

# Report of the 247th meeting of the GAC on 20.02.2013 in Munich

## Summary

The 247<sup>th</sup> meeting of the GAC (General Advisory Committee) was the first GAC meeting of 2013. The agenda comprised four proposals for opinion: Amendment of Article 50 of the Financial Regulations combined with the introduction of an implementing Circular 346; Modification of Article 60 of the Service Regulations combined with revision of Circular 22 with regard to home leave; Final PAX figures for 2013; and a new structure for Principal Directorate Quality Management

## Introduction

The GAC members are appointed in equal numbers by the President and by the Staff Committee.

When the President published in December the names of his nominees for 2013, we learnt that, as for 2012, broadly, the composition of the management side of the GAC corresponded to that of the Management Committee (the MAC).

In our opinion, the President is not free to nominate whoever he wishes to the GAC.

Firstly, we consider that it is a requirement of the regulations that GAC members must be permanent members of staff. However, most MAC members are not permanent members of staff. Worse, as short-term political appointees the Vice-Presidents could possibly lack both the knowledge and the independence required by the function.

Secondly, the role of the GAC is to formulate reasoned opinions, which the President should then consider with the MAC before deciding on a proposal. For this reason in the past there was a general understanding that GAC and MAC membership should be mutually exclusive. The reason for this is obvious: putting the MAC in the GAC will, in effect, mean that the MAC will be advising itself, rather than being independently advised. Not only will this likely reduce the quality of the

advice being given, but it is also a clear conflict of interest.

For these reasons, when we learned of the President's nominations, as was the case with the 2012 nominees, we appealed against them.

We have had similar situations in the past. For a fuller discussion, see our report of the 238<sup>th</sup> meeting of the GAC.

Because we cannot be sure that our appeal will be successful, we will continue to attend the meetings and, as usual, give reasoned opinions. These will be with the caveat that, should the constitution of the GAC indeed prove to be irregular, then the whole consultation process is flawed. This would mean that any appeal against a decision made after consultation of a wrongly composed GAC would have an extremely good chance of being successful.

## Art. 50 FinRegs and Circular 346

Article 50 of the Financial Regulations (FinRegs) requires staff members to provide original vouchers (i.e. bills, certificates, contracts etc) in order to receive payments under the ServRegs, e.g. of a rent allowance, language allowance, reimbursement of removal expenses etc. The one exception to this is the reimbursement of duty travel expenses (the duty travel regulations were changed in 2011 to allow reimbursement without the submission of proof of expenses,

but with spot checks on a random basis).

The administration presented a proposal to the GAC to allow replacement of paper requests with electronic ones to which electronic copies of original supporting documents may be attached. This proposal comprised two parts, namely:

- a draft CA document, setting out a proposal to amend the FinRegs such as to allow payments under the ServRegs to be made following submission of copies, rather than originals, of validating documents.
- a draft staff circular, setting out implementing rules and informing staff of the modalities.

That is to say, the CA document enables the change, and the staff circular explains how it is to be implemented, including the staff obligations. We support the principle of allowing staff members to submit (electronic) copies of certificates and vouchers to be filed when seeking payments under the Service Regulations. We believe that this will prove to be more efficient and quicker for both the staff member making the claim and the service when processing the claim. Accordingly, we gave a positive opinion on the CA document.

However, we considered the content of the circular to be problematic. The reason for this is that the circular imposes on staff an obligation to keep the original documents essentially for ever. This is both excessive and, to all intents and purposes, probably not enforceable.

We agree that the administration should be allowed to conduct random checks of original documents, in order to check the validity of a claim. However, in a manner similar to that with duty travel claims, there should be limits.

In the meeting, we tried to explain the unreasonable effects of the requirements of the circular as proposed. Take, for example, the case of a staff member claiming a rent allowance, who provides a scanned copy of the contract as supporting evidence. After a while, the staff member may cease to claim the allowance e.g. because they get promoted or buy a property. A couple of years later, they might then quite reasonably dispose of the original version of the rent contract. Most national laws include time limits for legal

actions against individuals ("Verjährung" in German). The currently proposed regulation would oblige staff to keep documents sometimes for decades after their purpose had been fulfilled, even though the Office would have a scanned copy of the same documents. We explained that this was clearly excessive and unreasonable. We thus did not consider it likely that the Tribunal would uphold the Office taking action against staff in such a case. The regulation would accordingly not be enforceable.

