



TWO VERY BAD YEARS OF THE “NEW CAREER” SYSTEM HOW MANY MORE YEARS CAN WE AFFORD?

Summary: *The new career system was introduced at the end of 2014, has been applied in 2015 and 2016 and will be applied once more in 2017. Mr Battistelli should leave the EPO on 30 June 2018 and the first opportunity to repair at least the most serious flaws of the new career system for the first time will probably only have an effect from 1.7.2018 onwards. We present here a small review of the past two reporting exercises (2015 and 2016) and what we foresee in the near future. We also address the legal steps which would be required to preserve your rights to a reasonable credible career development in the current reporting period.*

The global picture

Since the introduction of the new career system, management has wilfully confused managerial discretion with arbitrariness. How many staff members know exactly why they did not get a step or a promotion after a reporting exercise? And on which legal basis were they denied a reward? The (retroactively applied) criteria for getting a reward are so arbitrary and lack so much transparency that most staff do not know where they stand. This uncertainty combined with the emphasis on quantity only (especially in DG1) has led to a sharp increase in production, a decrease in quality and might ultimately lead to a massive risk of unemployment of examiners (overcapacity) if the current productivity levels are sustained in 2017 and early 2018. It is only fear and intimidation instilled at all levels by the current EPO top management that holds the system together and is this toxic atmosphere that

is already having serious consequences on staff well-being and health.

The consequent implementation of the new career system has also led to discrimination against women, part-timers and other categories of staff, generating a large number of challengeable individual decisions. This both overloads the legal system and creates legal uncertainty that has been only worsened by the recent ATILO decision¹, ruling that EPO staff nominated by the President can no longer address Requests for Reviews to the Administrative Council. In reality, this means that almost certainly most legal challenges relating to the new career system will only be dealt with by the next administration, not the current one. It is therefore important not to miss any appropriate legal steps before 2018.

¹ Judgment 3796 on a complaint filed at the ATILO following a rejection by the Administrative Council of a RfR against the new career system (CA/D 10/14).

Insufficient 2015 and 2016 budgets

If one believes Mr Battistelli's presentation of the "facts", apparently everything is just fine. At the end of 2015, he proclaimed in [Communiqué No 72](#) (emphasis added):

*"The budget envelope allocated to promotions, step advancements, bonuses, functional allowances and the transitional measures of the career reform amounts to a maximum of 10,4 million Euro. [...] In total, a budget of 18,4 million Euro (corresponding to 2,6% of the salary mass) is allocated to reward performance and competencies. **This represents a potential increase of 24% compared to the budget spent for the year 2014.**"*

This year, he stated in [Communiqué 1/2017](#) (again emphasis added):

*"Overall, the merit exercise 2016 has allowed the Office to reward over 82% of our staff this year, confirming the positioning of the Office as a best in class employer. **The budget dedicated to 2016 rewards totals €22m, which represents an increase of 19.5% compared to last year.**"*

While it is true is that the overall "rewards" budget has been increased, the budget allocated to *pensionable* rewards, i.e. steps and promotions, has been remarkably restrained in 2015 (€6.6mⁱ) and 2016 (€9.7mⁱⁱ) to either properly reward staff's efforts or to rescue qualityⁱⁱⁱ.

In fact, the budget usable for pensionable promotions and steps – which is the only budget that really matters in the long term – has been severely cut by 40% when compared with the recent past. **A budget for steps and promotion close to €18m in 2015 and over €20m in 2016 would have been needed for ensuring**

continued fairness and a reasonable career progression for all.

In fact, a one-off additional budget would have also been needed as a transitional measure to prevent the accumulation of legal challenges in front of the Conflict Resolution Unit (Request for Reviews), the Appeals Committee (Internal Appeals) and the ILO Tribunal (Complaints).

2017 budget

On a proposal of the President, the Administrative Council has decided to grant an envelope of €22.5m (see [CA/D 1/16](#)). On page 9, one can read:

"For 2017 an amount of € 22.5m (3% of the basic salaries) has been reserved for step increases/promotions/bonuses, to be allocated in accordance with the provisions of the career/performance management system (3% was also reserved in 2016)."

Hidden away on page 185^{iv}, one can see that the available envelope for the step increases and promotions is only €13m. This is grossly inadequate to implement a fair and reasonable promotion and step advancement exercise.

On page 65, one can see that the authority to determine the specific envelope allocation for differing "rewards" lies with the President:

"The allocation of the envelope to step increase/promotions/bonuses is to be decided each year by the President."

It must also be stressed that the allocated €13m is a maximum envelope. This is aggravated by the introduction of further limiting criteria, for instance in DG1, with stringent production requirements meaning that in the end, the full envelope for promotions and steps will not be spent.

Functional allowance for top managers: the EPO as a self-service?

The functional allowances are currently – in a fully non-transparent way – reserved for colleagues working close to Principal Directors or Vice-Presidents or rendering special services to top management. [GCC/DOC 7/2017](#) does not resolve this lack of transparency. Instead it increases the maximum amount of the allowance, and no longer excludes top managers from the list of beneficiaries.^v

As a consequence, all managers, including Vice-Presidents, Principal Directors and Directors, could receive every year a functional allowance – without anyone being informed but themselves – of up to two months salary!

