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## **Report on the GCC meetings of November and December 2020**

The last two GCC meetings of the year took place within only two weeks, namely on 26 November and on 10 December 2020. Our opinions on all documents submitted “for consultation” are annexed to this report.

### **The November meeting**

#### **Implementation of the SAP (GCC/DOC 17/2020)**

The most important document in the meeting of November was the proposal of the Office for the adjustment of our remuneration from 1 January 2021 as a result of the first application of the new Salary Adjustment Procedure (SAP). Linked to this document were also the usual end-of-the-year revisions of allowances and rates (GCC/DOC 18/2020, GCC/DOC 19/2020 and GCC/DOC 20/2020), as well as a revision of Circular No. 408 (GCC/DOC 21/2020).

Our arguments and proposals on the documents linked to the SAP fell on deaf ears. No real dialogue took place: the Administration listened but was not prepared to move an inch from their initial proposals. The President claimed that he would not re-open the discussion on the SAP as it was just the implementation of decision CA/D 4/20 by the Administrative Council.

#### **Other opinions**

We gave unanimous positive opinions on improvements to Circular No. 368, Guide to Cover (GCC/DOC 22/2020) and on a corrigendum to Circular 406 about death insurance (GCC/DOC 23/2020).

#### **Orientation paper on recruitment (GCC/DOC 24/2020)**

We requested that the Office’s orientation paper on recruitment tabled “for information” be submitted “for consultation”, as its impact on staff would be high. The President refused this request with the “convincing” argument that he always refuses such requests on such documents because recruitment is exclusively a managerial task<sup>1</sup>.

The overcautious approach in recruitment, which results in a freeze, is not at all justified by the arguments presented. To the contrary, 2500 colleagues of all DGs of the Office will be leaving in the next ten years. No matter how successful any automation, no matter how strong any efficiency gains through digitisation might be. Even if the number of incoming applications would decrease due to the current pandemic, a recruitment freeze will harm the Office on the long term with the loss of more than 40% of staff in the coming decade and no accompanying replacement. Internal job mobility, the Administration’s preferred solution, has its limits. The average age in many areas of the Office is above 50 and the colleagues will not become younger by being transferred around. Knowledge transfer will be difficult if recruitment is initiated after the most experienced have left the Office. Even contractors now suffer from this recruitment freeze, although the Office has already invested in their training and development and they would be prepared to move the Office ahead. Using the COVID pandemic as an excuse to push new policies through and to justify almost every decision nowadays, is appalling and ill-advised!

<sup>1</sup> This is also the reason why staff representation is excluded from virtually all selection boards.

### **Any Other Business (AOB)**

We raised two more topics under AOB, namely the fixed-term contracts and the meetings of teams with the President.

We reiterated our request for a Working Group dedicated to fixed-term contracts. We have seen the first non-prolongation of a contract, COVID being used as the only argument against, and a number of colleagues resigning or waiting to be informed about their future in the middle of a pandemic. An evaluation of the use of such contracts is urgently needed, also clear criteria need to be defined. The President confirmed that a WG would be set up in early 2021.

On the intranet, under the title of "[100 and counting](#)", the President informed staff about the many meetings he had with teams in the Office. He described the meetings as an overall enjoyable experience. This sharply contrasts with some feedback we received. The President also criticised some staff attending the meetings, who misused them for a political agenda and who were not able to put the issues in the broader scheme of things. Ticking off meetings to use the number as some sort of KPI to show to the AC should not be the only reason for such meetings, we hope.

### **The December meeting**

Two amended Circulars were on the agenda of the last GCC of 2020 for consultation. Both Circulars were amended as the result of litigation by staff.

### **Career – recognition of PhD's (GCC/DOC 25/2020)**

The revision of Circular No. 364 (Implementation of the New Career) was limited to amendments to the calculation of the time to be recognised for a doctoral degree (PhD) for grade assignment and career development. The amendments, which were solely triggered by litigation from colleagues, are positive for staff, as long as they are implemented in a fair and equal manner. The remaining parts of the Circular, however, have not yet been properly discussed and amended, although our nominees in the dedicated Working Group have made proposals to the Administration (some are compiled in the annexed opinion). Interestingly, when we tried to express our many reservations on the rest of the Circular, the President told that this discussion would take place, time permitting, under AOB. Evidently, we also voiced these reservations in our opinion.

### **Health – House arrest (GCC/DOC 26/2020)**

The revision of Circular No. 367 (Absences for Health Reasons) also only addressed one single topic, namely the so-called "house arrest", i.e. deleting the requirement for employees to stay at home from 10:00 to 12:00 and from 14:00 to 16:00 whilst on sick leave. The amendment was solely triggered by the fact that the Appeals Committee was of the unanimous opinion that "house arrest" was a non-proportionate measure. The Administration argued that house visits had only been used in a very limited number of cases – which essentially confirms the stance of the Appeals Committee: all the while, this means that all colleagues on sick leave were being kept on house arrest, irrespective of whether they would be one of these "very few" cases where the Administration deemed a house arrest necessary. Considering that there were quite some colleagues around the (virtual) GCC table who might not have been aware of this past practice, our members gave some telling and real-life examples of how these house visits were used in disciplinary proceedings, to pressure or even harass staff. The deletion is of course welcome. However, we regret that the Administration only reacted to a unanimous opinion of the Appeals Committee.

Also here, we would have hoped for an open discussion on the many outstanding problems in Circular 367 but the President again did not allow for any further discussion under this agenda item and postponed the discussion to the AOB part of the meeting. We therefore informed him that our reservations would be set out in the written opinion.

## **Restructuring of the Office (GCC/DOC 27/2020)**

The “Adjustment of the Structures of the Office in 2021” concerns amongst others the reorganisation of some departments that are highly relevant for staff (Conflict Resolution Unit, Office of the Ombudsperson) and other changes resulting in collective staff transfers. Therefore, we again requested a proper consultation on a topic that is so relevant for the functioning of the Office. And again this request was not allowed: the document remained “for information” only.

