their decision making and are only subjected to the European Patent Agreement (cf. Article 23, Section 3 EPA).

At the 148th meeting of the supervisory body of the European Patent Organization dated 29th/30th of June 2016, the supervisory body approved a comprehensive reform of the complaint’s offices, which further strengthened the autonomy of the complaint’s offices. The reform is effective as of 1st of July 2016.

11. How does the federal government assess the impact of the legal independence of the EPO from national and European law as regards the collaboration of the EPO with the EU member states to solve the criticism towards the EPO?

The immunity granted to the EPA complies with the normal approach at international organizations. It influences the objective collaboration between the EPA and their member states just as little as with other international organizations.

12. Is the federal government in dialogue with the EPO regarding the accusation or several accusations, and if so, how?
- a) If so, what results have been achieved so far?
 - b) If so, what goals does the federal government pursue with a dialogue?

The federal government is in a continuing dialogue with the EPO as regards different issues. Important issues for the federal government are especially patent quality, social climate, and long-term financial stability.

13. In view of the federal government, has the situation as regards the accusation or several accusations improved with the new management?

The federal government especially welcomes the measure that the new EPO president took to improve social climate. This also includes discussions with individual employees as well as regular dialogues with stakeholders. The federal government also supports the intended measures for a further improvement in all other areas as outlined in the strategy plan for 2019 to 2023 by the EPO president.

14. Does the federal government plan to take political as well as legal actions, should the accusations against the EPO continue under the new management, and if so, what?

The federal government has no reason to believe that the accusations against the EPO will continue under the new management.

