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Open letter

Input for the Working group on Performance Management

Dear Mr President,

The Central Staff Committee is worried at the lack of concrete progress in the Working Group on Performance Management (WGPM). We consider that a range of discussions are needed in order to re-establish a complete career system that is fit for purpose and allows again the EPO, and especially the corps of examiners, to perform their tasks as required by the EPC.

Unfortunately, not a single meeting of the WG was organised in June and only a one and a half hour VICO is planned for July.

On top of the numerous input already made by us since almost one year, you will find attached five concrete proposals in order to help the Working group progress:

- Input by the CSC on transitional measures from the OCS to the NCS
- Input by the CSC on the design of a career path based on merit while enhancing a cooperative working environment
- input by the CSC on some implementation details of the career on:
 - Orientation for the Appraisal: in Search and Examination (OASE)
 - Appraisal Committee and Harmonisation Committee
 - Target Setting (Circular 366)

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We look forward to seeing more face to face meetings of the WGPM after the summer break, where your appointees in the WGPM will have a mandate to meaningfully consider our proposals. The WGPM could benefit from the additional presence of career specialists.

One year has been lost, using the current system both for reporting and for rewarding staff. We look forward to substantial progress of the WG in autumn in order to provide adequate provisions in the draft 2020 budget to be decided by the Administrative Council in its December session after BFC consultation.

This would be a clear signal to staff that you want to seriously address the major problems of the current career system and their impact on the quality of the work delivered by the EPO and on the health of staff. It would also signal that you want to offer EPO staff a reasonable career prospect.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Alain Dumont', with a long horizontal stroke extending to the right.

Alain Dumont
Acting Chairman of the CSC

Working group on Performance Management

WG on performance management

Input by the CSC on transitional measures from the OCS to the NCS

Introduction:

The new career system (NCS) was introduced without any transitional measure, an unprecedented procedure in other international organisations. This has resulted in demotivation, frustration and litigation. The mandate agreed in the WG includes accommodating "*transitional measures addressing past litigation*".

The CSC proposes the following transitional measures with retroactive effect from 1 January 2015, in order to allow a smooth and progressive transition towards the NCS and the new salary grid.

Unchanged parameters:

The salary grid of the NCS and its job groups are kept. The transition to the new grid with effect from 1.7.2015, either in between steps or using the 50 Euros rule is kept.

Changed parameters:

Staff members currently without a grade are attributed a grade and step in the new system. Every staff member enjoys from 1 January 2015 the benefit of the old career system (OCS) until reaching the end of his/her grade under the OCS without prejudice to the real career evolution in the NCS since 2015. From that point onwards, only the NCS applies.

Time framework:

The working group is required to provide simulations as to the budgetary impact of such measures in time for the President to be able to submit a proposal in the draft budget 2020 which will be decided by the Administrative Council in December 2019 after consultation of the Budget and Finance Committee in October 2019.

Means:

The working group should be provided with all data allowing it to perform the necessary simulations as to the impact of a proper transition from the OCS to the NCS. A sufficient number of meetings of the WG should be planned in order to achieve the above goal. The WG should be provided with the needed expertise, either internal or external.

Alternatives:

The CSC considers that the above solution has the potential to greatly reduce past and future litigation on the career system and improve vastly engagement of large groups of staff. The CSC is also ready to consider alternatives, e.g. reverting to the old career system, which was a merit based system (with automatic step advancement and promotion based on merit) or implementing a transition using the model of the European institutions when their new career system was introduced in 2004. An early input by the President on his preferred path would help the WG to concentrate only on one path.

Working group on Performance Management

WG on performance management
Input by the CSC on the design of a career path based on merit
while enhancing a cooperative working environment

Introduction:

The new career system (NCS) has proven not to be a merit based system but a “winner takes it all system” exacerbating competition, creating frustration, demotivation and litigation and leading to a loss of engagement for quality. Recruitment of examiners is also becoming increasingly difficult. A need to review the NCS to foster cooperation spirit and staff engagement has arisen. The WG has been tasked with designing “a career path based on merit while enhancing a cooperative working environment”.

Means for the WG, spirit of discussions and goal:

The design of a career system working properly is an expert matter which requires deepened discussions without taboos and dogmas and an overall view of all aspects, if one wants to obtain staff acceptance. The ability to recognise the defaults of the current system and a strong mandate by the President to his appointees in the Working Group is needed. A sufficient number of meetings should be organised. The members of the WG should cooperate in good faith in order to find common ground and regular feedback should be provided to the President to monitor the progress. All needed data must be made available to assess the situation (demographic data and data on career results since 2015). The WG would benefit from the presence of the career experts available in the administration.

