



Report of the 248th meeting of the GAC on 19.03.2013 in Munich

Summary

The 248th meeting of the GAC (General Advisory Committee) was the second GAC meeting of 2013. The agenda comprised a single proposal for opinion: A code of conduct for the EPO.

Code of conduct for the EPO

The one point on the agenda of the GAC for opinion was a document setting out a code of conduct for the EPO.

This document sets out what are called the EPO's public service values. These are:

- Respect for the individual;
- Integrity and accountability;
- Impartiality and objectivity;
- Compliance with the rules of law;
- Quality and professionalism.

For each of these points, there is a brief explanation, including keywords to be understood as being comprised in the point. Then, under the heading "our approach" there is a list of statements, most of them starting with the word "we", for example "we strive to create ..." or "we seek to promote ...".

VP4 explained, both in an explanatory note and in the meeting, that the Code of conduct does not create another legal framework. It was not the intention to regulate regulations. Rather, the document was a result of the HR roadmap. The aim was to improve the culture and atmosphere at the Office, promote mutual understanding and set positive references for behaviour.

In the light of these, and other explanations given, we stated that we found nothing objectionable in the proposal *per se*.

However, we noted that, when talking about

the EPO's public service values, the document sets out that "staff with managerial responsibilities are expected to promote these values by leadership and example". The document is to be signed by the President with the words "I undertake to respect our values and ensure that they are respected".

We explained that, unfortunately, our belief was that the majority of staff currently had a quite different perception of the President's recent behaviour. If these staff members then see the President's name under such a text, we feared that it would likely lead to cynicism and scepticism concerning the proposal.

Given the positive aims set out in the proposal, we said that this would be regrettable.

We gave an opinion reflecting the above. The members nominated by the President gave a positive opinion on the proposal.

Quo vadis GAC?

As readers of our reports of the 247th and 246th meetings of the GAC will be aware, the members of the GAC appointed by the CSC have objected to:

- I. the fact that, contrary to the then valid requirements of Article 110(4) ServRegs, the President did not submit the names of his nominees as members and chairman of the Internal Appeals Committee (IAC) to the GAC for opinion, and
- II. the fact that the President nominated to

the GAC members of staff who were either members of the MAC and / or not permanent members of staff.

Before the end of 2012, some of us, under the old disputes regulations, filed appeals against both the above measures. These GAC members have, in the meantime, been informed that their appeals have been passed on to the IAC. This implies that, after an initial examination, the President has decided that these appeals cannot be allowed. We write "implies" because, contrary to usual practice, we did not receive a letter saying this was the case. Rather, these members merely received an email from the IAC informing that the cases had been passed on to the IAC as appeals.

Others of us, after the start of 2013, under the new disputes regulations, filed requests for review against both the above measures. These members have now received the results of these reviews. They are "interesting".

Concerning the nominations to the IAC, the President wrote that he did not agree that any legal error has been committed, but in order to avoid litigation, would allow the request. Moreover, he wrote that:

"This means that the IAC is considered as not having been properly constituted from 1st January 2013 and thus not in a position to function and to give any opinion on any case from this date and until a new composition is decided."

This presumably means that any opinions given by the IAC since the beginning of the year are invalid and that the IAC must repeat any work that it has performed between the beginning of the year and the date on which it is correctly constituted!

In response, the CSC sent an (open) letter to the President requesting him to take (further) action on this point. Otherwise, staff are left with no appeals committee! On 08.04.2013, in Communiqué 24, the President explained to staff the situation from his point of view, and announced his new appointments. This means that the IAC is now, finally, in a position to take up its functions for 2013.

The members who asked for a review of the decision concerning the President's nominations to the GAC have now also received a response. The request for review

was turned down, meaning that these members can also now file appeals.

In the response, the President, in an extremely intemperate tone:

- claimed that he had nominated the most qualified people to present and explain the administration's proposals;
- implied that, in contrast, the CSC has not nominated the most qualified people to the GAC;
- stated that the GAC was not a technical body, but rather a high level consultative body (what ever that means);
- expressed the view that the CSC had made its nominations in contradiction of Article 38 ServRegs by considering the GAC to be a mere technical and preparatory body;
- implicitly accused the members nominated by the CSC of not having a mandate to represent staff;
- implicitly accused the members nominated by the CSC of (merely) giving their personal opinions on proposals;
- threatened, for the above reasons, to consider changing the functioning of the GAC, so that it fulfils its statutory rôle.

General comments on the above points

Up until the start of 2012, the GAC had functioned in more or less the same way for much of the previous 35 years. It is, of course, completely possible that for all that time, the CSC and five previous presidents had misunderstood the rôle and proper functioning of the GAC. It took a sixth President to realise and attempt to correct this.

However, even if that were so, this is clearly not the way to go about changing things, especially in an International Organisation like the EPO which, works best by consensus. We are convinced that the most efficient way to change things at the Office is with staff, through consensus. In this respect we note that last year the Chairman of the GAC suggested discussions to try to achieve a common understanding on the rôle and functioning of the GAC. We welcomed this. It never took place. Rather, what we see now is a President who insists of imposing his ideas from above. There is no agreement from the other party (at the end of the day, the "other party" in this context is not those who currently

happen to be GAC members, but rather the staff of the Office in general), even when the ideas go against 35 years of Office practice.

Specific comments on list of points

The President claimed that an important reason for his choice of nominees was that they were the most "qualified and responsible" for presenting and explaining the administration's proposals. We find it strange, then, that for virtually every point presented and discussed since the start of 2012, the members nominated by the President have seen the necessity to nominate experts to present the proposals and answer our questions. In this respect, we refer the reader to the minutes (which are publicly available after approval), where the experts are listed. Readers will thus be able to judge for themselves who in the GAC is best able to form an opinion on the topics presented.

Moreover, we refute the (implicit) allegation that we have no mandate to represent staff. Traditionally, the CSC has nominated as full and deputy members of the GAC a mixture of current and former elected staff representatives. Those currently elected provide a direct connection to the local and central committees. The formerly elected

generally have several years experience of the topics which (may) come up for discussion. Of the six full members and six deputy members nominated this year by the CSC, no fewer than eleven are either currently or were formerly elected members of the various local committees.

Moreover, before every meeting, we arrange a preparatory ViCo. To this we invite the central chairman and secretary and any other CSC nominees or experts who we consider will be able to help us give a reasoned opinion on a proposal. We also do this to ensure that the opinions that we give are in line with the CSC. We reject the allegation that we merely give our personal opinions. We reject the insinuation that we do not have any legitimacy.

In the meantime, the CSC has sent a letter to the President explaining to him how the CSC considers the GAC should function and setting out what the CSC considers our rôle to be.

Finally, we find it telling, and perfectly fitting, that - in this case as in so many others - when faced with opinions that differ from his own, the President's reaction is to make threats to change the rules (see last bullet point above).

The members of the GAC nominated by the CSC.