



## Governing Body

326th Session, Geneva, 10–24 March 2016

GB.326/PFA/12/2

**Programme, Financial and Administrative Section**  
*Personnel Segment*

**PFA**

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### TWELFTH ITEM ON THE AGENDA

## **Matters relating to the Administrative Tribunal of the ILO: Report 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 325th Session (November 2015), this paper contains a brief report on the progress of discussions with the European Patent Organisation (EPO) with a view to identifying a solution to the difficulties caused by the number of complaints generated within the EPO and which threaten the ability of the ILO Administrative Tribunal to serve all other organizations (see the draft decision in paragraph 11).

**Relevant strategic objective:** 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 with the Tribunal by EPO officials.

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

**Related documents:** GB.325/PFA/9/1(Rev.).



1. This report has been prepared in response to the Governing Body's decision in November 2015<sup>1</sup> which requested the Director-General to undertake without delay discussions with the European Patent Organisation (EPO) with a view to identifying a practicable solution to the difficulties experienced by the ILO Administrative Tribunal owing to the large volume of complaints filed by officials of the European Patent Office, the EPO's secretariat, and to submit a progress report to its 326th Session.
2. Following the Governing Body's decision, the Director General wrote in early November 2015 to the President of the European Patent Office, informing him of the outcome of the Governing Body deliberations and proposing an early commencement of discussions between the two organizations.
3. The Office immediately contacted the relevant services of the European Patent Office with a view to: (i) identifying and assessing the main causes of the volume of complaints filed against the EPO and discussing the implications for the Tribunal's functioning; and (ii) exploring possible solutions and drawing up a timetable for coordinated follow-up action.
4. To date, two video conferences have been held, on 6 November and 8 December 2015, with senior officials from the legal and human resources services of the European Patent Office. During these exchanges, the Office shared the Governing Body's concern about the broader governance issue and its expectations for concrete and time-bound action offering good prospects for resolving satisfactorily and sustainably the difficulties at hand. The officials of the European Patent Office highlighted the internal challenges faced by the EPO in a context of ongoing reforms, called for improvements in the Tribunal's case management in general, and appealed to the understanding of the Tribunal offering financial support if needed.
5. In the same period, the Director-General has also received several communications from the President of the European Patent Office providing information on efforts to streamline the internal means of redress, giving an overview of recent disciplinary cases involving staff representatives of the European Patent Office, some of which had resulted in the dismissal of the individuals concerned, and calling for a comprehensive review of the Tribunal's working methods. As agreed between the two organizations, the European Patent Office transmitted in February 2016 a Memorandum providing explanations on its internal dispute settlement procedures, an analysis on the nature of cases referred to the Tribunal and concrete measures/proposals to address the current situation.
6. Based on discussions and written information received, the European Patent Office considers that recent reforms in the internal dispute settlement procedures are having an impact on the number of disputes that can be resolved without recourse to the Tribunal. The European Patent Office also expects that this development would be supported through targeted communication campaigns on the Tribunal's case law, as statistics show that a considerable number of complaints against the EPO are dismissed. At the same time, the analysis of the cases referred to the Tribunal indicates that a significant number of complaints stem from strained relations between staff representatives and management. In this regard, the EPO Administrative Council in close cooperation with the President of the European Patent Office commissioned, in late 2015, a social study to identify any issues calling for action. They also envisage convening an all-inclusive social conference in September 2016 to define a common social agenda for the years ahead. In parallel, the European Patent Office indicates that it is in the process of finalizing a Memorandum of Understanding (MoU) for the recognition of staff unions as social dialogue partners and a first negotiation round is

<sup>1</sup> GB.325/PFA/9/1(Rev.), para. 33, as amended.

expected soon after the signature of the MoU to address, among other things, the level of complaints to the Tribunal.

7. These measures, taken collectively, and if systematically pursued, might be reasonably expected to result over time in a sizeable reduction in the number of complaints filed by officials of the European Patent Office with the Administrative Tribunal . However, no immediate improvement is expected with respect to the difficulties faced by the Tribunal due to the disproportionate level of complaints against the EPO considering the ratio of officials of the European Patent Office to the total number of staff subject to the Tribunal's jurisdiction. It is noted that as at 31 January 2016, there were 1,346 pending complaints (including those ready to be assigned to a session and those where the written proceedings were still ongoing), of which 984 were filed by officials of the European Patent Office (which is over 73 per cent). It is also recalled that in the period from November 2015 to February 2016, there have been 48 new complaints filed against the EPO.
8. These numbers put a very serious pressure on the Tribunal's Registry. In this connection, the EPO has offered to provide additional financial contributions for 2016 to increase the capacity of the Registry to cope with the backlog and continued flow of EPO-related complaints.
9. In order to facilitate optimal and lasting solutions informed by a better understanding of the nature and extent of the challenges faced by the Tribunal and the EPO, the Director-General is in the process of convening as soon as possible a meeting with the President of the European Patent Office to which the Director-General may also invite the President of the ILO Administrative Tribunal.
10. As it appears premature to draw conclusions on the impact that these various initiatives may yield in the short and medium term, the Director-General considers that the situation of the volume of complaints filed against the EPO should be closely monitored and the discussions with the EPO on this matter should continue. The Director-General proposes that a more comprehensive report be presented at the end of 2016 or early 2017, including – if required – recommended action by the Governing Body, should the situation remain such that the functioning and credibility of the Tribunal continues at risk.

### **Draft decision**

11. *The Governing Body takes note of the report on the ongoing discussions between the Office and the European Patent Organisation and requests the Director-General to actively pursue those discussions and to present an updated report to its 329th Session (March 2017) at latest.*