



07.10.2016
sc16188cp – 0.2.1/4.6

Some advice from a friend: The praises of your advisors may cost you dearly

Following AC resolution CA/26/16, the EPO management latched onto the idea of a social study and ran with it, single-handedly defining the scope and giving an “independent consultant” the mandate to perform a social study of the EPO. The [Social study](#) by PricewaterhouseCoopers (PwC) is now available and will serve as a basis for discussion at the up-coming “social conference” in less than 10 days¹ and possibly be instrumental in determining further reforms.

As PwC concludes: “*the high levels of detail... may have rendered the report somewhat difficult to read*” (p.111). Nevertheless, the CSC will attempt to give you a preliminary impression.

1- The study is “off-topic”

The opening paragraphs make it very clear that the references for the whole study relate to the “EPO external operational environment”: The vocabulary used² renders it unambiguous that the “*external strategic challenges*” are the drivers of the change process and therefore will be the criteria used to judge them.

On the other hand, words such as “EPC” or “public” (not “public image”) do not appear anywhere as key factors in the EPO’s mission³. Neither becoming a world leader in IP nor becoming THE world patent granting authority is part of the mission statement set out in the EPC, the second goal being patently absurd. This seems of little consequence to PwC. The notion of maximising the EPO share of the PCT “*market*” is just an artefact neither foreseen nor even mentioned in the PCT. On the contrary, systematically generating operating surpluses (profits) for the benefit of the Member States contravenes the requirement of a balanced budget as set out in Article 42(1) EPC.

Obviously, the EPO management’s usual “market-driven” mantra has been taken on board by PwC without any form of critical analysis. In doing so, PwC has simply **missed the elephant in the room which is the original mission of the EPO as defined in the preamble of the EPC**: the EPO is a public service entity put in place to protect inventions and serve innovation in the interest of the public at large. The real aim of a public service is not to “*win*”, or to “*compete*”, or to “*grow*” or to “*propel business forward*”⁴. Hence any analysis of the EPO with only these goals in mind is truly misconceived. An evaluation of public entities usually follows a specific methodology that has been

¹ Just one of the 3 large studies with around 600 pages put at our disposal for evaluation before said event.

² “increasing competition”/“competitive advantage”/“international market”/“discerning customers”/“business model”

³ The term “EPC” appears only to re-affirm the powers of the President in managing the Office and taking decisions in appeal matters, providing the legal basis for golden rule 1: *the boss is always right* and rule 2: *if not, see rule 1*.

⁴ See <http://www.pwc.com/us/en/advisory-services/human-capital-hr.html>

specially adapted to the nature of public service, primarily aiming at evaluating the impact of public policy decisions and actions on stakeholders⁵.

In school terms, such a study would be marked as “interesting” but “off-topic”.

2- PwC as an adequate partner?

The above throws doubts upon whether PwC is either an adequate or even appropriate independent specialist for evaluating the “change process” in the EPO.

Symptomatic of this problem, the change process model suggested is a standard PwC product called “Transform” (©?): this is an off-the-shelf, one-size-fit-all methodology that can be applied with almost the same flow-charts and diagrams in many businesses (see the example of Oracle in the Annex).

3- A one-sided analysis reflecting his master’s voice

At the start, the study is presented as being based on an objective survey, solid fact-finding and the application of genuine, independent analysis. Further reading begins to cast serious doubts about these three assertions.

First, the study is only partially based on hard data such as the survey results, which leaves a **lot of room for interpretation**⁶ in the analysis.

Second, the study is remarkable for **what it conceals**: it is incomprehensible how a consultant can produce a 300-page analysis of the EPO social situation without once mentioning the main union SUEPO⁷ who represent more than 50% of its staff.

Third, how can the investigations and disciplinary procedures targeting a member of the Boards of Appeal, Staff Representatives and Union Officials which have caused social unrest amongst staff and raised concerns in the Administrative Council go completely unnoticed by PwC? Also, why is the Technologia survey 2016 not even cited?

Last, most of the key **starting-points of the study**, such as the information produced by the administration⁸, present policy mantra and top management philosophy, are simply taken for grantedⁱ without question.

4- Flawed logic

While some of the problem analysis appears to be correct (see pt. 5 below), most explanations reveal a **strong bias** on the part of the “independent” consultantⁱⁱ.

