

**CA/21/15**

Orig.: en

Munich, 05.06.2015

**SUBJECT:** Report on the European Patent Office's review and internal appeal procedures

**SUBMITTED BY:** Board of Auditors of the European Patent Organisation

**ADDRESSEES:** Administrative Council (for information)

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#### SUMMARY

Under Article 76(3) of the Financial Regulations, the Administrative Council asked the Board of Auditors to audit the Office's review and internal appeal procedures. The summary and recommendations of the audit are included in CA/20/15. This report gives more detailed information.

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## TABLE OF CONTENTS

<b>Subject</b>	<b>Page</b>
I. Summary	1
A. PROCEDURES	1
B. FACTS AND FIGURES	2
C. RECOMMENDATIONS IN BRIEF	3
II. Audit request	4
III. Detailed report	5
A. MANAGEMENT OF REQUESTS FOR REVIEW AND INTERNAL APPEALS AT THE EPO	5
a) Overall complaint management process	5
b) Audit of the Conflict Resolution Unit	8
c) Audit of the Internal Appeals Committee	14
d) Selection and evaluation of samples	22
e) Request for review and internal appeal management	23
f) Recommendations	25
IV. Recommendation for publication	26

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## **I. SUMMARY**

1. The Administrative Council asked the Board of Auditors to audit the Office's review and internal appeal procedures and how these had been implemented up to now.
2. The findings and recommendations are included in the annual auditors' report (CA/20/15). The present report (CA/21/15) gives more detailed information.
3. The audit approach is focused more on business administration than on legal perspectives.

## **A. PROCEDURES**

4. The procedures are defined mainly in Title VIII – Settlement of disputes – of the Service Regulations for permanent employees of the European Patent Office (ServRegs).
5. In principle the procedures are as follows:
6. As of 1 January 2013, a reform of the internal appeals procedure entered into force. One of the main changes is the introduction of a management review. The employee may submit a request for this within a period of three months. The Conflict Resolution Unit forwards the incoming request after registration to the appointing authority, who is usually the requester's superior. The requester has to receive a decision within two months after registration of the request.
7. After the requester has received a decision taken by the reviewer, he/she may challenge this decision within three months by sending an internal appeal to the secretariat of the Appeals Committee for forwarding to Directorate Employment Law (Dir. 5.3.2) for a position paper. The appellant has the possibility to reply to the position paper. If so, Directorate Employment Law may draw up a second position paper, which again will be sent to the employee. The Appeals Committee then invites the requester to a hearing. As a result, the Appeals Committee drafts an opinion which is regarded as a recommendation for the President. The opinion is sent to the President, who is responsible for taking the final decision. Once the final decision is taken by the President, the appellant is informed of the outcome and thus the final decision. The appellant receives the Appeals Committee's opinion along with the President's final decision.

8. There are also exceptions whereby an employee can directly lodge an internal appeal without having to go through the management review process first.
9. After receiving the Office's final decision, the appellant has the opportunity to challenge it before the ILO's Administrative Tribunal (ILOAT) by filing a complaint within three months after receiving the decision.

## **B. FACTS AND FIGURES**

10. In 2013 and 2014 (until 24 November 2014) 535 cases with 3 776 requesters were registered for **management review**. 55% of the cases and 92% of the requesters are focused on regulations and/or policies. The outcome of the cases in 2013 and 2014 shows that 375 cases (70%) with 3 124 requesters (83%) have the status "decision maintained". Of these 375 cases, 221 cases with 2 933 requesters related to regulations and/or policies.
11. The **Appeals Committee** registered 186 cases with 492 appellants in 2013 and 142 cases with 438 appellants in 2014 (until 24 November 2014). The list of registered cases includes 369 appellants in 2011 and 617 in 2012.
12. The Secretary of the Appeals Committee defines subjects for every appeal. There are a total number of 226 subjects. The main subjects are Investigation Guidelines, strike, salary reduction due to strike and the prohibition of mass mailing.
13. In 2013 and 2014 the Appeals Committee drew up opinions on about 155 cases with 2 211 appellants, of which 108 cases with 2 131 appellants were rejected.
14. In 2013-2014 (up to 24 November 2014), final decisions taken by the **President** covered 170 cases and 573 requesters. 94% of the cases were rejected.
15. For 84% of the requesters the President followed the opinion of the Appeals Committee. Of 92 appeals where he had a different opinion to the Appeals Committee the President rejected 85 (92%) and allowed 7 in part (8%).

16. In 2013-2014 (up to 24 November 2014) 133 cases with 200 appellants were submitted to the **ILOAT**.
17. The **average time** between the start of an internal appeal and the final decision is 46 months for decisions taken in 2013 and 44 months for decisions taken in 2014.
18. As from 20 November 2014, there are 759 pending cases with 5 761 appellants.
19. Most of the pending cases (356 cases with 1 542 requesters) are waiting for the position paper.
20. In 2013-2014 (until 24 November 2014) 995 requests were sent to the Administrative Council. 626 requests were referred to the CRU for management review and 369 cases were rejected due to formal or substantive errors.
21. In principle, the Appeals Committee works chronologically in the order of receipt. There are exceptions to this practice for urgent cases and for mass complaints.  
Recommendations in brief
  - One group of recommendations deals with the implementation of a single administrative system, with a central registration function and consistent assignment of topics.
  - A second group of recommendations is on more efficient working procedure, such as specialisation of lawyers, standardisation of position papers, and efficient design and clustering of hearings. Even the settlement of old cases should be taken into consideration.
  - The third group relates to separation of the procedures for individual cases (reviews and appeals) from political discussions.