We pointed out some inconsistencies in the proposed reform and highlighted that the number of (principal) directorate posts in DG0 and DG4 especially kept on growing, while the management structure in DG1 – the engine of this Organisation – is becoming ever more “lean”, thus effectively annihilating career prospects for many DG1 colleagues.

The Administration confirmed that the restructuring would only re-route management or reporting lines but would not involve (involuntary) staff moves between sites. Although the Administration claimed that all changes would be in close consultation with those involved, it also admitted that consultation on an individual basis could be optional if a whole unit was equally concerned. This confirms the feedback we received from some reorganised units: they were merely informed of a decision that had already been taken. It seems that the term “consultation” has different meanings.

## **Any Other Business**

Facility management recently invited the Staff Representation to nominate for a working group for a new **Workplace Concept**. The workplace concept will merge into in the New Normal although it does not seem to matter that the New Normal is yet to be defined – or better: yet to be unveiled to the ones affected, staff. Several teams / directorates across different DG’s will be involved in a pilot workplace concept from mid-September 2021 (understood as ‘post corona’). Two alternatives would be evaluated: one workplace concept essentially as we have it now, and another concept with flexible working spaces: as one arrives in the morning, one is allocated a room/open space to be used for the day. Units or directorates would still be allocated to a given floor/wing in a building but the spaces would be occupied freely as per the people arriving.

The Administration seems to believe that we all want to work much more flexibly, much more from home and not attached to any physical workspace. This is not exactly the conclusion following from the recent WTW survey. The industry has long abandoned this option since the flexi-open-space hype. We requested that at least a Staff Representative for each place of employment be involved in the pilot project follow-up but were told that two representatives would be more than enough.

Recently an **ISO Audit** was carried out on our health system<sup>2</sup> and our nominees in the COHSEC received a summary report. We asked that the Staff Representation – and at least those colleagues who participated in the audit – be provided with the full report, even if only for the sake of transparency and openness. The Administration stated that it had no intention to give us the full report because some parts (e.g. an audit on IT Security) were meant to remain confidential. This clearly cannot be said about this audit report, yet the Administration remained adamant. Upon insisting, the President said that he would look into it. What is worth hiding in this audit report?

A discussion took place on the topic of **Education Allowance**. From a recent publication<sup>3</sup>, it seems that the implementation date has now again been moved forward to school year 2021/2022 – in contrast with an earlier announcement<sup>4</sup> from the Administration that it would start only from 2022/2023 onward. Although it now seems that the Administration intends to provide the current support to all children that are already in a school, we could not get any commitment for their siblings, for children that are not yet in school or for the children of colleagues that are yet to be born. All colleagues working in the EPO today joined with a given social package. Changing essential parts of it – as e.g. the education allowance is – goes against their legitimate expectations.

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<sup>2</sup> See also “[ISO 45001 framework](#)”.

<sup>3</sup> See the announcement “[Education and childcare reform](#)” of 7 December 2020.

<sup>4</sup> See the announcement “[Education and childcare reform](#)” of 30 July 2020

Though not said explicitly, the President seemed to keep an open door to this point of view.

Even if we might now be able to safeguard the rights of staff who are already in the EPO, it doesn't magically make the reform any better. Despite all arguments, the Administration keeps their minds stubbornly fixed on using lump-sums as the solution to all problems. Though this is undoubtedly simple and easy to administer and maybe even *affordable* (a new buzzword recently added to management vocabulary), it is anything but fair and will most likely lead to even more litigation. It totally disregards the factual situation which is vastly different between the different places of employment, and entirely different depending on one's personal situation. Even the idea of providing multiplication factors together with the lump sums, which would help mitigate these factual differences, was rejected as "too complex". One would think that in this age of digitization, which promises great leaps in productivity, a plain computer would be able to perform spreadsheet-style multiplication.

The last topic that came to the table was the upcoming **day of strike**. We noted that we now found ourselves in the regrettable situation that EPO staff found it necessary to go into social conflict, starting with a one-day strike, to make their voice heard. We gave feedback from the (virtual) general assemblies and floor meetings. These have been opportunities for Staff Representation and staff to voice our concerns on the continued – even accelerated – erosion of our working package.

Heading into a social conflict is not what the typical employee wants. Yet it becomes increasingly evident that the Administration remains unwilling – or unable? – to listen to the arguments of staff, to heed the many warnings that staff has been making on each reform, to sit down at the table and have a genuine social dialogue. At some point, social conflict becomes inevitable, and the forced but utterly unnecessary Salary Erosion Procedure has been the triggering event.

We requested the authorisation to send an email to all staff to invite them to participate in the strike. The President refused<sup>5</sup> – and in return he has reproached us for not having announced the strike earlier (though we strictly adhered to the wording of our worldwide unique Circular No.347).

## **Conclusion**

Both GCC meetings are examples of how not to conduct a social dialogue: there is no genuine debate. Our arguments are ignored when they don't suit the Administration. The ten GCC members appointed by the President remain silent throughout the meeting – except for a few – and do not seem to have an argument for or against any proposal (but always vote in favour of any document submitted). And even if there are indeed some mini-steps in the right direction, the President and his Administration remain unwilling to acknowledge the deep-rooted, structural faults of many of the reforms that have been forced on staff in recent years.

The wave of hope at the end of Mr Battistelli's term has long gone out and although the style is different, the action continues down the same downwards spiral.

We would have hoped to paint you a nicer picture – but for that you have to rely on the Administration's la-la-land publications.

Your Central Staff Committee.

## **Annex:**

all opinions on the documents "for consultation" in the November and December GCC meetings

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<sup>5</sup> See our announcement "[Call for Strike: how-to strike](#)"

CSC opinion GCC DOC 17-2020 _____	2
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## **Opinion of the CSC members of the GCC on GCC/DOC 17/2020:**

### **Adjustment with effect from 1 January 2021 of salaries and other elements of the remuneration of employees of the European Patent Office and of pensions paid by the Office**

The CSC members of the GCC give the following opinion on the adjustment proposed in GCC/DOC 17/2020.

