



## **Report of the 114 Meeting of BFC 24/25 May 2016**

Dear Colleagues,

The BFC took place on 24 and 25 May. It was preceded by a B28 meeting from which we heard that it was tense between the President and some delegations who are apparently not satisfied with the follow up of the mandate that the Council gave to the President back in March ([CA/26/16](#)). This tension was also palpable in the BFC chaired by Mr Ernst (DE). Nonetheless, and although some documents failed to provide financial clarity (e.g. [CA/24/16](#) – see below – or [CA/16/16](#) “Progress report on co-operation with member states” on last page Annex 2 “Direct Costs For Co-Operation With Member States” is unreadable) the BFC gave unanimous opinions on all the documents presented.

Main items of interest for staff:

1. Switch towards self-insurance of the medical / health insurance ([CA/15/16](#))  
The switch to self-insurance means that the EPO and its staff will function as their own insurer and will no longer use a third party insurer enabling savings related to this third party insurance. The administration of the reimbursement procedure remains with CIGNA. However, with this the President has much easier means to change the scope of benefits and its control. That’s why the SR asked to be involved in the steering of the scheme. Although this question on possible changes was repeated by the chair, the President did not clarify it but simply referred to “changes will be done according to the rules”. The delegations unanimously provided a positive opinion. The question will reappear in the Council to come (see SR intervention 1).

2. Modification of rules relating to fees for reimbursement of examination fees in case of withdrawals - Amendment of Article 11 of the Rules relating to Fees ([CA/24/16](#))

Although the SR pointed to some financial irregularities, procedural irregularities and the additional administrative burden for the examiners, the delegations provided a positive opinion (see SR intervention 2).

3. Accounts / Budgets / Pension Reserve Fund  
The financial position of the Office is very solid. In IFRS terms 2015 saw our liabilities reduced by more than €4.5 Billion. However, this follows a very negative year 2014 when there was an increase of almost €10 billion in liabilities.

The IFRS accounting is very dependent on discount rates and has proven to be very volatile and erratic in the past, such that we proposed the Council to reflect whether the IFRS is an adequate tool to value and assess the real financial situation of the EPO.

The operational result of 2015 is a much more realistic figure. The result was very positive with € 294 Million. This is mainly due to a big increase in productivity of the examiners (+14%). The President announced that another increase in productivity was expected for 2016 (around +10%) and further increases in 2017. We as Staff Representatives pointed again to potential drawbacks of these extraordinary increases of productivity. We maintained our strong opinion (also raised by some Council delegations in the past) that the productivity increases are achieved at the expense of the quality, as confirmed by the EPO staff in the Technologia survey (76% of staff believes that the importance of quality has substantially decreased in the past two years).

The Pension Reserve Fund (RFPSS) performed again beyond the benchmark and stays in good health.

The Board of Auditors' report on the 2015 accounting period ([CA/20/16](#)) provided a positive statement on the accounts and the pension reserve fund such that the respective discharges could be and were provided.

#### 4. Follow-Up: Review and Internal Appeals

The Board of Auditors' report on the 2015 accounting period ([CA/20/16](#)) provided also a follow-Up on Review and Internal Appeals ([CA/21/15](#)). They provided only an overview on the factual situation and concluded that Reviews, Appeals and Complaints at ILOAT are increasing. The SR remarked that in 2014 about 35% of the opinions by the Appeals Committee were in favour of staff. Last year this dropped nearly to zero, so that the President's final decisions did not differ much from these opinions. The steady growth of cases at ILOAT is being a cause for trouble.

#### 5. Financial Study – Presentation

The financial study was presented for the first time to the delegations and the SR. The study is performed by Deloitte (as the one in 2010) and is at present ongoing. It is foreseen to be finalised in July 2016 with results potentially being presented to the October Council. As the results of the financial study may affect the working conditions the SR requested from the beginning to be involved and consulted without being heard yet (see SR intervention 3).

#### 6. Last but not least

As a further A-point (usually unanimously agreed without debate) ([CA/F 6/16](#)) presented amongst other "expenses not already referred to the committee" € 550k for 6 personal body guards.

