



Report of the 249th meeting of the GAC on 23.05.2013 in The Hague

Summary

The 249th meeting of the GAC (General Advisory Committee) was the third GAC meeting of 2013. The agenda comprised three proposals for opinion: reallocation of tasks among directors in Patent Administration; a proposal to merge the B/C Harmonisation Committee and the B/C Job Grade Evaluation Panel; and a document called "Improving working conditions and wellbeing of staff".

Reallocation of tasks among directors in Patent Administration

Currently, there are five directorates and four directors in Patent Administration (PA). They share tasks in customer relations (three units), responsibilities for the SIS units (29 units) and the central validation units (currently 2 units). All directorates are cross site.

The administration presented a proposal to re-organise this structure into four directorates with four directors. Basically, one of these would be responsible for (direct) customer relations only. The remaining tasks i.e. responsibilities for the SIS units and the central validation units would then be shared between the three remaining directorates and directors. The object is to reflect the growing importance of providing services to external clients.

For the vast majority of staff, there would be no change in either function or reporting officer. However, in some cases, there will be a change in counter signing officer. Thus the main effects will be on the directors concerned. One of these was present in the meeting as an expert for the administration, in order to present the proposal and answer questions. In the meeting, he explained that the directors also support the proposal.

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. 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 the current case, the effects on staff are marginal. Moreover, those most directly affected seem to support the proposal. The GAC thus gave a unanimous positive opinion on the proposal.

Merger of B/C Harmonisation committee and B/C Job Grade Evaluation Panel

The B/C Harmonisation committee (HarmCo) was set up in Circular 253. It provides advice to the President on aspects of the B/C career, such as the criteria to be applied in evaluating the level of duties.

The Job Grade Evaluation Panel (JGE) was set up by Presidential decision dated 23.08.2005 to evaluate the grading of jobs in B/C in accordance with a methodology adopted by the EPO. This method was forwarded to HarmCo for opinion.

The administration considered that there was an overlap between the two bodies.

Accordingly, the administration presented a proposal to merge the two bodies into a new so-called B/C Job Classification Committee. It was claimed that this new body would have responsibilities which corresponded to those of the two old committees. It was also claimed that this would result in synergies. What precisely these would be was not, however, explained, either in the document or in the meeting.

At first sight, it might seem reasonable to try to reduce the number of committees in the Office in this manner. However, we had a number of concerns.

Firstly, *Nomen est omen*. The title of the new committee does not cover important tasks of the HarmCo. These tasks include making recommendations for advising line managers on the measures they should take as regards management of the careers of the B/C staff under their supervision. We were thus concerned that, in actual fact, some of these tasks might not in the future receive the attention they should.

Next, we noted that the new committee will comprise fewer members than either of the two committees whose work it is intended to take over. We thus expressed doubts that the new committee would be able to carry out effectively all the tasks which the HarmCo and JGE have performed until now. Rather, we feared that this reduction in available manpower would lead to a loss in the expertise which the two committees have built up over the years. We also feared that this reduction in manpower would mean that not all places of employment would be adequately represented in the new committee, which could lead to a de-harmonisation of practice between the places of employment.

Finally, we noted that it seems that consideration is being given to overhauling the Office career systems. Implementation is expected for next year,. Given that the new committee would likely only meet once before these changes are due to take effect, we thus did not see the point in setting up a new committee at this point.

For these reasons, we gave a negative opinion on the proposal. The members nominated by the President gave a positive opinion on the proposal.

Improving working conditions and wellbeing of staff

The administration presented a proposal claiming to improve working conditions and wellbeing of staff. The proposal comprised a draft CA document proposing to amend Articles 26, 55 and 62 ServRegs (concerning medical examination, working hours and sick leave respectively) and a proposal to amend Circular 22, the main staff circular concerning the various different types of leave at the Office.

From this list of the regulations which it is proposed to amend, it should be clear that the proposal doesn't suggest "classical" improvements in working conditions. These could be, for example, reducing working time or increasing the Amicale budget.

Rather, the proposal mainly concerned how staff members inform the Office that they are unable to work, and how the Office then monitors and checks the sick leave. Concretely, the core points of the proposal are:

- A requirement to contact the line manager by phone on the first day of sickness; if this is not possible, another notification means (e.g. eMail) may be used on the first day, so long as the line manager is contacted within the first three days;
- Obligation to inform the line manager by phone in case of prolongation of sick leave and to inform him of likely duration of leave;
- Obligation to provide the Office with current / home phone number;
- Medical verification (i.e. medical checks) at the staff member's home - without the presence of any third parties e.g. family / lawyer;
- Requirement to be at home from 10:00 - 12:00 and 14:00 - 16:00 when on sick leave, which requirement is not restricted to working days;
- Mandatory medical examination after each 30 working days of cumulated sick leave in last 12 months;
- Role of the Occupational Health Service (OHS) in implementing the above examinations and taking up contact with the staff member.