- This annual review of salaries and pensions is based on an amendment of the adjustment procedure that the Administrative Council decided on 30 June 2020 (CA/D 4/20). This decision, however, is to be set aside because the statutory consultation process was flawed in several ways. For example, the underlying GCC document GCC/DOC 5/2020 was on the agenda of the GCC meeting on 6 May 2020, however, the necessary documentation was not available to the GCC members at least 14 calendar days before the meeting. This is in violation of Article 6 of the Rules of Procedure of the GCC and in breach of Article 38(2) and (3) of the Service Regulations. Therefore, the adjustment procedure should not be applied according to the amendments decided in CA/D 4/20, but rather according to the procedure as amended in CA/D 3/14 and in force since July 2014.
- The proposed adjustment violates the principle of purchasing power parity between the places of employment. The proposed monthly salary scales show the following basic salaries for grade 7, step 1: Belgium: 5.381,47, Germany: 5.991,89, The Netherlands: 5.921,26, Austria: 5.676,87. The coefficients of purchasing power parities on 1 July 2020 were: Belgium: 1, Germany: 1,1170, The Netherlands: 1,1190, Austria: 1,0632. When comparing the basic salaries to each other, they do not reflect the corresponding ratio of the coefficients of purchasing power parities as supplied by the International Service for Remunerations and Pensions. For example, the ratio between the above basic salaries in Germany and in Belgium ( $5.991,89 / 5.381,47 \approx 1,1134$ ) differs from the ratio between the corresponding coefficients ( $1,1170 / 1 = 1,1170$ ). As a second example, the ratio between the above basic salaries in the Netherlands and in Austria ( $5.921,26 / 5.676,87 \approx 1,0431$ ) differs from the ratio between the corresponding coefficients ( $1,1190 / 1,0632 \approx 1,0524$ ). Analogous differences arise *mutatis mutandis* for all other ratios between places of employment and for all other grades and steps. Furthermore, such differences of purchasing power apply to the scales used for the calculation of pensions.
- The proposed adjustment results in an undue erosion of purchasing power of the active employees and the pensioners. The proposed monthly salary scales adjustments amount to +0,5% in the basic scales applicable in Germany, +0,5% in the basic scales applicable in the Netherlands and +0,36% for those applicable in Austria. The trend of the Harmonised Indices of Consumer Prices from June 2019 to June 2020 was +0,8% in Germany, +1,7% in the Netherlands and +1,1% in Austria. The purchasing power parity coefficients with respect to Brussels rose by +1,9% for Germany, by +2,0% in the Netherlands and by 0,9% for Austria. This means that all employees and pensioners in Germany, the

Netherlands and Austria will lose purchasing power with the proposed scales, be it in terms of the Harmonised Indices of Consumer Prices or in terms of the purchasing power parity coefficients with respect to Brussels.

- The proposed adjustment is in breach of the principle of the parallelism in pay between the EPO and national civil services. The specific indicator for 2020 was calculated to be 101,6, which signifies a weighted increase, in real terms, of +1,6% in net remuneration levels of the civil servants of eight reference countries (BE, DE, ES, FR, GB, IT, LU, NL). The proposed adjustment, which is in real terms a decrease of net remuneration in Germany, the Netherlands and in Austria, is far behind the above increase in net remuneration levels of national civil services.
- The proposed new salary scales shall apply with effect from 1 January 2021. This means that for the period from 1 July 2020 to 31 December 2020 no adjustment of salaries and pensions took place. This is in contradiction to the requirement that the results of salary adjustments must be stable, foreseeable and clearly understood. In particular, the criterion of stability is neglected by skipping a period of six months without adequate transitional measures.
- Article 33(2)(c) EPC regulates that the Administrative Council shall be competent to adopt any appropriate increases in existing pensions to correspond to increases in salaries. The current proposal foresees that any positive adjustment resulting from the application of the sustainability clause and carried forward after three annual salary adjustments will be paid out to employees – not to pensioners – as a lump sum. The excess adjustment not applied in January 2021 is +3,3% for Germany, +3,3% for the Netherlands, +2,4% for Austria and +1,6% for Belgium. As only the active employees, but not the pensioners profit from this carry-over, this unequal treatment is in violation of the EPC.
- The implementation of the salary adjustment procedure as amended in CA/D 4/20 is inaccurate in some parts. For example, the sustainability clause foresees an indexation to annual Eurozone inflation +0,2%. The trend of the Harmonised Index of Consumer Products in the Eurozone was 100,3 (see Annex 1 of the proposal). The resulting limit should thus be calculated as 100,3 + 0,2% of 100,3, which is (slightly) bigger than the applied indexation of 100,5.
- The financial impact of the proposed salary adjustment amounts to EUR 6,1m in 2021. The draft budget for 2021 (CA/50/20, article 3000) foresees a much higher adjustment of +2,2% amounting to EUR 22,0m. The actuarial gain of the new salary methodology over 2020–2025 period is estimated at EUR 1,0bn (proposal, paragraph 58), which is already half of the EUR 2,0bn savings expected by 2038 (CA/50/20, page 4). The amount of savings is thus excessive when compared to the budget and to the estimated impact of the amended salary adjustment method (CA/19/20, paragraph 64). This is all the more noteworthy, because the performance of the RFPSS (EUR 9,1bn) is significantly better than the forecast (EUR 6,8bn) in the chosen scenario 2 of the financial study (CA/83/19). The same applies to the EPOTIF, for which the current performance (EUR 2,9bn) is much above the forecast (EUR 2,2bn) in

scenario 2 of the financial study. This emphasises again that the results of the proposed salary adjustments were not foreseeable. Furthermore, they make savings just for the sake of making savings, in particular with regard to the fact that the Office forecasts an annual cash surplus amounting to EUR 310m (CA/56/20, paragraph 10). This is in contradiction to well-established jurisprudence of the ATILO that a salary adjustment method must be stable, foreseeable and clearly understood and that cuts shall not be made simply for the sake of making savings.

