



Report of the 254th meeting of the GAC on 27.11.13 in The Hague

Summary

The 254th meeting of the GAC (General Advisory Committee) was the eighth GAC meeting of 2013. The agenda comprised a number of recurring items (salary, nominations, 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. Also on the agenda was a circular on death and invalidity insurance rates from 2014.

2013 Salary adjustment

For details on this topic, see the Central Staff Committee publication entitled "Adjustment of salaries from 1.7.2013" dated 6.11.2013. This paper gives details of this year's adjustment¹. The proposals can also be found in MICADO as CA/81/13 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 except the Brussels office is positive for this year. The result is that the Office proposed to the Council that salaries in the Netherlands should rise by 3.3%, in Germany should rise by 1.6% and in Austria should rise by 1.7%.

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.

¹ This paper can be found at:
<http://www.suepo.org/archive/sc13156cp.pdf>

Spouse's contributions to EPO medical system

For more information on this point, see our reports of the 212th, 219th, 227th, 237th and 246th 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 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 need to be reviewed

periodically, and the administration has decided to do this annually. For the higher premium, the Office asks the consultants Mercer to perform a study of the local markets in Germany and The Netherlands. The President decides on the methodology for the lower premium.

In the GAC, we said that we do not know what mandate was given to Mercer which led them to arrive at the figures proposed for the higher contribution rate. We also did not know the reasons for the methodologies used for arriving at the lower contribution rates. Neither the members nominated by the President nor their expert were in a position to provide us with any information on these points.

For example, concerning the lower contribution level, the only "methodology" that we can see is that 50% of the basic salary of C1/3 is multiplied by a number. For each of Germany and The Netherlands we know **what** this number is. For Germany, it is the employee's part of the general contribution rate to the German statutory healthcare insurance for the previous year (7.3%, resulting in a premium of EUR 103.18), i.e. a figure related to the external German system that is multiplied by 50% of C1/3. For the Netherlands, it is 1/3 of the actuarially calculated contribution rate for the Office healthcare insurance (3.0% resulting in a premium of EUR 42.64). We do not know the **reasons** for selecting these figures. In particular, we do not know why a different number is chosen for Germany and for The Netherlands, which results in a premium for Germany 2.4 times higher than for The Netherlands. In this respect, we pointed out that the Implementing Rule at B.(c) states that "the President shall define a reduced contribution applicable to working spouses with a gross income of less than the basic salary at grade C1 step 3". It is from this not at all clear that the President is free to use a different basis for calculating the contribution for different countries. This is particularly so given that no reasons have ever been given for the differences.

Concerning the higher rate, we also explained that we did not know what had led Mercer to propose these particular figures. For example, for Germany, Mercer only considers policies with a deductible of EUR 3000 for a

Neuzugangsbeitrag, that is to say, for a policy for a new policy holder. So called *Erstbehandler* or *Hausarzttarife* were not considered. This results in a premium of EUR 261.81. Shockingly for us (the members nominated by the President seemed to have no problems with this), this is about 60% more than the figure of EUR 166.12 applied as recently as 2008.

The implementing rule foresees that the "monthly contribution to the scheme for the spouse (shall 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".

To us, this would imply that Mercer should consider the largest legal deductible namely EUR 5000. 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 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, using a *Neuzugangsbeitrag* every year for the calculations is clearly unreasonable for a stable population such as that at the Office, especially given that the Office has also moved to a funded healthcare system.

We explained that only if we knew why precisely the tariffs considered by Mercer were chosen (e.g. if the administration were to provide us with the mandate and any other instructions provided to Mercer) would we be able to form an opinion as to whether or not the figures are reasonable.

For The Netherlands, we again pointed out that the EPO should not need the services of an expensive consultant to make an average of the three lowest rates available. We provided them with the link to an Internet site setting out contribution rates, both for 2013 and 2014. On this site, we found both the rates presented in the Mercer report and other cheaper rates (including from the same insurance companies), apparently meeting the same criteria.

We pointed out that the average of the three lowest rates is lower than the average proposed by Mercer (EUR 72.53), whilst also meeting the criteria selected by the consultant (own-risk share of EUR 500 and a collective discount of 10% when applicable).

Thus also for The Netherlands, we could not understand why Mercer had proposed the figures they did.

We explained that without knowing how the figures presented were derived, we were not in a position to give a reasoned opinion on the document.

For the reasons set out in part above, and in more detail in our report of the 246th meeting of the GAC, we did, however, set out why, as far as we can tell, the wrong tariffs have been chosen by Mercer. We suggested that the whole matter of the financing of the healthcare insurance scheme should be submitted to the Health Insurance Working Group as soon as possible. This included:

- examining the evolution of the system since the current arrangements were introduced in 2008 (particularly in the light of the shocking increase for Germany described above);
- making suggestions for financing the healthcare insurance system for the future;
- developing a proposal for an "integrated solution" in Germany, similar to the system that the Office has set up in the Netherlands;
- studying 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. In particular, management representatives from The Hague considered that the premiums proposed for Germany were obviously good value.

Death and invalidity insurance

Calculation of contribution rates for death and invalidity insurance are performed on three year windows. The current period runs from 2011 through 2013. Thus the administration

presented to this meeting of the GAC details of a preliminary settlement for 2011 - 2013 and a proposal for setting new provisional rates for the period 2014 - 2016.

The system showed a surplus over the 2011 - 2013 period. The administration is proposing to reimburse part of the projected surplus now, and the remainder when the final figures for the period are known i.e. some time next year. The administration claimed that the system is more or less in balance, and thus also proposed to keep the contributions at their current level for the next three years.