## II. AUDIT REQUEST

22. A letter dated 30 October 2014 was addressed by the chairman of the Administrative Council, Jesper Kongstad, to the spokesman of the Board of Auditors. The content of the letter was as follows:

*"Dear Mr. Schuh,*

*As you are aware, the Council, at its 141st meeting held on 15 October 2014 and at the suggestion of the UK delegation, agreed that the chairman would submit to the Board of Auditors a proposal to include in its work plan an audit of the Office's review and internal appeal procedures and how these had been implemented up to now.*

*According to the Financial Regulations, Art. 76(3), the Administrative Council may, on a limited scale, ask the Board to carry out specific investigations or reviews. Our request clearly fits into this provision, and we do hope that this timely proposal can be accommodated in your next work plan, which is still in the process to be drafted.*

*Should this request trigger specific questions as to the scope of and/or the resources needed for this assignment, I am available to answer any questions you might have."*

23. The Board of Auditors carried out the requested audit work as part of the annual audit programme and included its findings and recommendations in the annual audit report, CA/20/15. The benefit of this form of presentation is to have all findings and recommendations in one document. As the concept of the annual audit reports (CA/20/xx) does not provide enough space for detailed information, the Board decided in agreement with the chairman of the Council to publish the detailed findings in this document. Due to their nature the recommendations are simply repeated.
24. The Board was supported by an expert team from KPMG.

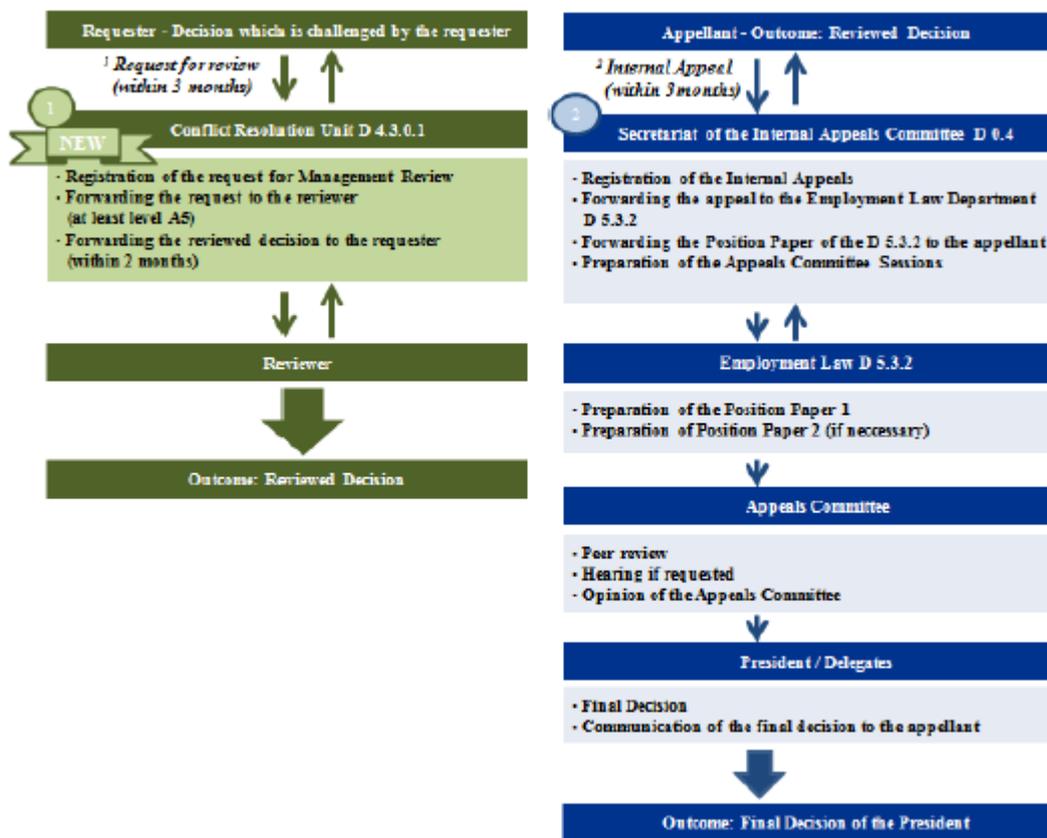
### III. DETAILED REPORT

#### A. MANAGEMENT OF REQUESTS FOR REVIEW AND INTERNAL APPEALS AT THE EPO

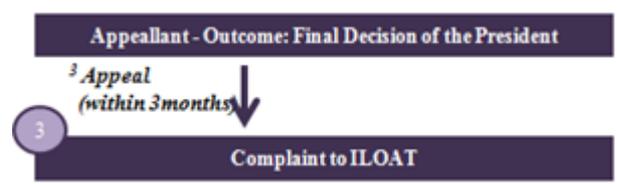
25. There are in general three ways in which complaints can be submitted by employees of the European Patent Office (EPO). We refer to the whole process in general as a complaint management process. Here we can differentiate between internal and external process steps. The internal process steps include requests for management review, which are handled by the Conflict Resolution Unit (CRU), and the internal appeal process, for which the Appeals Committee (AC) or the Administrative Council is responsible. The external litigation step is handled by the International Labour Organization's Administrative Tribunal (ILOAT).