In the GAC, we pointed out that, from feedback we had received, staff found it highly cynical to

refer to a package of such measures as "improving working conditions and wellbeing". We pointed out that from a staff perspective, the proposal is about rules for regulating and monitoring sick leave.

The proposal referred to a benchmarking exercise that had been performed, comparing the sick leave situation at the Office with that of other International Organisations. We also thought that the proposal had data protection aspects. Thus well before the meeting, we requested that the administration provide us with a) the benchmark study mentioned in the documents submitted to the GAC, b) any report which the Data Protection Officer (DPO) may have produced, and c) any legal opinion on the proposal which DG5 may have produced. We should not actually have to request this information. It is quite clear from the Tribunal case law that the Office *has* to provide the GAC with all information necessary for it to be able to give a reasoned opinion.

However, despite this, we received none of the above information. In the meeting, we were informed that the DPO had indeed been consulted and that she had made a number of objections concerning parts of the proposal. What these were, we were not told. Also, we were not informed about what the administration intended to do about these objections. Moreover, without having the benchmark study, it was difficult to determine the extent of the claimed problem. That is to say, if the proposal was worthwhile.

We strongly objected to the GAC being treated in this way.

In the GAC, it was also explained that the proposal was based on best practice as taught by, for example, British literature. This showed that early (telephone) contact between a sick staff member and his manager was an important factor in staff well-being. A core principle behind the proposal was to increase and improve contact between the individual staff members and their managers. Again, the literature shows that this is central to improving staff well-being.

We pointed out that, to the extent that a culture similar to a national one exists at the Office, it is probably most similar to a German culture, not a British one. We thus were concerned that what might be accepted in a British

environment might not transfer to the Office environment.

Before the meeting, we received, from SUEPO, a legal study concerning the legality of the proposal under German law.

This study made clear that a number of core aspects of the proposal are contrary to German law. The Office considers that it need not follow German law. However, we pointed out that in the recently issued "Code of conduct", which the President signed that he undertakes to respect, it is stated that the Office will "respect the applicable national laws of the country (it is) in". It is furthermore explained that "our privileges and immunities do not prevent us from complying with our obligations under applicable national laws". These undertakings were given less than a month ago!

We also argued that we considered it unwise for the Office to implement any proposal that is clearly in conflict with the legal system of our largest host country. This will not serve to increase staff acceptance amongst the ca. 60% of staff who work in Germany. Additionally, the service providers which the Office will use to implement parts of the proposal will be subject to German law. Thus the Office may have problems implementing the proposal. In particular, it seems that the parts of the proposal concerning medical examinations at the home of the staff member run contrary to the requirements of both the German basic law and Article 8 of the European Convention on Human Rights. The obligation to stay at home during certain hours while in sick leave is also in contradiction with the duty of care and national law. We pointed out that the German Constitutional Court has consistently made clear that it would rule on suits brought by employees of international organisations against rules or regulations which resulted in said employees being without equivalent protection to that offered by the German basic law. We thus considered it unwise for the Office to be actively putting in place a regulation which could invite such suits.

We were also concerned with the changed role of the Occupational Health Service (OHS). Currently, the OHS enjoys a relatively good reputation amongst staff. It is a service which is there to provide them i.e. the staff, with help and advice on health related issues. However,

in the proposal, the role of OHS is expanded to include checking and verifying sick leave. That is to say, rather than providing a service to sick staff, they provide a service to the administration. In our opinion, this is part of the function of the Medical Advisor. We feared that by mixing the two, staff trust in the OHS could be reduced.

We also pointed out that it seems that no thought has been given to providing the OHS with the extra resources necessary for it to be able to carry out the additional tasks foreseen by the proposal. It would only serve to decrease the standing of the OHS in staff's eyes if, rather than providing services to staff, OHS resources have to be diverted in order to (in effect) provide services to managers and the HR department. We found this regrettable.

For the above reasons, we gave a negative opinion on the proposal, and recommended that the Office *not* proceed with implementation. As an annex to the opinion, we provided the above mentioned legal opinion provided by SUEPO. We also noted that, before being submitted to the GAC, the proposal was sent to the COHSEC for opinion. The COHSEC had also made a number of critical observations. In our opinion, we stated that we supported these also.

The members nominated by the President gave a positive opinion on the proposal. However, to their opinion they annexed a number of suggested modifications to the proposal. Some of these were merely editorial. Others, however, included amendments which were claimed to overcome objections raised by the data protection office. Without having seen what the objections were, we cannot say if these objections have in fact been overcome.

The members of the GAC nominated by the CSC.