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## Report of the 234<sup>th</sup> meeting of the GAC on 11.10.2011 in The Hague

### Summary

*The 234<sup>th</sup> meeting of the GAC (General Advisory Committee) was the seventh GAC meeting of 2011. The agenda comprised as a first document the report of the Actuarial Advisory Group on the valuation of the Office pension systems and as a second document the Office's comments on this. Also on the agenda were "re-submission" of Circular 329 concerning staff contributions to the healthcare insurance scheme and (for the second time) a proposal for a single countersigning officer for SCAPES in Patent Administration.*

### Report of the Actuarial Advisory Group and Office's comments thereupon

At regular intervals, an actuarial study of the financial equilibrium of the Office social security schemes is carried out. The most recent study was done in early / mid 2011. The date taken for performing the valuation was, as usual, the end of the year before. That is to say, the situation studied was that on 31.12.2010. The study has now been submitted to the Administrative Council as CA/61/11. The Office then has to consider the actuaries' report and recommendations and decide if and how to respond. Office's response has now also been submitted to the Council as CA/62/11. Both of these documents were submitted to the GAC for opinion.

The actuaries' report made four recommendations:

- increase the global pension contribution rate from 27.3% to 27.9%;
- for new staff, keep the NPS DB contribution rate at 21% (the difference between this and the global figure is fed into the Salary Savings Plan - SSP);
- keep the contribution rate for the long-term care insurance scheme at 1.2%;

- perform the next study in two years' time (generally, a study is performed every three years; however, in times of financial volatility the actuaries have also in the past suggested more frequent studies).

In its response, the Office proposes to the Administrative Council implementation of all the actuaries' recommendations. The administration invited all three members of the actuarial advisory group to the meeting of the GAC, in order that they could present their report and answer any questions.

Following the discussions with the actuaries, we considered that some data elements needed providing, clarifying or checking before we could be convinced that their calculations were reliable. These included:

- demographic data for the populations of the NPS and OPS;
- the legal statutory basis used for calculating the contribution to the NPS of our new colleagues on an "as if" basis;
- the input data provided by the Office as basis for the calculations; there seemed to be a discrepancy of about 30%

between the amount of money going into the RFPSS between what was indicated in the study and in other documents;

- clarification on whether the table of annex VI of the study was based on the current contribution rate or the suggested future contribution rate.

In the GAC, we noted that the actuaries' recommendations did not include a date of application for the proposed increase. Indeed, the discussions in the GAC showed that the precise date was not so important. For example, the effect of the increase proposed would be less than the usual variations in the scheme. We thus concluded that the decision to propose an increase now was a political one. We argued that now was a very bad moment to implement such an increase, because:

- the existing pension scheme (essentially comprising two different schemes for staff recruited before and after 01.01.2009) has been found to be unlawful following an appeal before the Internal Appeals Committee of the Administrative Council - it makes little sense to increase the contributions to a pension scheme that is not lawful;
- the Office is in the process of creating a new pension scheme for all staff - why increase the contributions for a scheme that is on the point of being changed? Presumably new actuarial calculations will have to be carried out to fix contribution rates for any new scheme;
- contrary to previous practice the increase recommended is very small and is proposed without having observed a trend over a period of time of a certain length;
- contrary to past practice, the actuaries did not calculate the negative impact of inward pension transfers which resulted in the so-called "German Hole" (the deficit to the system resulting from past transfers from Germany into the scheme); we believe that the Office should make good this deficit to the system before asking staff to make additional contributions;
- albeit small, the increase may, for some places of employment, result in an effective decrease in salaries for 2012.

For the above reasons, we gave a negative opinion on the proposals. The members

nominated by the President considered, on the basis of the information provided by the actuaries, that the proposed increase in contributions was well founded and gave a positive opinion on the proposal.

### **Single countersigning officer for SCAPES**

For more details of this topic, see our report of the 230th meeting of the GAC. In that meeting, the administration presented a proposal according to which all SCAPES would have one and the same counter-signing officer who would be one of the directors in PatAdmin. The reason for this is that, for reporting purposes, it has to be ensured that SCAPES were compared correctly with their peers, and not with other PatAdmin staff.

According to the earlier proposal, however, the SCAPES would continue to be reported on by their respective SIS managers. This is a problem, since the SIS managers only have (on average) a single SCAPE. This means that it would be impossible for them to draw up a comparative report (as required by Circular 246) comparing the performance of SCAPES with each other. Moreover, since both the SIS managers and the SCAPES are graded B4/6, they are potentially in competition for promotion.

In the earlier meeting, we agreed with the problem identified in the document, namely that a fair comparative reporting amongst SCAPES is not possible today, and that it should be avoided that SCAPES are compared with other colleagues of the SIS units in the B5/B1 career group. However, we failed to see that this problem was properly solved by the proposed solution. In particular, in addition to the problems identified above, we considered that the proposal could lead to excessive interference by the counter-signing officer in the reporting procedure. Accordingly, in the earlier GAC we gave a negative opinion on the proposal.

