



Report of the 227th meeting of the GAC on 30.11-01.12.2010 in Munich

Summary

The 227th meeting of the GAC (General Advisory Committee) was the eighth and final GAC meeting of 2010. Whilst one more than in 2009, this nonetheless represented a reduction from the (record) recent highs of nine in 2008, twelve in 2007 and ten in 2006. The agenda comprised a number of recurring items (salary, nominations, kilometre and daily allowances, healthcare insurance related items 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. Additional items included rates for death and invalidity insurance, modification to the directive on an in-house supervisory committee for the SSP, revision of the regulation relating to working time and shift work in IM and a proposal to amend Article 24 ServRegs.

2010 Salary adjustment

For details on this topic, see the publication entitled "Adjustment of salaries from 01.07.2010" dated 08.11.2010 available from <http://haque.suepo.org/epo/> and the publication dated 03.12.2009 "Additional information concerning Munich salary adjustment", available from <http://munich.suepo.org> giving details of this year's adjustment and outstanding issues. The proposals can now also be found in MICADO as CA/150/10 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 Germany (Munich and Berlin), as well as for the Netherlands is negative for this year. For Vienna, it is slightly positive. In the GAC, we noted that the CA document sent to the Council included, as usual, the so called "nominal guarantee clause", according to which negative adjustments shall be set against future adjustments and salaries maintained at their June 2010 (i.e. previous) level. That is to say, the Office is proposing to

the Council that salaries should be frozen and not cut. We also noted, in his Communiqué No. 4 the President's commitment to defend this clause in front of the Council. We will have to see how the Council will react.

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.

Spouse's contributions to EPO medical system

For more information on this point, see our report of the 212th and 219th meetings of the GAC.

As the reader will be aware, from the start of 2008 the administration introduced measures to (under certain circumstances) 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 system.

As with normal healthcare insurance, the contribution rates for this needs to be reviewed periodically, and the administration has decided to do this annually. **However**, this year the administration presented a document to the

GAC stating that since, especially in the Netherlands, it is difficult to get the relevant data in good time, it is proposed to delay by one year the implementation of the data used to calculate the contributions. This means that the 2011 contribution rates would be left at the 2010 levels.

At first sight, this might seem positive for staff affected, since generally such contributions increase annually, and rarely decrease. We also have sympathy with the fact that it is difficult for the Office to obtain all relevant data in good time and thus that the Office wishes to build a one year delay into the system. However, we objected to both the figures being frozen, and how it is intended that the contributions collected are used in the system.

In particular, as set out in our report of the 219th meeting, we are convinced that the contribution levels for countries other than the Netherlands are set far too high. For these we gave a negative opinion last year. With respect to the Netherlands, last year we gave a negative opinion on the proposed premium for spouses earning between 50% and 100% of a C1/3 level salary, and no opinion (since the data was submitted late) on the premium for spouses earning a salary above C1/3.

We considered that the arguments we gave last year still applied. Moreover, we pointed out that the methodology used last year for calculating the lower premium for the Hague in effect no longer exists, owing to the other changes made to financing the Office healthcare system. This alone justified a negative opinion.

Worse, in the GAC the members nominated by the President explained how, from the start of next year, the money collected in respect to working spouses, will be used in the framework of the new funding system for healthcare insurance.

Basically, the collected money will be used to reduce the contribution which the Office has to pay. We set out that this is not what is required according to Article 3 of CA/D 7/10, introducing an actuarial system for financing healthcare insurance. This clearly states that "in the years 2011 to 2013, a comparison shall be made between the actuarially calculated total contribution rate and three times the employee's maximum contribution rate

specified in Article 83 of the Service Regulations. Any shortfall shall be funded by the Office ...". By our reading, this meant that the contributions raised may not be used to reduce the Office contribution. Rather, these contributions should be fed into the fund set up for healthcare insurance. This also in itself justified a negative opinion on the proposal.

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

Death and invalidity insurance

Calculation of contribution rates for death and invalidity insurance are performed on three year windows. The current period runs from 2008 through 2010. Thus the administration presented to this meeting of the GAC details of a preliminary settlement for 2008 - 2010 and a proposal for setting new provisional rates for the period 2011 - 2013.

