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Report of the 246th meeting of the GAC on 29-30.11.12 in Munich

Summary

The 246th meeting of the GAC (General Advisory Committee) was the ninth and final GAC meeting of 2012. Whilst still a relatively high number, this was in fact one fewer than in 2011. That year had the second highest number of meetings ever - the highest being in 2007, when there were twelve meetings. The agenda of the 246th meeting comprised a number of recurring items (salary, nominations, kilometre and daily allowances, healthcare contributions for spouses and adoption of the lump sum amounts in Circular 326 relating to removals) which are always on the GAC's agenda towards the end of each year. An additional item on the agenda concerned guidelines for overtime, shift work and on-call duty.

2012 Salary adjustment

For details on this topic, see the Central Staff Committee publication entitled “Adjustment of salaries from 1.7.2012” dated 30.11.2012 or the Munich Staff Committee publication entitled "Additional information concerning 2012 Munich salary adjustment". These papers give details of this year's adjustment and outstanding issues[1]. The proposals can also be found in MICADO as CA/84/12 for presentation to the December meeting of the Administrative Council. After the meetings of the GTR and the wise men, but before the meeting of the AC, the document is always sent to the GAC for opinion, in order to meet the requirements for statutory consultation as set out in Article 38(3) ServRegs.

It is by now well known that the calculated adjustment for all sites are positive for this year. For the Netherlands there was a deficit to be overcome owing to the negative adjustment in 2010 and the application since then of the so called "nominal guarantee clause", according to which negative adjustments shall be set against future adjustments and salaries maintained at their previous level. The theoretical adjustment of 0.72% last year had not been enough to offset the -3.64% "hole" from the 2010 adjustment. The result is that the Office proposed to the Council that salaries in the Netherlands should rise by 1.41%, in Germany should rise by 5.18% and in Austria should rise by 3.33%.

To the best of our knowledge, the adjustment reflects a correct application of the method. The GAC thus gave a unanimous positive opinion on the proposal.

Spouse's contributions to EPO medical system

For more information on this point, see our report of the 212th, 219th, 227th and 237th meetings of the GAC.

As the reader will be aware, from the start of 2008 the administration introduced measures to (under certain circumstances, namely if they are gainfully employed and do not have their own "primary" medical insurance) make staff members contribute extra (i.e. over and above the usual premium) for their spouses, should

[1] These papers can be found at: http://www.suepo.org/archive/sc12106cp.pdf or http://munich.suepo.org/archive/sc12110mp.pdf

they wish to maintain their spouses coverage under the EPO's healthcare insurance system.

Under these circumstances, staff are charged nothing for spouses earning less than 50% of a C1/3 level salary, a lower premium for spouses earning between 50% and 100% of a C1/3 level salary and a higher premium for spouses earning over 100% of a C1/3 level salary. Premiums are calculated separately for staff with spouses employed in the Netherlands (where the Office offers a so-called "integrated solution" using a single external insurer, currently ONVZ) and for spouses employed elsewhere, who are assumed to work in Germany.

As with normal healthcare insurance, the contribution rates for this needs to be reviewed periodically, and the administration has decided to do this annually.

In the past, each year, we have essentially set out the same objections to the administration's proposals. The introduction of these measures led to a mass appeal in Munich. In the meantime, as set out in a publication from SUEPO Munich[2], the Internal Appeals Committee has issued a (majority) opinion in which it states that requiring staff members to pay an additional contribution with respect to their spouses contravened the appellants' acquired rights to a maximum contribution rate, covering the whole family, of 2.4% of basic salary. Moreover, the IAC also unanimously made a number of criticisms concerning the implementation of the new regulations. In particular, the IAC considered that the proposal was unfair and unbalanced in that the contributions were lump sums. In the case of staff members either of a lower grade or who worked part time, the system thus caused an undue burden. Although not explicitly pointed out by the IAC, similar considerations apply due to the threshold effects. Should a spouse earn even just a few euros more than a C1/3 salary, then the premium is (for Germany) more than doubled.

