

Brief Inquiry

of members of parliament Roman Müller-Böhm, Stephan Thomae, Grigorios Aggelidis, Renata Alt, Nicole Bauer, Jens Beeck, Dr. Jens Brandenburg (Rhein-Neckar), Sandra Bubendorfer-Licht, Dr. Marco Buschmann, Britta Katharina Dassler, Hartmut Ebbing, Dr. Marcus Faber, Daniel Föst, Otto Fricke, Thomas Hacker, Peter Heidt, Katrin Helling-Plahr, Markus Herbrand, Torsten Herbst, Katja Hessel, Manuel Höferlin, Reinhard Houben, Ulla Ihnen, Olaf in der Beek, Dr. Marcel Klinge, Daniela Kluckert, Pascal Kober, Carina Konrad, Konstantin Kuhle, Ulrich Lechte, Dr. Martin Neumann, Dr. Wieland Schinnenburg, Matthias Seestern-Pauly, Frank Sitta, Dr. Hermann Otto Solms, Bettina Stark-Watzinger, Katja Suding, Michael Theurer, Dr. Florian Toncar, Gerald Ullrich, Sandra Weeser, Nicole Westig, Katharina Willkomm, and the parliamentary party FDP

Position and Procedure of the European Parliament

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 (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 states 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-finanzgebarendes-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. We ask the federal government:

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?
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?

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

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?

Berlin, 30th January 2020

Christian Lindner and parliamentary party