##### a) Overall complaint management process

26. The three steps in the overall complaint management process are described in detail in the following illustration:



27. After the President has taken his final decision, the appellant receives the opinion of the Appeals Committee together with the final decision on his appeal. Finally, the appellant can file a complaint about the final decision with the ILOAT, which is then considered as an external litigation step.



Time limits:

1 – three months after announcement of the impugned decision

2 – three months after announcement of the management review decision

3 – three months after announcement of the President's final decision

28. The process for requests or appeals directed against the Administrative Council is the same. To some extent other departments are included.

**(i) Management review**

29. If an employee wishes to challenge a decision taken by a manager, the President or another person, he has to send a request for review to the Conflict Resolution Unit (CRU, Dept. 4.3.0.1) within three months after the challenged decision is published. The CRU registers the request for review and forwards it to the reviewer. The reviewer is the requester's superior (but at least a director). The requester has to receive a decision within two months after registration of the request. According to the regulations, if no reviewed decision is issued within two months, the implied decision can be seen as a rejection and the requester may challenge the decision further by means of an internal appeal.

**(ii) Internal appeal**

30. After the requester receives a decision taken by the reviewer, he may challenge it within a period of three months. For this purpose he has to send an internal appeal to the secretariat of the Appeals Committee (Dir. 0.4). The secretariat registers the internal appeal and forwards it to the Office's Directorate Employment Law (Dir. 5.3.2). Dir. 5.3.2 then has to draw up the Office's position paper, which sets out the Office's legal opinion. Once the position paper has been drafted and sent to

the appellant, the appellant has the possibility to reply. After the appellant has replied, Dir. 5.3.2 may draft a second position paper, which will again be sent to the employee. Then the Appeals Committee sends the requester an invitation to a hearing. The hearing is held by the Appeals Committee.

31. The Appeals Committee consists of one chairperson and four full members. The chair and two members are nominated by the Office, the other two members by the Central Staff Committee. All the full members also have deputies. This is a peer review, as the members of the Appeals Committee are regular employees of the EPO and do not need to have a legal background. The legal basis for the Committee is set out in Articles 108-112 ServRegs.
32. After the hearing, the Appeals Committee drafts an opinion which is regarded as a recommendation for the President. The Appeals Committee's opinion is sent to the President, who is responsible for taking the final decision. Once the final decision has been taken by the President, the appellant is informed of the outcome and thus the final decision. The appellant receives the Appeals Committee's opinion along with the President's final decision.

**(iii) Administrative Tribunal of the International Labour Organization**

33. After receiving the Office's final decision the appellant has the opportunity to challenge it before the ILO's Administrative Tribunal by filing a complaint within three months after receiving the Office's final decision.

**(iv) Exceptions**

34. There are also exceptions whereby an employee can directly lodge an internal appeal without having to go through the management review process first.
35. For example, in the case of a request challenging a staff performance appraisal report, an internal appeal can be lodged directly.
36. Decisions already handled by the Medical Committee do not have to go through the internal appeal process. Furthermore, decisions reviewed by the Disciplinary Committee and decisions on part-time homeworking (Article 110 ServRegs) and extensions beyond the age of 65 do not have to go through the internal appeal process either. If such decisions are contested, they must be challenged before the ILOAT.

**b) Audit of the Conflict Resolution Unit**

**(i) Registered requests for management review**

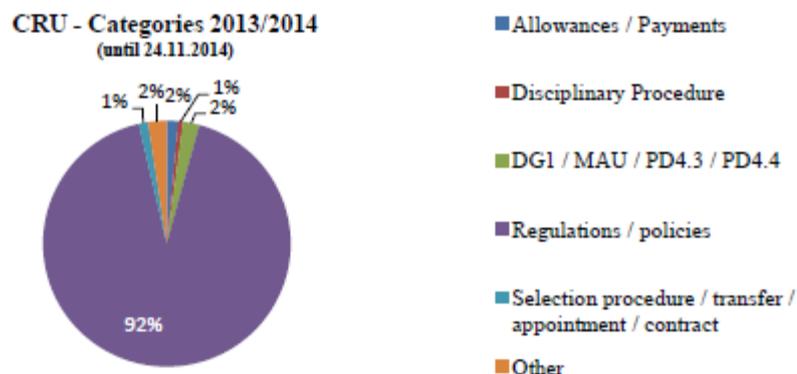
37. The list of registered management review requests contained 330 cases with a total of 2 861 requesters in 2013. At the end of November 2014, 205 requests by 916 requesters were registered by the CRU. The majority of the requests related to policy decisions and changes in regulations.

