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**Zentraler Personalausschuss**
**Central Staff Committee**
**Le Comité central du Personnel**

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# Report of the 258th meeting of the GAC on 29.04.2014 in Munich


**Summary**

*The 258th meeting of the GAC (General Advisory Committee) was the third GAC meeting of 2014. Only one topic was discussed, namely a proposed new salary adjustment procedure.*


## Background

Originally, one afternoon only, starting at 14:30, was foreseen for this meeting of the GAC. Also, it was foreseen to discuss another document concerning the Rules of Procedure of the GAC. Given the complexity and importance of the main topic (i.e. the salary adjustment procedure), we objected before the meeting that, in our opinion, the schedule was overly optimistic.

Before the meeting start, the Chairman (VP2 this year) agreed to start the meeting earlier, to allow more time for discussion. At the start of the meeting, the Chairman suggested that the only item that should be dealt with was the salary adjustment procedure. This naturally met with our approval.

This is the sixth time that the Office has adopted a salary adjustment method. In the early days, it simply applied the method used by the Co-ordinating Organisations. However, this is the first time that the President has sent a proposal to the GAC with the intention of sending it to the Council for adopting without first having achieved agreement with the Staff Committee on the content of the proposal. In fact, in contrast to his promise to the Council in 2011 in the HR Roadmap, as will be obvious from the below the President did not even try to achieve agreement with the Staff Committee.

## Consultation process

In 2011, in the HR Roadmap (CA/110/10 sent to and approved by the Council), the President committed to “renewed social dialog”, including “improvement and enhancement of negotiations, especially on sensitive topics”. Specifically, the document undertook to negotiate on the salary adjustment procedure.

As usual, after expiry of the previous method, a joint CSC / DG4 working group analysed the working of the previous method and identified issues that needed further examination and presented a report to the President.

Following this, the President refused to meet a CSC delegation comprising elected members with no disciplinary measures hanging over them and technical experts. Rather, he simply presented a proposal to the GAC for opinion.

This proposal, in addition to some generally minor technical differences, comprises three controversial proposals.

Deletion of all possibility of intermediate adjustments (current Article 5 of the salary procedure). This deletion was not discussed in the working group.

A “moderation clause” aimed to reduce volatility. In the form presented to the GAC, this was only briefly mentioned in the working group.

An “exception clause” for situations where member states’ GDP falls. This was not discussed in any form in the working group.

After the GAC/DOC was published, the CSC again approached the President emphasising the desirability to achieve a consensus with staff on this issue and making a compromise proposal. Mr Battistelli again refused to meet the CSC.

In the GAC, we stated that statutory consultation in the GAC is clearly necessary. However, the consultation that has thus far taken place falls far short of what staff would expect on such an important topic. It also falls far short of the President's own undertakings to staff and to the Council and, in our opinion, what is necessary according to the case law.

We also brought forward the reasons (set out in more detail below) why these proposed changes were unacceptable. We also argued that the proposed procedure did not meet the requirements of the Tribunal. In particular, according to the Tribunal's case law, whilst an international organisation is free to choose its own salary methodology, this must meet "all other principles of international civil service law" (Judgment 1682). These principles include that the results must be "stable, foreseeable and clearly understood" (Judgments 1265 and 1419) and observe other principles such as those of equality of treatment, be proportional and respect legitimate expectations and acquired rights. For reasons that will be clear from the detailed discussion below, in particular concerning intermediate adjustments and the exception clause, it is apparent that the President's proposal does not meet these requirements.

Moreover, we complained that the report of the Advisory Group on Remuneration (the "three wise men"), which is an integral part of the document which is sent to the Council, was only submitted to the GAC <u>the day before the meeting</u>. The members appointed by the President informed us that the reason for this is that the President had to see the paper first, in order to approve it being sent to the GAC.

Yes, the President must approve the sending to the GAC of a report from the wise men. A report which comprises information vital for understanding if the President's proposal makes sense. A report which will also be published (internally) in Micado and sent to the Council.