We thus gave a negative opinion on the staff circular.

We also recommended to the President to proceed with submission of the CA document to the BFC and the Council. However, we also recommended that the circular should be rewritten before being issued. In particular, we recommended that, in a manner analogous to that with duty travel reimbursements, some limit is fixed beyond which staff members do not need to keep originals.

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

### **Article 60 ServRegs and Circular 22**

Article 60 is the article of the ServRegs which governs home leave. Circular 22 is the circular setting out the rules which apply for the various different types of leave at the Office. The administration presented to this meeting of the GAC a proposal to amend both of these.

The document contained two main proposals:

- to reimburse staff travel costs for home leave in the form of a lump sum payment based on 50% of a specific definition of the business class fare for the route
- to abandon the existing possibility for staff to take home leave outside the territories of the EPC Contracting States

*Lump sum reimbursement based on 50% of the business class fare*

Following an earlier attempt by the administration to change (i.e. generally to reduce) the basis for reimbursing home leave expenses without first informing staff, in 2012 a "Working Group on Home Leave" considered

what basis should be used and performed a computer simulation of the current proposal to provide a lump sum payment based on the same specific definition of the business class airfare as in the proposal for journeys of over 500km. This simulation showed surprising results, notably that long journeys were often cheaper than shorter journeys, or that the business class fare varied significantly depending on the direction of travel e.g. business class travel is more expensive from Munich to Schiphol and back than the other way round. In addition, the proposal does not take account of the fact that there is no business class on some air routes.

Accordingly, in our view the lump sum payment proposed has been demonstrated to be unfair and yields payment amounts that are counter-intuitive. We think that most staff taking home leave will either drive or fly economy. Thus we consider that the lump sum payment should increase with increasing distance of travel. This is not the case with the current proposal.

We thus recommend sending the proposal back to the Working Group on Home Leave with a mandate to explore alternatives to 50% of the business class fare as a basis for calculating the lump sum payment.

#### *Abandonment of home leave outside Europe*

This part of the proposal will affect staff in two different ways. A staff member with a "European" nationality other than that of their country of employment (e.g. someone with dual British / Australian citizenship based in Munich who takes home leave in Australia since they had demonstrated that their closest family connections are not to the UK but to Australia) will retain their right to home leave, but will have to take it in the UK, with an address fixed in the capital i.e. London. On the other hand, a staff member whose "European" nationality is that of their country of employment (e.g. someone with German / Argentinean citizenship based in Munich, who had been granted the right to take home leave in Argentina) will lose completely their right to home leave.

In the meeting, we pointed out that there is a considerable body of case law among the judgments of the ILO-AT with regard to home leave, most notably judgments 441 and 525. These judgments address the question of

acquired rights and the purpose of home leave, among other issues. Based on this case law, we argued that the staff affected by this proposal will have a legitimate grievance and a good probability of success in appeal proceedings. The costs of this would be significantly more than the expected savings of EUR 75 000, which are in any case insignificant when compared to the EPO surplus of more than EUR 100 million in 2012.

The document mentioned that PD 5.3 is of a different opinion with regard to the case law. However, despite our request, we were not shown any legal opinion. Also, in the meeting we were not informed of any arguments on which this might have been based. In the meeting, we pointed out that the failure to submit either this opinion of PD 5.3 or the report of the Working Group cast serious doubts on the good faith of the consultation process. We again reminded the administration of the necessity, set out in judgment 2857 of the ILO-AT, to provide the GAC with all the information it requires in order for it to be able to give a reasoned opinion.

For all these reasons, we gave a negative opinion on both parts of the proposal.

The members nominated by the President gave a positive opinion on the proposal. Additionally, they suggested that the Office reconsiders the proposed abolition of home leave outside Europe for staff already in place. Staff entitled to home leave outside Europe should continue to receive the reimbursement, always if they enjoy this right as from the date of recruitment, or following a revision of their personal circumstances, if this right was granted to them following a request for a change in their address for home leave.