38. Registered management reviews:

	2013		2014 (until 24.11.2014)	
	Number of requesters	Number of cases	Number of requesters	Number of cases
<b>Total</b>	2 861	330	915	205
Related to regulations	2 672 (93.39%)	190 (57.58%)	805 (87.88%)	102 (49.76%)

Update end of 2014: Number of requesters: 1 072; number of cases: 223

39. CRU categories No. 1:



Categories	Number of requesters 2013	Number of requesters 2014 (until 24.11.2014)
Allowances/payments	33	23
Disciplinary procedure	5	19
DG 1/MAU/PD 4.3/PD 4.4	54	27
Regulations/policies	2 672	805
Selection procedures/ transfer/appointment/ contract	41	6
Other	56	35
<b>Total</b>	<b>2 861</b>	<b>915</b>

40. Subject examples for the category “Regulations/policies” are Circulars 341 & 342 (Investigation Guidelines), Circular 347 (Strike Regulations), Change to Circular 22 (Leave Regulations), October/November strike deduction and CA/D 2/14 (Social Democracy).
41. The number of requesters in 2014 compared to 2013 decreased significantly. One reason is that in 2013, 14 mass requests were submitted with a total number of 2 515 requesters (average of 180 requesters per mass request), compared with the figures for 2014 (until 24 November) with 10 mass requests and 701 requesters (average about 70 requesters per request). All mass requests relate to changes in regulations or policies.
42. In the following table a list of mass requests with more than 60 requesters (in 2013/2014) is included. The mass request with the case number 2013-0027 is the one with the highest number of requesters. The mass request with the most requesters in 2014 is case number 2014-0005 with 150 requesters. In 2013, there were more requesters per mass appeal.

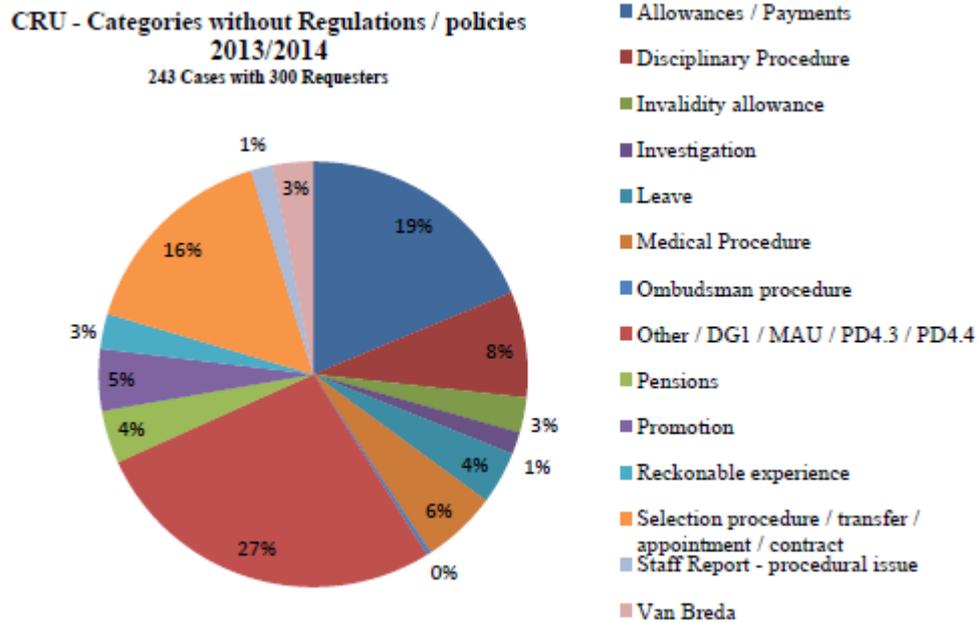
43. Mass requests:

Case-No.	Subject	Number of requesters
2013-0027	Circulars 341 & 342 - Investigation Guidelines	723
2013-0085	Repeal of VP4's note to all staff of 18.03.13 regarding industrial action plans	268
2013-0153	Use of mass emails in the Office	93
2013-0155	PD 4.3's letter dated 09.07.2013 regarding strike	208
2013-0165	Collective reward	315
2013-0190	Changes to Circular 22 (leave regulations) – well-being	116
2013-0191	Circular 347 (Strike Regulations)	198
2013-0238	IFLRE petition - 2013-0238	86
2013-0244	Oct./Nov. strike deductions	338
2013-0315	August salary payslip - Council	107
2014-0005	Oct./Nov. strike deductions - Filed via the online form - 2013-0244	150
2014-0050	Contributions to healthcare (Van Breda)	108
2014-0065	Pension contributions C349	105
2014-0168	CA/D 2/14 (Social Democracy) - AC referral	163

Case 2013-0027 relates to Circulars 341 (Policy on the prevention of harassment and the resolution of conflicts at the EPO) and 342 (Guidelines for investigations at the EPO).

44. In addition to requests related to regulations and policies, the requests may be structured as follows:

CRU categories (No. 2)

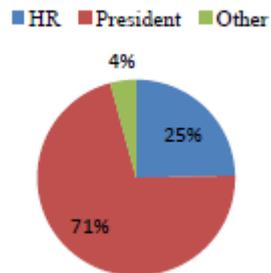


CRU - Categories without regulations / policies	Number of requesters 2013	Number of requesters 2014 (until 24.11.2014)
Allowances/payments	33	23
Disciplinary procedure	5	19
Invalidity allowance	6	2
Investigation	4	1
Leave	4	8
Medical procedure	8	9
Ombudsman procedure	1	0
Other/DG 1	39	16
Other/MAU	1	0
Other/PD 4.3	13	8
Other/PD 4.4	1	3
Pensions	11	1
Promotion	11	3
Reckonable experience	5	2
Selection procedure/transfer/appointment/contract	41	6
Van Breda	5	4
Staff reporting	1	5
<b>Total</b>	<b>189</b>	<b>110</b>

## Requests for management review

The majority of requests in 2013 and 2014 were against initial decisions taken by the President. This also includes the mass requests shown above.