The CSC considers that a discussion in the WG with a view to amending together the system along principles as described below has the potential of greatly reducing past and future litigation on the career system and improving vastly engagement of large groups of staff for cooperation and quality to the benefit of the EPO.

Principles:

The CSC proposes to implement the NCS as **a merit-based promotion system functioning around an average career**¹. By design, with a lot of grades with only 5 steps each, the NCS allows accelerating or slowing down the career on a frequent basis by acting on the promotion date².

The value of the steps (low at the beginning of the career and higher at the end) already provides structural substantial savings for the EPO.

It is proposed to avoid the yearly high transactional costs, frustration and litigation resulting from the discretionary attribution of step advancement.

A proposed solution could be inspired from a number of elements that the EU institutions introduced with their NCS but that the EPO left aside. The result should

¹ See Annex

² It is for example questionable whether the double steps foreseen in Article 48 should not be replaced with an amendment of Article 49 in order to allow promotion before reaching the end of the grade.

be an expected average career for a majority of staff from which low and high performers would reasonably deviate.

Unchanged parameters:

The new salary grid is kept. Article 47, ServRegs is kept, i.e. the principle of a professional development either within or between a technical and a managerial career path. Promotion is discretionary and is decided by the President. Step advancement can also be delayed in case of insufficient performance or even stopped in case of a procedure under Article 52.

Changed parameters:

Changes to some articles of the ServRegs might be necessary, e.g. Articles 48, 48a and 49 and to Circulars 364-366 in order to encourage cooperation and reward engagement towards quality.

Further amendments of the ServRegs are needed to reintroduce transparency in the system, e.g. by upgrading the Harmonisation Committee to a statutory joint body. The appraisal committee should also become a joint body.

It is suggested to borrow when possible references from the corresponding Articles of the EU Staff Regulations, e.g. Articles 44 and 45, and further EU Regulations, and adapt them to EPO demography and needs, also for transfers from a lower job group to a higher one (e.g. from job group 6 to job group 5).

Budgetary aspect:

The budgetary aspect can be tackled in different ways. When addressing budgetary issues, account should be taken of both the current demography of EPO staff and their legitimate expectations and the need to provide all employees including those recruited under the NCS with a reasonable career expectation.

Time framework:

The working group is required to provide a design of a complete new scheme at the latest for allowing a decision of the Administrative Council in June 2020.

Alternatives:

The CSC is also ready to consider alternatives, e.g. reverting to the old career system, which was a merit based system (with automatic step advancement and promotion based on merit) or implementing fully the model of the European institutions when their new career system was introduced in 2004. An early input by the President on his preferred option would help the WG to concentrate only on one path. Further dilatory measures³ by your administration should be avoided if the WG is to be taken seriously.

³ No meeting of the WG was organised in June despite our request. Only a one and a half hour VICO is planned for 9 July and some data requested on current application of the NCS

ANNEX

Example of an average career for an examiner

The Central Staff Committee has been asked by the administration to explain what it understands by an average career. An example is given with reference to the career of an examiner. This is the largest group in the EPO and the group for which recruitment difficulties are already arising under the NCS.

An average career is a career that will normally lead an examiner to the end of the job group 4.

For example, an examiner recruited without experience at G7-1 level, e.g. 25 years old, could reach the grade G13-5 at the age of 60 after 35 years of experience in the EPO and six promotions.

In the above example, with a performance constant over the career, this is achieved by granting one step every year and by a promotion at the end of each grade. This means promotion is neither accelerated nor delayed. Please beware that the structure of the salary grid is making salary progression slower in the beginning of the career than under the OCS.

The career of staff with performance below average would be slowed down by acting on the promotion dates. Staff with an unsatisfactory performance could be further delayed in their career advancement by possibly denying step advancement, all under conditions to be defined in the Service Regulations.

Staff with a performance above average and/or with competencies above average should be able to access job group 3, as intended by design of the NCS, i.e. as foreseen in Article 47 and Annex I (decided by the Administrative Council) under the technical career path and in Circular 365 (Senior expert). This means that the EPO should open up again some positions as senior expert. This would be achieved by accelerating promotion to a higher grade. The conditions must also be defined in the Service Regulations and Circulars.

