



Report of the fourth meeting of the Working Group on Finances (and additional comments)

"Convictions are more dangerous enemies of truth than lies."
(Friedrich Wilhelm Nietzsche) – **A summary**

The administration remains convinced that the appearance of a financial gap of EUR 5.8bn in 20 years is a viable threat. The Working Group on Finances' raison d'être is to discuss the 17 measures presented by the consultants to address this alleged gap. The administration expects staff to fill at least half of the "gap" by contributing EUR 410 000 per staff member. The fourth meeting took place on 12 December 2019. The Salary Adjustment Procedure (the Procedure) was again the most prominent topic on the agenda. The WG Finances will reconvene in January.

Management's proposed agenda ...

The meeting was to address

- feedback from the Administrative Council
- three measures ([see Annex of 2nd meeting report](#)) proposed by the Staff representation
- next steps

... and what was finally discussed

We reiterated for the nth time that we do not believe the gap actually exists because there are substantial flaws in the study, but despite this fact we are willing to discuss any subject with respect to the financial sustainability of the Office.

On career

We stressed that an important and urgent open issue was the deficient New Career System (NCS) and that we are very concerned that the President has so far not listed it as a top priority in his social agenda for 2020. Management did not rule out the discussion on the career. However, they currently do not seem to consider any proper transitional measure but rather favour a so-called "catch-up" measure for the 460 colleagues who have not benefitted from any pensionable reward since the introduction of the NCS in 2015.

Whilst that step is appreciated, we think that it can only be a starting point for fundamentally repairing the NCS. We explained that this measure is no way near sufficient for providing a fair career motivating staff to engage themselves more, never mind correcting the unfair treatment of all those who have been left behind despite enormous efforts.

With this measure colleagues do not “catch-up” at all. For example, it does not remedy the lack of any fair progression in the early part of the career of the newcomers, although this is very much needed for the SSP. It does not address the considerable slow-down induced for many staff. At the other end of the scale, it also does not consider including the A4-2s despite the fact that they have seen their grade and step removed 5 years ago and have since been excluded from any career advancement. It does not fill the void created by the Battistelli-administration when they failed to define a proper transitional measure.

At present, management only contemplates a mix of the current NCS – which they consider to constitute a merit-based system - and a seniority-based system, i.e. some form of periodic career advancement.

We remain convinced that until and unless management does not consider a proper transitional measure and an annual budget adapted for a proper career progression and for the demographic situation of the EPO, it will not solve the career problem and the health, quality and staff engagement problems arising therefrom.

On the Salary Adjustment Procedure (the Procedure)

Management stresses that a part of the (alleged) gap could initially already be covered by applying measure 1 (salary adjustment method) and that the remainder of the gap would not necessarily have to be covered immediately. IT-tools development could help to fill the (alleged) gap with another approx. EUR 1.2bn. The President wants the coverage of the alleged gap to be a common effort of all stakeholders. What the contribution by the Member States is going to be is still unclear. Moreover, a fee increase below inflation and thus a decrease in real terms can hardly be considered as a contribution by the applicants.

There was another lively discussion on how the evolution of salaries had been modelled in the financial study. After an in-depth discussion on the role of the specific indicator in the previous meetings, we this time had a long discussion on the role and influence of other parameters in the Procedure, such as inflation indices and purchasing power parity coefficients.

We reminded the management team once more that the model for expenses in the financial study was over-simplistic and did not take into account the consequences of the stress scenario that management had been retaining, in particular a prolonged global recession. This is why it remains essential in our view that a simulation of elements constituting a future Procedure should be modelled under such environment. On the day of the meeting we had provided a further annex detailing the lack of correlation between the specific indicator and the parities and refining our model for a simulation. We have also requested that management provides us with the detailed assumptions that were made in the study concerning the Harmonised Index of Consumer Prices (HICP) and the Gross Domestic Product (GDP).

Management representatives stated that they want to maintain the principles of the salary method but to have a more predictable outcome of the salary adjustment result. We repeated and explained our position to management on the fundamentals of any Procedure in an international organization like the EPO. We insisted that the simulation of the model should allow a better understanding of how the Procedure will react in such a crisis environment. It would furthermore facilitate discussions on setting the parameters for a moderation clause and an exception clause within such a Procedure.

We eventually agreed that we will provide the Working Group with a draft adjustment procedure including moderation and exception clauses, which can be used to simulate salary evolution in a crisis-scenario. Management will provide us with the assumptions made in the study on EU-HICP inflation and on the GDP growth (EU-zone and World GDP).