If the proposal in GCC/DOC 7/2017 were to be implemented in 2017, i.e. with retroactive effect and remaining within the budgetary envelope granted by the Administrative Council, this might even mean transferring to (top) managers some of the meagre budget envelope originally intended for regular staff. Indeed, the budgetary document adopted by the Administrative Council (CA/D 1/16) is completely silent on functional allowances. The expression is nowhere to be found. This has not prevented Mr Battistelli from already paying functional allowances out of the overall budget envelope for rewards in 2015 and 2016. With this new proposal, it is quite likely that managers will have to appropriate themselves a part of the envelope for overall rewards in order to pay themselves generous functional allowances. This crafty arrangement also allows for a retroactive reallocation of a budget decided last year by the Council to the particular benefit of senior managers.

We remind everyone that at the introduction of the new career system, many top managers already engineered

and then helped themselves to substantial salary increases².

In view of the complete lack of transparency in the attribution of such rewards, **could not this current proposal simply be a perfect recipe for fraud?**

Will the Administrative Council allow the EPO to taint its management with such a disastrous image? Only time will tell.

On the philosophy

Communiqué 1/2017 ends with the following sentence:

“We can be proud of both our achievements and the performance-oriented culture that is developing within our Organisation.”

The feedback we have from staff is exactly the opposite. They are anything but proud of the achievements and the “performance” oriented culture. Indeed, their feedback is that they are increasingly concerned that the current “rat race” culture is leading the EPO into a wall and that EPO management, especially in DG1, is accelerating the process every year so that we hit the wall at ever greater speed.

The fact that the President of the EPO is trying to silence all dissident voices by threatening and sanctioning the Staff Representatives who dare to express contrary opinions only worsens this situation.

Staff used to be proud to work for an organisation that both cared about the rule of law and the quality of the products it delivered. There was already a culture of rewarding good performance which had

² “For some very happy few, like young A5 (under step 4) and A6&A7 (under step 6) the [transition into the new career represented] a net increase up to respectively 11% and 16%.” Source: SUEPO su14226cp 21.10.2104

been negotiated with and agreed to by your Staff Representation in 2002. Good performance was still rewarded, but within a system that engendered active cooperation between colleagues which in turn fostered both high quality work and supportive behaviour. The new career system and its performance oriented culture have led to a “rat race” in which everyone must compete and that benefits only a few while having (long term) negative consequences for most.

The “team bonuses” are only the last example of this pathetic exercise: in DG1, “teams” have been asked to justify why they have performed better than others. Some have not participated at all while others have done it with a pinch of humour or derision, which has often either been unrecognised or censored, proposing rewards for “the team of women” or “the team of newcomers”.

All in all, the team reward exercise has been a retroactive step that has only exacerbated the great divide between competing colleagues. The feedback we get from staff is that they find this drift very damaging to both the working atmosphere and the Office’s image.

We also hear the concern that the new career is allowing straightforward appropriation of Office money to the benefit of few people in a fully non-transparent way. For example, from Communiqué 1/2017, it would appear that preparation (and/or participation) to some so-called strategic office-wide projects (like the social conference) may have influenced the final attribution of rewards in February 2016.

One thing is certain: lack of transparency is not a bug; it is an intended feature of the “new career” system. It can be used to hide all sorts of abuses. EPO Staff do not recognise themselves with such “values”.

Preserving your rights in a hostile environment

Pending either a change of administration (hopefully in July 2018), or a decision of the Council to force the current administration to enter into genuine talks (very unlikely), we can only encourage you, if you feel you have not been treated fairly, to file a Request for Review (RfR) against the absence of a deserved reward. It is your right to be informed of the reasons behind decisions affecting you, cf. Article 106 ServRegs. It is up to the Office to rebut any presumption you may have that you have been discriminated against or treated arbitrarily.

Please beware that the deferment of a step is (also) a disciplinary sanction that should only follow on from a disciplinary procedure. If you have not been granted any step since the introduction of the new career, i.e. neither in 2015 nor in 2016 (with your December 2016 salary slip) and if you think that your performance has been reasonable and comparable with your colleagues’ (who may have received one or more steps in the same period) or your own previous performance, then you should consider using any such additional arguments in a RfR, because a covert disciplinary sanction has been inflicted on you without a disciplinary procedure.

Please also remember that only individual staff members may challenge a decision affecting them. Not challenging a (repetitive) lack of step advancement can be understood by the administration as an “invitation” for them to carry on regardless the year after. Why would your manager try to give you a step in 2017 (from the meagre budget he/she has) and perhaps frustrate another colleague who has now “grown accustomed” to receiving some reward every year?

[Information](#) was made available by the Local Staff Committee of The Hague (LSCTH) about what to do if you did not receive any reward in 2015. The above information includes a link to a template RfR which can also be used for the 2016

appraisal exercise with only minor adaptations. Further detailed information was provided by LSCTH after the 2016 exercise concerning specifically the [severe discrimination against pregnant women](#) and how to address it.

