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Programme, Financial and Administrative Section
Personnel Segment

PFA

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ELEVENTH ITEM ON THE AGENDA

Matters relating to the Administrative Tribunal of the ILO

Update on discussions with the European Patent Organisation on possible future action to improve the Tribunal's caseload

Purpose of the document

As requested by the Governing Body at its 326th Session (March 2016), this paper contains a progress report on the discussions with the European Patent Office with a view to identifying a solution to the difficulties caused by the number of complaints which are filed by officials against the European Patent Organisation (EPO) and which threaten the ability of the Administrative Tribunal of the ILO to serve all other organizations (see the draft decision in paragraph 8).

Relevant strategic objective: None.

Main relevant outcome/cross-cutting policy driver: None.

Policy implications: None.

Legal implications: None.

Financial implications: None.

Follow-up action required: Continued discussions with the EPO on ways to reduce the volume of complaints filed against the EPO.

Author unit: Office of the Legal Adviser (JUR).

Related documents: GB.325/PFA/9/1(Rev.); GB.326/PV; and GB.326/PFA/12/2.

1. This report has been prepared in response to the Governing Body's decision in March 2016 which requested the Director-General to actively pursue the discussions with the European Patent Organisation (EPO) with a view to identifying a practicable solution to the difficulties experienced by the Administrative Tribunal of the International Labour Organization (the Tribunal) owing to the large volume of complaints filed by officials of the European Patent Office, the EPO's secretariat, and to present an updated report to its 329th Session (March 2017) at the latest.¹
2. In March 2016, the Administrative Council of the EPO adopted a resolution in which it expressed deep concern about the social unrest within the European Patent Office, noted that disciplinary sanctions against staff or trade union representatives were widely questioned in the public opinion, and requested the President of the European Patent Office to achieve, within the framework of tripartite negotiations, a Memorandum of Understanding simultaneously with both trade unions of the Office.
3. In a meeting convened by the Director-General in April 2016, the two Executive Heads together with the President of the Tribunal exchanged views on the situation created by the high number of complaints against the EPO, the root causes of the backlog and possible solutions. It was understood that the feasibility of certain proposals would be assessed and followed up, which prompted the Director-General's optimism that real progress could be made in the coming months so as to alleviate the Tribunal's workload which at the time appeared unsustainable.
4. In an update provided in February 2017, the President of the European Patent Office highlighted a number of developments at the EPO in relation to social issues and which may also have an impact on the workload of the Tribunal. Firstly, the Memorandum of Understanding recognizing trade unions present at the EPO as social partners and creating a collective bargaining framework was signed in March 2016 with one of the unions, the European Civil Service Federation (FFPE), and it remained open to the signature of the Staff Union of the European Patent Office (SUEPO). Secondly, in a Social Conference held for the first time in October 2016, stakeholders discussed the conclusions of three external studies: a social study, a financial study and an occupational health and safety assessment. The Conference also formulated recommendations for the improvement of the internal justice system which were further discussed at a follow-up workshop held in November 2016. Thirdly, in December 2016, a review of the EPO's internal appeal procedure was commissioned by the President of the European Patent Office to address principally the composition of the European Patent Office's Internal Appeals Committee, the ability of that body to have recourse to informal dispute settlement mechanisms and the clarification of the rules on receivability in line with the jurisprudence of the Tribunal. Finally, the President of the European Patent Office indicated that as a consequence of some recent judgments of the Tribunal, a number of his decisions and those of the Administrative Council have been withdrawn to be resubmitted to the Internal Appeals Committee.
5. On this last point made by the President of the European Patent Office, it is noted that on 30 November 2016 the Tribunal delivered in public Judgments Nos 3785 and 3796, which identified some serious deficiencies both in the administrative review performed by the EPO Administrative Council and in the internal appeal system within the EPO, and which could affect a very large number of pending complaints. To implement Judgment No. 3796, the EPO Administrative Council has withdrawn its own final decisions regarding requests for review in relation to 11 general decisions it had adopted, and has forwarded those requests for review to the President of the European Patent Office to be examined through the internal appeal system. To implement Judgment No. 3785, which declared that the composition of

¹ [GB.326/PV](#), para. 662, and [GB.326/PFA/12/2](#), para. 11.

the European Patent Office's Internal Appeals Committee was not balanced and lawful, the President of the European Patent Office withdrew his own final decisions which were based on recommendations of this internal body. Those two types of final decisions had been the subject of hundreds of complaints already before the Tribunal, and as they are now withdrawn, and depending on how these cases will be dealt with by the European Patent Office internally, one could reasonably expect a significant decrease in the Tribunal's current caseload.

6. According to information provided by the Tribunal, while in March 2016, 73 per cent of the total number of pending cases were complaints against the EPO, this percentage now stands at 54 per cent. However, the proportion of EPO-related complaints remains high compared to that of the other 60 organizations under the Tribunal's jurisdiction. Moreover, the cases that were sent back to the Internal Appeals Committee of the European Patent Office in implementation of Judgments Nos 3785 and 3796 are likely to be referred back to the Tribunal at some point if that system does not manage to deal with them appropriately.
7. Although over the past year the European Patent Office appears to have set in motion a certain number of initiatives aimed at facilitating the appeasement of current tensions and the improvement of industrial relations, the Director-General is of the view that the level of litigation generated within the European Patent Office still represents a challenge for the smooth functioning of the Tribunal. Finally, it is noted that the European Patent Office has not yet made known its views on the feasibility of establishing an internal first instance tribunal – as it has been suggested – which would limit significantly the number of cases brought before the Tribunal.

Draft decision

8. *The Governing Body takes note of the ongoing discussions on ways to reduce the Tribunal's workload generated by complaints filed against the European Patent Organisation and requests the Director-General to continue to explore, in consultation with the Tribunal, all possible means for ensuring its effective and unhindered operation in the interest of all international organizations that have recognized its jurisdiction.*