It goes without saying that the EPO needs to recruit primarily examiners and to have them stay as examiners during their whole career, i.e. several decades. If examiners are quickly given to understand that there is no career in Job 3 at the EPO as an examiner but only as a manager (or in the Appeals Boards!) then the message to them is: please leave the examiner career as soon as possible! This is why the EPO came very early to the conclusion that examiners need a decent (average) career and introduced the A4-2 grade. The Battistelli administration forgot about this important fact.

The above is only for illustration of the principle of an average career and can and should be extended, *mutatis mutandis*, to other staff in other job groups in to order to provide all staff with a reasonable career expectation at the EPO.

have still not been made available. In view of the complexity of the matter, a strong effort needs to be made right after the summer break.

Working group on Performance Management

WG on performance management
Orientation for the Appraisal in Search and Examination – OASE

Three possibilities are presented in the document, which amounts to three different systems:

Option 1 - system, where only the first examiner receives examination points

Option 2 - system of points distributed among all members of the Division

Option 3 - system of points given equal points to all members of the Division]

Further optional elements or alternatives are marked in purple.

I. INTRODUCTION

The Office employs quite a variety of staff. For many the performance might be difficult to estimate, for example for those performing special administrative, technical or legal functions in DG's 4 and 5. The performance of staff performing patent granting duties in DG 1 seems easier to estimate, with two sizeable groups performing similar work. This first orientation paper provides guidance on the performance assessment of biggest distinct population – the examiners.

For formalities officers, HR colleagues, facility management, technical services, BIT staff, buyers, patent information, lawyers and those we have not listed the staff committees lack the deeper insight yet. We are therefore looking for colleagues who can share appraisal issues they experience in the respective areas with us, so that we can provide guidance here, too, in future parts of the "Orientation for the Appraisal"-series. So please contact your local committee.

The estimation of the work of individual examiners in DG 1 is often a source of conflict and litigation, as the legal aspects of the assessment are not an exact science. There is a need to address the lack of clarity and provide a commonly accepted orientation framework for judging the work of examiners to approach a fair assessment as stipulated in Article 47a (1) ServRegs.

II. QUALITY OF WORK

It is noted that it is the team manager's task to check and guarantee the quality of work delivered. It is therefore assumed that every fully trained examiner does a work of "good" quality at least, as long as the responsible team manager is not able to prove a recurring lack of quality. In case the quality is disputed, by the team manager, the assessment of quality of the work done by individual examiners has to be based on substantial assessment of the work done, including all factors involved in the work done by a particular examiner, including in particular:

- The type and diversity of procedures performed
- The general compliance with the provisions of the EPC
- The richness and precision of the analysis
- The thoroughness and soundness of the decisions
- The extension, accuracy and depth of the searches performed

III. QUANTITY OF WORK

The assessment of the individual evaluation of work done remains a managerial responsibility, which is to take into account all relevant aspects as listed below for the evaluation.

Relevant aspects of the work done when assessing the quantity of work including in particular:

- The type and diversity of procedures performed
- The number and type of intermediate action (communications, summons)
- The participation in Divisions as Second Member or Chairman
- The number of oral proceedings
- The difficulty of technical field
- Classification and opposition work
- The limitation of the number of applications in a particular technical fields
- Other tasks performed by the Examiner, like coaching
- Performing work in more than one technical field
- etc.

As an orientation for assessing the quantity of work it is proposed to distribute a number of standard points to all members of Divisions according to different types of actions.

A) Distribution of standard points per action

Standard points will be distributed according to the type of final action, according to this table.

Action type -	Examination Points					
	Grant			Refusal		
SEARCH						
Search – Search Examiner	100			100		
Total Search	100			100		
FIRST ACTION						
First action Examination - First Examiner	40	50	20	40	50	20
First action Examination - Chairman	10	0	20	10	0	20
First action Examination - Second Examiner	0	0	20	0	0	20
SUMMONS						
Summons – First Examiner	40	50	20	40	50	20
Summons – Chairman	10	0	20	10	0	20
Summons – Second Examiner	0	0	20	0	0	20
FINAL ACTION						
Final action Examination - First Examiner	40	50	20	60	140	40
Final action Examination - Chairman	10	0	20	30	0	40
Final action Examination - Second Examiner	0	0	20	10	0	40
Total Examination (without / with summons)	100/150	100/150	120/180	200	200	240

If, for whatever circumstances, an application is re-allocated to a different Division, the first action points will be given again in the first action after reassigning.

The distribution of points according to this scheme presumes a randomization in the allocation of applications to the divisions/examiners.

B) Classification / Opposition

The classification / opposition time will be deducted from the S/E time.