An application of the salary adjustment procedure as amended in CA/D 3/14 would have resulted in a (rounded off) adjustment of +3,8% in Germany (before moderation), 3,8% in the Netherlands, +2,7% in Austria and +1,8% in Belgium. The current proposal thus means severe losses for the employees and pensioners. The above illustrative list of defects of the proposal further shows that it is based on a flawed decision procedure, it is in breach of fundamental principles of law, it is in violation of the EPC and its implementation shows technical inaccuracies.

In summary, the **CSC members of the GCC unanimously give a negative opinion** on the adjustment with effect from 1 January 2021 of salaries and other elements of the remuneration of employees of the European Patent Office and of pensions paid by the Office as proposed in GCC/DOC 17/2020. In order to emphasise the constructive approach, reference is made to the open letter (sc20172cl) dated 17 November 2020, in which the Central Staff Committee made proposals for repairing the salary adjustment procedure. It is unfortunate that these proposals were not discussed and the Chairman did not facilitate a real exchange of views, but rather stopped the debate. It is with regret that the decision-making authority did not show openness regarding the comments and proposals presented in the consultation process.

The CSC members of the GCC



## **Opinion of the CSC members of the GCC on GCC/DOC 18/2020:**

### **Revision as of 1 January 2021 of the rates of the daily subsistence allowance**

The CSC members of the GCC give the following opinion on the revision proposed in GCC/DOC 18/2020.

The proposed adjustment of the daily subsistence allowance is based on the arithmetic average of the rate of the annual salary adjustment for Austria, Germany and the Netherlands. The adjustment is calculated as +0,46%. This calculation is based on the assumption that the adjustments amount to +0,5% in Germany, +0,5% in the Netherlands and +0,36% in Austria (percentages rounded off).

These adjustments, however, are the result of a proposal – reference is made to the opinion of the CSC members of the GCC on GCC/DOC 17/2020 – which is

- based on a flawed decision procedure of the Administrative Council,
- in breach of fundamental principles of law,
- in violation of the EPC and
- showing technical inaccuracies.

Thus, the calculation of the adjustment of the rates of the daily subsistence allowance is flawed as well.

In summary, the **CSC members of the GCC unanimously give a negative opinion** on the revision as of 1 January 2021 of the rates of the daily subsistence allowance as proposed in GCC/DOC 18/2020.

The CSC members of the GCC

## **Opinion of the CSC members of the GCC on GCC/DOC 19/2020:**

### **Revision as of 1 January 2021 of the rates of the kilometric allowance**

The CSC members of the GCC give the following opinion on the revision proposed in GCC/DOC 19/2020.

The proposed adjustment of the kilometric allowance is based on the arithmetic average of the rate of the annual salary adjustment for Austria, Germany and the Netherlands. The adjustment is calculated as +0,46%. This calculation is based on the assumption that the adjustments amount to +0,5% in Germany, +0,5% in the Netherlands and +0,36% in Austria (percentages rounded off).

These adjustments, however, are the result of a proposal – reference is made to the opinion of the CSC members of the GCC on GCC/DOC 17/2020 – which is

- based on a flawed decision procedure of the Administrative Council,
- in breach of fundamental principles of law,
- in violation of the EPC and
- showing technical inaccuracies.

Thus, the calculation of the adjustment of the rates of the kilometric allowance is flawed as well.

In summary, the **CSC members of the GCC unanimously give a negative opinion** on the revision as of 1 January 2021 of the rates of the kilometric allowance as proposed in GCC/DOC 19/2020.

The CSC members of the GCC

## Opinion of the CSC members of the GCC on GCC/DOC 20/2020:

### Revision as of 1 January 2021 of the rates of the lump sum compensation of removal expenses

The CSC members of the GCC give the following opinion on the revision proposed in GCC/DOC 20/2020.

The proposed adjustment of the lump sum compensation of removal expenses is based on the arithmetic average of the rate of the annual salary adjustment for Austria, Germany and the Netherlands. The adjustment is calculated as +0,46%. This calculation is based on the assumption that the adjustments amount to +0,5% in Germany, +0,5% in the Netherlands and +0,36% in Austria (percentages rounded off).

These adjustments, however, are the result of a proposal – reference is made to the opinion of the CSC members of the GCC on GCC/DOC 17/2020 – which is

- based on a flawed decision procedure of the Administrative Council,
- in breach of fundamental principles of law,
- in violation of the EPC and
- showing technical inaccuracies.

Thus, the calculation of the adjustment of the rates of the lump sum compensation of removal expenses is flawed as well.

In summary, the **CSC members of the GCC unanimously give a negative opinion** on the revision as of 1 January 2021 of the rates of the lump sum compensation of removal expenses as proposed in GCC/DOC 20/2020.

The CSC members of the GCC

**Opinion of the CSC members of the GCC on GCC/DOC 21/2020:**

**Circular No. 408: Contribution for gainfully employed spouses  
to the healthcare insurance scheme in 2021 (Article 83a(1)(a) ServRegs)**

The CSC members of the GCC give the following opinion on the revision proposed in GCC/DOC 21/2020.

Thresholds triggering the obligation to pay contributions for working spouses with no healthcare insurance of their own rely on the grade / step G1-4. They are thus adjusted according to the new Salary Adjustment Procedure (SAP), i.e. decreased in real terms, whereas the income of spouses remains adjusted with national / local circumstances. The thresholds are disconnected from the real-life adjustment of spouses' salaries, which are statistically higher. Therefore, contributions will be levied for more spouses than in the past.

