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Report of the 238th meeting of the GAC on 28.02.2012 in Munich

Summary

The 238th meeting of the GAC (General Advisory Committee) was the first GAC meeting of 2012. The agenda comprised a proposal for Office-wide house rules, modifications to Article 70a ServRegs and Circular 301 (both concerning the child care allowance), amendments to Article 38 ServRegs and the implementing rule thereof and amendment to Circular 22.

Introduction

The GAC members are appointed in equal numbers by the President and by the Staff Committee.

As reported earlier in our report of the 236th GAC, the so-called "HR Roadmap" talks of "involvement of higher management" in the GAC in 2012, in order to "strengthen" it. Additionally, in a meeting with the staff representation the President declared that if he wants an opinion from his managers he will ask them, but that once a proposal comes to the GAC he expects his nominees to defend it. When the President published on 15 December the names of his nominees for 2012, we learnt that, broadly, the composition of the management side of the GAC corresponds to that of the Management Committee (the MAC). That is to say, all five Vice-Presidents (including PD 4.3, currently acting VP 4) plus an additional senior manager in the MAC have been nominated as Chairman (VP 3) or members (VP 1, VP 2, acting VP 4, VP 5, the Chief Financial Officer). Additionally, the Controller has been nominated as a deputy member.

In our opinion, the President is not free to nominate whoever he wishes to the GAC.

Firstly, we consider that it is a requirement of the regulations that GAC members must be permanent members of staff. However, most MAC members are not permanent members of staff. Worse, as short-term political appointees the Vice-Presidents could possibly lack both the knowledge and the independence required by the function. For more details on this, see our report of the 220th GAC.

Secondly, the role of the GAC is to formulate reasoned opinions which the President should then consider with the MAC before deciding on a proposal. For this reason in the past there was a general understanding that GAC and MAC membership should be mutually exclusive. For example, in 2004, Mr Förster was nominated as a member of the GAC. However, when he became controller, his nomination was put on ice. The reason for this is obvious: putting the MAC in the GAC will, in effect, mean that the MAC will be advising itself, rather than being independently advised. Not only will this likely reduce the quality of the advice being given, but it is also a clear conflict of interest.

For these reasons, when we learned of the President's nominations, we appealed against them.

We have had similar situations in the past.

In 2006, the Internal Appeals Committee (IAC) unanimously agreed with us that the GAC had been wrongly constituted due to the nomination of non-permanent staff to the GAC in 2006. This had as a result that the consultation was repeated for all 2006 topics which either had been or, at the date of

delivery of the IAC opinion, still could be appealed (see our report of the 192nd GAC).

In 2010, however, the IAC delivered a split opinion on the question of whether or not a person who was a non-permanent member of staff could serve as Chairman of the GAC. The President followed the opinion of those IAC members who considered that this was allowed. This decision is currently under appeal in front of the Administrative Tribunal of the International Labour Organisation.

In the meantime, because we cannot be sure that our appeal will be successful, we will continue to attend the meetings and, as usual, give reasoned opinions. As in 2006 and 2010, these will be with the caveat that, should the constitution of the GAC indeed prove to be irregular, then the whole consultation process is flawed.

As in 2006 and 2010, this would mean that any appeal against a decision made after consultation of a wrongly composed GAC would have an extremely good chance of being successful.

In our report of the 237th GAC, we noted that the senior managers of the Office also tend to have the busiest agendas. We hoped that they would make themselves available for all the regularly scheduled GAC meetings next year. Of the three full (as opposed to acting) Vice Presidents now nominated as members of the GAC, only one was actually present at this first meeting of the year. The missing two were deputised by Principal Directors in their Directorates General. One of these Principal Directors is also a non permanent member of staff.

Moreover, the current meeting was originally scheduled to last two days. Following publication of the agenda, at the request of the management representatives and without any consultation with ourselves, the second day of the meeting was cancelled and the starting date moved to a later time.

