



Report of the 225th meeting of the GAC on 01-02.09.2010 in The Hague

Summary

The 225th meeting of the GAC (General Advisory Committee) was the sixth GAC meeting of 2010. The meeting agenda comprised several items. Two concerned Office responses to judgments of the ILOAT, namely specimen contracts for Vice-Presidents and outsourcing at the EPO. Two more concerned healthcare, namely (for the second time) a proposal for the creation of a "Healthcare Insurance Advisory Committee" and a proposal concerning the reserve fund of the EPO for sickness insurance. For the second time this year, PAX cluster reference examiner data was on the agenda. Other items included a proposal for pre-employment screening, a proposal on internal job mobility at the EPO and amendment to various articles of the ServRegs and circulars concerning unpaid leave and part time working. It is worth noting that a number of the topics on the agenda related to items "left over" on the new President's desk from the previous one, such as the Office responses to ILO judgments and the healthcare items. How the President chooses to address these issues after the GAC consultation could have a lasting influence on how staff see his presidency.

Vice-Presidents contracts

In judgments 2875, 2876 and 2877, the Administrative Tribunal of the International Labour Organisation (ILOAT) set aside the specimen contracts for Vice-Presidents introduced in 2006 to the extent that the contract "introduced provisions with respect to the pensions of Vice-Presidents who previously served in the Office" (for more information, see the SUEPO report on the 108th session of the ILOAT, available from <http://www.suepo.org/archive/su10021cp.pdf>).

The provisions in question increased the maximum pension for such staff from 70% of final basic salary to 80% and provided for a substantial cash payment over and above the normal pension into an external pension fund. In the judgments the tribunal agreed with the complainants that this constituted a change to the pension regulations and thus it was necessary to consult the GAC before implementing this change. Naturally, before introducing the specimen contracts the Office had not bothered to do this.

The Office could, of course, have accepted the tribunal's ruling and left it at that. That would have meant that internally recruited Vice-Presidents would "only" benefit from the same level of pension as other permanent members of staff. Instead, the Office presented to this meeting of the GAC a proposal to re-introduce, in a formally correct manner, the measure which the ILOAT quashed. The justification provided, both in a note to the GAC and in the meeting, is that remuneration packages in the private sector "exceed by far anything that can be offered by the EPO". Thus the Office needs to offer such conditions in order to attract high quality internal candidates so as to benefit from their experience and knowledge. Otherwise, there is a risk that exceptional internal candidates would either retire when their pension rights reach the maximum rate of 70% or join the private sector!

We pointed out that this argument also applied to, for example, examiners or DG3 members who might be tempted to retire and offer their expertise to private industry. In fact, we

considered that experienced examiners or DG3 members probably had more expertise that industry would be interested in paying for than vice-presidential candidates.

In the GAC, we pointed out the catastrophic optics of a measure which can only benefit certain members of the MAnagement Committee (MAC) financially. This can only serve to increase cynicism and decrease staff motivation. Moreover, we doubted that further pension privileges can -or even should- be a determinant in whether or not a staff member is tempted by a VP post. Rather, a serious Office should build on personal motivation, commitment and readiness to serve rather than on further increased economical security or even greed.

Moreover, the implementation of the measure added insult to injury in that it made it seem that staff, through the RFPSS, would be expected to pay for the privileges which the MAC members enjoy.

We found the measure indecent and gave a negative opinion on the proposal. The members nominated by the President gave a positive opinion!

Outsourcing at the EPO

In Judgment 2919, the ILOAT instructed the Office to "within 60 days of the date of the publication of the present judgment, consult the General Advisory Committee on the practice of "outsourcing" in accordance with the recommendations of the Internal Appeals Committee." In this way, the tribunal agreed with the **unanimous** opinion of the IAC, which the then President, Ms Brimelow, had ignored, that outsourcing practice at the EPO affected staff within the meaning of Article 38(3) ServRegs and thus should be discussed in the GAC (for more information, see the SUEPO report on the 109th session of the ILOAT, available from <http://www.suepo.org/archive/su10093cp.pdf>).

Rather than complying with this instruction, the President sent a short, terse note to the GAC basically saying that the time limit set by the tribunal was not long enough and that he would "submit an analysis of the use of external contractors at the EPO as soon as possible".

On the one hand, we do have some sympathy

for the fact that it is not ideal to have to carry out an exhaustive analysis of this kind in the middle of the school holidays. On the other hand, this is clearly a problem that the Office has made for itself. After all, the then President could have shown respect for the unanimous opinion of the IAC.

More seriously, for what ever reason it is highly unusual for an organisation which accepts the ILOAT's jurisdiction to fail to carry out a clear tribunal instruction.