In addition, the contributions are calculated based on premiums charged by national insurers, i.e. under conditions prevailing in the real world, namely insurance market prices in NL and DE. The adjustment of basic salaries / pensions for EPO staff / pensioners are decoupled from the real-life adjustment and they are lower. The burden of the contributions therefore increases on households.

The CSC members of the GCC **unanimously abstain** on the proposal as in GCC/DOC 21/2020.

The CSC members of the GCC

**Opinion of the CSC members of the GCC on GCC/DOC 22/2020:**

**Circular no. 368 – Guide to Cover**

The CSC members of the GCC give the following opinion on the revision proposed in GCC/DOC 22/2020.

The GCC-SSPR group on the Guide to Cover works in a constructive manner, leading to the document being adapted regularly to changes in the health systems of our host countries. The CSC members of the GCC highlight the positive exchange on the different topics between the representatives of the administration and the staff representatives.

The **CSC members of the GCC unanimously give a positive opinion** on Circular no. 368 as proposed in GCC/DOC 22/2020.

The CSC members of the GCC

**Opinion of the CSC members of the GCC on GCC/DOC 23/2020:**

**Corrigendum - Circular 406 – Death insurance (Article 84 ServRegs)  
Review for the period 2017-2019 and provisional rates for 2020-2022**

The CSC members of the GCC give the following opinion on the corrigendum proposed in GCC/DOC 23/2020.

According to the requirements set out in the Implementing Rules for Articles 83a, 84 and 84a of the Service Regulations, the three-yearly review of the death insurance for the period 2017-2019 has now been carried out and the calculation of the surplus contributions paid has been finalised. This has resulted in corrected final contribution rates for 2017-2019, which lead to a reimbursement to staff.

The CSC members of the GCC **unanimously give a positive opinion** on the corrigendum as proposed in GCC/DOC 23/2020.

The CSC members of the GCC

## **Opinion of the CSC members of the GCC on GCC/DOC 25/2020:**

### **Circular 364 – Implementation of the Career System; Minimum qualification for recruitment, grading on recruitment, promotion and other rewards**

The CSC members of the GCC give the following opinion on the proposal to revise Circular 364 (Implementation of the Career System).

#### On the amendments to the Circular

We appreciate the positive amendments in the Circular following the constructive discussions in the Working Group (WG) on one single topic, namely on the calculation of the time to be considered for grade assignment and career development for a doctoral degree (PhD) in new sections 5 and 6 of Part II of the Circular.

This step forward will help to solve a number of pending litigation cases and will help to limit further litigation on the topic.

As set out by the President during the GCC meeting, a time-limited transitional period will allow staff to ask for a review of their recognised experience. This is also a positive development and we are confident that the WG will take up this discussion in a constructive way.

#### On the Circular as a whole: a general (negative) note

Whilst the above amendments – taken in isolation – would deserve a positive vote, the negative points of the Circular as tabled to the GCC for opinion have not been amended. As regards Circular 364 taken as a whole, our main reservations have already been expressed in the GCC last year (see sc19059cp attached), where we unanimously voted against the Circular. These deficiencies still need to be discussed and improved as soon as the WG takes up their discussions again early next year.

We refer to our earlier proposals for an EPO career reform, which identify the deficiencies to be addressed and which could form the basis for discussions to be resumed in the WG next year. The “Position of the CSC with regard of performance management” of 14.11.2018 (see sc18154cp attached) and the open letter “Input for the Working group on Performance Management” (see sc19095cl attached) summarise our point of view and need to be further addressed within the WG.

Concerning the recognition of prior experience upon recruitment, the current assignment to the lowest step within an assigned grade should be addressed. It leads to the doubtful situation that experience outside the Office will regularly count more than inside. Furthermore, the Office’s current focus on diversity and inclusion should also be reflected in the recognition of childcare periods, but as well of civil and military service.

Very few of the issues raised in our proposals have been addressed so far and the WG should be mandated to provide a work plan for the coming year in order to make concrete proposals for further amendments in order to repair the deficient so-called New Career.

The CSC members of the GCC

Annexes:

- Report on the meeting of the General Consultative Committee of 11 April 2019 (sc19059cp)
- Position of the CSC with regard of performance management (sc18154cp)
- Input for the Working group on Performance Management (sc19095cl)





## **Report on the meeting of the General Consultative Committee (GCC) of 11 April 2019**

### **Introduction**

Our report supplements the President's "[Update on GCC meeting of 14 April](#)" from a staff perspective. The date of the meeting was 11 April. A red thread through GCC meetings in general remains the lack of meaningful staff involvement early enough to secure transparency and trust, which we will highlight in connection with the discussions on the respective documents.

### **Documents for consultation (i.e. necessitating a vote)**

#### **Revision of [Circular 364](#) - GCC/DOC 03/2019**

The document was tabled at a time where the Working Group on Performance Management is still actively deliberating career aspects. The Administration stressed that the revision was only for the current reward exercise. We just wonder why the Administration chose a time line for the working group precluding more in-depth changes already for the current reward exercise.

Relaxing the language constraints for newcomers apparently aims at increasing the number of staff not having an EPO official language as a native language, but it might not be the right answer to the problem. It does not address the low attractiveness of the EPO as an employer<sup>1</sup>. We feel that it can also contribute to a situation where new examiners may not be able for almost the entire five years of their first contract to fulfil the EPO mission in its three official languages under the EPC<sup>2</sup>. The selection process is quite opaque since staff representatives are no longer members of the selection boards. The President confirmed here that he would continue this practice in general. Staff representatives may exceptionally be called upon by the administration for certain specific recruitments.

There is no comprehensible correlation between appraisal reports and the reward exercise, which remains relative, based on a competition where performance does not necessarily mean winning a prize. This revision essentially continues in the direction of the previous appraisal/reward exercise<sup>3</sup>, which was shown in the survey to have caused great discontent among staff. The President countered that he has a totally different perception based on his face-to-face meetings with staff.