According to its mandate, set out in Article 38 ServRegs, the GAC has to provide the President with a **reasoned opinion** on any proposal that affect the whole or part of the staff, including the pensioners.

This requires a well-drafted and well-prepared proposal. However, in recent years the quality of the documents has gone down. This has not only been noted by ourselves but also by the management side. For instance, when Mr. Koch took over as chairman of the GAC in 2006 he wrote in a letter to the then VP4: "*Ich wäre der Verwaltung sehr dankbar, wenn auf die Qualität der Dokumente höchste Priorität gelegt würde*." In recent years, this wish has gone unheeded. Time will show whether or not the fact that MAC members will now be giving opinions on the proposals will lead to the documents being prepared with more care. This was not yet the case in this first meeting of the year.

We had also expected that the presence of higher management in the GAC might serve to encourage open discussions and, perhaps, facilitate reaching common positions and agreement on amendments to the proposals. In this meeting, however, all opinions we issued were split: the management representatives gave positive opinions on all proposals while our opinions were all negative.

We can conclude the President seems to have failed in his goal of "strengthening the GAC", at least in so far as his expectations of staunch defence of the proposals by his representatives are concerned. It is fair to say that the members of the GAC nominated by the President remained largely silent as we put forward questions and objections to the proposals. They politely let us have our say, but did not really make any obvious effort to describe why they saw value in the proposals on the table, or to convince us.

Office-wide house rules

Currently, the Office has different house rules at each place of employment. Following the reorganisation of PD 4.4 (building services) in 2009, a group was formed to consider harmonising the house rules between all the places of employment. The justification for this seems to be that it is considered confusing for staff who travel from one place of employment to another to be confronted with different house rules! This is despite the fact that, although phrased differently, the important concepts are naturally shared between all house rules.

Before being submitted to the GAC, the proposal was presented to the COHSEC for

opinion. In its opinion, the COHSEC considered that an office-wide approach towards building safety and security may have some benefits, in particular for staff visiting other places of employment. However, our feedback from COHSEC members was that they only considered the health and safety implications of the house rules, concluded that these were minimal in the house rules themselves, and focused their analysis on the annex to the house rules dealing with safety regulations

Before the meeting, we received feedback from other Office bodies such as Amicale, who considered that the new rules were extremely restrictive and would impact severely the use made of Office buildings by various clubs.

From the discussions in the GAC it became clear the proposal's authors take it for granted that harmonisation is a good thing which does not require any further justification. However, in our view, the various house rules across the different Office sites function to the satisfaction of all parties. In contrast, harmonisation will create a considerable amount of work for the people implementing it and increase the risk of misunderstandings among staff. Since the rules will be new for all sites, they will put a burden on 7000 staff, as they will all be required to familiarise themselves with the new rules. For these reasons, we considered that the effort involved in the harmonisation process will be disproportionate to the benefits.

We also objected to the tone of the proposed new regulations which give the impression that the Office trusts the personnel of an outside security firm more than it trusts its own people.

Concerning the content, we noted that e.g. with respect to the treatment of representatives, the document is not in conformance with current practice. We also brought forward the concerns of the Amicale clubs.

For the above reasons, we gave a negative opinion on the proposal. In addition, we also provided a paragraph-by-paragraph list of our observations and objections with respect to the house rules.

During the meeting, the administration's expert took notes and seemed to agree that further modifications and study are necessary before the proposal can be implemented. We welcome this, but question whether it is worth the effort to harmonise the house rules as the existing locally-based house rules seem to be fit for purpose. After all, the Office has functioned for over 30 years without harmonised house rules and we are not aware that this has caused any particular problem either to colleagues on duty travel or after a transfer to a different site.

If the Office is indeed going to carry on with the idea of having harmonised house rules, we would normally expect that a redrafted proposal would be sent to the GAC in due course, taking into account the points noted at great detail by the administration's expert. This is particularly so since, in actual fact, there was only time in the meeting to discuss the house rules themselves. The annexed parking rules and emergency response plan were not discussed at all!