**<u>Details of proposal</u>**

We see inflation in the member states as one of the main dangers with the procedure as proposed by Mr Battistelli. The Office has salary scales for all member states. Pensioners who retire to a member state of which either they or their spouse is a national may choose to have their pension paid according to this scale. Also, education allowances up to 2.5 times the child allowance (ca. EUR 9600 per child for Germany) are also being paid according to these scales e.g. for children studying at university in another member state.

<u>Intermediate adjustments</u>

Currently, the salary procedure foresees the possibility of intermediate salary adjustments in the case that:

1. inflation in a member state is at least 2% over the period 1 July to 31 December (Article 5(1) of current procedure), or
2. inflation in a member state is at least 10% since the previous adjustment (Article 5(2) of current procedure).

This provides a safety net against inflation. In the working group, the possibility of e.g. raising the thresholds for case 1) above was discussed. There was no discussion at all concerning 2) above. In the GAC we thus said that we found it rather surprising that Mr Battistelli is now proposing simply to delete the provisions. Indeed, Mr Battistelli is proposing that the method should have a duration of ten years. We said that in our opinion, a longer method needed additional safety features, not fewer.

Even if inflation remains low in our host states, inflation in member states could still hurt staff members or pensioners if the Council adopts the President's proposals.

Consider, for example, Turkey, which has the second highest population of any member state. Since it is a recent member state, we can thus probably expect more Turkish nationals as colleagues in the future. However, although currently growing, historically the economy has not been stable, with a history of inflation (six zeros were removed from the Turkish Lira in 2005!).

Any return to inflation figures of the recent past would harm Turkish staff members who, for example, wanted to send their children to university there.

The only reason given for the deletion is "simplification" since the article "has not been applied very often". Leaving aside the question of whether or not "simplification" of a provision is the same as deleting it entirely, the fact that it has not been applied very often during the memory of Mr Battistelli and those around him does not mean that the article was not used in the past. Indeed, in the late '70s and early '80s, and again in the early '90s UK (and indeed FR) inflation was in double figures and this clause was applicable. In fact, if inflation remains low in all member states (a big if), then the clause causes the administration no extra work at all. It just sits there and is not applied. On the other hand, if inflation does return in all or some member states during the ten year application of the method, then this article provides staff (and pensioners) with a valuable safety net.

Moreover, we pointed out that the "three wise men" in their opinion to the President recommended to modify i.e. **not** to delete Article 5(1). They also advised that "the present provision in Article 5(2) should be maintained to protect staff and pensioners".

Moderation clause

Mr Battistelli is proposing as a "moderation" i.e. smoothing clause to limit salary adjustments to +/- 2% around national inflation[1]. Any remainder outside these limits will be considered the next year. Historically, our salary adjustments (i.e. the adjustments of national civil servants) have, however, been of the order of 0.4% above inflation[2]. This implies that such a moderation clause will apply to delay an adjustment more often than it will have a moderating effect on losses of purchasing power. Worse, the text of the proposal is ambiguous. In the meeting, the administration explained how they intend to implement it. If the adjustment in year n is (say) 3% above inflation (e.g. as it was in 2010), only 2% of this is paid out. The rest is taken into account in year n + 1. However, if in n + 1 the adjustment is 1.5% above inflation, the remainder from the previous year is not paid out in full, but shifted further into the future. In this way, the proposed moderation clause may unduly delay adjustments. It is worth pointing out that there have never been two consecutive years where the adjustment has been lower than 2% below inflation. There have been consecutive years when the adjustment has been higher than 2% above inflation.

Exception clause

The introductory part of the document discusses the so called exception or crisis clause used at the EU.

Basically, according to the EU clause, if there is a decrease in EU GDP and the EU salary method shows that the EU staff should receive a real salary increase i.e. a salary adjustment greater than inflation, then only part (or none) of the increase above inflation is paid out. The remainder will be paid out in future years when the economy has recovered.