On the other measures proposed by the Staff Representatives

There was no time to discuss the further measures proposed by us in any detail. We requested that management provide the following for the next WG-meeting:

- their comments on our proposals,
- a rough estimate of the financial impact of our proposals and
- a reviewed and adjusted EPO fee structure accommodating the impact of diminishing national renewal fees, inter alia due to the lack of adjusting them at national level to at least inflation in the past years.

In fact the increased EPO production of granted patents over the past years subsidises this behaviour of lowering national renewal fees, as the total revenue for member states was still increasing due to EPO's high output, from around 60 000 granted patents per year only a few years ago to now around 120 000. Our proposal to review and adjust the EPO fee structure would in our view already fill a big part of the (alleged) gap suggested in the financial study.

Outlook / next steps

The fifth meeting of the WG Finances – and the last one for 2019 - was planned for 18 December. At the beginning of that week, we were informed that the meeting had been called off by management as they had *“realised that our meetings would benefit from more in depth analysis of the various proposals”*. We would indeed much appreciate if management were to study our proposals thoroughly. The WG Finances will now normally reconvene this month.

Meanwhile we are trying to impress on the management representatives that any staff representative in whatever international organisation would defend a proper Procedure for good reason. We think that we might have made some, albeit slow, progress on that.

We have submitted two more proposals before the Christmas break, being

- a detailed draft Salary Adjustment procedure (Annex 1) and
- a proposal to reinstate the Tax Adjustment for colleagues in the NPS, i.e. recruited after 1 January 2009 ([see Annex 2](#)) which – in combination with our earlier proposal 3 ([see Annex 2nd meeting report](#)) on voluntary recapitalization of a part of the pension for the OPS - constitutes our proposal 3bis.

We hope that management will seriously consider the proposals we made so far, both on the income side (fee adjustment), on investments (transfer to RFPSS and EPOTIF) and on the expense side (fair estimation of the behaviour of the Procedure under a crisis scenario) before the WG Finances can reconvene and discuss on a sound basis.

Conclusion

Now, after the long Christmas break, we should be able to establish whether management is serious about discussing with us and finding agreements based on the real financial situation of the EPO or whether we have merely been kept busy and dogma and pure financial focus will determine how the Office is managed. We would expect the latter would make the Office even less attractive, destroy its reputation and ultimately inhibit its proper functioning due to disengagement of large groups of staff.

We advocate to instead start from a sound and reasonable actual position, future-proofing the Office by

- (re-)designing the fees-structure where necessary to accommodate the changes in pendency time,
- devising a proper investment policy of the operational surpluses likely to arise in the coming years,
- considering changes affecting staff whilst fully respecting acquired rights and
- seeking solutions that favour both the Office and Staff by ensuring fair participation of all stakeholders.

Your Central Staff Committee

Annexes:

Annex 1: Implementing Rule for Article 64 of the Service Regulations for Permanent and other Employees of the EPO

Annex 2: Proposal 3bis Proposal 3 + Reintroducing Tax adjustment for Colleagues in New Pension System (NPS) Proposal by the Staff Representatives in the WG finances

Annex1

DRAFT BY STAFF REPRESENTATION (20 December 2019)

IMPLEMENTING RULE FOR ARTICLE 64 OF THE SERVICE REGULATIONS FOR PERMANENT AND OTHER EMPLOYEES OF THE EUROPEAN PATENT OFFICE

PROCEDURE FOR ADJUSTING THE REMUNERATION OF PERMANENT EMPLOYEES OF THE EUROPEAN PATENT OFFICE, APPLICABLE WITH EFFECT FROM 1 JULY 2020

CHAPTER I

GENERAL PROVISIONS

Article 1

Adjustment timetable

- (1) The levels of the basic salaries and allowances set out in Annex III to the Service Regulations are adjusted each year, with effect from 1 July, in accordance with the provisions of Chapter II of the present procedure and on the basis of a proposal drawn up by the President of the Office after consulting the General Consultative Committee.
- (2) The annual adjustment proposal shall be submitted to the Administrative Council for approval at its meeting in December of the year in question. An estimate of the cost of the proposed adjustments, together with the scales concerned, is submitted to the Budget and Finance Committee at its autumn meeting, if they are available in time.
- (3) Before submitting his proposal, the President obtains confirmation from independent experts, appointed by him, that it is consistent with the provisions of this rule.
- (4) The amounts of the daily subsistence allowance set out in Annex V to the Service Regulations and of the kilometric allowance referred to in Article 79 of the Service Regulations are adjusted by applying the arithmetic average rate of annual salary adjustment for Austria, Germany and the Netherlands to those in place.

