

Report of the 228th meeting of the GAC on 22.02.2011 in Munich

Summary

The 228th meeting of the GAC (General Advisory Committee) was the first GAC meeting of 2011. The agenda comprised a proposal to amend Article 24 ServRegs, provisional PAX Cluster Reference Examiner Data and the note of the President to the Chairmen of the A and B/C promotion boards for 2011.

Introduction

The right to nominate the chairman of the GAC alternates between the President and the Central Staff Committee (CSC). In 2011, it is the turn of the CSC to nominate the chairman.

In 2011, for the first time, the CSC has nominated Mr Daintith, an examiner from Munich and former chairman of the CSC as chairman of the GAC. Mr Daintith is a permanent member of staff. Thus we consider this appointment to be in accordance with the applicable regulations (see our discussion of the situation last year in our review of 2010 in our report from the 227th GAC).

Before the meeting, the Chairman and the members nominated by the President had all had introductory meetings with the President. At the start of the meeting, we thus asked for feedback on these meetings. They informed us that the President had said that he considered the GAC to be a very important body and took it's work seriously.

One of our concerns about the functioning of the GAC was the fact that one of the previous secretaries had transferred to another area of the Office. The Chairman informed the GAC that he had raised with the President the issue of secretarial support. This must be adequate for the GAC to be able to work smoothly. We also expressed our hope and expectation that the administration would take concrete steps to ensure that sufficient secretarial support of an appropriate level and competence was provided for the GAC.

The Chairman also reported that the President had raised the idea of a Chairman's report of meetings of the GAC. It seems that the administration is often asked why information about the GAC only came from the CSC. The Chairman noted that, under Article 7 of the GAC's Rules of Procedure (RoP), the administration could produce reports also. Moreover, the minutes are produced as promptly as possible. This is the official report. Also, a formal report could be produced, possibly by the secretariat. Such a report would, however, merely say "Topic A was discussed and a split / positive / negative opinion was given". However, this also presupposed an appropriately staffed secretariat.

In the GAC, it was felt that more interesting for staff than another report from the GAC would be a summary of what the President proposed to do with the opinions which he received from the GAC.

Finally, we pointed out that the GAC is a statutory body. Thus it is the one body with whom the President must consult. We thus found it surprising that it seems that the Pensioners' association has a higher level of information than the GAC on a number of topics such as review of the salary method or membership of the Health Insurance Advisory Committee.

Items for discussion in 2011

As we did in previous years, we read out a list of items which we hope the administration will present to the GAC in 2011. Our doubtless incomplete list included:

- A revised set of papers on the "New Pension System" following from the decision of the Administrative Council in this matter;
- Final medical insurance figures for 2009;
- Final medical insurance figures for 2010;
- The provisional medical insurance figures for 2011;
- A paper on formal conflict resolution;
- A paper on the second basket of measures relating to pensions;
- A paper on transfer policy in PatAdmin;
- A "safe option" for the Salary Savings Plan (SSP);
- A document on the parts of the Single Patent Process (SPP) that affect staff;
- Revision of the data protection guidelines;
- Adoption of the level of the child allowance to that at the EU;
- BEST implementation following ILOAT judgment 2874;
- Outsourcing policy following from ILOAT judgment 2919;
- Rules for recruitment procedure for Principal Directors;
- Evaluation of SWAP;
- (Minor) revision to Circulars 253 and 271, in particular concerning recognition of reckonable experience.
- A revision of Circular 22, in particular concerning increased flexibility for parental leave, family leave and unpaid leave.
- A paper on quality control in non-examining areas.
- A follow up paper and final report on the 2008 restructuring of PD HR.
- Use of spouses contributions in the financing of the EPO healthcare system.
- Further documents concerning the implementation of the new system for financing the EPO healthcare system, for example relating to the Health Insurance Advisory Committee.
- Final figures for death and invalidity insurance, including the promised check of the accuracy of the data

- provided for the provisional balance.
- A methodology for adjusting the removal lump-sums in years where the calculated salary adjustment is negative.
- A code of conduct for the EPO.

In our opinion, there are plenty of topics outstanding for which the administration should present proposals before starting any new projects! The administration took note of the list. They commented that not all of the topics corresponded to the list of priorities for 2011 agreed between the President and the CSC.

Amendment of Article 24 ServRegs

Originally, this document was submitted to the 227th meeting of the GAC. However, since the document was submitted late, the GAC only held a provisional discussion. No opinion was given (for details see our report of the 227th meeting).

Despite various observations made during said discussions, which we were told were passed on to the document's authors, the document submitted to this meeting was unchanged from before.

To recall, currently according to Article 24 ServRegs, if an employee questions an instruction from his superior permanent employee which appear to be irregular and if the superior confirms the order in writing unless illegal, the employee must carry it out. According to the proposed amendment, the written confirmation shall immediately be sent to the head of internal audit by both the author and addressee.