For the first time, we were made aware both by the document itself and from feedback from the LTC WG, that in 2013 the President made decisions that payouts in respect of both death and invalidity should be refused.

The members nominated by the President refused to inform us whether or not there was a new policy to be more restrictive in these matters. We stated that, without knowing if there is a new policy (whereby if these refusals are merely a statistical blip, it is strange that it was not possible to say so) we were not in a position to know whether the basis for the figures for the future is sound. Clearly, if there is a new policy to pay out less often, then less money will be paid out and the contribution rates should be lower. We also made clear that, if there is a new policy, this is highly risky for the Office. The Tribunal takes a dim view of the President replacing medical opinions with his own. If (at least some of) these decisions are overturned by the Tribunal and the Office is forced to return to previous policy, there will be a backlog of cases to clear and payments to make. We made clear that, in this case, we would expect that payments for the mess caused will be charged to the Office and not to staff.

We also stated that staff pays a premium for insurance coverage. They thus have a valid expectation that, should they be unfortunate enough to go on invalidity or die, the insurance will pay out. It is not acceptable that the President decides that a staff member can continue to work, in spite of a medical opinion to the contrary. It is not acceptable for the President to decide against paying grieving survivors in case of valid death insurance

claims.

The invalidity insurance is split into so called basic cover for all staff and additional so called supplementary cover only for staff recruited before 10.06.1983.

Concerning the supplementary cover, the group of staff who benefit from this cover are a closed and decreasing group. This group was formed deliberately by the Office. The members of the group are thus not to blame for the demographics of the group, which, since it is a closed, decreasing group with an average age higher than Office staff as a whole, would normally have to pay a higher contribution rate. Thus, as a transitional measure, the Office pays a surcharge calculated to compensate for the demographic nature of the group. This we consider to be fair.

Concerning the so-called basic cover, we have in the past consistently claimed that grouping of staff recruited before and after 10.06.1983 into a single group for calculation of the invalidity insurance contribution is not correct for reasons set out in ILOAT judgment 2110.

However, examination of the figures shows that as a matter of fact, this is becoming almost irrelevant. Staff recruited before 10.06.1983 have at least 30 years service in the Office. Given recruitment ages, they are (almost) all at least 56, the age from which they begin to benefit from the supplementary coverage. Any staff in this group over 60 will only benefit from the supplementary coverage. Benefits payable under the so called basic cover in respect of staff recruited before 10.06.1983 have already fallen to almost zero. This group of staff thus more or less receives payments entirely from the supplementary cover. Soon, payments to them will only come from the supplementary cover.

Since, as far as basic cover is concerned, this group is more or less no longer relevant, we disagreed with the administration's assumption that the system is in balance. Rather, since the staff recruited before 10.06.1983 more or less no longer benefit from the basic coverage, it is now an appropriate basis for calculating the contribution rate for the basic coverage only to consider the figures for staff joining after 10.06.1983. This would give a lower contribution rate of around 0.2% of basic salary.

For these reasons, we gave a negative opinion on the document and recommended to apply a contribution rate of 0.2% of salary.

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

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. For the revision as of 1 January 2014, the result it that it is proposed to increase the lump sums by 2.2%.

The GAC gave a unanimous positive opinion on the proposal.

Nominations

According to Article 98(1) ServRegs, the President has to present the names of his nominees as Chairman (and deputy) of the disciplinary committee to the GAC for opinion.

For 2014, the President suggested two new names, and provided their bibliographic details. This is the first time that we can recall that it was proposed to change both the Chairman and deputy at the same time, which we considered unwise. Moreover, also in a break from the past, the two nominees are both line managers. In the past, both nominees were members of the Legal Board of Appeal. That is to say, both legally qualified and neither appointed by nor under the disciplinary authority of the President. We thus asked the administration for the reasons for these changes, particularly since we were not aware of any problems with the functioning of the committee this past year. They were not able to give us any answer beyond repeating continuously that this was a discretionary decision within the authority of the President and that the candidate for the position of Chairman was an excellent person.

We pointed out that these are not valid justifications for the change. We assume that the President can find many other excellent

candidates for the positions of Chairman and Alternate Chairman of the Disciplinary Committee in the Office with at least the same qualifications that the proposed candidates have.

In the GAC, we also pointed out that the proposed Chairman and Alternate Chairman are both line managers on contract. That is to say, not only people under the disciplinary authority of the President, but also appointed by the President for a limited, renewable period of time. Moreover, the proposed Chairman has no legal qualifications and no experience in judging disciplinary matters (the proposed Alternate Chairman has both the above qualifications). We noted that, in the course of their normal duties both candidates have a heavy burden of duty travels. Indeed, the Chairman has staff in each of The Hague, Berlin and Munich. We thus feared that it might prove more difficult than in the past to arrange disciplinary procedures, when both nominees had tasks that ensured that they were generally available in Munich.

Finally, we pointed out that, the proposal goes against the spirit of *Findlay v. The United Kingdom* (case 22107/93 of the European Court of Human Rights). This judgment sets out why a court may not comprise people falling under the chain of command of the person convening the court, which would be the case with line managers at the Office.

For all these reasons, we gave a negative opinion on the nominations. We stated that we deeply regretted having to do this. This was the first time that we were aware of that this step has been taken. We stressed that we want nothing more than that this Committee functions correctly and has the trust of staff. However, we feared that in future this might not be the case. We stated that we saw no reason at all to deviate from past nomination practice.

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

The members of the GAC appointed by the CSC.