Although the GAC's opinion was not required on this topic, we nevertheless sent the President a letter setting out our concerns at the Office's approach to this matter. We also recommended that he should take up contact with the successful complainants and explain to them when he intended to comply with the tribunal's order.

Creation of the Healthcare Insurance Advisory Committee (HIAC)

This topic was discussed at the 223rd meeting of the GAC (see also our report of that meeting).

To that meeting of the GAC, the administration had presented a draft CA document quite unlike any other we have ever seen. It essentially comprised a quick "cut-and-paste" from Articles 38 and 38a ServRegs and their implementing rules (Article 38 concerns the GAC; Article 38a the central and local occupational health, safety and ergonomics committees), and lacked an introduction, background and justification for the proposal, as required by the usual template for CA documents.

In that GAC, we were told that the then consultation was only intended as an initial exchange of ideas and whilst the GAC's opinion was requested on the document, this was so as to get feedback which could be taken into account when amending (and completing) the document prior to renewed consultation in the GAC and (possible) submission to the Administrative Council.

We nevertheless gave a negative opinion on the concept set out in the previous document. There were interesting aspects to the proposal, such as providing that the representatives of the pensioners should have a nominee in the

committee and (in theory) allowing early involvement of the Staff Committee in discussing proposals and figures. However, on balance we considered the way that the administration proposes to set up the HIAC to constitute an attack on the consultation rights of the Staff Committee. In particular, whilst currently the minimum of consultation rights for the Staff Committee is consultation in the GAC, guaranteed by Article 38 ServRegs, according to the previous proposal, the so called HIAC would replace the GAC for health insurance issues but be weaker than the GAC for a number of reasons (again, see our earlier report for details).

In our opinion on the previous document we thus recommended to the President that the HIAC should be an expert body **in addition** to the GAC, not replacing the GAC. Examples of such bodies already exist at the EPO, for example the Groupe de Travail sur les Rémunérations (GTR) and the Long Term Care Insurance (LTCI) consultative committee. This would allow thorough preparation of topics in talks between experts on both sides of the table before a proposal was submitted to the GAC.

To this meeting of the GAC the administration submitted a re-written version of the document. To our disappointment, only the formal aspects of the document had been addressed. None of our major objections with respect to the concept proposed had been addressed in the slightest.

As we set out in our previous report, this proposal is a strong attack on the consultation rights of staff. This will be a good test to see whether the new President wants to improve staff consultation or whether he will follow the advice of certain parts of his administration and will indeed propose to the Administrative Council as one of his first decisions a reduction of staff consultation rights.

Accordingly, we basically gave the same negative opinion as previously. Last time, some of the members nominated by the President had shared some of our concerns with respect to the proposal, in particular concerning the GAC giving away part of its mandate to another committee with fewer rights. However, this time (in a somewhat different composition) they gave a positive

opinion on the proposal.

Reserve fund for sickness insurance

In 2009, in CA/D 14/09, the Organisation set up, within the Reserve Funds for Pensions and Social Security (RFPSS), a reserve fund to cover the Organisation's liability with respect to medical coverage for pensioners. It should be noted that staff members' liabilities in this respect are already funded in the pension reserve fund (PRF) part of the RFPSS and thus covered. The reason for this is that pensioners pay for their medical coverage through contributions levied on their pensions. These they have already paid for and thus funded through their pension contributions.

To this meeting of the GAC the administration presented a document proposing "enlargement" of the reserve fund created under CA/D 14/09. The stated necessity for this is as part of the implementation of CA/D 7/10, with which the Council approved the introduction of a funded system to finance the Office healthcare insurance scheme. The document proposed that through "enlargement" of the existing fund, it could be used as the fund in the restructured system for financing healthcare. However, the original cash amount would be ring-fenced from future payments into the fund in such a way that money relating from the original payment would always be identifiable.

The document originally presented was illogically laid out and full of typing and other errors. In the GAC, the administration presented a redrafted document in which all mention of ring-fencing was removed. In our opinion, this constituted a major change, which we regretted. In our opinion, the original payment was part of an Office debt to the system and should be separate from staff contributions. Otherwise the suspicion is that staff will end up paying part of the Office's debt. This deletion also raises the suspicion that either the authors of the original document did not know what they wanted to do in the first place, or that they on purpose submitted a version with a ring-fenced part to try and reassure the Staff Representatives only to change it during the meeting. If this is the case, the time constraints imposed for a good faith consultation would not be met. In the GAC, the members nominated by the President argued that it was operationally more

simple to have a single fund. If there were two funds, one to cover the Office's past liabilities and one for new payments, a mechanism would have to be created to decide from which fund to take money when the time arose. These members then gave a positive opinion on the proposal as amended by themselves in the GAC.

For our part, we were not convinced by the arguments provided. We gave a negative opinion and suggested several possible different courses of action to the one proposed.