Similarly in the last BFC in October 2015 we intervened ([sc09615cp](#)) against again an A-point item concerning award decisions owing to urgency ([CA/F 19/15](#)) here for

an EPO's positioning campaign and support for Directorate External Communication to address the media presence of the EPO in an amount of € 880k. As A-items are not discussed observers are allowed to provide a written statement for the minutes. The SR provided such a written statement, however, had to learn that they are not considered as observers. Thus, we asked to reconsider the respective RoP to allow also for written statements by the SR (see SR intervention 4).

Notwithstanding this existing disregard of SR the main question remains why a patent office needs 1. Body Guards and 2. excessive media positioning campaigns.

The Central Staff Committee



## **Interventions of CSC Members to the 114 Meeting of BFC**

- **Intervention on health care self-insurance**
- **Intervention to: Financial Study – state of play (oral and presentation by Deloitte)**
- **Intervention zu der Änderung von Artikel 11 der Gebührenordnung**
- **Intervention zu der Genehmigung des Protokolls des 113. Tagung des Haushalts-und Finanzausschusses**

## **Intervention on health care self-insurance**

Ladies and Gentlemen,

The financial savings for the Office appear unclear. The Office mentions 1 to 2 million Euros versus additional cost “unlikely to exceed 1 million”. None of these figures are in the one-page executive summary of the Funk report available to us.

As mentioned by Vice-President DG4, the staff representation has in the past been in favour of self-insurance. However, we do not agree with the present proposal because it does not meet our expectations for the following reasons.

The risk in the scheme is borne by the Office but also by the staff in service and the pensioners, in that they essentially pay one third of the contributions. We would expect that those groups be also involved in the steering of the insurance scheme, its auditing and more generally in all aspects determining the contributions and the benefits.

One essential element defining the benefits is the guide to cover, that is the reimbursement conditions for specific products and treatments. Presently, the guide is part of the contract with the insurer and is relatively stable. In our understanding, according to the proposal, the President of the Office will define the guide (after consultation of the GCC). In this respect, I will refer to section F on page 14/23 of the document. Whilst we understand the need for adapting to medical progress, the unilateral procedure adopted in the proposal may lead to undesired variations and changes in the guide to cover. But needless to say that we would welcome if the Council were also involved.

We also regret that the ceilings for reimbursement have not been reviewed for 30 years. The consultation process in the General Consultative Committee would have been an opportunity to do this.

Disputes on reimbursement will be processed first by the third-party administrator but ultimately by the Office. We would prefer a solution also involving conciliation with an external ombudsman, as is practised in national systems, for instance in Germany.

The document mentions that self-insurance will allow the Office to intensify control and set up audit mechanisms. Whilst we condemn fraud, we are worried about the practical consequences of the further mechanisms to be put into place unilaterally by the Office, involving the Investigative Unit, which will deal with staff (and pensioners) in a weak health condition. We would prefer cooperation with national authorities in such matters, which, as resorting to an ombudsman, is also possible under Article 20 of the Protocol on Privileges and Immunities.

Thank you for your attention.

Intervention to: Financial Study – state of play (oral and presentation by Deloitte)

Dear delegates,

The AC has asked us to play a reasonable and constructive role in the social dialogue. The SR is willing to take responsibility and contribute to the projects and working groups in the interest of the Office. The welfare of the Office is in the natural interest of the staff that we represent.

However, we informed you already that the involvement of SR within the past reforms has been abandoned wherever possible.

A few examples are:

- No involvement anymore in any career or reward board.
- No involvement anymore in the selection of medical doctors.
- And today also, no formal involvement in the steering of the new health scheme

The financial study is again one occasion which shows that the Office has not changed course with respect to social dialogue or even the requested “renewed social dialogue” as the SR has not been involved in the process. Possibly like you we see this presentation for the first time.

The financial study might lead to changes affecting the working conditions of staff. That’s why it would be important that the SR would have been involved from start. However, despite several requests to get involved and even a letter nominating already our representatives as observers remains yet unanswered and thus till now no involvement of the SR is foreseen. The process remains thus intransparent and outside any social dialogue.

Thank you for your attention.



## Intervention zu der Änderung von Artikel 11 der Gebührenordnung

114. Tagung des Haushalts- und Finanzausschusses  
am 24. und 25. Mai 2016

Im Ausschuß „Patentrecht“ haben die Beobachter des Personalausschusses bereits auf handwerkliche Mängel im vorliegenden Beschlußentwurf hingewiesen und konstruktive Verbesserungsvorschläge eingebracht. Daher möchte ich mich hier auf die finanziellen Aspekte beschränken und auf einige Ungereimtheiten aufmerksam machen.