C) Oral proceedings

For Oral Proceedings, the actual duration of the oral proceedings will be deducted from the S/E time of each of the three members of the Division. For proceedings in absentia, one hour will be deducted for each member of the Division.

D) Productivity

The productivity will be defined as number of points per day.

E) Learning curve

Learning curves will be given in terms of percentages of expected productivity, according to the following tables:

Grade	Learning curve (% expected productivity)
New Recruit	
Year 1	60%
Year 2	80% 70%
Year 3	90% 80%
Year 4	90%
Year 5	90%
Transfer technical field	
Year 1	80%
Year 2	90%

IV. REFERENCES

A) References for search and examination

Productivity references will be based on at least five years of historical data. Data from examiners with learning curve will not be taken into account.

Changes of the references will be consulted at the GCC on proposal from VP1 at least every three years. A joint subcommittee of the GCC will prepare a reasoned recommendation to the GCC before submission. Adoption of the references will have to be approved by a 3/4 majority of the GCC. They will have to be published before the start of the reporting exercise.

The essential parameter for the estimation of the quantity of work is the Basis Reference, which will be calculated for every technical field for which it is statistically relevant.

Technical field	Basis Reference
M&M	
Field one	36
Field two	30
Field three	30
HBC	
Field one	20
Field two	38
Field three	26
ICT	
Field one	22
Field two	18
Field three	24

All units of the table are expressed in points/day. Again, the validity of these references presumes randomization in the allocation of patent applications to the divisions/examiners.

The Basis Reference is defined for each technical field as:

$$\text{Basis Reference} = \min(\mu - 3 \cdot \sigma, 0,5 \cdot \mu)$$

μ : the arithmetic mean

σ : standard deviation

B) Publication of References

The number of points will be monthly published per team and per technical field, together with statistics on the different types of actions:

Month XX	Number of actions	Points
Searches	183	18300
First Actions	120	7200
Summons	35	2100
Decisions to Grant	102	6120
Refusals	34	4080
TOTAL	474	37800
S/E Time (days)		960
Productivity (points/day)		39

Where the S/E time is the time employed by all members of the Divisions

Also a list of anonymised points per examiner will be published for each team:

Month XX	Number of points	Productivity (points/day)
Examiner 10	2300	42
Examiner 9	2552	41
Examiner 8	2380	39
Examiner 7	1980	36
Examiner 6	1920	36
Examiner 5	2040	34
Examiner 4	1860	32
Examiner 3	1920	32
Examiner 2	1780	30
Examiner 1	1740	29

V. REPORTING AND PERFORMANCE ASSESSMENT

While the assessment of the individual evaluation of work done remains a responsibility of the reporting officer, who has to take into account all relevant factors for the evaluation, the productivity and number of standard points may be used as an orientation.

For example, productivities higher than Basis Reference +50% might be assessed with an “excellent”, respectively “far above the expected level”, or any other corresponding assessment in a revised assessment system.

Productivities higher than Basis Reference +30% might be assessed with a “very good”, respectively “above the expected level”, or any other corresponding assessment in a revised assessment system.

Productivities above or at the Basis Reference shall be assessed at least with “good”, respectively “at the expected level” any other corresponding assessment in a revised assessment system.

Productivities –10% below the Basis Reference shall be assessed at least with “sufficient”, respectively “below the expected level” any other corresponding assessment in a revised assessment system.

Productivities more than –10% below the Basis Reference shall be assessed with “insufficient”, respectively “far below the expected level” any other corresponding assessment in a revised assessment system.

VI. SIMPLIFIED REPORTING

Examiners with productivities above the Basis Reference may request simplified reporting.

VII. ENTRY INTO FORCE

The common orientation for judging the work of examiners will be applied from 1 January 2020.

Working group on Performance Management

WG on performance management Appraisal Committee & Harmonisation Committee

1. INTRODUCTION

In the recent years staff reported growing dissatisfaction with their Appraisal Reports, which increasingly result in calls for conciliation with the counter-signing Officer (CSO) and reporting Officer (RO), and subsequent submissions to the Appraisal Committee.

The Appraisal Committee currently consists only of members nominated by the President, Staff Representatives are not allowed. In most cases referred to the Appraisal Committee, the reports as drafted by the RO and the CSO are apparently confirmed without amendment. These final decisions are often challenged in front of the ILOAT in Geneva.

The perception of staff, due to the unbalanced composition of the Appraisal Committee, is one of arbitrariness and intransparent decisions.

