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Report of the 231st meeting of the GAC on 16.06.2011 in Munich

Summary

The 231st meeting of the GAC (General Advisory Committee) was the fourth GAC meeting of 2011. The agenda comprised two documents related to restructuring of Office departments. Additionally, a document setting out the proposed official holidays for 2012 was submitted. Finally, for information the President submitted a document setting out a proposal to disband the audit committee.

Restructuring of Joint Cluster Electricity and Semiconductor Technology

The administration has decided to reduce the number of principal directors in DG 1 from the 15 envisaged in the re-organisation of 2005 to 7 "line" PDs. This will be achieved by requiring each PD to manage two clusters, rather than one as originally foreseen by the 2005 restructuring. Currently, there are 15 joint clusters and 8 principal directors. However, one of the principal directors will retire shortly, leaving 15 JCs and 7 PDs. Bringing this all together, the administration presented to the GAC a proposal that the Joint Cluster Electricity and Semiconductor Technology should be split in two parts. One of these parts will be integrated with the Joint Cluster Electronics and the second part with the Joint Cluster Measuring & Optics.

Neither from the document itself nor from the information provided by the administration's expert in the GAC (PD Measuring & Optics) was it clear why JC E&ST was the cluster chosen to disappear. Moreover, it was also not clear if the simple assignment of a Principal Director to two Joint Clusters is the only or the best solution possible. For example, neither the expert of the administration nor the member of the GAC representing DG 1 management were able to answer simple questions such as the number of examiners

affected by too high (or too low) workloads, or to quantify the magnitude of the problems observed in E&ST in terms of delayed files or files transferred from/to other joint clusters. The document does not contain any comparison of the proposal with other possible scenarios, such as the split of the smallest joint cluster, Polymers, or of any other heterogeneous joint cluster, such as PAOC or Human Necessities.

The document is also silent on the expected effect that the merge will have on the calculation of the Reference Examiner Data to be applied to the Examiners affected by the restructuring. It also does not include any proposal which could help the PAX Implementation Board to identify which Reference Examiner Data would be appropriate for those Examiners affected.

In any restructuring, the most important issue for us is how the staff affected are treated. The examiners in E&ST appear to have been properly informed of the future changes. As far as we can tell from the feedback we received, they generally understand the reasons for the changes. Despite this, however, some issues remain. In particular, whilst the document acknowledges the need for adequate support and further training for all examiners who, as a result of the re-organisation, will be forced to change technical fields, the proposal does not

quantify this need and leaves to the "receiving" principal director all freedom to decide on the necessary measures.

More importantly, any reorganisation of examining areas also has effects on Patent Administration. On questioning, we were informed that the consultation process in Patent Administration was limited to the participation of one director in the working group in charge of the project. We were told that this director has "informed" the affected line managers in SIS H5 and M5. Staff members in these units, however, have neither been asked about their views nor been informed about their professional future in the Office. In this respect the statement contained in the document that *"Patent Administration intends to dissolve the two SIS-Units supporting current JC E&ST and logically assign their staff to where in PA they are most needed"* is extremely disrespectful of the staff concerned. We thus expressed our disagreement and profound disgust with the way that staff members affected by the re-organisation - and in particular our colleagues in Patent Administration SIS H5 and M5 - are being treated.

Under these circumstances we concluded that we were not in a position to judge whether the proposal is the best possible solution to restructure the DG1. We thus provided a reasoned position setting out the above.

The members nominated by the President gave a positive opinion on the proposal.

A new PD structure for DG 5

As reported in our report of the 217th meeting of the GAC, DG 5 has been the subject of numerous reorganisations in the recent past. For example, Principal Directorate Patent Information (based in Vienna) has been moved from DG 5 to DG 4 and, in 2008, back again. Even before that, parts of the Vienna office were moved from DG 4 to DG 2 and DG 5. Additionally, PD 5.1 ("European and International Affairs") was created in 2005 out of one directorate. It was then claimed that this had led to lack of clarity concerning the distribution of roles between PD 5.1 and PD 5.2 ("International Legal Affairs"). Thus in early 2007, the GAC was presented with a proposal to restructure PD 5.1. This resulted in it growing from one directorate to three.

Moreover, in 2008 PD 5.3 ("Legal Services") was restructured. Additionally, the EPO Academy was first created, and then integrated into the Office structure as PD 5.4. Most recently, with effect from 01.01.2010, the number of Principal Directorates was reduced by one, and the departments and directorates re-arranged amongst the PDs. Strangely, however, the "spare" Principal Director post was not deleted from the budget.

In 2009, we gave a negative opinion on the restructuring that took effect from 01.01.2010. In our opinion, the resultant structure was unclear and was driven by the retirement of Mr Giroud and the decision not to replace him. This led to a number of conflicts of competencies between PD 5.1 and PD 5.2.

The administration presented to this meeting of the GAC a document proposing yet another restructuring of most of DG 5. As always, the justification for this was essentially that all these various previous restructurings had not been optimal. Thus further restructuring was necessary. As usual, this would create clarity - but the problems with the existing situation are never explained. As usual the restructuring would bring synergies. Again, where these will be is never explained let alone quantified. It seems that the administration expects us to believe that synergies exist if they merely tell us this is so, without providing any evidence.

Strangely enough, this latest reorganisation, which is presented as a vision towards the future, results in a structure which is virtually identical to the organisational chart of 2005! The only difference is that patent information has in the meantime been moved to DG 5. That is to say, the Office has come full-circle with the structure of DG 5. The document does not give any indication of what has failed in the four reorganisations performed in the last six years, which justifies now returning basically to the structure which already existed in 2005.