CHAPTER II

**ANNUAL ADJUSTMENT OF THE BASIC SALARIES AND ALLOWANCES
SET OUT IN ANNEX III TO THE SERVICE REGULATIONS**

Article 2

Annual adjustment of the scales for Belgium

- (1) With effect from 1 July, the basic salary scale and allowance amounts set out in Annex III to the Service Regulations and applicable for Belgium are adjusted by a percentage corresponding to the Harmonised Index of Consumer Prices calculated for that country, corrected by the index for remuneration trends in the central government services of the reference countries ("specific indicator"), calculated in accordance with the procedure described in Article 3.
- (2) This percentage adjustment is applied to the basic salary scale and allowance amounts in force as at 1 July of the previous year.

Article 3

Calculating the specific indicator

- (1) The central government services of the following eight countries are taken as a reference: Belgium, France, Germany, Italy, Luxembourg, the Netherlands, Spain and the United Kingdom.
- (2) The specific indicator is obtained by performing the following operations:
 - (a) Establishing correspondence between the grades at each of the reference national administrations and those at the EPO.
 - (b) Calculating, for each of these grades and for each of two marital situations ("unmarried" and "married with two dependent children"), the gross maximum and minimum monthly remuneration as at 1 July of the adjustment year and as at 1 July of the previous year. This calculation takes account of all elements making up the remuneration paid to national civil servants. Any one-off payments made during the year are converted into corresponding monthly amounts.
 - (c) Calculating, for each of these grades and for each of the above marital situations, the net maximum and minimum monthly remuneration as at the two comparison dates. This is done by deducting, from gross remuneration, compulsory social security contributions (sickness, death, invalidity and long term care insurance, pension scheme) and the income tax levied by the central government authority, calculated without taking non-automatic personal allowances into account.
 - (d) Neutralising the effect of double-counting of variations in specific compulsory deductions from the salaries of officials in the national civil services, if

the same compulsory deductions are also made to EPO staff salaries, in accordance with instructions set out in the Annex.

Deductions from national civil service salaries for benefits not granted to staff of the EPO shall not be taken into account.

- (e) Calculating, for each of these grades and for each of the above marital situations, the real-term trend indices for maximum and minimum remuneration. This is done by deflating the net remuneration trend indices by the national Harmonised Index of Consumer Prices over the 12-month period preceding the date of the annual adjustment (1 July).
- (f) Determining, for each of these grades and for each of the above marital situations, the average real-term trend indices per grade. This is done by calculating the arithmetical mean of the real-term trend indices for maximum and minimum remuneration calculated under (e).
- (g) Determining an average trend index per grade. This is done by applying to the average real-term trend indices, calculated under (f), weightings of 0.3 and 0.7 respectively for the marital situations "unmarried" and "married with two dependent children".
- (h) Determining an average trend index per reference country. This is done by weighting the grade indices, obtained under (g), by the grade distribution of staff in the central government services of the country concerned.
- (i) Determining the average overall trend index (or "specific indicator"). This is done by applying the following coefficients to the country indices obtained under (h):

Belgium:	7.0%
France:	16.3%
Germany:	19.8%
Italy:	15.0%
Luxembourg:	5.2%
Netherlands:	8.2%
Spain:	11.9%
United Kingdom:	16.6%

- (3) The national remuneration data used for the calculations described in paragraph 2 are those supplied by the national governments for the European Communities and the Co-ordinated Organisations.

Article 4

Determining the scales for countries other than Belgium

To obtain the basic salary scales and allowance amounts applicable in a member state other than Belgium, the new basic salary scales and allowance amounts applicable in Belgium are multiplied by the purchasing power parity

coefficient relating to the country concerned and calculated with reference to Brussels in accordance with the provisions of Chapter III.

CHAPTER III

INTERIM ADJUSTMENTS

Article 5

(1) Within the reference period, each time that the relevant consumer price index in a country, as indicated in Article 5, shows an increase over three consecutive months of more than 6%, the President of the Office shall recommend that the Administrative Council provide for a special adjustment of remuneration. The first of the three consecutive months shall fall within the reference period.