During the meeting, the members nominated by the President seemed to share several of the concerns that led us to give a negative opinion on the proposal. They also seemed to agree that there was no particular urgency to adopt harmonised house rules. However, when we read their written opinion, which was positive, it was clear that they considered the matter closed. The aim was harmonisation. The document achieves this. Basta!

Child care allowance

The child care allowance was introduced in 2007. The legal framework is provided by Article 70a ServRegs and Circular 301. These are complemented by additional texts for each place of employment in order to cover local specialities.

The current texts foresee that employees with children in Office child care facilities are not entitled to claim the allowance. However, the amount that these parents have to pay for a place in an in-house crèche should be comparable to those that parents who do receive the allowance have to pay for comparable facilities, taking into account the fact that they do receive the allowance. The calculation of the payable amount for the in-house crèches has led to appeals in Munich where parents felt that too much was being charged for the Office facilities.

The document further tries to clarify the items

considered as "miscellaneous costs", which are in principle not covered by the allowance. Often, facilities do not provide itemised bills. In such cases, the Office tries to make deductions from the amounts billed to take into account the fact that items which, in the Office's opinion, should not be covered as "direct costs", such as warm meals, are included in the bill. This situation has led to appeals in The Hague. The current proposal seems to have been put forward to bring the regulations into conformance with current Office practice, thus allowing it to keep on making undue deductions from the childcare costs.

From the above, it is clear that the problems that have led to the appeals lie in the implementation of the regulations, and not in the regulations themselves. Despite this, the administration presented to the GAC revised versions of Article 70a and Circular 301 for opinion. They also presented how it has been agreed with the Munich Staff Committee that the disputes in Munich in the past should be dealt with. However, the GAC's opinion was not requested on this point.

The basic concept for the future is that staff members will be eligible to claim child care allowance for all children, regardless of where they are looked after, i.e. including those children in in-house facilities.

At the same time, the Office will calculate an average charge for these in-house facilities taking into account any subsidies e.g. from the town of Munich, that are received. No account will be taken of infrastructure costs, which the Office will provide for free. The link between parental contributions for in-house and other facilities has been removed. The idea being that if parents put their children into more expensive facilities (be they in-house or other private facilities), whilst they will receive a larger allowance, since this is defined as a percentage of the total direct costs, they will have to pay more out of their own pockets too.

The proposal also deletes the Office's earlier commitment to continue "at least to provide those Office facilities already in place". This is despite the fact that, as part of the appeals settlement in Munich, the Office agreed to create 25 additional places! In fact, it seems that in The Hague, where the open market provides a sufficient number of facilities, the Office intends to withdraw from providing in-house facilities.

In the GAC, we argued that since the problems were caused by the implementation of the legal texts rather than by the texts themselves, we did not find the reasons given to modify the texts convincing. Rather, we suggested that the issues which had caused appeals should be addressed and sent to the corresponding LACs for opinion. For these reasons, we gave a negative opinion on the proposal. With the opinion, we also gave a list of further observations on the proposal.

The members nominated by the President gave a positive opinion on the proposal on the ground that the regulations had finally been aligned to the practice.

Amendment to Article 38 ServRegs and its implementing rule

Article 38 ServRegs and its Implementing Rule (which can be found in Part 1a of the Codex) govern the functioning of the "Joint Committees" at the Office. That is to say, the functioning of the GAC and, for each place of employment, their local equivalents, the LACs.

In 2009, the administration amended Article 2 ServRegs with the intention of allowing non-permanent staff to be members of the joint committees. However, both Article 38 ServRegs and its Implementing Rule were left unchanged. It is these texts which, in our opinion, regulate who may serve in these committees. Accordingly, when a non-permanent member of staff was nominated as chairman of the GAC in 2010, as set out above, we appealed it. More importantly, when, as also set out above, the President nominated several non-permanent staff members as members and Chairman of the 2012 GAC, we also appealed this.