In other areas the explanations regarding the causality are simply flawed, sometimes to such an

⁵ see for example those aims presented in the working document [„Comment évaluer l’impact des politiques publiques“](#) , France Gov, September 2016

⁶ Fact is that of the 113 pages only 13 pages relate to the survey, leaving a large room for interpretation. The presentation regrouping some categories “because it seemed fit” is a dubious statistical methodology. Furthermore, most of the questions therein are very ambiguous rendering them useless for drawing meaningful conclusions from them. The benchmarking for the remuneration package presents a complex picture which is not always reflected by the clear cut, simple statements made on them, such as “very competitive” or “most favorable package offered”.

⁷ The acronym SUEPO never appears in the final report and only once in the appendix, whereas the acronym FFPE is fully explained in the glossary as “European Civil Service Federation”.

⁸ Example: The health data are compared without mentioning the fact that the metrics have changed, rendering difficult a fair comparison with the past and rendering any conclusion on the improving health results in the EPO being due to the reforms alone as more than doubtful.

extent that the logic used insults the intelligence of the target reader, i.e. staff⁹:

- Moral hazard: it is alleged on p.43 that, due to the financial compensation awarded by ILOAT for delays, **“staff members have a financial incentive to slow down the internal appeal process by flooding the system”!** To claim that such a “moral hazard” exists and then automatically leads to **intentional abuse by individual staff members is simply as ridiculous¹⁰ as it is unfair**. Staff has only ever complained about the length of the procedure because they are the first to suffer its consequences¹¹. Moreover, the ILOAT itself reminds the EPO of its obligation to provide sufficient resources to deal with internal appeals within reasonable delays
- God only invented noses to carry spectacles: the assertion is made that since employees have basically a good understanding of their job (74% - p.79), this *“suggests that there is a good organisational communication of the EPO’s services”!* **The causality assertion is flawed**. Whilst the first statement is obviously true, it is not because the EPO is such a good communicator, but rather because jobs in the EPO are clearly defined by the European Patent Convention (which fortunately “fleeting” management cannot modify), examination guidelines, procedural notices and last (but not least) 40 years of tradition and jurisprudence. More often than not, the communication of the EPO’s services is rather a disruptive factor in the execution of work in DG1.

5- “Us and them”: the blame culture as applied by PwC

Many of the problems appear to have been pointed out and precisely identified, such as the following perceptions:

- **there is a lack of trust** in senior management (80% - p.73),
- the EPO is **not** an effectively managed and **well-run** organization (67% - p. 68),
- the EPO has **not** been consistent in its promises and commitments (73% - p.72),
- **staff opinion** does not matter (75% - p. 78),
- **the new career system** does not offer opportunities (67% - p.77),
- the lack of **“buy-in” from staff and management is of paramount importance** for the acceptance of reforms;...

However, the analysis made afterwards is baffling when it comes to identifying the “culprits”:

- **Staff is resistant to change**: PwC rightly identifies that the bulk of the staff are knowledge workers (p.83-84), who are *“highly committed”*, *“take pride in their work”* and have *“a strong public service orientation and ethos, as well as strong support for the EPO mission”*. However, what at first sight may be seen to be a great asset turns out to be apparently a problem. It is because of these very characteristics that the staff is *“resistant to change”¹²*. The implicit conclusion that a culture based on **“functional stupidity”¹³** would be better for the EPO is not

⁹ In particular the “knowledge staff” which, as the study rightly points out, makes the bulk of the EPO population.

¹⁰ It can be likened to declaring that staff members who have committed suicide may have done so on purpose for personal gain or that a union official has orchestrated their own downgrading or dismissal to prove a point. Neither are the quality “indicators” or the mentioned “users’ satisfaction surveys” questioned (p.65).

¹¹ On the contrary, due to the obvious asymmetry of consequences, the present Office management obviously gains in having the conflict they created solved many years later when they have moved on to other positions or retired.