Equal numbers of members appointed by the President and the Central Staff Committee (CSC), and a chairman chosen in agreement between the President and the CSC would contribute to a better acceptance of the decisions taken by the Appraisal Committee and thus could help to reduce complaints to Geneva.

Besides, a further positive effect would be restoration of trust in the administration, which would result in an improved staff engagement and return of professional pride.

This issue has been explained to the President during a meeting with the Central Staff Committee (CSC) which took place on 03/06/2019 and the President signalled support for an involvement of Staff Representatives in the Appraisal Committee.

A corresponding line of argumentation holds for the composition of the Harmonisation Committee.

2. AMENDMENTS TO THE SERVICE REGULATIONS

2.1 An involvement of Staff Representatives, respectively staff members appointed by the Central Staff Committee, in the Appraisal Committee requires amendments to the Service Regulations.

A proposal, which should be understood as an unbinding basis for discussion is provided below:

Article 110a1 Objection procedure for appraisal reports

(1) In case of disagreement on an appraisal report referred to in Article 47a, the parties to the dispute shall endeavour to settle it through conciliation.

(2) If at the outcome of the conciliation, an employee is still dissatisfied with his appraisal report, he may challenge it by raising an objection with the Appraisals Committee.

(3) The President of the Office and the Central Staff Committee shall appoint in mutual agreement the chairman of the Appraisals Committee and his deputy.

(3a) The President of the Office and the Central Staff Committee shall both appoint 8 employees in active employment at the beginning of each year.

(3b) Amongst the 8 appointed members at least two shall be in job group 4, two in job group 5 and two in job group 6.

(3c) From each list of 8 employees the chairman or his deputy will choose two members for each session, in cases involving an employee in job group 4, 5 or 6, the chosen members shall be in the same job group as the employee who challenges his appraisal report before the Appraisal Committee.

(4) The Appraisals Committee shall review all relevant grounds for challenging an appraisal report.

2.2 An Involvement of Staff Representatives, respectively staff members appointed by the Central Staff Committee, in the Harmonisation Committee requires amendments to Circular 364. The special case of the Boards of Appeal Unit should also be considered.

A proposal, also to be understood as an unbinding basis for discussion, is provided below:

E. Process

The President shall take appropriate measures to ensure a smooth reward process. The procedure and responsibilities are described *inter alia* in Part IV.A above. More specifically:

1. A Harmonisation Committee shall be created to ensure a consistent approach across all DGs, in particular to ensure a balanced distribution among all categories of staff (such as but not limited to gender, job group, etc.). The Harmonisation Committee shall be responsible for ensuring observance of the applicable criteria Office-wide.
2. The Harmonisation Committee shall be chaired by the President and composed of equal numbers of staff members of each DG appointed by the President of the Office and the Central Staff Committee (CSC), the total number of Harmonisation Committee members shall be determined by the President of the Office.

Working group on Performance Management

WG on performance management Target setting (Circular 366)

The mandate given to the Working Group on Performance Management comprises a redesign of the target/goal setting procedure provided in Circular 366; the current Office practice is to cascade the Office goals down to the individual employee¹. However, Circular 366 also stipulates that the targets given to an individual employee must be collaboratively agreed-upon².

This is a contradiction in itself and requires a redesigned and amended Circular 366.


Furthermore, the e-learning module “Guide to Performance Development at EPO” teaches that goals must be S.M.A.R.T, thus attainable:

Module 2: Goal setting (04:42 / 05:36)

S.M.A.R.T. goals

- Specific
- Measurable
- Attainable
- Relevant
- Time bound

Attainable



Goals must be within your capacity to reach. If goals are set too far out of your reach, you cannot commit to accomplishing them. Goals need to stretch you slightly so you feel you can do it and it will need a real commitment from you. Success in reaching attainable goals keeps you motivated.

¹ Circular 366 (January 2018), section II.4: “cascaded down through the units.” See also section III:1, 1st paragraph

² Circular 366 (January 2018), section I: “Performance development is the process by which managers and staff collaboratively agree upon the contribution...”. See also section III.1, 2nd paragraph.

The following aspects are therefore proposed to be incorporated into Circular 366:

- For each employee the average value of the quantitative goals he/she actually achieved -and not the goals he/she has been given- during the past five years is considered, possibly *pro rata temporis*.
- This average achievement plus not more than 1.5% defines the attainable goal for the following year of an individual employee.
- The average achievement expected for subsequent following years must not increase by more than 10% over a period of 10 years.