Another deficiency is that the additional contributions are neither tax deductible nor do they quality for the so-called "Arbeitgeberzuschuss". The IAC also (gently) criticised the Office for not having yet addressed these points. One possibility would be an EPO group solution, as in the Netherlands. We have repeatedly suggested that the Office should put serious effort into such an arrangement.
In the GAC, we noted that, in the past, the administration has submitted to the GAC for opinion the final healthcare figures for the previous year and the provisional figures for the current year. However, in the current year, the administration has only presented this one document, which accounts for about 2% of the income in the system. We thus regretted that we were in effect being asked to give an opinion on 2% of the healthcare system, but were given no information on the other 98%!

Moreover, we noted that the above mentioned IAC opinion in effect puts into question (if confirmed in later filed appeals) the move to an actuarially financed system, coupled with removal of the 2.4% maximum contribution rate.

We thus suggested that this matter should be submitted to the Health Insurance Working Group as soon as possible, in order to examine whether it is possible to move to a financing system which would be acceptable to staff, before the end of 2013.

Turning to the proposal submitted to the GAC, as set out in our reports of the 219th and 237th meetings, we remain convinced that the contribution levels for the higher premium level for countries other than the Netherlands are set far too high.

This premium is calculated for the Office by Mercer. According to the regulation, the premium should be "calculated with reference to the market prices for low premiums offered by reputable private sickness insurers which correspond to the minimal cover required by law in the spouse's country of employment". By law in Germany, a maximum deductible of EUR 5000 is allowed. We would thus expect a premium calculated for a similar figure. This Mercer does not do. Moreover, Mercer calculates a premium for a *Neuzugangsbeitrag*, that is to say, for a policy for a new policy holder. However, private insurers in Germany build up reserve funds in order to compensate for increased medical costs in old age. This means that a policy for (say) a 40 year old who has held a policy for 10 years is cheaper than a new policy for a 40 year old. The difference

[2] The publication can be found at http://munich.suepo.org/archive/su12116mp.pdf

grows with age. That is to say, a *Neuzugangsbeitrag*, especially for the higher age groups, is likely to be more expensive than that paid by long-term customers. Moreover, so called *Erstbehandler* or *Hausarzttarife,* which we would expect to be cheaper, were not considered.

Accordingly, we not only consider the calculated premium to be too high. We also consider it not to be calculated in accordance with the regulations.

For both Germany and the Netherlands, we objected to the premium for spouses earning between 50% and 100% of a C1/3 level salary. We pointed out that, although the President has discretion to set the premium levels, he must use this discretion in good faith.

However, in effect the administration just multiplies 50% of a C 1/3 salary by a number. For Germany, this number is the general contribution rate to the German statutory healthcare insurance ("allgemeiner Beitragssatz zur Gesetzlichen Krankenversicherung") of the preceding year, which is 7.3%. For The Netherlands, having used different figures for each of 2010, 2011 and 2012, the Office for 2013 proposed to use the same figure as in 2012. This figure is the actuarially calculated staff contribution rate of 3.07%. This is a figure which no staff member currently pays. It also just happens to be higher than the figures used in 2010 and 2011 (which were the final calculated rates for the years in question). We could see no apparent reason for the choice of figures (which resulted in very different staff contribution rates for Germany and The Netherlands), and none was given. Moreover, no methodology justifying this choice of numbers has ever been sent to the GAC for opinion.

For all these reasons, we gave a negative opinion on the proposals. In our opinion, we gave a number of observations concerning how we considered the premium for spouses earning above 100% of a C1/3 level salary in Germany should be calculated. We also suggested that a number of items should be submitted to the Health Insurance Working Group (HIWG), including:

- examining the evolution of the system since the current arrangements were introduced in 2008;
- making suggestions for financing the healthcare insurance system from 01.01.2014 on;
- developing a proposal for an "integrated solution" in Germany, similar to the system that the Office has set up in the Netherlands;
- study the methodology for deriving premiums for spouses earning between 50% and 100% of a C1/3 level salary in **both** Germany and the Netherlands.

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

Guidelines for overtime, shift work and on-call duty

A document on this topic was presented earlier in the year to the 239th meeting of the GAC. For more details, we thus refer to our report of this meeting.

In that meeting, the GAC gave a unanimous positive opinion on the proposal with a few, relatively minor, agreed amendments. Following that meeting of the GAC, the proposal has also been discussed twice in the COHSEC (the Central Occupational Health, Safety and Ergonomics Committee), and the COHSEC has also (twice) given a positive opinion on the proposal. We were thus mildly surprised to see the document submitted again to the GAC for opinion.

