



U4U - Union pour l'Unité AISBL

Bruxelles, le 17/03/2023

Dear Mr Leardini,

In the context of our dialogue about the functioning of the EU agencies, we would like to bring a situation to your attention that deserves, in our opinion, the intervention of the EU Commission.

As you know, back in December, the mandate of the Executive Director (ED) of EUIPO, Mr Archambeau, was not renewed during the last ordinary meeting of the Management Board (MB) of the EUIPO. The MB's decision of non-renewal was not accompanied by any reasoning and came, for many observers and for staff, as a surprise. The different monitoring tools addressing the EUIPO's performance had not given any reason for concern about the management of the agency. On the contrary, EUIPO had excelled for its way of getting through the sanitary crisis.

We understand from public sources that the ED challenged the decision of non-renewal.

On 7/3/2023, the staff of EUIPO was informed by the Secretariat of the Management Board, following an extraordinary Management Board meeting held on 6 March 2023, that the 'Management Board decided to temporarily suspend the powers of the appointing authority (AIPN) and of the authority authorised to conclude contracts of employment (AACC), delegated by the Management Board to the Executive Director. The suspension takes effect as of today, 7 March 2023, until the end of Executive Director's mandate.'

The Management Board further informed that the existing sub-delegations to the Director of the Human Resources Department, to the President of the Boards of Appeal and to the Paymaster Office (PMO) of the European Commission would remain unchanged but be exercised under the supervision of the Chairperson of the Management Board.

Finally, the Management Board decided 'to mandate its Chairperson to exercise the AIPN/AACC powers other than those covered by said sub-delegations.'

U4U is deeply concerned about the situation created by this MB decision at EUIPO for several reasons: It creates a precedent for a quasi-renationalization of the European administration that puts in question the basic principle of the independence of the European Administration; furthermore, it creates the impression that the recourse to a legal remedy

can trigger sanctions and; finally, it creates among the staff of the agency an unhealthy climate of uncertainty.

As to the first concern, it is true that under Article 153 (1) EUTMR the Management Board has a limited role of exercising *exceptionally*, with respect to the staff of the Office, the powers conferred by the Staff Regulations on the Appointing Authority. The Management Board however is obliged, under Article 153(2) EUTMR to adopt - and has adopted in 2017 - a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment, delegating the relevant appointing authority powers to the Executive Director and defining the conditions under which that delegation of appointing authority powers can be suspended.

The EUTMR clearly indicates that it is only in exceptional circumstances that the Management Board may temporarily suspend the delegation of the appointing authority powers to the Executive Director and those sub-delegated by the latter, and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.

Article 4 of Decision No MB-17-01 of the EUIPO Management Board, that implements the requirement of a delegation of powers to the Executive Director, also refers to 'exceptional cases' where the Management Board may decide to temporarily suspend the delegation of powers to the Executive Director. However, the same decision does not define those 'exceptional cases'.

The legal provisions of the EUTMR need to be read in the light of the treaty provisions that set out the principle of independence of the European Administration (Article 298 TFEU). We are convinced that the powers of the Appointing Authority must not be exercised by an employee of a national administration as is currently the case at the EUIPO. Without judging in this respect the legality of the EUTMR itself, it must be understood that the exercise of the powers of an appointing authority by an employee of a national administration can only exist for a legal second. We read the norms in the sense that there is a need for the MB to delegate back AA powers to a physical person that has an employment link to the European administration itself.

In the case of the EUIPO, such a person would naturally be the Deputy Executive Director who was appointed through a formal procedure involving the EU Parliament by the Council of Ministers.

A second point of concern is the impression that is created by the recent decision of the Management Board among staff members. It was an open secret that the ED had asked for review of the decision (publications in IP media) – the fact that he is suspended in his functions without further explanation triggers the interpretation that it is a kind of sanction for having had recourse to legal remedies. In an agency that has already a problem of a diagnosed fear to speak up among staff (staff satisfaction survey), the lack of a reasoning for the suspension promotes negative interpretations of the sanctioning purpose of the measure.

Finally, the agency is faced with a situation where there is a lack of clarity among staff about who is managing the agency. While there is a statement that previous sub-delegations to the Director of HR stay intact, it is not clear to which extent the staff policy commitments are maintained and whether the change of command will have an impact on the implementation of our staff policies.

The Staff Committee of the EUIPO is currently seeking clarification from the Management Board in this respect. We attach the letter addressed by the Staff Committee to the Chairperson of the Management Board.

As the Commission is represented in the Management Board of EUIPO, we are convinced that you have better knowledge about the debates that have resulted in the decision of suspension of AA powers. While it is not the Commission's task to exercise the discretionary powers of independent administrative bodies in their place, we strongly suggest to take a special interest in the follow-up of these decisions and the way in which they are communicated to staff and the general public.

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