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<sup>1</sup>See Staff Engagement Survey 2019: pay / benefits are considered satisfactory but almost all other aspects (reputation, respect and trust in management) are much below European norms.

<sup>2</sup>Article 14(1) EPC: "*The official languages of the European Patent Office shall be English, French and German.*"

<sup>3</sup>To be fair, the document contains some positive promises about equal opportunities among all categories of staff, "neutralisation" of periods of maternity and adoption leave, attention paid to employees who have not received any step advancement or promotion in several successive reward exercises.

These meetings, like focus groups, lack transparency, so we have to take the President's word for it. Senior management's trust ratings are at an all-time low, so increasing transparency by meaningfully involving staff through its elected representatives would appear to be the way to go.

The President assured that he himself would see to a fair and transparent exercise this time by chairing the Harmonisation Committee<sup>5</sup>. However, he has to rely on a senior management downstream with some routine in the exercise, which staff does not trust at all.

At the end, the President announced some (small) changes in the document and proceeded to the vote. We were not in a position to agree to a document essentially calling for trust/faith and unanimously voted against it. The Administration unanimously voted in favour.

### **Pilot of Ad hoc teleworking (AHTW) - GCC/DOC 06/2019**

Based purely on the submitted document we initially were reticent to support it. The selection criteria and conditions for access were not clear and appeared to be based on the assumption that a further production increase was the aim of the exercise. The project aims at making staff profit from technological developments by allowing them to work at a distance from EPO premises for short periods of time, on an ad-hoc or occasional basis, up to a limited number of days per year.

The project still has flaws and obscure spots<sup>7</sup>, but following the explanations and reassurances given during the meeting and bearing in mind that it is just a pilot project, all GCC members voted in favour.

The President committed to involving staff representatives in the evaluation of the pilot and the elaboration of a regulation for steady-state implementation.

### **Documents for information:**

#### **[President's Instructions on rewards](#) - GCC/DOC 04/2019**

As for Circular 364 above, the instructions are based on the version used last year. They reflect some of the promises made in the Circular<sup>8</sup>. President and administration are clearly not in favour of laying down too concrete instructions, in order to maintain some flexibility in the exercise. Again, we think that combining managerial discretion and fairness is a delicate exercise, all the more so when it takes place behind closed doors with no participation of the staff representation. Nevertheless, the President declared that he was not against publishing the names of those having received a step or a bonus, in addition to those having been promoted.

One major issue remains the system driven in DG1 by quantitative objectives encouraging the rat race and ultimately affecting quality.

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<sup>5</sup>See section E of the Circular: "*The Harmonisation Committee shall be chaired by the President and composed of PD Human Resources and composed of members of each DG appointed by the President.*"

<sup>7</sup>The exact nature of the "win/win" effect, the form and scope of the agreement to be reached between staff and his/her manager would need to be clarified at the latest before AHTW is implemented full-scale. Similarly, its scale should not put into question the centralisation at the heart of the European patent system.

<sup>8</sup>For instance, maternity leave (NOT sick leave) is considered as time present for the rewarding process.

In addition, the President also committed to spending the whole budget allocated for reward<sup>9</sup>. Whilst this is laudable it still does not solve the issue that even that budget will most probably not be sufficient to restore the link between performance and reward, to include those who have not received any step advancement or promotion in several successive reward exercises<sup>10</sup>.

### **Report to the GCC on the SSP tender result - GCC/DOC 05/2019**

This tender attracted a low number of bidders because, compared to other pension funds, the SSP fund is still small with €86m<sup>11</sup>. It is proposed to grant the tender to Fidelity (with sub-contractor Lohoff) for the combined SSP asset management and administration services as from 1 January 2020.

We stressed that involving staff representatives only as observers in the process is insufficient. In the New Pension System staff members bear individual financial risk. This makes meaningful staff representation a must.

### **Conclusion**

The President apparently favours continuity and appeals to us to trust his good intentions, promising that the next step will bring more changes. Trust is a tender plant and needs to be nurtured with care and consistently. It is *the* key element for management credibility, as the staff survey has shown. Continuing policies and behaviour that got us where we are now are unlikely to get us where we aspire to be.

The Central Staff Committee

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<sup>9</sup>Last year, the budget was underspent by about 30%

<sup>10</sup>Strangely enough, this criterion mentioned in the Circular does not reflect in the instructions.

<sup>11</sup>In the jargon: a “*semi-commoditised*” market



## **Position of the CSC with regard of performance management**

The EPO predominantly recruits professionals with high analytical skills and the capacity to intellectually challenge what is put before them. Colleagues apply for positions at the EPO knowing that the work may not be as inspiring as project-work in industry, but knowing as well that they will provide an important contribution to a reliable patent system for the European public. In that context, and in comparison with peers at other international public service organisations in Europe, they justifiably expect a merit-based career system.

What is currently in place and what is being reinforced is a “rat race” or a “winner takes it all” system. The President purported in recent meetings with managers that staff does not understand the reward system because their managers fail to explain it properly. Small surprise, as these managers were generally recruited from the pool of staff selected for their strength in intellectually challenging what is put before them and therefore find it difficult to defend the indefensible.

To foster the granting of high quality patents the CSC considers that the following steps should be taken and the following principles applied to acknowledge an individual’s contribution over the years and turn the career system of the EPO<sup>1</sup> into a truly merit-based system with adequate transparency:

- Set up a joint working group (JWG) with the mandate to propose amendments to the career system in 2019 for implementation from January 2020 at the latest;
- Seriously benchmark the career system of the EPO with the career systems of other international and European organisations and Patent Offices in a transparent way to align the principles of the EPO’s career system with the career system of the other organisations;
- Ensure that the promise made in job advertisement with regard to career prospects is met;
- Ensure that a staff member with an average performance has an average career while a staff member with above-average performance has a corresponding above-average career progression (merit-based career), within fair boundaries ensuring engagement of all staff and the needed cooperation between staff.
- Ensure the promised career progression between Job Groups (“no glass ceilings”) in particular between Job Groups 5 and 6.