¹² Dozen occurrences; p.9, 10, 59, 65, 71, 74, 84, 87, 88, 89, 96, 106, 107, 108, 111 - *“change has also been strongly opposed at the EPO because of its culture of litigation and “independent”, almost academic approach, in which a strong appetite for intellectual interchange is not always perceived as going hand in hand with a managerial culture based on pursuing high levels of effectiveness and efficiency”*

¹³ See [„A Stupidity-Based Theory of Organizations“](#)

new¹⁴: it has been the mantra of the present administration since the introduction of the HR roadmap in 2010 and has only been conveniently “acknowledged” by the present consultant to confirm the adequacy of this policy decision.

- A further problem are the “middle managers”. First, they **do not have the necessary competences** and should urgently be trained (p.35). Second, they do not seem to get the point of the “*urge to change*” (p. 78 and 106), nor do they seem to be reliable¹⁵ (p. 105) in promoting the message. Hence, they should be better informed (p.95, 98, 106), assisted by a “**change agent network**” (p.95, 109) and last but not least be held “**accountable**” (p.108) for their ability (or lack of it) to fulfil their function as “*change agents*” or even “*change champions*”. Clearly, the whole focus of the survey rests on this premise from p. 80-113.
- Mistrust stems from lack of common values: according to PwC, underlying the lack of trust, the real problem is that “**EPO’s values and behaviours**”, which are at the core of the Office, are **not “accepted and adhered” to at all levels** (p.61 and 85). It is recommended to “*align organisation-wide cultural values with the EPO’s mission and objectives*” (p.85, 90). To support that goal, a set of “values” should be clearly formulated and then “*behaviour priorities*” (p.113) supporting them must be cultivated, that is “*including any changes/fine-tuning to the EPO’s processes, e.g. performance management and reward mechanisms.*” (p.90). Needless to say, by nature, the EPO leaders are responsible for defining these values and priorities in the first place (p.90).

As a conclusion, criticising the “*us and them*” mentality in the Office comes in handy when identifying the culprits in the Office. By coincidence, PwC shares the approach used by top management over the last years over and over again to always never blame themselves but instead point fingers at others.

6- Self-serving praises

In sharp contrast to the previous paragraph, top management is apparently endowed with both a “*deep and sound*” or “*solid understanding of the change management process*” (p.9, 95, 100, 105). Their project management is “*strong*” (p.104), has “*developed particularly well*” (p.105) and the initiatives have been “*successfully*” introduced (p.82). As a summary, PwC judges that the “*analysis has demonstrated that EPO has performed successfully in introducing significant reforms*” (p.111).

This last is all the more surprising as according to the indicators chosen, the comparison of the survey results between 2011 and 2016 shows a clear trend (Annex): in this light it seems unconceivable:

- a) to qualify the reforms as successful and
- b) to congratulate top management on how reforms have been introduced.

Either such praise is to be understood in the context of the usual sycophantic relationship that consultants tend to have with their rich clients or they should be understood as clever euphemisms: one can have a great understanding of a sport without being able to play it at all; similarly a goose can be successfully stuffed, even if its death is not part of the equation.

Remarkably, the reforms themselves have never been analysed let alone challenged. On the contrary, they are treated as sacrosanct; PwC merely evaluates how they have been implemented. This can be

¹⁴ See SUEPO publication dated 29/07/2013: [Indignez-vous! when Bush meets Machiavelli...](#)

¹⁵ The simple explanation that “**turkeys do not vote for Christmas**” seems to have been overlooked.

expected as consultant's recommendations often inspire the next reforms. For instance, the Career reform was designed with the (substantial) support of consultants but with a total disregard for the input of staff. So it comes as no surprise when the consultants support said reforms and only **suggest their "fine-tuning"** (p.84, 87, 88, 90, 113) using a methodology the same consultants offer along with substantial training and support "*packaged*" (p.88) into more workshop programs.

7- Reality check: it's the proposal, stupid!

Fact is that, leaving the PwC comments and recommendations aside, the objective parts of the **social study correlates well** with the outcome of the **Technologia survey** in 2016; it **confirms the clear worsening of the situation**, in particular in terms of Staff dissatisfaction (see Annex). It is in line with the opinion expressed on numerous occasions by Staff and their Representatives and complements the ample media coverage on the present situation. It is all the more remarkable then that at no stage the reforms themselves come under scrutiny.