In response, the administration presented to this meeting, the first GAC meeting of 2012, a draft Council document proposing amendment to both Article 38 ServRegs and its Implementing Rule. As justification the document bemoaned the fact that "the Office continues to face litigation as regards the composition of the GAC". Thus the amendments were proposed "in order to avoid any misinterpretation as well as to ensure terminological consistency" with the intention

of allowing staff on contract to serve on the GAC and the various LACs.
In the GAC, we pointed out that the composition of the GAC is under legal challenge in 2012 and it is exactly the composition of the GAC that is the subject matter of the proposal. This could be interpreted an attempt to remedy an error after the fact. Moreover, the President is asking an opinion from the people who stand to gain most from his proposal, namely those whose membership of GAC is the subject of the current appeals.

On the substance of the proposal, we noted that the document submitted to the GAC attempts to provide a legal basis for non-permanent members of staff to be members of the GAC. However, what it fails to do is to address the underlying question of how the GAC should function and whether or not the proposal is in line with that way of functioning. In our opinion the composition of the GAC is an important consideration in allowing the GAC to fulfil its purpose and aim, namely to provide the President with the best and most independent advice possible.

In the meeting, the Chairman said he would welcome a future discussion on the purpose and functioning of the GAC. We supported this suggestion. In fact, it seemed to us prudent to have this discussion as soon as possible. Moreover, the discussions should preferably take place not just amongst the GAC members. Rather, the Staff Committee should be involved too.

In addition to the question of whether or not non-permanent staff should be members of the GAC, there is the question of whether or not MAC members should, at the same time, also be members of the GAC. The proposal fails to address our objections to this, set out above in the Introduction to this document, that members of the MAC should not, at the same time, serve in the GAC.

For the above reasons, we gave a negative opinion on the proposal.

The members nominated by the President gave a positive opinion on the proposal, since it serves its purpose of providing "terminological clarity and consistency".

Amendment to Circular 22 - Office closure 2012

Circular 22 is the staff circular concerning the administration of various forms of leave at the Office. The administration presented a proposal to amend this Circular. According to this amendment, the President may decide to close the Office on specific days, either between Christmas and New Year or on bridging days. In addition, the document proposed that this new regulation should be used in 2012 to close the Office on 18 May and 27 and 28 of December.

It has been a long standing request of the CSC (see for example our report of the 231st GAC), 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. Moreover, the ILO was closed between 22 December 2011 and 2 January 2012, the extra days being a gift to staff from the ILO management.

However, rather than following this best practice from other International Organisations, the administration further propose that staff must take some type of authorised leave (i.e. annual leave, flexi hours, compensation hours etc) during such closures.

The reasons given for the proposal are to save money due to not having to provide services such as heating, security and catering on days when only about 20% of staff work.

We failed to see any benefit for the majority of staff in this proposal. Rather, the majority of staff will merely have less flexibility as to when to take leave.

Moreover, the proposal will have negative effects on the public which the Office is there to serve. Firstly, the Office has already published the list of days when the Office will be closed in 2012. Given the delays in publishing the Office Journal, the public will now only receive very short warning concerning any decision to close the Office on the 18 May. Moreover, the Office publishes patent applications each week. Closing the Office for a whole week between Christmas and New Year will have the effect that either certain documents will only become published prior art a week later than otherwise, or some

staff members will have to work overtime in the days prior to the closure to guarantee the publications.

We accordingly gave a negative opinion on the proposal.

We additionally suggested that, for 2012, should the Office really consider the savings worthwhile, the Office should implement closure between Christmas and New Year in the same way as in other International Organisations, i.e. by granting staff the extra days as vacation. In such a case, staff would likely consider this fair compensation for losing the freedom as to whether or not to take a bridging day in May. However, the Office still had to ensure that an adequate service was provided for the public. For future years, we recommended the administration to discuss the matter with the Staff Committee to see if a mutually acceptable arrangement can be arrived at.

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

The members of the GAC nominated by the CSC.