The GAC again gave a unanimous positive opinion on the guidelines. However, we consider that the problems which exist in the Office in this area lie not with the regulations, but rather with the practice. For example, it is clear from the ServRegs that the default for working overtime or shift work is to be compensated by receiving time off work. Only as an exception should compensation be in the form of cash. The reason for this is that shift work and overtime are stressful. If this is not compensated by adequate time off work, then this may have a long term detrimental effect on the staff member’s health. This is neither in the Office’s long term interests nor of the staff member's. However, it seems that in 90% of cases, cash compensation is paid. This could be a symptom of systematic understaffing in the affected areas. For the same reason, staff working a shift pattern should not at the same time be required or allowed to work overtime. However, we know of cases where this occurs.

In addition to giving a positive opinion on the guidelines, we thus also provided a list of our concerns and made suggestions for improvement. In particular, we noted that the tool for registering hours in MyFIPS is under "salaries and allowances". This gives the impression that the default compensation is cash. This could be improved by moving the tool to "time and leave", which would emphasise that the default compensation should be time. We also suggested that it should be more difficult than (as currently) merely crossing a box in the tool to authorise cash compensation. Additionally, it should not be possible, for the same time slot, to enter overtime, shift and on-call duty.

Kilometric and daily allowances

In accordance with Article 1 of our salary method, for these items the EPO merely uses the figures recommended by the Coordinating Committee on Remunerations (CCR) of the Coordinated Organisations (COs). Since, to the best of our knowledge, this was correctly reflected in the figures presented, the GAC gave a positive opinion on the two documents.

Annual adjustment of removal expenses

With Circular 326, the administration introduced a system of lump sum reimbursement for removal expenses. The circular foresees that the lump sum amounts will be adjusted by the arithmetical average rate of annual salary adjustment across all Office sites.

After two years where the lump sum amounts remained frozen due to application of a nominal guarantee to some of the salary adjustments, it is proposed to increase the lump sums by 3.9% from 01.01.2013.

The regulation does not explicitly say how to handle situations where salary adjustments are negative, either for the current or previous years. However, since the proposal is in the spirit of the regulation, the GAC gave a unanimous positive opinion on the proposal.

Nominations

Previously, according to Article 98(1) and 110(4) ServRegs, the President had to present the names of his nominees as chairman (and deputy) of the disciplinary committee and chairman, members (and deputy members) of the internal appeals committee (IAC) to the GAC for opinion.
However, one of the results of the recent reform of the internal appeals system is that as of 1st January 2013 the President no longer has to send the names of his nominees, or those of the proposed chairman and deputy, to the GAC for opinion. Already this year the President only submitted the names of his nominees as chairman and alternate Chairman of the disciplinary committee to the GAC for opinion.

We again took the opportunity to comment on this. In our opinion, it would be regrettable if, at least in the eyes of some staff, the credibility of the IAC has been reduced by this change. Moreover, given the date of application of the new regulations (1 January 2013), it seemed to us that the administration was, one last time, required, under the regulations still in force, to present the names of these nominees to the GAC for opinion. The members appointed by the President agreed with us on this point. What this means we don't know. For example, we can't exclude that the President will call a further GAC in 2012 for this point only.

Concerning the disciplinary committee, to which the same two persons are appointed as chairman and deputy chairman in 2013 as in 2012, having not noted any problems with the functioning of the committee this past year, the GAC gave a positive opinion on the nominations.

The names of the nominees will be published by the administration in due course.

That was 2012

The General Advisory Committee (GAC in English, ABA in German, CCG in French) is firmly anchored in Article 38 of the Service Regulations. This states that the GAC shall "be responsible for giving a reasoned opinion on any proposal to amend the(se) Service Regulations or the Pension Scheme Regulations, any proposal to make implementing rules and, in general, except in cases of obvious urgency, any proposal which concerns the whole or part of the staff to whom the(se) Service Regulations apply or the recipients of pensions".

