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Friday, 27 February 2018

TO: all 38 EPO Delegations

Ladies and Gentlemen,

USF is the largest Federation of unions in the European international public service and has been following with great concern the situation at the European Patent Office (EPO) which deserves to be labelled as extreme. A number of shocking events around social policy and rule of law issues at the EPO were reported upon in various media over the last few years. These reports also reveal fundamental flaws in the institutional setup of the EPO taken in combination with its assigned jurisdiction, the ILOAT.

USF wishes to draw your attention to an important ongoing debate between organs of the Council of Europe. The debates in Strasbourg focussed on the issues of strengthening the legal system of international organisations and of the strict limitation of activities covered by their immunity of jurisdiction. The EPO's situation appears prominently in several of the documents drafted in that framework, in particular in the Report 14487 (of 29 Nov. 2017) at §44, and the Opinion 14487 (of 24 Jan. 2018) at §4-8, cf. attached ANNEX.

Beyond the mere application of Art.6 of the ECHR (access of individual workers to an independent and impartial court) the issues of the European Social Charter as a universal source of social rights, the locus standi of unions and the creation of appellate judicial bodies are now being raised. USF considers that the various organs of the Council of Europe deserve to conduct their discussions and develop their conclusions with an adequate degree of autonomy, but any support or encouragement your Institution or Government may convey to the current debates at the Council of Europe would help re-establishing decent working conditions, transparency and a positive perception of the EPO by the public.

As the documents of the ongoing debate are public, we submit them for your consideration, trusting that you will know best how to provide adequate support to the momentum currently developing at the Council of Europe..

Faithfully yours,



Dr. Bernd Loescher
USF President

CC:

- ✓ Mr Batistelli
EOB president
- ✓ Mr Frans Timmermans, First Vice-President EU Commission
(Interinstitutional Relations, Rule of Law and the Charter of Fundamental Rights)
- ✓ Elżbieta Bieńkowska,
Member EU Commission, DG MARKT
- ✓ Mr Volker Ullrich and Mr Stefan Schennäch,
Rapporteurs of the Parliamentary Assembly of the Council of Europe
- ✓ Mr Antonio Campinos,
President elect of the European Patent Office
- ✓ Mr Jan Willem Goudriaan,
Secretary General, EPSU

ANNEXE

We cite:

(Doc. 14487 | 24 January 2018)

<http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?lang=EN&FileId=24391>

"A. Conclusions of the committee on Social Affairs, Health and Sustainable Development

The Committee on Social Affairs, Health and Sustainable Development welcomes the report prepared by Mr Volker Ullrich (Germany, EPP/CD) for the Committee on Legal Affairs and Human Rights and supports its recommendations that the Council of Europe member States should bring about greater transparency of the work of international organisations and should ensure that these organisations introduce mechanisms to protect the rights of staff, along with procedures for lodging appeals.

However, the report submitted to the Parliamentary Assembly by the Committee on Legal Affairs focuses on the right of access to a tribunal, rather than on social rights which form an integral part of human rights – as recognised by the Council of Europe and its Parliamentary Assembly on many occasions – and whose non-respect seem to pose the most acute problem for staff in international organisations.

Thus, whilst fully agreeing with the aim of the Committee on Legal Affairs to encourage the Committee of Ministers and the member States to look more closely at the protection of human rights and the rule of law in international organisations, the Committee on Social Affairs wishes to propose a number of amendments to ensure that social rights are taken into account as far as possible, and to ensure, as a priority, the effective protection of the rights of staff of international organisations."

And point 1.5 of Recommendation 2122 (2018, Provisional version):

<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24500&lang=en>

"Referring to its Resolution 2206 (2018) on jurisdictional immunity of international organisations and rights of their staff, the Parliamentary Assembly calls on the Committee of Ministers to:

1.5 carry out a comparative study of the extent to which the internal remedy systems in international organisations are compatible with Article 6 of the European Convention on Human Rights (ETS No. 5) and with other relevant human rights (including social rights), and, where appropriate, make recommendations on how these systems can be improved with a view to attaining a higher level of protection of these rights."

And points 6.2 - 6.5 of Resolution 2206 (26 Jan. 2018, provisional version):

<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24498&lang=en>

6. In the light of the above, the Assembly recommends that member States of the Council of Europe and the international organisations to which they are Parties:

6.2. ensure that these means of redress are also available to trade unions or other groups (such as staff committees and staff associations) working to protect the rights of staff;

6.3. introduce procedures for lodging appeals against decisions of the internal tribunals of international organisations in employment disputes, ideally by creating tribunals of appeal, where they do not yet exist, for the more established internal tribunals (such as the Administrative Tribunal of the International Labour Organization (ILO) and the Administrative Tribunal of the Council of Europe), and by having smaller international organisations submit to their jurisdiction;

6.4. ensure that internal redress mechanisms at all levels are independent and impartial, respect the principle of equality of arms and issue reasoned decisions, and that these mechanisms are given the means to operate effectively and without undue interference so that decisions are fair and taken within a reasonable time;

6.5. bring about greater transparency of the work of international organisations and ensure that information on procedures relating to employment disputes is accessible to their staff.