The system showed a small surplus over the 2008 - 2010 period. The administration is proposing to reimburse 90% of the projected surplus now, and the remainder when the final figures for the period are known i.e. some time next year. At the same time, since the system is more or less in balance, the administration proposed to keep the contributions at their current level for the next three years. It should be noted that the amounts involved are all (relatively) small. Thus for example for so called "basic cover" (see below), the staff contribution rate is 0.3% of basic salary. Provisionally, it seems that a contribution rate of 0.2684% (which, to one decimal place rounds to 0.3%) would have been sufficient. That is to say, staff will be reimbursed (ninety percent of) 0.0316% of (average) basic salary over the period. That means, for almost all staff, under 3 euros a month.

Turning to the content, the document concerned death and invalidity insurance. We had no particular observations concerning the death insurance part of the document. As far as we could tell, the settlement for the past and provisional rates for the future set out in the document seems correct.

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 we asked some questions relating to the total amount of benefits paid and the total bill for the Office's extra costs. Strangely, these were both significantly lower than in the previous period. This might be due to the fact that colleagues recruited before 10.06.1983 are now retiring, but we did not get sufficient details to ascertain this.

Our main objections concerned the calculations used for the basic cover part of the invalidity insurance. For reasons set out several times in the past, for example in our report of the 219th meeting, we are of the opinion that the basis for the calculations is faulty. Staff recruited before and after June 1983 have different levels of insurance coverage, yet are lumped together for calculating part of the invalidity premium. However, since the "pre-1983" staff are a higher risk group, this means that the younger staff are essentially subsidising them. This was ruled illegal in earlier ILO-AT judgment 2110.

Even though the amounts of money involved are small, and the effect on the amounts due to "pre 1983" staff appears to be slowly fading out, this led us to give a negative opinion, which set out the above in more detail.

The members nominated by the President gave a positive opinion.

Kilometric and daily allowances

In accordance with Article 1 of our salary method, for these items the EPO merely uses the figures recommended by the Coordinating Committee on Remunerations (CCR) of the Coordinated Organisations (COs). Since, to the best of our knowledge, this was correctly reflected in the figures presented, the GAC gave a positive opinion on the two documents. However, as last year, we encouraged the Office to request that the CCR include figures for the daily allowance for China (see our report of the 219th meeting for more details).

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. The administration presented to the GAC a document stating that since the average is 0%, the current lump sum amounts will continue to be applicable.

In fact, if the Council decides to apply the nominal guarantee, then the arithmetical average of the actual adjustment is about 0.13%. However, the arithmetical average of the calculated adjustments is -1.4%. The divergence is due to the fact that no consideration was given to how to adjust the amounts in years when the calculated adjustment is negative in one or more places of employment.

Since the calculated adjustment for places of employment accounting for over 95% of staff is negative, the proposal to adjust the sum amounts by 0% seemed reasonable. The GAC thus gave a unanimous positive opinion on the proposal to leave the amounts unchanged. However, the GAC also recommended that consideration should be given as to how to address this issue in the future.

Modification to Directive on an in-house supervisory committee for SSP investment management and administration

The current version of the above directive can be found in part 1a of the EPO Codex. This sets out who may be a member or chairman of the in-house committee charged with overseeing the Salary Savings Plan (SSP) investment management and administration.

The President submitted to the GAC a document modifying the directive, and an explanatory note explaining that the object of the modification was to allow the supervisory committee to have a chairman (and deputy) who is not an employee of the Office. This would bring the committee in line with the supervisory board of the RFPSS. This board may already draw on external expertise. For example, the RFPSS-SB's current chairman is Mr Sebeyran, who is not an employee of the Office, but rather has the job of Secretary General at the "Caisse des dépôts et consignations"¹. This is felt to bring a level of expertise to the supervisory board which is missing from the in-house SSP committee.

¹ For more details see: http://fr.wikipedia.org/wiki/Caisse_des_dépôts_et_consignations

On careful consideration of the currently valid text, the GAC noted that the current regulation concerning the Composition of the in-house committee merely states that "the in-house committee shall be directed by a chairman appointed by the President of the Office for a term of one calendar year". The majority of the GAC thus saw no limitation anywhere that the chairman must be a member of staff. Rather, these members consider that the current text already allows the President to appoint an external expert as chairman of the in-house committee. The same applies to the deputy chairman.

Accordingly, these members reached the conclusion that there was actually no need to amend the directive in the manner proposed and gave the President an opinion on these lines.

One member was of the opinion that a change was indeed necessary and gave a diverging opinion to this extent.

Currently, it is not clear how the chairman and members should be deputised or replaced. Moreover, in contrast to the situation with the RFPSS supervisory board, there is no oversight on the part of the in-house committee concerning who the President may choose as chairman. We thus added to the opinion that, should the directive indeed be modified, these points should be attended to.