The explanation offered for reform implementation problems such as the timeline was too tight, the communication was wrong and the process clumsily rolled-out – caterpillar style – could make sense. However, the most obvious explanation is missing: essential components of **the reforms themselves are wrong**.

No matter how elegant the construction process of that reform could have been, **the fact is that the boat is a sitting duck and will be sunk in the harbour**.

Just like the [Vasa](#), **neither the process**, the time-line or the communication were necessarily wrong, rather it was simply **the ship's poor design**. And no amount of careful "fine-tuning" and trimming will change the obvious reality that the hull remains fully under the waterline. Pragmatically at this stage it may simply be less expensive to stop the experience here.

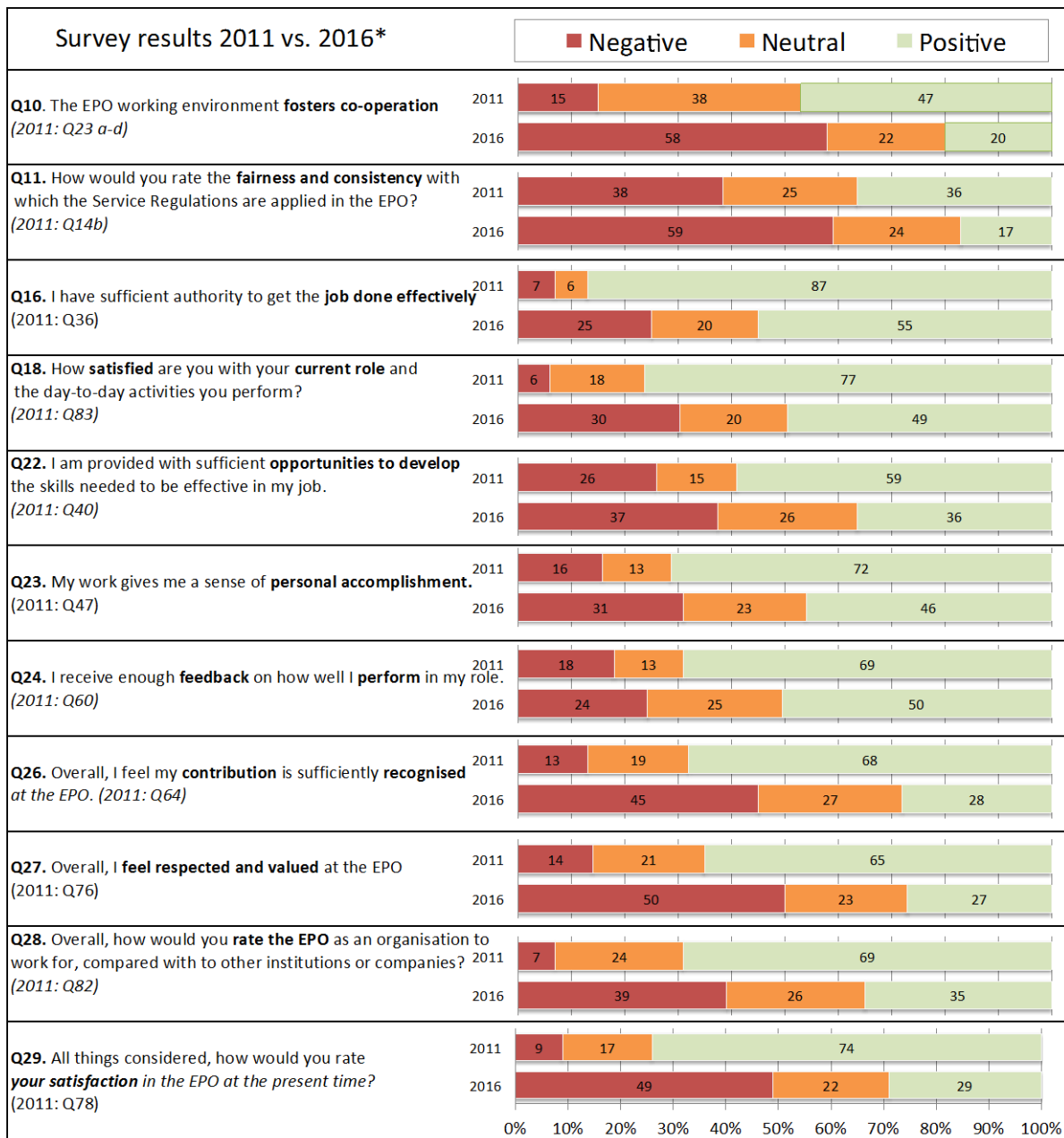
A true friend's advice would most probably have been to build a new, more sea-worthy boat. But this time, instead of using expensive advisors, the designers should rely on the advice of their own experienced shipbuilders and on the acquired knowledge of the crew who will eventually man the new EPO flagship on their long journey ahead.