#### **Final PAX figures 2013**

In conformance with recent practice, following discussions in the PAX Implementation Board, the administration presented the final PRED and CRED values for 2013 to the GAC for opinion.

Concerning the actual figures, we were satisfied that the calculations leading to the values presented in the document were performed in accordance with the relevant provisions in the PAX Implementation

Handbook. We thus gave an opinion to this effect.

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

### **PD Quality Management**

The administration presented to the GAC a proposal to re-structure PDQM. The background for this is that the PA Consulting Support Services study (available from the intranet) made recommendations with regard to the efficiency and effectiveness of quality management at the EPO. Following this, in 2012 VP2, at the request of the President, carried out an assessment of PDQM. This concluded that PDQM should focus on providing support for the rest of the Office and that the operational units (mainly DG1 and Patent Administration) should be empowered to manage their own Quality Systems.

Currently, PDQM comprises three directorates. It is planned to reduce this to two, with a corresponding drop in staff complement. The document is silent on which tasks and staff will no longer be in PDQM, and more importantly, what will happen to them! It is nevertheless clear that current Directorate Practice and Procedure with its tasks will be dismantled and transferred to the operational units.

In the meeting VP 1 and VP 2 provided guarantees that the current units of Dir Practice and Procedure with their corresponding tasks will be moved *en bloc* to Dir 115 in DG 1 and to Patent Administration in DG 2, where they will continue their current work. This is reassuring from the point of view of staff in Dir P&P, in that they will not be asked to move site or change their tasks.

Indeed, our major concern whenever a reorganisation is envisaged, is not the new structure as such, but the impact that this reorganisation will have on the staff members affected and how they are taken care of. This is also the reason why the GAC is consulted before a decision on any reorganisation is taken: A reorganisation is a measure that affects staff and the opinion of the GAC is thus required pursuant to Article 38(3) ServRegs.

In this respect, we pointed out that we considered that the GAC consultation was premature and incomplete. In particular,

neither the expert of the Administration nor VP 2 could answer questions such as how many staff members will finally move out of PD QM to Patent Administration, DG 1 or DG 5, which exact procedures will be followed to select staff who currently work in Dir P&P but will nevertheless remain in PD QM, or what will be the staff balance in the future between The Hague and Munich and where team leaders will be located and why. Moreover, it seems that the staff consultation process is far from complete.

We set out that the purpose of Article 38(3) ServRegs is that the Administration provides complete and concrete information on how they foresee that a proposal will affect staff. In the case of a reorganisation, this means providing information on numbers of staff affected or transferred to other units, on new structures, in particular new reporting lines, and on any selection procedures envisaged to reallocate staff and on training foreseen for new or recently transferred staff. We also noted that in 2011 the GAC had given the unanimous opinion GAC/AV 10/2011, which set out that not only major projects, but also reorganisations, should routinely plan consultation of the GAC as milestones in their time plan, thus ensuring that recommendations can be taken into account and misunderstandings avoided. This opinion set out that there should be an initial consultation or at least discussion in the GAC that should take place early enough to ensure that the reorganisation project can be adapted, if necessary, to take into account the outcome of the consultation. This must then be followed by a final consultation before implementation, when the concrete impact on staff affected is discussed. This final consultation would be obligatory, even if the initial consultation led to no substantive changes in the proposal.

We gave an opinion setting out the above.

In addition, the member nominated by the CSC from Berlin regretted that the proposal does not explicitly foresee the possibility of creating a unit of PDQM in Berlin. He was of the opinion that the newly created structure leaves room for the creation of new units and additional posts. They should thus be fairly distributed, so that they are not exclusively concentrated in the biggest places of employment. Whilst insisting that any possible staff changes or transfers should only happen on a voluntary

basis, he believed that such a possibility would enrich the EPO as well as those staff members who would like to voluntarily transfer to Berlin.

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

After the GAC meeting we learned that all the missing information relating to the direct impact of the reorganisation on staff will most probably be available before Easter. The President thus has the possibility to submit a second proposal to the GAC in April to request an opinion on all the issues that affect and interest staff in PDQM, DG1 and Patent Administration.

The members of the GAC nominated by the CSC.