



## **Report of the 229th meeting of the GAC on 05/06.04.2011 in The Hague**

### **Summary**

The 229<sup>th</sup> meeting of the GAC (General Advisory Committee) was the second GAC meeting of 2011. The agenda comprised a document on reorganisation of Life Sciences activities within DG2, changes to the Code of Procedure for delegating authorising powers to authorising officers in the RFPSS, further expansion of the electronic MyFIPS application, an extension of the PTHW pilot and the final PAX Cluster Reference Examiner Data for 2011.

### **Reorganisation of Life Sciences activities within DG2**

Within DG2, there is a directorate Information Acquisition in Principal Directorate Patent Grant Automation (PD PG) which performs certain patent application and process activities for the bio-technology area. These include dealing with Sequence Listing (SEQL) and developing, maintaining and procuring databases and electronic tools for this technical area. The administration presented to the GAC a paper which proposed changes to the organisational structure of this area.

In the meeting, it was explained to us that the reorganisation was in response to an audit carried out in 2008 which had been ordered by the then President. This showed that improvements in quality and service were needed. As part of this, interactions between the Life Sciences area and the examiners should be improved. Moreover, since the staff in Life Sciences are outside the main PatAdmin area, delays in passing on files and other problems exist. The aim of the reorganisation is, by re-integrating some of the staff performing patent administration tasks into PatAdmin, to overcome the above problems and make the work flows more efficient.

In any reorganisation, our main concern is the

effect on staff concerned. In the current case, we were particularly concerned that it seemed that after the reorganisation, one staff member fewer would be allocated to PatAdmin duties.

The expert of the administration explained to us that some PatAdmin staff members in the receiving SISes would additionally be trained to be able to perform this work. Thus even a better coverage, for example during absences, could be achieved. Moreover, the SEQL staff would also be trained in other aspects of PatAdmin work, thus also improving their own career chances.

After discussions the GAC concluded that the transfer of the administrative staff of the SEQL team from directorate Information Acquisition in PD PG to the SIS units in Munich and The Hague (PatAdmin) responsible for providing administrative support to the Joint Cluster Biotechnology is likely to improve the contact between the members of the SEQL team and the Biotech examiners who are the main users of their services. The GAC thus gave a unanimous positive opinion on the proposal. The GAC also made a number of suggestions and observations. In particular the GAC stated that they expect the planned training investment to actually take place. Moreover, we hoped that the details concerning the implementation will be taken care of in consultation with the staff concerned.

## **RFPSS: Code of procedure for delegating authorising powers to authorising officers**

The administrator of the RFPSS presented a draft proposal on delegation of authorising powers to staff entrusted with the investment of assets. In part, this was made necessary by a reorganisation of the bond portfolio into three different asset classes.

In the GAC, the fund administrator explained that there is a hierarchy of documents for the fund administration. These are the Regulations, the Investment Guidelines and the Code of Procedure, in this order of hierarchy. Before being presented to the GAC, the Code of Procedure, the lowest in rank amongst the three legal documents, had been discussed in the Supervisory Board (SB). We were informed by members of the SB present in the GAC that the document had the full support of the SB. The amendments proposed were indeed restricted to bring the document in line with the new distribution of the bond portfolio and did neither affect staff nor the securities and guarantees around the investments that authorising officers may make.

The GAC gave a unanimous positive opinion on the proposal. Additionally, the GAC noted that the Code of Procedure comprises two main parts, a first part "Code of ethics and standards of professional conduct" and a second part "Procedure for decisions" dealing with operational matters. The GAC recommended that thought be given to separating the two parts into two documents. The first document should cover the code of ethics, which should be (relatively) static. Accordingly, amendments to this document should normally be extremely rare and only made following consultation with both the RFPSS SB and the GAC.

The second document, however, could cover the purely operational matters with no effect on staff. It should thus usually be possible to change this second document following consultation of the RFPSS SB only, i.e. without GAC consultation. This would make it easier to adapt the document as necessary, for example as additional and new investment instruments become available.

## **PAX cluster and peer reference examiner data**

For more information on this topic, see our report of the 228th meeting of the GAC. In that report, the administration presented provisional PAX Cluster Reference Examiner Data (CRED) and Peer Reference Data (PRED) for 2011. We were told at that time that it was intended to present the final figures as soon as possible to the GAC for opinion. Thus it was, that the figures were presented to this meeting.

There were no obvious discrepancies between the provisional and final figures, which had been produced by the PAX Implementation Board.

In the case of technical areas in Joint Clusters Computers, Electricity and Semiconductor Technology, Measuring and Optics, Telecom and Vehicles and General Technology, CRED and PRED have been calculated, but the PRED is only applied to examiners working in the technical area in Berlin. For examiners in Munich and The Hague, the relevant CRED is applied.