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<sup>1</sup> We also refer to our letter **sc18138cl** dated 19 October 2018, proposing as agenda point for the next GCC the topic “*Adapting the career system to EPO needs*”

- Calibrate the factors determining career progression to accommodate the specific situation of the (broadly) very different populations existing at the EPO, i.e. recruited before 2009, 2009 to 2014, 2014 to 2018 and after 2018 (contract workers). This is necessary after several non-consensual reforms, also for keeping the promise made for the expected final result of the SSP at the end of the career;
- Develop fair and objective criteria leading to a fair and reproducible decision about allocation of a pensionable reward.
- Implement a *pro rata temporis* evaluation so as not to discriminate staff in some situations, e.g. women on maternity leave, colleagues on parental-leave, part-timers, sick colleagues, colleagues on contracts, etc;
- To create transparency, publish every year the allocation of pensionable rewards over the different grades and steps within each grade, and the criteria on which the decision to allocate – or not - is based;
- Ensure that the merits of a staff member of a comparable group of staff who has not received a pensionable reward in one year carries forward a credit to the next year to increase eligibility for a pensionable reward in that year;
- Establish pensionable rewards as the standard. A bonus shall, as stipulated in Article 48a ServRegs, only be granted for particularly high performance and/or additional duties not otherwise rewarded. Bonuses should be reserved for staff having reached the end of their job group and cannot be rewarded with pensionable rewards. Individual bonuses otherwise work against the cooperation spirit. Likewise team bonuses will put teams in competition and will damage the necessary general cross-team cooperation. Bonuses for top managers should not be taken from the same envelope as bonuses for staff and should also be distributed in a transparent way;
- Provide a yearly budget meeting the above targets and fully exhaust the allocated budget;
- Introduce transitional measures not implemented at the start of the NCS. This entails reintegrating all staff into the salary grid and applying the above-mentioned retroactive transitional measures and principles over the period 2015-2018 continuously and consistently. This might necessitate an additional budget;
- Amend the Service Regulations where necessary to implement the above principles and to ensure proper involvement of the Staff Committee in supervising the exercise of granting pensionable and other rewards. Staff representatives should also be included in the litigation process concerning allocation of rewards (i.e., management review).

The CSC is ready to enter into a frank and open social dialogue on the basis of the above principles to define together with your administration a career system that is acceptable to staff, that is supported by the CSC and that fulfils the needs of the EPO as the Authority granting European patents with a high presumption of validity.

We do not share the view of HR that the current system can be applied with only a quick fix. We rather predict that this will result in endless litigation for every year of application, amounting to several thousands of individual decisions on pensionable rewards or lack thereof, as the case may be.

The Central Staff Committee

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President of the EPO

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Date: 08.07.2019

## Open letter

### Input for the Working group on Performance Management

Dear Mr President,

The Central Staff Committee is worried at the lack of concrete progress in the Working Group on Performance Management (WGPM). We consider that a range of discussions are needed in order to re-establish a complete career system that is fit for purpose and allows again the EPO, and especially the corps of examiners, to perform their tasks as required by the EPC.

Unfortunately, not a single meeting of the WG was organised in June and only a one and a half hour VICO is planned for July.

On top of the numerous input already made by us since almost one year, you will find attached five concrete proposals in order to help the Working group progress:

- Input by the CSC on transitional measures from the OCS to the NCS
- Input by the CSC on the design of a career path based on merit while enhancing a cooperative working environment
- input by the CSC on some implementation details of the career on:
  - Orientation for the Appraisal: in Search and Examination (OASE)
  - Appraisal Committee and Harmonisation Committee
  - Target Setting (Circular 366)

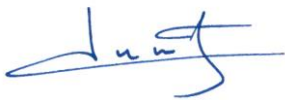
European Patent Office  
Bayerstr. 34  
80335 Munich  
Germany

We look forward to seeing more face to face meetings of the WGPM after the summer break, where your appointees in the WGPM will have a mandate to meaningfully consider our proposals. The WGPM could benefit from the additional presence of career specialists.

One year has been lost, using the current system both for reporting and for rewarding staff. We look forward to substantial progress of the WG in autumn in order to provide adequate provisions in the draft 2020 budget to be decided by the Administrative Council in its December session after BFC consultation.

This would be a clear signal to staff that you want to seriously address the major problems of the current career system and their impact on the quality of the work delivered by the EPO and on the health of staff. It would also signal that you want to offer EPO staff a reasonable career prospect.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Alain Dumont', with a long horizontal stroke extending to the right.

Alain Dumont  
Acting Chairman of the CSC

Working group on Performance Management



## **WG on performance management**

### **Input by the CSC on transitional measures from the OCS to the NCS**

#### Introduction:

The new career system (NCS) was introduced without any transitional measure, an unprecedented procedure in other international organisations. This has resulted in demotivation, frustration and litigation. The mandate agreed in the WG includes accommodating "*transitional measures addressing past litigation*".

The CSC proposes the following transitional measures with retroactive effect from 1 January 2015, in order to allow a smooth and progressive transition towards the NCS and the new salary grid.

#### Unchanged parameters:

The salary grid of the NCS and its job groups are kept. The transition to the new grid with effect from 1.7.2015, either in between steps or using the 50 Euros rule is kept.

#### Changed parameters:

Staff members currently without a grade are attributed a grade and step in the new system. Every staff member enjoys from 1 January 2015 the benefit of the old career system (OCS) until reaching the end of his/her grade under the OCS without prejudice to the real career evolution in the NCS since 2015. From that point onwards, only the NCS applies.

#### Time framework:

The working group is required to provide simulations as to the budgetary impact of such measures in time for the President to be able to submit a proposal in the draft budget 2020 which will be decided by the Administrative Council in December 2019 after consultation of the Budget and Finance Committee in October 2019.