We explained that the reasons why the previous President made the proposal to move to a funded system for healthcare were largely ideological. This is evidenced by the previous President's undue rush to have the proposal adopted in her last Council meeting, before departing the Office. In our opinion at the time, we objected that the proposal was not yet ripe for implementation, and recommended a more measured approach. The implementation and other consequences of this will be with the Office for years to come. However, it was not too late for the proposed change to be stopped (or at least suspended). This was our preferred option.

Moreover, even if the Office intended to carry on with the reforms and set contribution rates according to an actuarial study, this did not mean that an additional fund or changes to the existing fund were necessary. Rather, the actuaries could determine the level of the Office liabilities for pensioners in order for the Office to determine how much money the Office should transfer into the existing fund created under CA/D 14/09. A lower contribution rate should then be applied for staff from 2014, based on the actual level of expenses. In other words, the results of the actuarial study would be used as a guidance for determining the maximum rate applicable to staff. This would have the advantage of being consistent with what the Office told the Council in 2009 when the Council adopted CA/D 14/09.

Finally, if the Office were not minded to implement either of the above suggestions, then we insisted that rather than mixing past and future payments in a single fund, a separate fund should be set up for future payments. This would also enable the existing fund to meet its original purpose and thus also be consistent with the position of the Office in

2009.

We also pointed out that all three approaches set out above solve the problems put forward by the administration namely:

- to cover for the unfunded liabilities for pensioners
- to take account of an aging population
- to introduce a so-called "fair" sharing of the costs between the EPO and staff

It is also more likely that the options set out above would be grudgingly acceptable to staff than the Office's proposal.

Finally, we stressed that the Office presenting approaches to the Council in 2010 which are not consistent with those presented in 2009 could undermine the Office's and thus the new President's credibility in front of the Council. By contrast, all three of our suggestions were consistent with the Council decisions taken in 2009. The second two options are also consistent with CA/D 7/10 taken this year.

PAX Cluster reference examiner data

This item was discussed in the 222nd meeting of the GAC. In that meeting, we pointed out that the document submitted to that meeting of the GAC only gave the final results. There was no information at all concerning the input data or how the figures were calculated. Moreover, the figures were produced by the administration alone. The PAX Implementation Board, which includes members nominated by the CSC, were not involved in any way in producing or over viewing the data. Accordingly, we considered that the information contained in the document did not allow the GAC to give a reasoned opinion on the proposal and we recommended that the Office should consult the GAC again on this topic.

To this meeting of the GAC, the administration presented a new version of the earlier document, together with a report from the PAX Implementation Board, which this time had indeed studied the proposal. The Implementation Board confirmed in its report that the values had been calculated in conformity with the PAX Implementation Handbook. Also submitted to the GAC was a new, extended mandate for the Implementation Board, clarifying that the board should generate and check the CRED and PRED

(Cluster and Peer Reference Examiner Data) and produce a report for the GAC each year. After discussion, the members of the GAC were satisfied that the calculations leading to the figures provided were carried out in accordance with the relevant provisions as defined in the PAX Implementation Handbook and that these figures properly describe the current situation in the different Joint Clusters with respect to production/productivity. The GAC made some minor recommendations for amendments to the documents intended for publication and welcomed the new, extended mandate of the PAX Implementation Board, which proved to be very useful for the GAC.

Unpaid leave and part time working

The Office presented a proposal for amendment of various Articles of the ServRegs and staff circulars concerning unpaid leave and part time working at the Office. The stated aim was to "improve the life / work balance of staff as well as staff planning possibilities".

The changes to the ServRegs included:

- a. increasing from three to five years the maximum period for which it is possible to take unpaid leave;
- b. decreasing from twenty to ten the number of successive working days for which parental leave may be taken;
- c. changes to the authorisation process for requesting part time work;
- d. deleting a sentence from one of the sick leave regulations.

Corresponding changes were also made to circulars 22 and 34, which regulate in more detail leave and part time working respectively.

Judging by the mails received by GAC members in the lead up to the meeting of the GAC, for many staff members item a. above was the most controversial item in the package. The reason for this is that current PD 4.3 (Mr Archambeau) is shortly to leave the Office in order to take up a five year contract as Vice President of OHIM in Alicante, starting 01.12.2010. Some staff obviously considered that this proposal was an attempt to keep a door open for him through which he could return to the Office.

In the GAC, however, Mr Archambeau stated that the modalities of his departure had been arranged under the currently existing

regulations and that he would not be on unpaid leave on the 1st of December. We expect this to be confirmed when staff changes are published (as, according to Article 31 ServRegs, they have to be). Mr Archambeau also explained that, in particular in the light of the uncertainty in the PatAdmin area, HR was receiving about a request a month from (in particular) B-grade staff in The Hague to take unpaid leave to go and work on fixed term contracts in other international organisations, of which there are several in The Hague area. The proposed measure would facilitate this since the contracts were often for a duration of five years.