(2) Each time the threshold of 6% is exceeded, the special adjustment shall be equivalent to the threshold, i.e. 6%. Any special adjustment shall take effect the month following the first month when the threshold is exceeded.

(3) The 6% threshold is measured as from the preceding 1 July or, if a special adjustment has already been granted during this period, as from the date of effect of this special adjustment.

(4) Any special adjustment granted during the reference period used for the calculation of the annual adjustment at 1 July shall be deducted from this annual adjustment.

CHAPTER IV

CONSUMER PRICE INDICES, COEFFICIENTS OF PURCHASING POWER PARITY AND DOUBLE COUNTING

Article 6

(1) The Harmonised Index of Consumer Prices for Belgium referred to in Article 2 and the purchasing power parity coefficients referred to in Article 4 are calculated by the International Service for Remunerations and Pensions in collaboration with the Statistical Office of the European Communities in accordance with the methodology approved by the decision-making bodies of the European Union after consulting national statisticians.

(2) The national price indices referred to in Article 3(2)(e) correspond to the Harmonised Index of Consumer Prices calculated by the Statistical Office of the European Communities.

- (3) The double-counting effect is determined by the International Service for Remunerations and Pensions in accordance with the provisions of Article 3(2)(d).

CHAPTER V

PROVISIONAL ADJUSTMENTS AND POSSIBLE CORRECTIONS

Article 7

Provisional adjustments

- (1) Should the civil services of some reference countries not forward the information required under Article 3(3) in time for the President to submit his adjustment proposals in accordance with Articles 2 to 4, the President submits to the Administrative Council a provisional adjustment proposal based on the information available to him.
- (2) As soon as he is able to do so, the President submits to the Administrative Council a definitive adjustment proposal in accordance with Articles 2 to 4. This definitive adjustment takes effect on 1 July of the year for which it is calculated.

Article 8

Data corrections

- (1) If the data used to calculate an adjustment have to be corrected retroactively, the President, with the agreement of the independent experts referred to in Article 1(3), modifies as appropriate the salary scales in force and submits them to the next meeting of the Administrative Council for approval.
- (2) Paragraph (1) shall be applicable to payments made to staff in the administrative statuses provided for in Article 39 of the Service Regulations and to recipients of EPO pension benefits.

Article 9

Moderation clause

- (1) The final specific indicator shall result from the calculation of the weighted average of the changes in percentage in real terms in the net remuneration of comparable grades in the National Civil Services of the reference countries, covering two reference periods with a weight of two-thirds for the reference period as defined in Article 3, (2), (b) and a weight of one-third for the preceding reference period. The value of the specific indicator used for the annual adjustment shall be subject to an upper limit of 2 % and a lower limit of -2%. If the value of the specific indicator

exceeds the upper limit or is below the lower limit, then the value of the limit shall be used to calculate the adjustment value.

- (2) The first paragraph shall not apply when Article 10 applies.
- (3) The remainder of the annual adjustment resulting from the difference between the adjustment value calculated with the specific indicator and the adjustment value calculated with the limit shall be applied as from 1 April of the following year.
- (4) In the event that the annual adjustment leads to a basic salary or an allowance which is lower than that in force on 30 June of the year in question, this negative adjustment shall be set against future adjustments, and salaries and allowances shall be maintained at their level.

Article 10

Exception clause

(1) If there was a decrease in the real gross domestic product of the Contracting States the previous year and the specific indicator is positive, only part of the specific indicator shall be used to calculate the value of the adjustment. The remainder of the adjustment value corresponding to the remainder of the specific indicator shall be applied as from a later date in the following year. That remainder of the update value shall not be taken into account for the purposes of Article 9. The reference values of the gross domestic product are those calculated by the Statistical Office of the European Communities for the EPC Contracting States in the European Union, and by the competent national authorities for the other Contracting States, available at the time of calculation. The value of the GDP of the Contracting States, the consequences in terms of split of the specific indicator, and the application date are defined in accordance with the following table:

GDP of Contracting States	Consequences on the specific indicator	Date of payment of the second part
[-0,1%; -1%]	33%; 67%	1 April of year n+1
[-1%; -3%]	0%; 100%	1 April of year n+1
below -3%	0%	-

(2) When the application of paragraph 1 has led to the fact that the value of the specific indicator did not serve the adjustment of the remunerations and the pensions, that value shall form the basis of the calculation of a future adjustment once the cumulative increase of the GDP of the Contracting States measured from the year where paragraph (1) was applied, becomes positive. In any case the value mentioned in the first sentence shall be subject by analogy to the limits and the principles laid down in Article 9. The evolution of the GDP of the Contracting States shall be regularly measured for this purpose.