Requests against decisions



Requests against decisions taken by	Number of requesters 2013	Number of requesters 2014 (until 24.11.2014)
President	2 164	534
HR	614	332
Other	83	49

### (ii) Outcome of requests for management review

45. The outcome of cases in 2013 and 2014 shows that 375 cases (70%) with 3 124 requesters (82.73%) have the status “decision maintained”, which means that the decision after the review has remained the same as the initial decision. Of these 375 cases, 221 cases with 2 933 requesters related to regulations and/or policies.

46. Outcome CRU:

<b>Outcome CRU</b>	<b>Cases 2013/14 (until 24.11. 2014)</b>	<b>Requesters 2013 &amp; 2014</b>	<b>Requesters 2013</b>	<b>Requesters 2014 (until 24.11.2014)</b>
Decision maintained	375	3 124	2 556	568
Allowed	17	16	9	7
Allowed in part	4	4	2	2
Rejected	5	7	7	0
Rejected as irreceivable	80	495	254	241
Implied rejection	11	11	11	0
Forwarded	14	22	18	4
Withdrawn	6	6	1	5
No action needed	6	65	3	62
Pending	17	26	0	26
<b>Total</b>	<b>535</b>	<b>3 776</b>	<b>2 861</b>	<b>915</b>

(iii) **Compliance with deadlines at the CRU**

47. Almost all requests for management review were answered on time. On average the registration and processing of one request took 1.5 months. In 2013/14, 32 cases (with 189 requesters) were not completed within the two-month deadline. The decision on those requests could be seen as an implied decision of rejection, and the requester was therefore able to file an internal appeal.

48. We have selected some samples related to the cases where there were delays. We have identified the following reasons for the delays:

- Typo in the database (manually maintained Excel file)
- Issues at reviewer instance
- Settlement reached with requester (by dialogue)
- Case of great complexity

49. In some of these cases where the review was not sent on time, there were direct contacts between the reviewer and the employee.

**c) Audit of the Internal Appeals Committee**

**(i) Registration of internal appeals**

50. The list of registered cases includes 369 appellants in 2011, 617 appellants in 2012, 492 appellants in 2013 and 438 appellants in 2014 (until 24.11.2014).

51. The list of internal appeals registered in 2013-2014 does not show any significant difference between the two years.

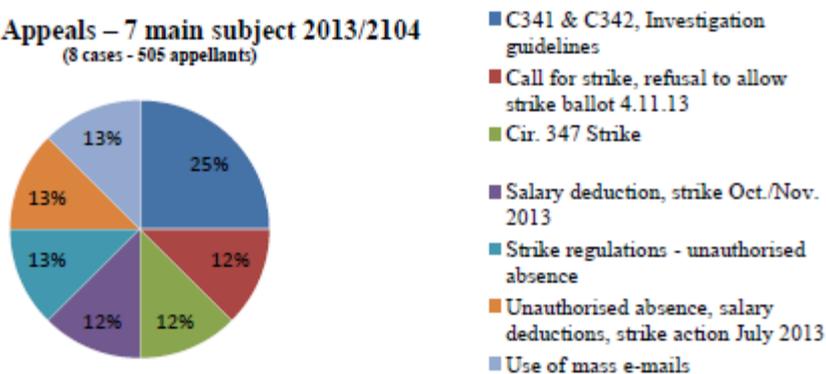
52. Registration of internal appeals:

2013		2014 (until 24.11.2014)	
Number of appellants	Number of cases	Number of appellants	Number of cases
492	186	438	142

53. An assignment to appeal categories is made by the Appeals Committee Secretary. However, the AC Secretary does not use the same categories as the CRU. For example, the Appeals Committee does not use a “Regulations/policies” category. The Secretary of the Appeals Committee defines subjects for each appeal. There are a total of 226 subjects for 329 cases with 931 appellants. The seven main subjects with more than 25 appellants are shown in the chart below.

54. Main subjects - internal appeals:

**Internal Appeals – 7 main subject 2013/2104**  
(8 cases - 505 appellants)



<b>Internal appeals – main subjects (more than 25 appellants)</b>	<b>Appellants 2013</b>	<b>Appellants 2014 (until 24.11.2014)</b>
Circ. 341 & 342, Investigation guidelines	150	
Strike regulations - unauthorised absence	76	
Use of mass emails	38	
Circ. 347 Strike		26
Call for strike, refusal to allow strike ballot 4.11.13		29
Salary deductions, strike Oct./Nov. 2013		145
Unauthorised absence, salary deductions, strike action July 2013		41
<b>Total</b>	<b>264</b>	<b>241</b>

Case 2013-0027 relates to Circulars 341 (Policy on the prevention of harassment and the resolution of conflicts at the EPO) and 342 (Guidelines for investigations at the EPO).