The Central Staff Committee



The Sinking of the Vasa by Andrew Howat

ANNEX:



In the above table, we compare the interview responses to 11 questions from the EPO commissioned surveys from 2016 and 2011 that are identical or nearly so. While this comparison is in sharp contrast to the self-congratulatory tone of the Social Study report, it is in broad agreement with the findings of the Technologia 2016 Staff Survey.

This begs the question: how can someone arrive at such a rosy presentation of the social situation in the Office (as depicted in the Social Study) when we can demonstrate there has been a very worrying deterioration since 2011?

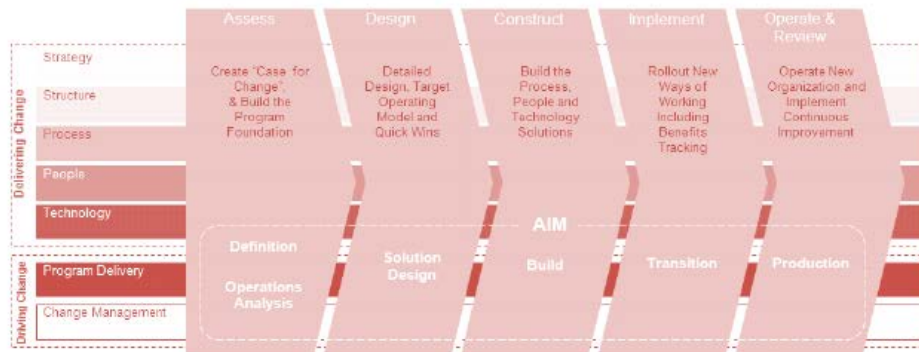
In fact, PWC had all the results of 2016 and 2011; they knew that many questions were identical; they knew that this was direct, unfiltered input from staff. We can only conclude that they must have also known this was bad news for top management. It is hard to believe that downplaying the obvious to the point of ignoring it and then presenting the opposite message in the report was anything other than a conscious decision. One can legitimately ask whether such an approach still can be described as "extreme spin" or already qualifies as misinformation.

Ignoring such an unambiguous and dramatically negative evolution discredits the survey.

(*Note: the figures are rounded up: accordingly, the sums may not always add up to 100%)



PwC Transform Methodology (powered by AIM Advantage™, for EBS and RapidStart Methodology and PwC's F.A.S.T. Approach for Fusion) provides an integrated roadmap for implementing significant change programs across all components of a major change: Strategy, Structure, Process, People and Technology.



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i Consider these exemplary statements:

- “the aim of social democracy aims to build a strong partnership with staff representation” or “further reinforcing the social dialog” (p.82): may be the stated intention, but experience shows that this statement is obviously wrong;
- “social dialog has never been fruitful” (p.82): factually wrong; Many negotiations have been successfully concluded in the past, such as the previous career reform;
- “the implementation of the reform is seen positively” (p.83): by whom?;
- “staff representatives, who often tend by default to support positions that do not genuinely represent the opinion of the actual majority of the EPO employees” (p.87): wrong: by all measures, votes, actions and surveys (including the present one) confirm the genuine alignment between the views of Staff representation and the EPO staff themselves.

ii Further examples:

- It is noticeable that while claiming to be comprehensive, the remuneration benchmark fails to mention the highly competitive High-tech (STEM) employment market in which the EPO, competes with patent attorney and law firms: this employment market is in crisis with a systemic shortage of qualified workforce so the EPO needs a competitive edge to remain a desirable employer; (see slide 10 of [The EPO salary method; review of its functioning 207-2013, CSC, March 2014](#))
- In the legal field, comparison with IOs, National Law or with International Standards is made à la carte according to what seems to fit better the thesis it aims at supporting.