Because the President describes the EU clause, he implies that he is proposing to implement this at the EPO. However, in fact he proposes something quite different.

What the president proposes is that if there is a decrease in GDP amongst member states (above a 1% threshold) none of any salary adjustment will be paid out. That means, even if the adjustment is below inflation i.e. staff would anyway have a loss of purchasing power, no adjustment is paid.

Moreover, as explained in the document itself, the moderation and exception clauses can interact to the detriment of staff. For example, if in one year moderation means the full adjustment is not paid out, and then in the next year the exception clause is triggered, this means that nothing (i.e. not even the moderated part) is paid out to staff. In fact, if the current proposal had applied in the past, 1.7% moderated in July 2009 in Germany would still not yet have been recovered due to application of the exception clause.

In the GAC we explained that this was a severe attack on staff. Moreover, it was inequitable since it would result in different purchasing powers in different countries, to the detriment of staff or pensioners using country

[1] One of the technical changes proposed is that the inflation measure used throughout should be the Harmonised Index of Consumer Prices – HICP – a EUROSTAT figure calculated for all member states
[2] This 0.4% represents the (almost) 40 year average

scales affected by high (or higher) inflation. We also said that the President describing one system (the one used at the EU) and then implementing something very different seemed to be a deliberate attempt to mislead the Council.

At the EU, the GDP development will be calculated by Eurostat. However, for the EPO the administration will have to calculate the figure itself. We cannot simply use the Eurostat figure since we have several member states that are not EU member states. In the GAC, we doubted that the EPO will have the capacity to perform the necessary calculations in a proper way. In particular, the Office does not have a contract with the national administrations of (non-EU) member states to provide the Office with certified figures. The members nominated by the President could also not answer definitively how they would treat exchange rate variations. For example, Turkey would seem to have an economy growing in terms of local currency, but with a currency falling fairly quickly against the Euro.

Justification for these changes

Clause (3) of Article 8 (which in the version sent to the GAC is faulty and which the administration has promised to correct) makes explicit the so called “nominal guarantee”. In the GAC meeting, the members appointed by the President made continuous reference to the insertion of this clause as justification, as part of a package, for all the harm which the rest of the proposal could do to staff (and pensioners). However, this justification does not hold water.

In CA/131/05 (the Office’s analysis of the Deloitte study), on page 11 last paragraph the Office itself identifies the nominal guarantee as one of the core elements of the salary method which give stability to the Office. It is also a measure which has been reaffirmed every year by the Administrative Council for over 30 years. Thus it is clear that staff has a legitimate expectation that this measure will be maintained as a long acquired right.

We thus agree to making this long acquired right explicit. However, making a measure that staff already has explicit cannot be used as part of bargaining to achieve a package of measures, whereby the other measures are exclusively to the detriment of staff.

What is not in the proposal

Missing from the proposal is any measure aiming at fulfilling a past promise made in the name of the Office, namely to bring the EPO child allowances into conformance with those at the EU[3]. We pointed out that the difference between the EU allowances and the EPO allowances has been stable around 30% during all the period of application of the procedure, and suggested that any gesture in the direction of closing this gap would be appreciated by staff.

## Conclusions

For all the above reasons, we stated that the current proposal is socially inacceptable. We thus could not support it. However, we hoped that the President would nevertheless be able to reach agreement with the CSC on an acceptable salary adjustment procedure which could be presented jointly to the Council. To this extent, in an annex to our opinion we presented a suggestion which aimed to take into account the aims of the administration as set out in the GAC/DOC and as expressed in the GAC meeting on the one hand and the position of the CSC as set out in the counter proposal sent to the President in April. Our suggestion also aimed to meet the minimum criteria of the jurisprudence of the ATILO. The President has now sent his proposal unchanged to the Council as CA/23/14, with no further discussions with the CSC.