55. In 2013, 150 appellants submitted an internal appeal related to Circulars 341 and 342, Investigation guidelines.

**(ii) Outcome of internal appeals**

56. In 2013 and 2014 the Appeals Committee drafted opinions for about 155 cases for 2 211 appellants with the following outcome:

<b>Outcome 2013/2014</b>	<b>Cases 2013 &amp; 2014</b>	<b>Appellants 2013 &amp; 2014</b>	<b>Appellants 2013</b>	<b>Appellants 2014 (until 24.11.2014)</b>
Allow	17	20	17	3
Allow in part	28	52	31	21
Majority rejection	1	1	0	1
Rejection	108	2 131	53	2 078
No recommendation	1	7	0	7
<b>Total</b>	<b>155</b>	<b>2 211</b>	<b>101</b>	<b>2 110</b>

The high figure in 2014 (2 078 appellants) is mainly caused by one mass request concerning “health insurance CA/D 7/10”, with 1 482 appellants. The opinion of the Appeals Committee was sent to the President for final decision on 20 November 2014.

57. Some of the appeals included in the table above were registered as long ago as 2007. In total, for 72 appellants (3.26%) the opinion was that the appeal was to be allowed or allowed in part.

**(iii) Final decision by the President**

58. From the data we received we obtained the following information on the number of decisions taken by the President or his delegates in 2013 and 2014.

Final decision:

<b>2013</b>		<b>2014 (until 24.11.2014)</b>	
<b>Number of cases</b>	<b>Number of appellants</b>	<b>Number of cases</b>	<b>Number of appellants</b>
84	141	86	432

59. In 2013, 89% of all decisions were “rejected”, in 2014 96% of the decisions were “rejected”.

Outcome, final decisions

	<b>2013</b>	<b>2014 (until 24.11.2014)</b>
<b>Allow</b>	3	3
<b>Allow in part</b>	11	15
<b>Allow moral</b>	1	0
<b>Reject</b>	126	414
<b>Total</b>	<b>141</b>	<b>432</b>

60. Before the President takes his final decision, he receives the opinion of the Appeals Committee. In 84% of the recommendations the President followed the opinion of the Appeals Committee.

Difference between AppCom opinion and final decision	Appellants 2013 & 2014	Appellants 2013	Appellants 2014 (until 24.11.2014)
Difference	92	38	54
No difference	481	103	378
<b>Total</b>	<b>573</b>	<b>141</b>	<b>432</b>

61. The difference between the opinion of the Appeals Committee and the decision of the President (92 requesters, 16%) is as follows:

	Appeals Committee opinion 2013	President's final decision 2013	Appeals Committee opinion 2014 (until 24.11.2014)	President's final decision 2014 (until 24.11.2014)
Allow	11	0	14	0
Allow in part	22	2	39	5
Settlement	3	0	0	0
No recommendation	2	0	0	0
Reject	0	36	1	49
<b>Total</b>	<b>38</b>	<b>38</b>	<b>54</b>	<b>54</b>

Of 92 appeals where he had a different opinion to the Appeals Committee the President rejected 85 (92%) and allowed 7 in part (8%).

62. After receiving the final decision the appellant can challenge the decision and initiate external litigation before the ILOAT.

63. The table shows the number of EPO cases the ILOAT has had to deal with in the last three years.

Year	EPO cases	EPO appellants
2012	43	45
2013	92	153
2014	41	47

**(iv) Processing time**

64. The average time between the start of an internal appeal and the final decision is 46 months for decisions taken in 2013 and 44 months for decisions taken in 2014.
65. The Secretary of the Appeals Committee takes an average of 1.9 months to register internal appeals and forward them to Directorate Employment Law (Dir. 5.3.2). Dir. 5.3.2 takes around 25 months to draft the first position paper and forward it to the appellant.
66. Below, average times are listed for the different steps within the internal appeals process.

Processing time:

Months	Appeal transferred to Dir. 5.3.2	Transfer to Dir. 5.3.2 – first position paper	First PP – hearing	Hearing – AppCom opinion	AppCom opinion – final decision	Average time: appeal – final decision
2013	1.90	25.29	10.05	5.82	3.20	<b>46</b>
2014	1.92	24.81	9.84	5.77	2.83	<b>44</b>

Remark: Due to the fact that for some cases (for example cases which are related to decisions of the Medical Committee) no position paper was drafted (or at least the date was not tracked in the received data), the average time is lower than the sum.

**(v) Administrative Council**

67. The data registered by the Council Secretariat are as follows:.

	<b>2013</b>	<b>2014 (until 18.11.2014)</b>
Requests referred to EPO President	461	165
Requests rejected	339	30
<b>Total requests</b>	<b>800</b>	<b>195</b>
<b>Number of subjects</b>	<b>17</b>	<b>8</b>

68. In 2013, 800 requests were sent to the Council Secretariat. 461 requests were referred to the CRU for management review and 339 cases were rejected due to formal or substantive errors. Even if the number of incoming files at the Council Secretariat has fallen significantly, there is still a high workload for the Council Secretariat, as it has to check all incoming cases before it can reject them or forward them to the CRU. In very rare cases a request was sent correctly to the Administrative Council. From the perspective of the Office only one case was correctly sent to the Administrative Council in 2013 and 2014