It is clear that, even if the number of staff interested in taking five years unpaid leave is limited, this is a measure which adds flexibility for staff considering options outside the Office. It is also evident, that the limitation currently imposed to request unpaid leave and its extension in periods of not more than one year does not contribute to solve the problem as explained by the administration. Accordingly we gave a common recommendation (both staff representation and administration together) that Article 45 ServRegs should be amended to allow for periods of unpaid leave of any duration up to a maximum of five years.

Similarly, item b. above adds flexibility for staff, and is indeed a long lasting request of the CSC. We likewise gave a positive opinion on this part of the package.

For item c. we gave a negative opinion. The amendment comprised deleting most of Article 56 ServRegs concerning part time working and moving the content to a modified Circular 34. However, rather than, as claimed, improving staff's work / life balance, amendments to Circular 34, in particular increasing to six months the minimum time period for which part time working may be granted, served to decrease flexibility for staff.

Item d. relates to automatically cancelling permission to work part time at the start of a period of extended sick leave (a request to work part time again may then be filed by the staff member should they so wish). This was introduced in 2004 by the administration with the justification that without this measure, staff who did not know their codex well and did not themselves cancel their part time under such circumstances were disadvantaged compared

to staff who did and who, having cancelled their part time received higher remuneration when on extended sick leave. We thus wondered what the justification was for deleting such a recently introduced measure, in particular since it seemed to have absolutely nothing to do with improving the work / life balance of staff. According to the administration, the reason was a mixture of envy by colleagues and the fact that managers found the measure hard to explain to their staff. These did not seem like good reasons for deleting a measure of benefit to staff who are "full time sick". Accordingly we gave a negative opinion to this part of the package.

The members nominated by the President gave a positive opinion on items b., c. and d.

Internal job mobility at the EPO

The administration presented a proposal for internal job mobility (IJM) at the EPO to the GAC for opinion. This is intended to bring advantages for the Office in terms of staff flexibility and to staff in terms of motivation and professional development e.g. gaining extra skills. The document identified three types of job mobility:

- permanent transfer;
- temporary assignments;
- "special duties", usually of a part time nature.

The document actually proposed no changes to regulations at the Office. Rather, it was a general policy document. The document submitted comprised two parts. A first section, which we were told set out how the MAC considered that IJM should function, and a second section which was loosely based on the work of a joint working group. We understand, however, that the document submitted to the GAC was not approved of in its whole by the CSC nominees in the working group. The two parts repeated each other in some aspects and were slightly contradictory in nature in others. Accordingly, the GAC recommended that the first part should be deleted and replaced with a foreword by the President.

Clearly, provided that mobility is at the free will of the staff concerned, no one can have anything against the principle. The GAC thus gave a unanimous positive opinion on the document. To this opinion we added that it

should be clear that IJM is a tool for professional development and not a tool for balancing and redistributing manpower in the Office (there are other ways of doing this). Moreover, criteria should be developed for jobs which are suitable for rotation. Finally, we objected to the impression given that frequent job rotation should be a criteria for a management career.

Pre-employment screening

Two recent audit reports have raised the issue of people gaining employment in the Office on the strength of being recruited on the basis of falsified certificates and professional backgrounds. Indeed, this was classified as one of the top five threats facing the Organisation with regard to fraud. A joint working group examined the issue, and the group's recommendation was sent to the GAC for opinion.

The proposal defines four levels of screening:

- level 1 for third party staff employed by external contracting companies;
- level 2 for third party agency staff who have some access to Office systems;
- level 2A for third party staff such as IM contractors with special access rights to Office premises or computer systems;
- level 3 for permanent staff.

The document then described how screening for each level gets progressively more comprehensive, each level building on the lower one. For the two higher levels, an external screening company specialising in this area would be used. No checks will be carried out without signed authorisation from the subject.

The GAC welcomed the introduction of measures that may serve to protect the Office - and the staff - against fraud and which might improve the quality of recruitment at the Office. However, the GAC also recommended waiting for the evaluation of the results of a pilot which is currently being conducted before Office-wide implementation of screening.

The GAC made a few recommendations on the proposal. These included that candidates should always be given the opportunity to comment on any findings following the screening that may lead to a negative decision being taken. The GAC also recommended that

the Office should invite the Administrative Council to introduce the same pre-employment screening measures in the recruitment procedures carried out under the responsibility of the Council (that is to say, for Vice-Presidents, the President and DG3 members and chairmen).

Additionally, we suggested that, in order to conform with ILOAT Judgment 2657, the Office should offer the possibility of arbitration to any unsuccessful candidate who raises a claim against the Office in respect to the procedure leading to the rejection of his application.

The members of the GAC nominated by the CSC.