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Report of the 224th meeting of the GAC on 15-16.06.2010 in The Hague

Summary

The 224th meeting of the GAC (General Advisory Committee) was the fifth GAC meeting of 2010. The meeting agenda comprised three topics for discussion and opinion: a block of documents on amicable conflict resolution, a document comprising further amendments to circulars 253 and 271 and guidelines and instructions on arrangements for working hours.

Amicable conflict resolution

This topic has already been discussed in the GAC this year, in the 220th meeting. Thus reference is made to our report of that meeting, following which the form of the documents has been greatly changed.

Nine documents in total were submitted to this meeting of the GAC. Three, a draft circular, guidelines on amicable conflict resolution and a draft Presidential decision setting up an "Advisory Committee on Conflict Resolution", were submitted for opinion. The other six, which comprised items such as a draft staff brochure and a draft letter to line managers, were submitted as additional background information.

Split up as set out above, the documents are now much more readable and will thus be easier for staff to understand. However, the papers submitted still lacked a background setting out the scope of this proposal, i.e. what it aims to achieve and what not. For example, the proposal is not intended to replace the formal dignity (i.e. harassment) procedure of Circular 286, suspended by former President Pompidou, and a vital part of the dignity policy. We are still waiting for a replacement of said formal procedure.

The core of the proposal is that the Office should facilitate informal and amicable resolution of interpersonal conflicts between staff members. This is achieved by training staff members to act as confidential counsellors, providing external mediators (if necessary) and setting up an Amicable Resolution Bureau to coordinate. The process is confidential and voluntary. That is to say, all parties must agree to a procedure.

No reasonable person can object to the principle of the Office facilitating, where possible, amicable resolution of conflicts between staff. Accordingly, we gave a positive opinion on the concept as set out in the draft staff circular. However, despite being positive on a concept, it is clearly possible to have reservations with respect to its implementation. Essentially, the other two documents (namely the guidelines and the document setting up the advisory committee) set out how the Office aims to implement the concept. With respect to these, we did indeed have reservations. These largely related to the lack of clarity of various phrases and definitions, and to inconsistencies between the various documents. Most of these could be overcome reasonably easily. Of most concern in this respect is the lack of clarity concerning the role of the Amicable Resolution Bureau (ARB). In one place, its role is given as being "a central point for co-ordinating and providing information". However, throughout the guidelines and following documents, there are a lot more responsibilities and tasks attributed to this role - some of which seem to require very special competencies which would seem

to be beyond those we would expect a purely administrative bureau to possess.

Also of concern is the fact that the proposal lacks detail on how conflicts arising between staff members and their line managers should be dealt with - whilst it is well known that there are quite a number of conflicts in which line managers are involved. It is true that there is a mention of a stronger role of the line managers in conflict prevention and resolution, but it is not clear how this is to be achieved and there is no indication of the competencies (or training) needed to meet that goal.

Finally, at the same time that the GAC was meeting, the MAC were also meeting in The Hague to discuss the budget. We were concerned to hear informally that funds and posts in the budget necessary to implement the proposal as set out to the GAC will not be explicitly defined in the 2011 budget. This places a large question mark against the MAC's commitment to the project.

On the guidelines and the setting up of the advisory committee we thus gave a reasoned opinion setting out the above. The opinion of the members nominated by the President was similar to our own.

Further amendments to Circulars 253 and 271

Amendments to these circulars were already discussed in the 221st meeting of the GAC earlier this year. These have not yet been adopted by the administration. Instead, the administration presented a proposal for further amendment to the above mentioned circulars.

Circular 253 sets out the B/C career system at the Office. Circular 271 does the same for A-grade staff. They include guidelines for calculating reckonable experience for employment before entry into the Office, which is then used to calculate the grade and step at which a staff member enters into service. A recalculation of reckonable experience is often made subsequent to a staff member taking up duties at the Office. This happens on the one hand because candidates don't always fully understand the importance of providing full documentation, but also because the administration makes mistakes and errors of interpretation of the documentation provided by the candidate. Normally the candidate realizes the importance of such mistakes, or has the first opportunity to request correction, only some time after entry into service. The proposal submitted to this meeting of the GAC basically set out that generally no recalculation would be performed following entry into the Office. There are some exceptions. In such cases, a request for review must be made within three months of entry.

The justification given in the document (as in several other recent proposals) is to save work in the HR department.

In our opinion, this is a completely unacceptable justification. The HR department is there to provide a service to staff. In this way, it should enable staff, and thus by extension, the organisation itself, to function more smoothly. We have seen too many proposals whose sole justification is to save work load for the HR department. Rather, providing an improved service should be the main goal of the HR department in general and those responsible for developing HR policy in particular. Not saving itself work! This is especially so for proposals with a huge potential effect on the staff concerned. A 12-month step is worth approximately 200 euros to staff members. Over a 30 year career, one step could thus be worth several tens of thousands of euros to the staff member concerned. Of course, an error in grading could be worth more than a single step to the staff members so effected. Such a huge effect cannot be justified by saving some hours of work in the HR department.

Moreover, in those cases where it is proposed that recalculation is not possible following entry into the service, the person concerned effectively has no avenue to seek redress. Access to the Internal Appeals Committee (and thus the ILOAT) is only for serving staff members. The Office would claim immunity before national courts in the rare case that a candidate would take the Office to court **before** entering the Office! For those cases where recalculation would still be possible following entry into the Office, it is equally unfair, in effect, to expect staff to request (and potentially appeal) a calculation within their first three months of service (thus, during the probationary period).