Shift work in IM

Shift work at the Office is regulated by Article 58 ServRegs. A staff member may be required, by the nature of his or her duties, to work regularly at night, weekends or public holidays (irregular work on such occasions is classified as overtime). Staff are compensated for the inconvenience and loss of freedom to plan their working and private lives. In 2004, the President adopted a decision concerning shift work in IM. According to this, if managers in IM arrange the work of their staff within a time band running from 07:30 to 18:30 on normal working days, this does not count as shift work within the meaning of Article 58 ServRegs. That is to say, staff affected have no right to extra compensation. This meant that, since 2004 the time window for which such staff members needed to be compensated for the loss of freedom entailed by shift work was

reduced.

With the introduction of the Office wide flexi-time system, office hours now run from 07:00 to 19:00, and staff may choose their working hours within these limits. The administration presented to this meeting of the GAC a document proposing to widen, to these hours, the time band within which working time in IM does not count as shift work. That is to say, affected staff would be expected to be available for shift work without compensation for an extra hour a day.

In the GAC, we thus explained that this clearly impacted staff concerned in a negative way and so we could only give a negative opinion on it. Moreover, we noted that although the President had not yet taken a decision, in August the Vienna Local Advisory Committee (LAC) had recommended widening the Office hours in Vienna. Since the proposed regulation merely makes mention of Office hours rather than mentioning any concrete times, Vienna IM staff stood to be even more negatively affected.

At least some of the members nominated by the President understood our concerns. We will have to see what the President decides on this matter.

Amendment of Article 24 ServRegs

Originally, the meeting agenda comprised a document for opinion with the title "Code of Conduct", drawn up by the administrator of the audit committee. The document was a result of work by a working group charged with developing a proposal for an anti-fraud policy for the Office.

Before the meeting, following a request by the Staff Committee, the document was withdrawn. It was replaced by another document, which was also a result of the above working group. This document comprised a draft for amendment of Article 24(2) ServRegs. This is the article of the ServRegs which sets out how a staff member should react if he receives an instruction (e.g. from his manager) which seems to be irregular. Currently, in such a case, the staff member shall convey his opinion to his immediate superior. If the order is confirmed in writing the employee must carry it out (unless its execution would be criminal).

The amendment proposes that the written

confirmation must be forwarded to the head of internal audit.

The document was submitted late to the GAC. The covering letter accompanying the document said that the President requested the GAC to discuss the document and submit an opinion in written procedure as soon as possible. In the GAC, we pointed out that the regulations foresaw a written procedure in cases of urgency, to be followed by a meeting in cases where no consensus could be reached in writing. A written procedure is not foreseen in cases where a document is simply submitted late and where there is no obvious urgency. Moreover, this document was obviously merely one of a suite of documents on the subject of an anti-fraud policy. We would prefer to discuss all the documents together, so as to have an overview of the whole topic, rather than dealing with the documents one at a time. Following our request, the status of the document was changed to "for discussion" and no opinion was (yet) required.

On the substance, no one on either side of the table had any idea of the justification for sending the written confirmation of an instruction to internal audit, as opposed to some other member of staff, for example the President. The document itself was silent on this point.

There was general consensus in the GAC on the above points, which were noted by the administration for forwarding to the President.

Nominations

According to Article 98(1) and 110(4) ServRegs, the President has to present the names of his nominees as chairman (and deputy) of the disciplinary committee and chairman, members (and deputy members) of the internal appeals committee (IAC) to the GAC for opinion.

In the GAC, we were informed that it had been agreed with the CSC to give the plans to reform the disciplinary committee, e.g. to replace it by a standing committee similar to the IAC, a lower level of priority. Thus the nominations for the disciplinary committee were the same as the previous year. Having not noted any problems with the functioning of the committee this past year, the GAC gave a positive opinion on the nominations.

For the IAC, in past recent years the deputy chairman, who also served as one of the deputy members, was a member of DG3 with experience of the disciplinary board. In the GAC we were informed that, according to a new DG3 policy, he will not be available for 2011. Thus the only change compared to the nominations for 2010 is that this nominee will be replaced by two new nominees (both lawyers in the patent law department) for the two posts. The other nominees remained unchanged. However, mainly due to our concerns with respect to the functioning of the IAC in the recent past, we could not give a positive opinion on the proposal.