(3) If there was a decrease of the gross domestic product in the world the previous year, then the provisions of Article 9(4) do not apply to the annual adjustment.

(4) If relevant, the legal consequences resulting from the application of Article 9 and this Article shall continue to have full effect even after the date of expiry of this procedure as referred to in Article 11.

CHAPTER VI

INTERIM REPORT, EVALUATION OF THE PROCEDURE AND SUBSEQUENT MODIFICATIONS

Article 11

- (1) After the adjustment with effect from 1 July 2024 the President shall submit an interim report to the Council on the application of the procedure.
- (2) After the present procedure has been in operation for ten years, the President will undertake a full review of its results in 2029. This review will take account of the EPO's recruitment needs, the competitiveness of its salaries, and any difficulties encountered in applying the procedure.
- (3) In the light of this review, the President will make a report to the Administrative Council, and if appropriate submit proposals for change. However, until such changes are approved by the Administrative Council the present procedure will remain in force.

CHAPTER VII

DATE OF ENTRY INTO FORCE AND TRANSITIONAL MEASURE

Article 12

- (1) The present procedure will for the first time apply with effect from 1 July 2020.
- (2) In application of Article 10(2) of the former procedure, as a result of the examination of the impact on the purchasing power conducted under its Article 10(1), the salary scales and allowances for the following countries are updated in order to correct for the relevant years the differential in purchasing power resulting from the application of Chapter IV of the former procedure.

(3) The present procedure will be applied in the light of Articles 33(2)(b) and 46 of the European Patent Convention.

ANNEX

METHOD FOR AVOIDING DOUBLE-COUNTING

Article 3(2)(d) of the Implementing Rule for Article 64 of the Service Regulations introduces the principle of avoiding double-counting in order to ensure better compliance with the principle of parallelism with the evolution of remuneration in the national civil services.

To ensure proportionality of changes in the reference countries' social costs, the specific indicator shall be calculated as follows:

The changes to social costs which are comparable to those in the EPO are identified according to the definition in Article 3(2)(d).

A correction is calculated which neutralises the identified changes to social costs by using current salary data but with deductions of the relevant contribution made at the rates applicable in the previous year.

Article 2

This decision shall enter into force on 14 December 2007.

It shall apply with effect from 1 July 2008.

Done at Munich, 14 December 2007.

For the Administrative Council

The Chairman

Roland GROSSENBACHER

October

Annex2

Proposal 3bis **Proposal 3 + Reintroducing tax adjustment for colleagues in New Pension System (NPS)** **Proposal by the Staff representatives in the WG finances**

The Hague, 19.12.2019

The Measure: We propose that colleagues under the NPS should benefit from the tax adjustment.

The context: We have made a proposal (proposal 3) aiming at giving the voluntary possibility for colleagues under the Old Pension Scheme (OPS) to recapitalise a part of their pension. We propose that, as a symmetrical measure, the colleagues under the NPS should benefit from the tax adjustment.

Advantage in terms of HR policy: The combination of these two measures (Proposal 3bis) would somehow bridge the gap between the two systems while fully respecting acquired rights.

Financial impact: It is likely that the second measure can be entirely financed by the gains made by the Office under the first measure if designed in an attractive way for staff. We respectfully ask for the financial impact of the combination of these measures (**Proposal 3bis**) to be assessed.

Legal assessment: the tax treatment of the NPS is an anomaly under international law. With this second measure this anomaly would be repaired. Pending the introduction by the EPO of a truly internal tax under its primary law ([CA/7/03](#)) or its secondary law ([CA/78/08](#)) which the Office should always have in mind and favour whenever a bigger European integration would be considered (introduction of the UPC, etc...), this amendment would re-establish a fair treatment of the colleagues under the NPS. The longer term objective of establishing an internal tax on pensions should be kept in mind and actively pursued, since it would also re-establish equal treatment amongst Member States, currently severely destroyed to the benefit of the two host countries.

Changes needed: the Office needs to ask the Administrative Council to repeal [CA/D/18/07](#), thereby reactivating the provisions of Article 42 for colleagues in the NPS.