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

## The last GAC?

This year, meetings scheduled on 10.04.2014 and 21.05.2014 were both cancelled. In the 258th meeting, we were informed that a meeting would be scheduled for 16.06.2014. We duly received a meeting invitation. However, shortly after, with no information as to why, or if a replacement meeting would be

[3] In a joint communiqué dated 09.10.2007 signed by two vice Presidents, the Office committed, starting 2009 over three years to bring the EPO allowance to the level of the EU allowance. Nothing has yet been done to make this promise good.

called, the meeting was cancelled. Thus the 258th meeting of the GAC may have been the last ever meeting of the GAC, before it is replaced by the GCC (see below).

We do not expect the GCC to meet before the summer. This coupled with the cancelling of the meeting on the 16.06.2014 in itself has effects on staff. It has been increasingly noticeable that the administration, in its efforts to adopt measures (investigation guidelines, dispute regulations, strike regulations, "social democracy", salary adjustment procedure etc.) harmful to staff have neglected their duties in ensuring the day to day running of the Office. This means that a number of recurring items have not yet been presented to the GAC this year and presumably will not be discussed in the GCC until after summer.

These include the public holidays in 2015. The Office has to publish these in the Official Journal. Also, staff (especially those planning long trips in 2015) need to know for their vacation planning what the public holidays will be in 2015, and more important, if there will be any compulsory bridging days, and if so, how many and when they fall.

More importantly, the administration has not yet sent to the GAC the notes to the chairmen of the promotion boards. This year should see a normal promotion round under the current career systems before the rumoured new career is introduced some time next year. For this, the promotion boards need to be able to work normally. Otherwise staff who have worked hard might not get the promotion that their efforts deserve. This is hardly likely to help either motivation or the social climate.

## GAC vs GCC

Under Mr Battistelli's "social democracy", from 01.07.2014 the GAC is due to be replaced by the GCC. According to new Article 38 ServRegs, this will have a more limited mandate than the GAC i.e. according to the new regulations, the administration will not have to consult with staff in all cases in which they currently have to. We also wonder as a general point if a committee (any committee) with 10 members per side will function better than one with 6 members per side.

Moreover, another important difference between the GAC and the GCC is that in the GAC, the members are nominated *ad personam* that is to say, not because of any special function they might have. The way we understand the GAC should function, the GAC is expected to be a committee where true and open discussions take place, in order to form reasoned opinions. Moreover, the members, whilst nominated either by the President or the Staff Committee, are expected to exercise a degree of independence. However, we would not expect a member who continually expressed opinions contrary to those of the President or the Staff Committee (as the case may be) to be nominated the following year!

We believe it is only under these conditions that the President can dispose of the highest quality of information possible when taking his decisions. **A good President will value high quality opinions, even when they do not correspond to what he wants to hear.**

In contrast to this, the GCC will comprise all the members of the CSC. We assume that Mr Battistelli will continue to nominate his MAC members to the GCC like he has for the GAC (see also our reports of the 238th and 247th GACs). That is to say, the members will be nominated according to their *function*.

We suspect that the behaviour of Mr Battistalli's nominees in the GAC since 2012 provides a clue as to how the GCC will function. Since 2012, Mr Battistelli has charged his members with dogmatically defending his papers whilst metaphorically sticking their fingers in their ears when the Staff Committee nominees speak.

The net result of this is that the management representatives in the GAC since 2012 have had zero margin for manoeuvre or compromise. They have simply given positive opinions on each and every proposal, including the ones listed in the previous section. This has served to weaken the GAC.

The GCC will comprise sitting on one side elected members of the Staff Committee and on the other, members of the MAC. In effect, Mr Battistelli will have set up a committee specially for the purpose of reciting Management and Staff Committee positions to the other side!

Very useful that.
Finally, a committee like the GAC cannot function without a hard working, competent and committed secretariat. We wish to thank all the secretaries and support staff who have supported the functioning of the GAC this year and in the past.

The members of the GAC appointed by the CSC.