**(vi) Current backlog situation (reviews)**

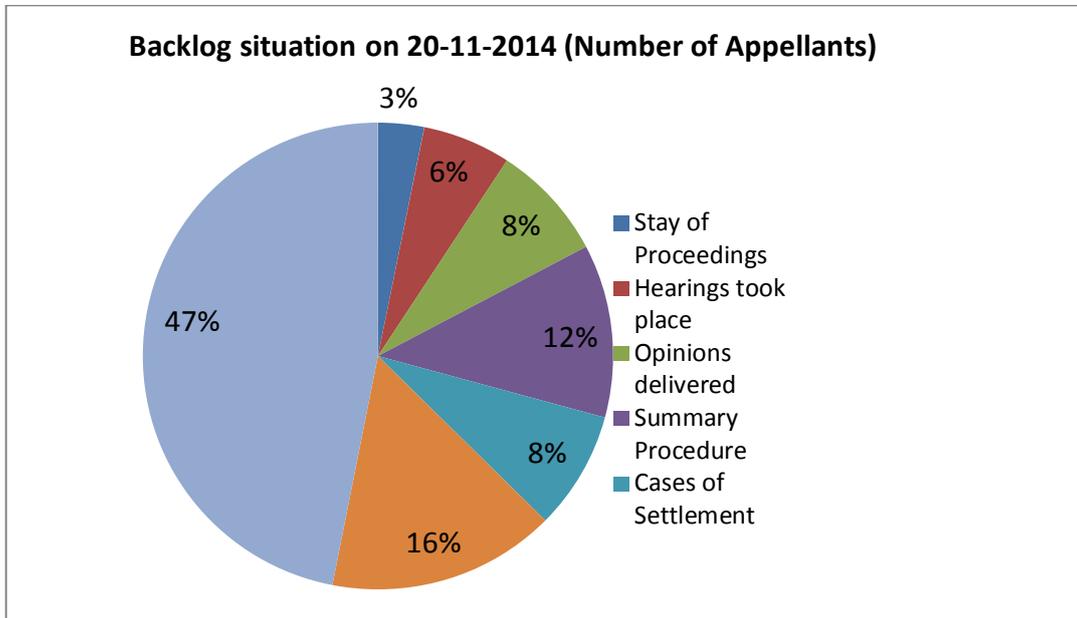
69. Due to the described process for the management review there is currently no backlog in the Conflict Resolution Unit.

**(vii) Current backlog situation (appeals)**

70. In principle, the Appeals Committee processes appeals chronologically in the order of receipt. There are exceptions to this practice for urgent cases. Other exceptions are mass complaints, as those appeals are handled together. After registration the appeal is forwarded to Dir. 5.3.2 for it to issue a position paper.

71. Currently there are 759 pending cases with 5 761 appellants (as of 20 November 2014).

The backlog situation as per 20 November 2014 was as follows:



Backlog situation on 20.11.2014	Cases	Appellants
Stay of proceedings	24	185
Hearings took place	46	1 563
Opinions delivered	61	1 608
Summary procedure	91	374
Cases of settlement	62	126
PP delivered	119	363
Appeals waiting for PP	356	1 542
<b>Total</b>	<b>759</b>	<b>5 761</b>

Most of the pending cases (356 cases with 1 542 appellants) are waiting for the position paper, which has to be drafted by Dir. 5.3.2. The oldest case in the backlog dates from June 2007. Regarding the status for “Opinions delivered”, the situation is mainly due to one mass request concerning “health insurance CA/D 7/10”, with 1 482 appellants.

**(viii) Possible development of the backlog**

72. According to the information obtained during interviews and the corresponding documents, we assume that the backlog will continue to increase in the coming years in the prevailing situation. There are several reasons for this assumption. In addition to internal appeals the Employment Law Directorate has to deal with other tasks. Its main task is to give legal advice as well as handling litigation. Beside internal and external (ILOAT) litigation it also has to prepare the legal opinion on new regulations and reforms. This includes drafting of the reforms. Another task we would like to point out is pre-litigation and advice on requests for review, when the President is involved.
73. During the interviews we also obtained information that some employees were heavily involved in projects during 2014 and will still be involved in them in 2015. Therefore there is limited capacity for working on reducing the backlog or on new internal appeals.
74. A high number of non-permanent staff also reduces efficiency, as one internal appeal case has to be reallocated to up to three lawyers.
75. The backlog of internal appeals in Dir. 5.3.2 increased constantly from 1 076 appeals in 2010 to 5 761 in 2014. In June 2014 an organisational study of legal services was conducted. According to this study Dir. 5.3.2 has to work with a high amount of non-permanent staff.
76. According to the directorate's own assessment, new lawyers would be needed in order to reduce the current backlog of around 700 cases in the next five years.

**d) Selection and evaluation of samples**

77. Based on the data provided by the EPO, we have selected seven requests for management review, as well as four additional cases which were forwarded by the Administrative Council to the CRU. Furthermore, we have selected six cases of internal appeals with the Appeals Committee Secretary, as well as two samples of appeals which are in the backlog of the Employment Law Directorate. As most contracts are limited to three years, it often happens that more lawyers are needed to work on a case. This also results in delays within the process. It would be advantageous if limited contracts could be extended to five years.

**(i) Conflict Resolution Unit**

78. The selected requests registered by the Conflict Resolution Unit were processed on time. The requesters received the opinion of the reviewer on average within two months after registration.