The President is accordingly obliged to consult

the GAC before taking a decision on any proposal affecting all or part of the staff. As a result of this, the main duty of the GAC is to help the smooth running of the Office by giving the President the best possible advice on any proposal, before said proposal is implemented. It goes without saying that the President should be interested in receiving and considering such advice. However, although, the President is obliged to consult the GAC, there is no obligation to follow any recommendations the GAC makes. Because consultation in the GAC is the minimum involvement to which staff have a statutory right, the CSC takes consultation in the GAC extremely seriously.

The GAC has six members appointed by the President and six appointed by the Central Staff Committee. The chairman alternates. One year the President appoints, the next the CSC. In 2012, it was the President's turn to appoint the chairman. He appointed Mr Wim van der Eijk (VP3) as chairman.

In recent years, the President mainly appointed Directors (from DG4 and DG5) as members of the GAC. On the one hand, they often had a good technical knowledge of the subjects being discussed. However, on the other hand it was often clear that they were not authorised to make any substantial changes to the documents submitted.

This year, as set out in other publications (including our reports of the 237th and 238th meetings of the GAC), the President "put the MAC in the GAC". That is to say, all five then Vice-Presidents (including PD 4.3, then acting VP4) plus an additional senior manager in the MAC were appointed as Chairman (VP3) or members (VP1, VP2, acting VP4, VP5, the Chief Financial Officer). Additionally, the Controller was appointed as a deputy member. During the year, VP2 left the Office, so PD PA became a full member in his place. Whilst PD 4.3 was removed from his post in PD HR, he remained in the GAC until the end of the year.

In our opinion, the President is not free to appoint whoever he wishes to the GAC, and, as set out in our reports of the 237th and 238th meetings, we had a number of problems with the President's appointments. Rather than repeating these, we merely point to these reports. Suffice to say, for these reasons, when we learned of the President's appointments, we appealed against them. However, because we cannot be sure that our appeal will be successful, we attended the meetings and, as usual, gave reasoned opinions. However, at the start of each meeting we stated our position that we disagreed with the constitution and stated that, should the constitution of the GAC indeed prove to be irregular, then the whole consultation process was flawed.

When informing the CSC in 2011 of his intention to "put the MAC in the GAC", the President made clear that the mandate of his members was to defend the proposals submitted to the GAC. This was what they did through the year. Indeed, it seemed as though they had even less authority to propose changes than the A5s previously appointed. The purpose of the GAC, however, is to provide advice, not to deliver courtesy opinions or "Gefälligkeitsgutachten".

The President has also stated that (because of this) it is the opinion of the members appointed by the Staff Committee which is most important. The reason is that it is this opinion which is most likely to raise objections to the proposals submitted. It is thus regrettable that the President has shown an increasing tendency to ignore our GAC opinions. Recent examples of this have been his determination to proceed with reform of the appeals system and to introduce the Guidelines for Investigation. This despite the fact that in both cases we clearly set out that the proposals were deficient and not ripe for implementation.

Because they were mostly new to the GAC, the members appointed by the President could not be expected to know the history of past discussions or the background details of various topics. Moreover, they took a more cavalier view than in the recent past of the information which the GAC needs in order to be able to give a reasoned opinion on a proposal. That said, they were generally well prepared and willing to listen to the arguments which we put. It was, however, clear that they had no mandate or room to agree with us, even on points which we suspect that, in private, they might have.

2012 also saw a relatively high number of meetings (nine). The Rules of Procedure foresee that generally the GAC should meet every other month, that is to say six times a year, depending on the matters to be

discussed. Despite this, the number of documents actually discussed was smaller than usual. In total, 30 documents were submitted. This includes recurring items such as six of the seven items discussed at the current meeting. On these items, discussions are often short. By comparison, in 2011 the GAC considered 49 proposals.

Interestingly, the administration presented a draft calendar for 2013 comprising ten meetings, all of them one day long. Given that usually extra meetings are added throughout the year, this would represent an extremely large number of short meetings. We explained that we had doubts that this was a sensible way to proceed.

At the time of writing, we have not yet seen any appointments for 2013. It remains to be seen if the experiment of "putting the MAC in the GAC" will be repeated. It also remains to be seen how the discussions will be next year, now that the MAC has a year's experience under its belt.

The members of the GAC appointed by the CSC.