Conclusion

Staff is now (im)patiently waiting for the current top management to leave the Office. The President's end of term is a great opportunity for the Administrative Council (AC) and the new regime to start tackling and (hopefully) resolving the social crisis. The new leadership they will appoint can have a fresh look at the way the new career system has been designed and finally implemented: it might be possible to settle the major sources of conflict in an amicable way. It only requires the will to *genuinely* discuss with staff how to improve and then implement the new career system with an agreement on amendments necessary to remove arbitrariness and lack of transparency. The €22.5m overall envelope which is currently foreseen in CA/D 1/16 could still be enough to fix the most serious problems before the 2018 rewards exercise^{vi}.

Ideally, such a discussion about repairing the new career system should already have started with the current administration, but we have given up any hope of any meaningful consultation. Instead, the new "social democracy" version 2.0 shows that Mr Battistelli and Ms Bergot are more interested in suppressing the Staff Representation than in discussing anything with them^{vii}.

Nevertheless, it becomes clearer everyday to most interested circles (including the AC) that the current implementation of the new career system has:

- a sustained, detrimental effect on the quality of EPO searches and consequent EPO granted patents;
- a deleterious impact on the working climate within the Office;
- a progressively detrimental effect on EPO staff health and well-being;
- created a complex legal mess that needs to be resolved;
- ultimately compromised the proper medium and long-term functions of the EPO.

Is the Administrative Council willing to act before the consequences become irremediable? Or will the AC instead prefer to believe the President when he presents them with his alternative "facts" that somehow demonstrate that the EPO is the best place anywhere for employment and that quality improves hand in hand with productivity. This latter claim is unique in the world for a knowledge-based organisation like ours, so perhaps the EPO management have a secret patent pending on it? Time will tell.

One thing is certain: July 1st 2017 is now only 15 months away. We remain hopeful that a new President will take charge of the Office from that day on^{viii}. The day where staff's performance on quality will matter again is not so far away. In the meantime, look after yourselves: defend your rights and protect your health and well-being.

ⁱ See [Communiqué 72](#) and the “[Presidential Instructions on Rewards](#)” linked to it. Snapshot of the relevant extract:

Reward type (in EUR)	Pensionable/ non-pensionable reward	Budget 2015
Steps/ Promotion	pensionable	Max. 4.800.000
Transitional measures (see 2 b below)	pensionable	1.800.000

The meagre budget allowed only for distributing mainly half steps to integrate colleagues in the new salary grid.

ⁱⁱ Extract of [Communiqué 13/16](#) of the President:

“Once again, managers have been able to recognise and reward merit and performance with the **allocation of an envelope of € 9.7 m euros for the pensionable rewards** and € 5 m for the individual bonuses for calendar year 2016.”

ⁱⁱⁱ As a comparison, we remind you that the budget for promotions and steps was €18m in 2012, and that a collective bonus of a total of €27m was paid on top. This means that the total “rewards” budget - to use the presidential terminology – was of 43m in 2012. It has thus been halved.

[CA/D1/11](#), page 243, table Article 3000 (BASIC SALARIES):

	MU/VI	TH	BE	Total
11. Step increase/promotions 2012 2,60%	9 070	6 180	680	15 930

[CA/D1/13](#), page 237, table Article 3000 (BASIC SALARIES):

10. Step increase/promotions 2014 2,60%	10 130	6 720	755	17 605
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[CA/D 17/12](#), page 2

“An amount of EUR 27 656 000 shall be allocated for the purposes of the calculation of the collective reward.”

^{iv} Table Article 3000 (BASIC SALARIES):

10. Budgetary envelope for steps and promotions, 1,74%	7 455	5 010	530	12 995
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^v [GCC/DOC 7/2017](#) (see tracked changes on page 4):

(2) An employee may be called upon in his current grade to perform additional duties or duties involving specific demands.

He may receive a functional allowance defined by the appointing authority equivalent to a maximum amount of two monthly basic salaries per year, up to the amount equivalent to two steps in his current grade, within the budgetary limits available.

~~This provision shall not apply to job groups 1, 2 and 3.~~

^{vi} It would only take a decision of the Council in its October 2018 meeting to grant the new President a margin of manoeuvre for attributing a bigger part of the envelope for promotions and step advancement and a decision in the October or December 2018 Council on an additional budget to discuss and agree with the Staff representation on implementing proper transitional measures and the necessary amendments to the career in 2019.

^{vii} In “Social democracy” 2.0 (from 1 July 2017) the number of full-time elected staff representatives is decreased from 14 to a maximum of one, making of the Staff Representation an empty shell. In the

meantime none of the secretaries working for the Staff Representation and who retired over the past 3 years has been replaced.

^{viii} see [CA/1/17](#), page 7, List of C items (Appointments/Elections) under 2.6:
Procedure for the appointment of the next President of the European Patent Office (CA/C 4/17)