79. In addition we have chosen some samples for which the time between registration and providing the opinion of the reviewer took more than two months. During our interviews with the employees from the CRU we obtained the information that in some cases it may be that a first decision is not possible within two months. For example, very complex cases or cases where the requester stays in direct contact with the reviewer could not always be resolved within by this deadline.

80. Furthermore, during the interviews we obtained the information that direct contact, which is the main idea behind the management review, is only used in some cases.

81. Some individual cases could be resolved by introducing the management review before they become an internal appeal. The more individual the request, the more efficient the system.

82. As the Excel list of registered cases and their status has to be maintained manually, we have identified some typing errors (e.g. incorrect date of registration).

**(ii) Internal Appeals Committee**

83. Due to a lack of one linked system for registration and processing of requests/appeals it is not always possible to link the requests handled by the CRU with the internal appeals submitted to the Appeals Committee Secretary. This is because the CRU and the Appeals Committee Secretary use different Excel structures for registering requests/internal appeals. The CRU is also not informed whether a request which has already been handled through a management review has been submitted to the Appeals Committee Secretary for registration of an internal appeal.
84. Furthermore we have received the information that the Appeals Committee was partly not complete in 2014. According to a letter published by the Secretariat of the Internal Appeals Committee on 6 October 2014 the Staff Committee did not appoint members as required by Article 5(3) Implementing Rules Art. 106-113. During this period opinions relating to internal appeals submitted to the Appeals Committee were drafted without staff representation. In January 2015 the President announced the composition of EPO statutory bodies and committees in 2015, and the new staff representatives within the Appeals Committee were announced as well.

**(iii) Employment Law Directorate**

85. During the processing of an internal appeal most of the time is needed for the first position paper to be drafted by Dir. 5.3.2. For the chosen samples it took on average 23 months after the registration of the internal appeal for the position paper to be drafted. One reason might be that position papers have to be very detailed and are not standardised.

**e) Request for review and internal appeal management**

86. One of the issues with the current internal litigation system is that the process takes a very long time until a final decision is taken and communicated to the appellant. Most of this time is needed for the Employment Law Directorate to draft the first position paper, and that is therefore the main reason for the current backlog. There are more new internal appeals registered than are discussed on the Appeals Committee.

87. Communication and co-operation between Dir. 0.4, PD 4.3 and PD 5.3 are suboptimal, as there is no harmonisation of working methods. Until now there has been no common tool for all those units to track internal appeals adequately. We obtained the information that there is an ongoing project aimed at introducing a common tool. The aim of this project is to implement an e-platform/system which is used throughout the different stages of the internal appeals process. It should support the EPO-wide monitoring and tracking of requests for management review, as well as internal appeals.

The introduction of the CRU in the complaint system ought to encourage direct dialogue. So far, dialogue between the employee and the reviewer has taken place only in some individual cases. The advantage of this reform is that agreement has been reached in some individual cases. The more individual cases are, the more efficiently the mechanism works, as the system is not geared for mass appeals. Separate systems for individual requests/appeals and mass requests/appeals would ensure that the cases can be processed faster and that employees would receive the decision on the appeal more quickly. For discussions on policy decisions/regulations a separate instrument should be introduced.

88. Cases which are incorrectly sent to the Administrative Council cause double work and loss of time. This double work could be avoided by communicating the system clearly on the intranet pages of the departments. There should be a clear description of the system and who can send a request directly to the Administrative Council, as well as the conditions which must be met. Alternatively, the CRU could be used as an independent function which takes care of the registration of all management reviews and internal appeals. That means that all requests/internal appeals would have to be sent to the CRU for registration. After registration, it would be the responsibility of the CRU to register the request/internal appeal and forward it to the department in charge.
89. Furthermore, despite the fact that there is a lot of information about the system on the intranet, in some cases employees use the wrong channel to submit a complaint. For example, the Administrative Council received around 1 000 requests in 2013 and 2014. All of them were in the Office's opinion wrongly addressed, as they challenged a general decision or the requesters were affected individually.

90. By using separate processes for individual cases and requests/appeals relating to policy decisions and regulations, internal complaint management could be made more efficient.

**f) Recommendations**

91. In detail, we would recommend the following actions for the EPO:

- One common tool for the whole process for requests and internal appeals should be implemented.
- A central function (single-owner process) for the registration of requests as well as appeals should be implemented.
- A standardised approach to registering requests and adequate communication of the process should be introduced.
- Direct dialogue within the Office as pre-litigation for individual cases should be reinforced in order to reduce the number of internal appeals.
- The settlement of old cases should be taken into consideration.
- The position paper should be more concise and standardised where possible.
- The creation of clusters (topics) for appeals should be implemented as early as possible.
- Hearings concerning the same topic areas should be clustered.
- Hearings concerning more trivial cases could be reshaped, for example with fewer participants or less time during the hearings.
- The Employment Law Directorate should be strengthened in terms of resources and/or organisational redesign to increase output.
- The work of lawyers could be more focused on specific areas and supported by training in specific areas (specialisation).
- Measures to separate the procedures for individual cases (reviews and appeals) from policy discussions should be addressed.

**IV. RECOMMENDATION FOR PUBLICATION**

92. The Board considers that the report can be published.