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The negotiations on pensions

Dear colleagues,

When the Administrative Council (AC) cherry-picked individual measures from an already hardly balanced, comprehensive set of measures in 2008, it gave rise to appeals which have been considered by the AC's Appeals Committee. Based on their opinion – and on the Financial Study commissioned by the President - we are now back to discussing pensions for EPO staff.

A window of opportunity

The Office wants to see social peace, so that we can all concentrate on the work ahead. It depends on the perspective whether one considers the re-opening of the discussion a *necessity* or an *opportunity* to discuss measures offering improvements for all involved parties.

The Staff Representation and the President of the EPO have committed to entering a negotiation on the EPO pension system in the framework of a paritary working group.

A new background

We must not only consider the *legal* or *financial* perspectives. The *political* landscape has changed, too. With the EPO soon granting patents for most of the EU member states it would appear opportune to look at what has been agreed in 2004 with regard to the pensions of other civil servants supporting the cause of Europe (see EU Service Regulations[1]). The national pension systems in our members states have moved on too. However, national pension systems can usually not be compared to ours because if they have a pension reserve fund at all, it does not have a reserve exceeding 80 years, like ours. Still, the reforms in national pension systems will be in the mind of Council delegations at the time where they have to support a pension-reform proposed by the President.

What do we want to achieve?

Successful negotiations must result in a *fair* and stable pension system, with all involved parties seeing it as an overall improvement. Such a systems for us needs to rest on three sturdy pillars:

[1] In particular articles 42a (parental and family leave), 52 (retirement age), 55a (part-time working), 77 (retirement age, accrual rate), annex VIII (Pension Scheme) and Annex XIII (transitional measures)

1. A *single* Defined Benefit pension system for *all* present and future staff, guaranteed by the Member States and backed up by a solid Pension Reserve Fund.
2. An internal taxation of pensions for all EPO present and future pensioners with the view of a recognition for national income tax in order to avoid double taxation of the pension benefits under national income tax schemes. This would address a historical deficit, deal with the unjustified distinction between the EPO and other IOs and balance the benefits for members states more fairly.
3. The introduction of reasonable change(s) of some retirement conditions of EPO staff, e.g. flexible conditions of early retirement, acquisition of missing pension rights, later age of retirement, *in combination with* fair (transitional) measures for staff in place respecting their *acquired rights* relating to pension conditions.

The first two pillars bring positive development to **staff**, irrespective of whether they were taken on before or after 1 January 2009.

The second pillar brings a lot to the **EPO** as well, as it corresponds to suppressing the burden of the tax adjustment and its corresponding 800 m€ liabilities, thereby freeing financial resources the Office needs for financing its development.

The third pillar is certainly the one the **Administrative Council** (AC) is most likely to support first but is of course the most sensitive one for staff, as some transitional measures will be required and might affect some of us differently.

Fairness and respect of acquired rights will therefore be crucial. These two principles will guide us when discussing this point in detail with the Administration.

Is it feasible?

During the most recent meeting with the Central Staff Representation the President showed a strong commitment to address both the pensions and tax related issues. We therefore consider that negotiation can produce desirable results, provided that the EPO Administration plays fair and does not try to introduce socially unacceptable measures through the back door.

Two parties, namely the EPO management and the Staff Representation, negotiate, but the proposed agreement will also affect the third - and far from monolithic - stake-holder, the Administrative Council. When having to vote on the proposal, AC delegations may be tempted to get rid of some of the above pillars, especially the second one. This second pillar does not propose that Member States would once more have to pay for the tax adjustment (as was the case before 2007), but that their national tax authorities would renounce levying national income taxes on EPO pensions in the future, according to the principle of no double taxation.

The case of Germany

In particular the German delegation may try to resist the internal[2] taxation of EPO pensions, since Germany is the member state which hosts the greatest number of EPO pensioners, and hence benefits the most of the income tax on their pensions. It is, however, uncertain whether the German delegation will find strong support among other delegations on this topic. Germany is the member state benefiting most from the EPO. .It has two EPO sites, several expensive buildings and more than 4500 civil servants with their families living on its soil. It has the largest concentration of patent attorneys in Europe

[2] If an internal tax was to be recognised by member states as constituting a tax that could be considered equivalent to a national tax, this would avoid the double-taxation currently prevailing on our pensions.

due to the presence of the EPO in Munich. Germany is also the member state that benefits most from the fees on granted patents (about a third of the 300 million Euros / year goes to Germany), and thus from money which comes increasingly from outside Europe. Internal taxation of our pensions would cost the German state some 4 million Euros[3] a year. That would seem a small price to pay for all the benefits Germany obtains from the EPO.

Coming clean

Avoiding double taxation is also the only clean way for introducing equality of treatment amongst member states, distorted by the current reform and therefore could find support amongst member states, especially in view of the fact that EPO staff will be soon asked to deliver patents for the European Union. It strikes us as odd that, when attempting to go more towards Europe, a host country should unduly benefit. The language-regime chosen already favours Germany. For the country to then continue to be subsidised by the money derived from application fees appears to go against the spirit of what politicians in Europe want to achieve.

It is in any case the President's responsibility to prevent any new cherry-picking by the AC and Mr Battistelli has the legal means to do so: the President is the one who submits proposals to the AC (Article 10(c) EPC).

Our previous experiences with Ms Brimelow on the invalidity allowance are, however, such that we would expect to have very strong guarantees that any pension reform package requiring concessions from staff in exchange for internal taxation will not be cherry-picked by the Council and will be respected by the member states.

Doing nothing is not wise

Many AC delegations have now understood the legal uncertainty created by the introduction of the ill-conceived NPS for staff hired after 2008, and have accordingly mandated the President to solve the issue, which will not simply go away. Staff members hired after 2008 who "*enjoy*" the NPS have also filed appeals to the AC (see CA/31/11). More will do so in the future. The AC would be ill-advised to ignore now that (legal) problems are piling up.

The staff representation believes that the President will be in a more credible position when defending a negotiated solution to the pensions issue in front of the AC. EPO production figures of last year and of first quarter 2011 are good for a reason. They are undoubtedly linked to the change of management-behaviour that took place with the arrival of President Battistelli who seems pragmatic enough to understand that successful reforms can only be designed with EPO staff's support and that everything should be done to avoid jeopardising social peace. This is desirable also from the perspective of the AC and is likely to be supported by many delegations.

For staff, and *with* staff

We will act with the sole aim to design a fair pension system fulfilling the legitimate needs and expectations of all staff while balancing it with the internal and external pressure to reform our present system. An (almost[4]) paritary working group on pensions has been

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[3] Estimated. Staff representatives have tried to have access to the actual amount for several months now, to no avail.

[4] Mr Foerster, the chairman nominated by the President, plays a very active role in the group thereby making the actual composition 7 members for the administration and 6 for the staff representation.

recently created and met for the first time on 16 March. An overview of what was discussed during the meeting can be found here (sc11036cp).

As soon as more information is available we will inform you. Any solution found and being proposed to the Council *must* enjoy staff's full support. It needs to reconcile the concerns of those driven by the defence of acquired rights, those detrimentally affected by the ill-fated NPS and those who struck for an overall improved pension system. Before any final offer from the President is agreed with him we will ballot staff.

We will not accept any proposal that is not accepted by the staff concerned.

To ensure support by the decision makers the proposal must also demonstrate due regard of any justified financial concerns raised and must be seen to be fair also in the European setting.

Not easy - but not impossible, either!

The Central Bureau of SUEPO