After so many changes, what staff of DG 5 need now is stability and a long-term strategy together with the long awaited role clarity. This will enable them to get on with doing their jobs! It is intended that the re-organisation should be completed by 01.08.2011. The reason for this choice of date, in the middle of the reporting period, is that then the re-organisation can be complete before DG 5 moves back to the Isar building in autumn of this year. This seemed

rather a strange choice of date and justification to us. Instead, we recommended that the administration wait until 01.01.2012. This would allow the Office to draw up a long-term strategy for DG 5 which would bring stability to staff in DG 5. This would include role clarity for all units in DG 5. Moreover, any further reorganisation should be so carried out that the impact on staff should be as limited as possible. Additionally, staff should be properly involved and consulted. In the GAC, the administration's expert (VP5) admitted that, for part of the reorganisation, consultation of the Vienna LAC was necessary. Delaying the implementation until the start of the new year would also allow this consultation to take place without unnecessary time pressure. We gave an opinion setting out the above. We also provided a list of observations for the administration to consider further.

The members nominated by the President gave a positive opinion on the proposal.

Official holidays for 2012

The administration's proposal concerning public holidays for the following year is sent to the GAC each year for opinion.

As the reader will know, generally Vienna has the most public holidays. Up until 2008, staff at the other sites receive a number of extra days vacation as compensation. From 2008, the administration presented to the GAC a proposal where, rather than getting the appropriate number of days vacation as compensation (to be taken at the staff member's convenience), staff in Munich, The Hague and Berlin got at least one compulsory bridging day (usually on a Friday in May or June). These compulsory bridging days became the subject of numerous appeals, in particular from part-timers (who, because they often don't work on Fridays, are over proportionately affected by the measure). Moreover, their implementation was, in our opinion, illogical since the bridging days chosen were working days in Vienna! That is to say, on those days, the whole Office was not shut down. This created problems for staff in Vienna if they needed to contact staff from other sites e.g. for IT support.

When we examined the proposed official holidays for 2012, we were thus pleasantly surprised to note that the compulsory bridging

days had disappeared. We suspect that the departures of Ms Brimelow and Mr Archambeau from the Office might have something to do with this. In as far as it went, we thus gave a positive opinion on the proposal.

However, in our opinion the proposal did not go as far as it could have. For example, we have repeatedly suggested that the Office should follow the practice of the institutions of the European Union and, in addition to the other official holidays, close all the Office sites between Christmas and New Year. In this way, the Office would make substantial savings (well in excess of those due to a bridging day in May or June) on heating, lighting, security etc.

Moreover, we noted that currently Office production is above plan. We suggested that, should this still be the case in (say) the first December week, as a reward for Office staff the President consider re-introducing the practice of earlier Presidents in granting staff an additional day (or days) leave shortly before the Christmas period.

The members nominated by the President gave a positive opinion on the proposal.

Disbanding of the Audit Committee

The Audit Committee was set up in 2009 by decision of the Administrative Council. At that time, Mr Battistelli was Chairman of the Council. That is to say, he signed the decision setting up the committee. The committee was set up after several rounds of discussions in both the Council and the Budget and Finance Committee. These discussions concluded (in CA/140/08) that:

"EPO governance would clearly benefit from the establishment of an audit committee. An audit committee would ensure better co-ordination between external and internal audit and make better use of the audit resources; it would enhance the independence, effectiveness and credibility of IA; it would allow discussions of sensitive cases in a restricted circle and therefore more clarity in the auditors' report; it would ensure appropriate feedback from management regarding audit recommendations; it would enhance a climate of mutual trust between the Office and the Council to the advantage

of the whole Organisation and lastly of the stakeholders (citizens and industry). It would also improve the trust of the staff in the top management and in the Council in enhancing high standards of integrity, transparency and fairness and in enabling effective fraud prevention mechanisms and a better response to sensitive issues."

It is thus surprising that, two years after setting up the committee, the President should be submitting a proposal to the Council to disband it again! This is especially so given that the document proposing this (CA/55/11, available in Micado) provides no reasons or arguments for this that would not have applied at the time the committee was set up. That is to say, it identifies no specific problems with the functioning of the committee. Moreover, alternatives to simply disbanding the committee e.g. by altering its mandate, are not discussed.

As set out in the summary to this paper, the proposal was submitted to the GAC for information only. That is to say, it was neither discussed nor did the President request the GAC to give an opinion on it. We were, however, of the opinion that the proposal should have been submitted for opinion. The reason for this is that, as one of its functions, the Audit Committee has a duty to give an opinion on:

"the appointment of the Head of Internal Audit and the transfer or dismissal of the Head of Internal Audit and the staff members employed as internal auditors, as well as any disciplinary measures relating to them".

This serves to protect the head and staff of Internal Audit from interference from within the Office in the performance of their duties. Accordingly, disbanding the Audit Committee affects the head and staff of Internal Audit. Therefore, the proposal falls under the last clause of the first indent of Article 38(3) ServRegs, namely that of "any proposal which concerns the whole or part of the staff to whom these Service Regulations apply". Such proposals require GAC consultation before adoption.

Finally, despite the above, the pre-amble to the draft decision in CA/55/11 has been phrased in such a way that the casual reader could come to the conclusion that the GAC had, in fact,

been consulted.

Even though the President did not ask the GAC for its opinion, we nevertheless wrote him a letter setting out the above. In parallel, the Chairman of the GAC wrote a letter to the President. In this, he informed the President that there had been discussion and disagreement in the GAC concerning the fact of whether or not the document should have been submitted for information or for opinion.

The members of the GAC nominated by the CSC.