Additionally, we recommended that the problems identified could be better solved by having a single reporting officer for all SCAPES (who should be a director in PatAdmin), with the Principal Director as counter-signing Officer. This would ensure that, as required, the SCAPES could be reported on in a harmonised manner with a correct comparison to their peers.

In the earlier GAC, it was clear that most of the members nominated by the President shared our concerns with the proposal and seemed to agree that our proposal might be a good solution. At that time, these members expressed their opinion that other alternatives than that contemplated in the proposal should be studied. They requested that the revised proposal be re-submitted to the GAC for opinion.

At the time, we thought that, following the re-think requested by the members of the GAC nominated by the President, the administration would present a new proposal to the GAC for opinion. To our surprise, however, the administration instead presented a paper commenting on the arguments made against the earlier paper in the earlier opinions and substantially the same proposal again, whereby only the date of implementation had been changed. The paper concluded by requesting that the GAC should reconsider its earlier opinion and give a positive one instead.

This is the first time that we can recall this happening! Whilst respectful and polite, this document also shows a worrying lack of understanding concerning GAC consultation. Whilst the GAC has to be consulted, the opinions given are not binding on the President. That is to say, whilst a good President should be interested in the outcome of GAC consultation, and should consider carefully any negative opinion from the GAC before taking a decision, the President clearly has the prerogative not to follow a GAC opinion.

One of the Directors in PatAdmin was present in the 234th meeting of the GAC as an expert (in addition to a second Director in PatAdmin, who is a member) to explain why the administration considered that the original proposal was indeed the best one. Her main argument was, in essence, that the counter-signing officer would set careful objectives. This would enable the respective SIS managers to be able to draw up a comparative report comparing their single SCAPE with those in other SIS units!

This argument appeared to convince the members nominated by the President, who changed minds and gave a positive opinion on the proposal. We considered, however, that this argument was not fully in line with Circular 246. Indeed, if anything it reinforced our earlier

concerns about the proposal leading to excessive interference by the counter-signing officer in the reporting procedure well beyond the powers and responsibilities that the Circular grants him. Since no arguments had been provided which would lead us to change our minds, we effectively repeated our earlier negative opinion, with the same arguments, and made the same recommendation.

### **"Re-submission" of Circular 329**

Circular 329, signed by VP 4 in February this year, informed staff that the contribution rate for healthcare insurance for the years 2011 - 2013 had been set at 2.4% of basic salary.

In an internal appeal, a claimant (presumably a pensioner) claimed that this was unclear in that it made it possible for the Office to charge pensioners 2.4% of their final basic salary, rather than 2.4% of their basic pension, which is what the Office actually (and correctly!) does.

Although the Office disagreed with this analysis, the Office nevertheless considered it useful to clarify in the Circular that the reference for calculating the contribution is the basic salary, basic pension or invalidity allowance. According to the meeting agenda the Circular was thus "**re-submitted**" to the GAC for opinion in order to re-assure the appellant, even though the legal analysis was that this was not necessary.

We had three problems with this.

**Firstly**, the Circular was not submitted to the GAC in the first place. Thus it cannot be re-submitted. The Circular merely served the purpose of informing staff of the outcome and immediate effects on staff of Council decision CA/D 7/10. The proposal leading to this decision was submitted to the GAC in the summer of 2010. That is to say, the Circular was not a decision in its own right; its purpose was merely informative. There was no need to submit the Circular to the GAC then, and there is no need to do so now.

**Secondly**, even if the Circular could be considered to be ambiguous, the text of Article 83 ServRegs (which is in any case of a higher legal level, and to which the Circular purports to give effect) is perfectly clear and correct in the basis of how contributions for invalids and pensioners are to be calculated. On top of this,

the Office is implementing Article 83 ServRegs and CA/D 7/10 correctly.

**Thirdly**, if, despite the above, the President decides that a new Circular should be presented to the GAC and issued, then the administration should at least ensure that the revised Circular is correct and does not introduce further errors. That was not the case. Rather, the proposed revised Circular managed to cite a document wrongly and introduce the previously unknown term "basic pension".

In conclusion, we said that instead of sending this paper to the GAC for opinion, it would have been better if the Administration had submitted other, long due items concerning the healthcare insurance scheme. These included injecting money in the healthcare fund and proposing a level of contribution for the future on the basis of an actuarial study. We also pointed out that, contrary to usual practice, we have so far seen neither the provisional results (i.e. of medical costs incurred) for 2011 nor the final accounts of the 2010 exercise.

Accordingly, we gave a negative opinion on the proposal highlighting the above. The members nominated by the President acknowledged the above mentioned problems with the proposal and gave an opinion recommending a revised wording for the Circular.

We also again drew the President's to the earlier GAC opinions given in 2009 and 2010 (available in Babylon) on the establishment of a funded insurance scheme. A whole year has now elapsed since the introduction of the new financing system. No progress has yet been made on the outstanding aspects. It is accordingly now urgent for the President to try to find a compromise with staff on this essential issue before the end of the period for which the contribution rate has tentatively been frozen at 2.4% of basic salary.

The members of the GAC nominated by the CSC.