In our opinion, this anomaly is contrary to the spirit of PAX. A mere geographical distinction should not in itself be sufficient reason to have two different sets of reference data for examiners working in the same technical field. We also noted that this was contrary to a decision from VP 1 decision dated 4 March 2010 that "the new Peers Reference Examiner data shall apply to all Berlin examiners dealing with files from this specific technical field and to the examiners of the other Cluster".

Accordingly, we recommended that the PREDs calculated for the Joint Cluster Berlin are also applied to all examiners working in the corresponding Joint Clusters in The Hague and Munich.

The members nominated by the President were of the opinion that there was a discrepancy between the vice-Presidential decision and the provisions of Annex II of the PAX Implementation Handbook. Clarification was thus necessary. However, they considered that it was clear that, for these six technical areas the intention was to keep the PREDs for Berlin examiners only and apply the CREDs to the examiners in these six Joint Clusters.

Both sides thus identified the existence of a problem but recommended different solutions.

### **Extension of the President's decision for the PTHW pilot**

Part Time Home Working (PTHW) was introduced by Presidential decision dated 31.07.2009. The decision foresaw that the authorisation for PTHW ran out when the pilot project ran out. A report on the pilot project has been completed and presented to the President. However, no final decision has yet been made as to whether or not to carry on with the project. In an attempt to bring clarity to the status of the participants in the pilot project, the administration presented to the GAC a document clarifying that the decision of 31.07.2009 remains in force "until 30 September 2011 or until superseded". However, only current participants in the pilot project will be allowed to continue until a (new) final decision has been taken.

In the GAC, we pointed out that the decision adopting the pilot project clearly stated that the project was for one year, starting on 01 September 2009 and that the decision "devient caduque avec l'échéance de la période d'essai". That is to say, there is no longer any decision to extend, which ran out in September 2010.

When we pointed this out in the GAC, the discussions became surreal.

First, we were informed that the pilot had indeed been extended by a new decision of the President. We informed the administration that we could find no record on the intranet of such an extension.

The administration then said that, maybe, it had been a decision of VP4. We informed the administration that we could find no record of VP4 having announced such a decision. Moreover, we could find no record of PD HR having announced such a decision either.

Next, the administration suggested that maybe the announcement was from the Future of Work domain. No such announcement is on the domain website. Anyway, it is doubtful that a domain is authorised to take such a decision.

Finally, the administration remembered that, in actual fact, the decision extending PTHW had

been implemented in the form of individual letters to each of the project participants. They produced an undated, unsigned copy of the letter. This clearly showed that, under this extension, the authorisation to carry on with PTHW expired on 31 March this year!

Clearly, there are complex topics such as the applicable health and safety regulations, liability and insurance cover which have to be definitively sorted out before extending PTHW at the Office. On the other hand, we understand that most staff who have participated in the project so far would probably like to continue with PTHW. Thus we have in principle no objection in them being allowed to until a final decision is taken.

However, the proposal for allowing this as submitted to the GAC was obviously deficient. Despite this, the administration neither withdrew nor redrafted it. Accordingly, we were forced to give a negative opinion on the proposal.

That said, it is not acceptable to leave the staff concerned in a legal limbo until such date as a follow-up decision is taken. We thus considered that the Office should as previously send individual decisions to all the pilot project participants. This decision could be similar to the one of September 2010, but modified with a realistic date which reflects when a final decision is likely to be taken. Moreover, pilot project participants should be given the option to stop PTHW if they so wish now that the pilot is completed.

### **Extension of electronic MyFIPS application**

The administration presented an extension of the electronic MyFIPS application replacing the paper claim form for financial compensation of on-call, shift and overtime work. As is to be expected, the user interface seems similar to that used for claiming duty travel reimbursement or recording flexi- or compensation hours. The administration clarified that this new tool was not intended as a new policy. Nor did it change any of the existing ServRegs. The administration claimed that the system would be more secure and accurate than the current paper system. Moreover, since there was an interface to the salary system, payments could be done quicker.

However, the proposal failed to integrate the possibility of receiving compensation for overtime in the form of free hours, as foreseen by the ServRegs, into the electronic tool. Rather, the proposal only foresaw cash compensation. Moreover, the program comprises no interface to the working time program. This means that there is no check on whether or not the maximum time that a staff member may work per week is being adhered to.

Thus we could not agree that the proposal represented an improvement and simplification to the current arrangement, where time or

The members of the GAC nominated by the CSC.

money can be claimed on a single paper form. Rather, it complicated matters since the current paper form and the new electronic tool would have to coexist in parallel.

There was unanimous agreement in the GAC that the proposal was not ripe for implementation. There was, however, divergence as to what a revised proposal must comprise before implementation.

For our part, we thus gave a negative opinion setting out the above and making additional suggestions concerning the workflow for approving overtime by the line manager.