The names will be published by the administration in due course.

That was 2010

The General Advisory Committee (GAC in English, ABA in German, CCG in French) is firmly anchored in Article 38 of the Service Regulations. This states that the GAC shall "be responsible for giving a reasoned opinion on any proposal to amend the(se) Service Regulations or the Pension Scheme Regulations, any proposal to make implementing rules and, in general, except in cases of obvious urgency, any proposal which concerns the whole or part of the staff to whom the(se) Service Regulations apply or the recipients of pensions".

The President is accordingly obliged to consult the GAC before taking a decision on any proposal affecting all or part of the staff. As a result of this, the main duty of the GAC is to help the smooth running of the Office by giving the President the best possible advice on any proposal, before said proposal is implemented. It goes without saying that the President should be interested in receiving and considering such advice. However, although, the President is obliged to consult the GAC, there is no obligation to follow any recommendations the GAC makes. Because consultation in the GAC is the minimum involvement to which staff have a statutory right, the CSC takes consultation in the GAC extremely seriously.

In general, as has been usual in recent years, the GAC meetings this year were held in a good constructive spirit. However, as last year,

the President nominated fewer PDs and as a consequence more Directors as members of the GAC than used to be the case. On the one hand, they often had more technical knowledge of the subjects being discussed. However, on the other hand it was often clear that they were not authorised to make any substantial changes to the documents submitted, contrary to what was the case in earlier years.

The GAC has six members nominated by the President and six nominated by the Central Staff Committee. In 2010, it was the President's turn to nominate the chairman.

The President nominated Mr Richard Flammer, head of the Vienna sub-office as chairman. Mr Flammer is, however, not a permanent member of staff. Rather, the sole basis for his employment in the Office is that of principal director on a temporary contract. The last time that the President nominated non-permanent staff members to the GAC was in 2006. At that time, we appealed against those nominations. In 2006, the Internal Appeals Committee (IAC) agreed with us that, according to the then valid regulations, only permanent members of staff could serve as members or chairman of the GAC. Accordingly, the IAC found that the whole consultation process in 2006 had been faulty. The result was that all decisions taken after GAC consultation in 2006 which either had been, or at that time, still could be, appealed were suspended pending further consultation in a properly constituted GAC.

Since then, the Administrative Council has amended Article 2 ServRegs so that both permanent employees and employees on contract may act as members or chairmen of various Office bodies. However, and in our opinion, crucially and fatally, the implementing rule for the GAC (which the Council is also responsible for adopting) was not modified in this respect. Rather, this still says that only permanent employees in active service may serve as chairman or members of the GAC. Accordingly, when the decision nominating Mr Flammer was announced, we pointed this out to the then President (Ms Brimelow) and requested her to re-nominate a different chairman. This she refused to do. The matter is thus under appeal. Owing to the backlog of appeals from the Brimelow era, even though the appeal has been given a higher than normal degree of priority, the IAC has not yet

delivered an opinion on this matter. Should the IAC come to similar conclusions as in 2006, this would mean that the consultation process in 2010 was faulty. Thus, at the start of each meeting we announced and had minuted that the meeting was taking place under the caveat that the composition and thus the consultation could be faulty.

Under Ms Brimelow, in spite of the generally constructive GAC discussions, it was depressingly difficult and in most cases impossible to identify any influence of them on the President's final decisions. It is, of course, early in Mr Battistelli's presidency. So far, however, he does seem to be at least considering the advice which the GAC gives him. For example, in his Communiqué No. 3, he announced his intention to take into account concerns and follow recommendations made by the members of the GAC nominated by the CSC.

One result of the recent antagonism shown towards the GAC by the previous President is, ironically, that the Administrative Tribunal of the ILO has, in a number of recent judgments confirming the necessity for the Office to consult the GAC correctly and in good faith, strengthened the GAC. Indeed, in its 107th session, in judgment 2857 the tribunal confirmed again that the administration had to present the GAC with enough information for it to be able to form a reasoned opinion. In the 108th session, in judgments 2874, 2875, 2876 and 2877 the tribunal confirmed again the necessity to consult the GAC on all matters affecting staff. In the 109th session, in judgment 2919, the tribunal confirmed this yet again. It should be noted that in all the judgments above, the appellants received unanimously positive opinions from the appeals committees. In the case of 2857, the President announced the intention to follow the appeals committee's opinion, but didn't. In the other cases, the opinions were simply ignored!

The members of the GAC nominated by the CSC.