To this meeting of the GAC, the head of Internal Audit (IA), Mr Paye, attended as an expert. At the start of discussions, a copy of the relevant passage of the cited Internal Audit report 90 was distributed to the GAC for information. This showed that the problem which the administration was trying to address was the issue of possible interference in the functioning of selection boards by the hierarchy. The example given was the case of the recruitment of the wife of a former President. This recruitment was criticised and quashed by the ILOAT in judgment 2762.

This rather surprised us. We thus questioned

how the general solution proposed, namely adopting Article 24 ServRegs, solved this very specific problem. We also asked if other solutions, for example modification of Article 7 ServRegs of Annex II, both of which relate to recruitment, had been considered.

Neither of these questions was really answered. Rather, we were informed that the Office had no oversight how often Article 24 was used. This was however desired. Internal audit was the most appropriate repository for this information. If appropriate, the information gained would be passed on to the President for further action.

After discussions, the GAC agreed that the proposal was well-intentioned. However, it fell short of addressing the problems identified, either in the document itself or in the specific justification provided by the expert of the administration during the meeting. The GAC was thus convinced that the example given was not the best for showing what the problem was. Indeed, it was not clear what type of problem and in what area the Office was experiencing - was it personal, managerial or statutory. Moreover, the GAC noted that the proposal was part of a larger framework on fraud awareness and code of conduct for the Office. It would be preferable to discuss the proposal as part of this framework, and not in isolation. It also seemed that the task being assumed by IA was in fact outside of the mandate of IA. The GAC was also concerned that, far from empowering staff, it would in fact have the unwanted consequence of frightening staff who might previously have been prepared to follow the procedure set out in Article 24 ServRegs, if they knew that the a trace would be passed on to another department of the Office and from there, possibly even to the President. Finally, there were a number of drafting problems in the proposal.

Accordingly, the GAC gave a unanimous opinion reflecting the above.

President's notes to the chairmen of the promotion boards

Every year, the President sends to the GAC his notes to the chairmen of the promotion boards. In years where, generally, no reports are available, in recent years the administration has in addition submitted to the GAC for information the letters sent to

reporting officers asking to report on any negative changes in performance since the last report was drawn up. Over time, the content of the notes has evolved as the administration slowly takes our observations into account. This year, both the notes and the letters were unchanged from those used previously.

Our information from members of the promotion boards is that the boards generally function well. Moreover, there is no intention to change past practice, which is based on circulars 253 (B/C grades) and 271 (A grades).

Accordingly, the GAC gave a unanimous positive opinion to the notes. As in previous years, we did, however, note that:

- §13 of the note the Chairman of the A-grade Promotion Board and §11 of the note to the Chairman of the B/C-grade Promotion Board (which allow the boards, in exceptional cases, to make promotion recommendations which derogate from Circulars 253 and 271) remain a concern for us, as in previous years; the boards should handle these exceptions with the utmost care to avoid abuses and preferential treatment.
- One of the fundamental ideas behind the EPO's reporting and promotion system is continuity. For example, in the higher grade of the career bands, staff are expected to demonstrate a consistent level of performance over three reporting periods. It is essential for the good functioning of the promotion system that changes taking place at the office (e.g. job mobility, etc) are coherent with this need for continuity.
- Especially if an improvement in performance has been noted, the criteria for promotion for staff members who have received overall or partial markings of 4 or 5 should be reviewed.

The promotion boards have access to staff members' personal files. These days, these files are in electronic form. We also stressed means must be provided so that all members of the promotion boards have equal and adequate access to the information necessary for them to perform their statutory functions.

PAX cluster and peer reference examiner data

For more information on this topic, see our reports of the 222nd and 225th meetings of the GAC.

To this meeting of the GAC, the administration presented provisional PAX Cluster Reference Examiner Data and Peer Reference Data for 2011. The results presented were the result of calculations made on actual data from the months up to September of the year 2010, which was then extrapolated for the whole year. These figures are then used for the PAX planning process, which should be completed up to the end of March.

The Chairman of the PAX Implementation Board (PAX-IB) was present at the meeting as an expert of the administration. He assured the GAC that the figures were drawn up in conformance with the methodology. He informed the GAC that the data which will shortly be published will be the final figures for 2011. These were derived taking into account data from the whole of the year 2010, and not extrapolated data. These will be sent to the next GAC in due course. These may be used

for reporting under certain conditions. He explained that this procedure was established following discussions in the GAC in March 2010. In future, it was expected that the provisional data would be ready in time to be submitted to the GAC in November / December and the final data in spring of the following year. However, this first time, this has not proven possible. The reason for this was due to the restructuring with respect to the creation of the Berlin. This had caused delays the working of the PAX-IB. Should the new VP1 decide to restructure again, then this should take into account the impact on the PAX-IB.

After examining the document, the GAC gave the opinion that the figures contained in were calculated in accordance with the relevant provisions. The GAC, however, recommended that PD 1.1 and the PAX Implementation Board pay attention to the presentation of the information to staff in DG 1 in order to ensure that each examiner is aware of the figures (CRED or PRED) that apply to him.

The members of the GAC nominated by the CSC.