

SETTING THE RECORD STRAIGHT ON IMMUNITY AND ENFORCEMENT

On 26 February 2015 the President published the following laconic note to the EPO staff:

Notification from the Dutch government

The Dutch government takes steps to defend the immunity of the EPO

The President has informed you about a worrying development in the Netherlands concerning a decision from the Court of Appeal of The Hague passing over the principle of immunity of our Organisation (see [Communiqué No. 69](#)). The President has just received an official notification from the Dutch government which has decided to undertake some first actions to ensure that the judgement is not executable. You will be kept informed of further developments.

Presumably, the President is referring to the "[Aanzegging](#)" of the Dutch Minister of Justice.

In actual fact, the Aanzegging is an admonition to the Court Bailiff. The Bailiffs may not enter the EPO premises to try and enforce the judgment, more specifically by (trying to) confiscate property and assets of the Organization. Anything more than that, such as any suggestion that the Judgment is invalid or that the EPO is free to disregard its admonishments, is wrong.

The Office is correct in saying that the Executive branch of the Dutch Government is trying to prevent "physical" enforcement of the terms of the judgment.

It is interesting to observe what the Office omits to say – or to accept. The Aanzegging does not in any way touch the judgment itself. The Office's legal and political (not to say moral) obligation to follow its admonitions remains – even though the Dutch bailiffs cannot come and seize the EPO servers or arrest the President if he does not. The fact remains that the Court has set aside the immunity of the EPO and entered a valid judgment: the organisation must implement the ruling (it has no choice; it can only decide for itself on how to implement).

Indeed, in an international organization like ours, enforcement of such a judgment will not usually come from the domestic bailiffs, but from the supervisory authorities: the Member States themselves. It is with this in mind that we have already provided the Council delegations with a copy of our recent [update](#) on this matter.

We shall not comment, at this stage, whether or not the chosen course of action of the Dutch government was lawful or politically savvy. We are seeking counsel on this matter and will keep you informed.