Dem Grundsatz nach erscheint uns ein finanzieller Anreiz für den Anmelder, eine Anmeldung zurückzunehmen, an der er kein Interesse mehr hat, sinnvoll. Wenn wir uns aber Absatz 14 des vorliegenden Dokuments genau anschauen, fragen wir uns doch, wie man kalkulieren will, wie viele Anmelder aufgefordert werden, über die Zurücknahme nachzudenken. Offenbar werden nicht für alle Anmeldungen, bei denen der erste Prüfungsbescheid seit 2010 oder länger aussteht, Mitteilungen an die Anmelder versendet, sondern es werden gezielt Anmeldungen ausgewählt. Es kann nicht im Interesse der Transparenz sein, daß unklar bleibt, wie diese ausgewählt werden. Im Sinne des Gleichbehandlungsgrundsatz wäre es sinnvoll, wenn man hier etwa jahrgangsweise vorgeht und alle entsprechenden Anmelder informiert. Für das Amt und den Patentprüfer entsteht doch bei dem aktuellen Vorschlag ein gewisser Mehraufwand, wenn der Patentprüfer nun eine alte Akte aus dem Schrank nimmt und er, bevor er mit der Prüfung beginnt, zunächst eine Mitteilung verschicken lassen muß, dann erst auf den Anmelder warten muß und erst Monate später wieder an der Akte weiterarbeiten kann.

In Abschnitt 28 weist das vorliegende Dokument sogar auf umfassende Änderungen der IT-Systeme hin, die erforderlich sind. Ein weiterer Aspekt: Ich verstehe nicht genau, wie man bei 3.000 Zurücknahmen, von denen in Absatz 31 die Rede ist, und bei einer Prüfungsgebühr von 1.825 Euro auf Rückerstattungen in Höhe von 8,5 Millionen Euro kommt. Ebenso ist der von VP 5 genannte Betrag, nämlich 1,5 Millionen Euro, nicht nachzuvollziehen.

Ich möchte abschließend einen konstruktiven Verbesserungsvorschlag machen. Mir erscheint es sinnvoll, wenn nach einer Ladung zur mündlichen Verhandlung dem Anmelder die Prüfungsgebühr zurückerstattet wird, wenn er sodann die Anmeldung rechtzeitig zurücknimmt. Der interne Aufwand der Verhandlung und der entsprechenden Vorbereitung kann so deutlich reduziert werden, so daß tatsächlich eine Win-win-Situation entsteht. Für die Beschwerdeverfahren habe Sie im Verwaltungsrat bereits eine entsprechende Änderung beschlossen.

Intervention zu der  
Genehmigung des Protokolls der 113. Tagung des Haushalts- und  
Finanzausschusses

114. Tagung des Haushalts- und Finanzausschusses  
am 24. und 25. Mai 2016

In der vergangenen Tagung des Haushalts- und Finanzausschusses haben die Beobachter des Personalausschusses in Absprache mit dem Vorsitzenden und dem Sekretariat zum damaligen Tagesordnungspunkt 6.5 (CA/F 19/15) eine kurze schriftliche Erklärung zu Protokoll gegeben. Bei der Durchsicht des Protokollentwurfs der 113. Tagung des HFA fiel uns auf, dass diese Erklärung nicht aufgenommen wurde.

Nach Rücksprache mit dem Sekretariat wurde deutlich, dass dies nicht mit Absicht geschehen ist, dass aber Artikel 9 (8) der Geschäftsordnung des Verwaltungsrats nicht festlegt, dass solche schriftlichen Erklärungen der Beobachter des Personalausschusses ins Protokoll aufgenommen werden müssen.

Wir nehmen dies mit Respekt zur Kenntnis, und es wäre nun sicherlich unbotmäßig, wenn ich unsere damalige Erklärung jetzt vorlesen würde. Ich möchte aber dennoch anregen, dass Sie bei der nächsten Überarbeitung der Geschäftsordnung diesen Artikel 9 geeignet anpassen. Denn eine Erklärung der Beobachter des Personalausschusses im Protokoll nachlesen zu können, sollte doch in unser aller Interesse sein.