That said, we understand from members of promotion boards that re-calculation of experience several years after entry into the Office causes problems. The Office also has

an interest in having final legal security. However, if the aim of the proposal is to prevent appeals, we are convinced that this could be better achieved by the HR department making more effort to explain the calculations to staff members affected in an honest and transparent manner.

After discussions, the members nominated by the President agreed that the document could be withdrawn, pending discussions with the CSC on the problems identified and attempts to work towards an agreed solution.

Guidelines and instructions on arrangements for working hours

In 2008, the Office issued "Guidelines on arrangements for working hours" which introduced an Office wide flexitime system. However, whilst applicable to all new staff, this system was optional for staff in place. That is to say, staff in place could chose to opt into the new system, or could remain in the old system applicable at their respective places of employment. The introduction was announced on 30 September 2008, in a publication entitled "Opening the door to flexibility". The announcement talked of building up trust through the introduction of a trust based system which staff could choose to opt into. It was later clarified that staff could also choose to opt back out of it, should their expectations in the new system not be met, and it was announced that a review would be carried out "*to see what changes it has brought - both positive and negative - and what changes, if any, are needed to make the guidelines and their implementation better for all concerned*" (emphasis added).

To this meeting of the GAC the administration presented two documents on this subject. One comprised guidelines on arrangements for working hours, setting out a working time arrangement similar to the current optional flexitime arrangement, and a draft Presidential decision, specifying that these guidelines would apply to all staff, superseding all other regulations applying at the different EPO sites. The other document comprised instructions on how to administer working time in MyFIPS.

The documents submitted foresee that the draft decision should be signed by Ms Brimelow and that the measures should enter into force on 1 July 2010, i.e. on the first day of Mr Battistelli's mandate. In the GAC, we insisted that we saw nothing in this topic which required that it be adopted in the final days of the Brimelow presidency. In particular, we see no advantages for staff in the urgent imposition of a single Office wide working time model, as opposed to the current arrangement, where staff in place can choose whether to work according to the previous working time arrangement effective at their place of employment. Moreover, the proposal fails to argue that there are any advantages for the Office that would justify imposing on staff a working time arrangement that they have been (if convinced of the advantages) freely able to opt into. In the absence of advantages for either staff or the Office, the timing shows that objective criteria are of lesser importance than the exercising of power. The impression given is that the timing was chosen as a last opportunity for Ms Brimelow to demonstrate to staff "who the boss is".

In fact, not only can we see nothing in the proposal that improves on the current flexitime arrangement, rather, it seems to be worsened in a few details. For example, it introduces new cases under which an absence must be registered and notified to the line manager and the current proposal is no longer based on trust but is implemented through time controlling by electronic registering tools. More worryingly, we learned that the proposal on the table was drawn up by a group comprising members nominated by the President only, and ignoring the concerns of members nominated by the CSC in a task force on working time responsible for the review. For example, we understand that the suggestion to set the start of (allowed) working time to 06:30, as currently foreseen in the Berlin flexitime model was turned down and the earliest start time fixed at 07:00, which represents a worsening for Berlin staff.

Moreover, by making the system compulsory, the proposal in effect breaches previous promises given to staff opting-in to the system introduced in October 2008 that they would be given the possibility to opt-out again if they so wished, up to the 30.06.2010 (cf. note to all staff of 8 May 2009, reconfirmed by note of 11 December 2009). Giving staff an opportunity to opt out of a system on 30 June, before making it compulsory for all staff as from 1 July 2010, is not an act of good faith which will serve to build up trust!

Even more seriously, the proposal will be introduced for all staff in all places of employment. We are convinced that this would be in breach of an existing "Betriebsvereinbarung" that regulates flexible working hours in Vienna and, in our opinion, is still in force. The Office may thus not introduce unilaterally a different system in Vienna, but is obliged to negotiate any such new system with the Staff Committee. Moreover, the proposed new system is clearly both less advantageous to staff - for example with respect to time allowed for duty travel - and more bureaucratic than the current system in Vienna.

Worse, the decision part of the document comprised a paragraph which states that the decision "is not intended to deprive .. any employee ... of any acquired or contractual right ...". In the GAC, we were informed that this merely reflected the President's intention. Accordingly, staff cannot derive any rights from this paragraph. Viewed in this light, this is worrying and will indeed likely be understood by at least some staff as an attack on their acquired and contractual rights and will thus be appealed. Indeed, by explicitly declaring Communiqué No. 5 and the "Wiener Betriebsvereinbarung" superseded, contractual and acquired rights are respectively breached. Any appeals will lead to years of legal uncertainty.

It thus seems that the only motivation behind rushing this proposal now is that the President wants to finish at least one project before her end of term. This we considered regrettable. It is also regrettable that the President has chosen the Office-wide abolition of the "Kober days" (named after a previous President), as originally announced in the MAC Communiqué of the 154th meeting held on 17 July 2007, as the project that will summarise her mandate and by which she will be remembered at the EPO.

For the above reasons, we gave negative opinions on the proposals.

The members nominated by the President gave a positive opinion on the proposals. However, whilst welcoming the introduction of flexitime across the Office, one such member had additional comments, in particular concerning the implementation in Vienna which already has "a well running and accepted flexitime system". In particular he would welcome clarifying the legal basis of the Vienna "Betriebsvereinbarung", in order to avoid legal uncertainty. He also felt that the core time of the new system is not adapted to units providing support, commented on the fact that time accounting will be weekly, rather than monthly (as is currently the case in Vienna), and questioned the way that travel time is accounted for under the new system.

The members of the GAC nominated by the CSC.