#### Means:

The working group should be provided with all data allowing it to perform the necessary simulations as to the impact of a proper transition from the OCS to the NCS. A sufficient number of meetings of the WG should be planned in order to achieve the above goal. The WG should be provided with the needed expertise, either internal or external.

#### Alternatives:

The CSC considers that the above solution has the potential to greatly reduce past and future litigation on the career system and improve vastly engagement of large groups of staff. The CSC is also ready to consider alternatives, e.g. reverting to the old career system, which was a merit based system (with automatic step advancement and promotion based on merit) or implementing a transition using the model of the European institutions when their new career system was introduced in 2004. An early input by the President on his preferred path would help the WG to concentrate only on one path.

Working group on Performance Management

**WG on performance management**  
**Input by the CSC on the design of a career path based on merit**  
**while enhancing a cooperative working environment**

Introduction:

The new career system (NCS) has proven not to be a merit based system but a “winner takes it all system” exacerbating competition, creating frustration, demotivation and litigation and leading to a loss of engagement for quality. Recruitment of examiners is also becoming increasingly difficult. A need to review the NCS to foster cooperation spirit and staff engagement has arisen. The WG has been tasked with designing “a career path based on merit while enhancing a cooperative working environment”.

Means for the WG, spirit of discussions and goal:

The design of a career system working properly is an expert matter which requires deepened discussions without taboos and dogmas and an overall view of all aspects, if one wants to obtain staff acceptance. The ability to recognise the defaults of the current system and a strong mandate by the President to his appointees in the Working Group is needed. A sufficient number of meetings should be organised. The members of the WG should cooperate in good faith in order to find common ground and regular feedback should be provided to the President to monitor the progress. All needed data must be made available to assess the situation (demographic data and data on career results since 2015). The WG would benefit from the presence of the career experts available in the administration.

The CSC considers that a discussion in the WG with a view to amending together the system along principles as described below has the potential of greatly reducing past and future litigation on the career system and improving vastly engagement of large groups of staff for cooperation and quality to the benefit of the EPO.

Principles:

The CSC proposes to implement the NCS as **a merit-based promotion system functioning around an average career**<sup>1</sup>. By design, with a lot of grades with only 5 steps each, the NCS allows accelerating or slowing down the career on a frequent basis by acting on the promotion date<sup>2</sup>.

The value of the steps (low at the beginning of the career and higher at the end) already provides structural substantial savings for the EPO.

It is proposed to avoid the yearly high transactional costs, frustration and litigation resulting from the discretionary attribution of step advancement.

A proposed solution could be inspired from a number of elements that the EU institutions introduced with their NCS but that the EPO left aside. The result should

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<sup>1</sup> See Annex

<sup>2</sup> It is for example questionable whether the double steps foreseen in Article 48 should not be replaced with an amendment of Article 49 in order to allow promotion before reaching the end of the grade.

be an expected average career for a majority of staff from which low and high performers would reasonably deviate.

#### Unchanged parameters:

The new salary grid is kept. Article 47, ServRegs is kept, i.e. the principle of a professional development either within or between a technical and a managerial career path. Promotion is discretionary and is decided by the President. Step advancement can also be delayed in case of insufficient performance or even stopped in case of a procedure under Article 52.

#### Changed parameters:

Changes to some articles of the ServRegs might be necessary, e.g. Articles 48, 48a and 49 and to Circulars 364-366 in order to encourage cooperation and reward engagement towards quality.

Further amendments of the ServRegs are needed to reintroduce transparency in the system, e.g. by upgrading the Harmonisation Committee to a statutory joint body. The appraisal committee should also become a joint body.

It is suggested to borrow when possible references from the corresponding Articles of the EU Staff Regulations, e.g. Articles 44 and 45, and further EU Regulations, and adapt them to EPO demography and needs, also for transfers from a lower job group to a higher one (e.g. from job group 6 to job group 5).

#### Budgetary aspect:

The budgetary aspect can be tackled in different ways. When addressing budgetary issues, account should be taken of both the current demography of EPO staff and their legitimate expectations and the need to provide all employees including those recruited under the NCS with a reasonable career expectation.

#### Time framework:

The working group is required to provide a design of a complete new scheme at the latest for allowing a decision of the Administrative Council in June 2020.

#### Alternatives:

The CSC is also ready to consider alternatives, e.g. reverting to the old career system, which was a merit based system (with automatic step advancement and promotion based on merit) or implementing fully the model of the European institutions when their new career system was introduced in 2004. An early input by the President on his preferred option would help the WG to concentrate only on one path. Further dilatory measures<sup>3</sup> by your administration should be avoided if the WG is to be taken seriously.

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<sup>3</sup> No meeting of the WG was organised in June despite our request. Only a one and a half hour VICO is planned for 9 July and some data requested on current application of the NCS

## ANNEX

### Example of an average career for an examiner

The Central Staff Committee has been asked by the administration to explain what it understands by an average career. An example is given with reference to the career of an examiner. This is the largest group in the EPO and the group for which recruitment difficulties are already arising under the NCS.

**An average career is a career that will normally lead an examiner to the end of the job group 4.**

For example, an examiner recruited without experience at G7-1 level, e.g. 25 years old, could reach the grade G13-5 at the age of 60 after 35 years of experience in the EPO and six promotions.

In the above example, with a performance constant over the career, this is achieved by granting one step every year and by a promotion at the end of each grade. This means promotion is neither accelerated nor delayed. Please beware that the structure of the salary grid is making salary progression slower in the beginning of the career than under the OCS.

The career of staff with performance below average would be slowed down by acting on the promotion dates. Staff with an unsatisfactory performance could be further delayed in their career advancement by possibly denying step advancement, all under conditions to be defined in the Service Regulations.

Staff with a performance above average and/or with competencies above average should be able to access job group 3, as intended by design of the NCS, i.e. as foreseen in Article 47 and Annex I (decided by the Administrative Council) under the technical career path and in Circular 365 (Senior expert). This means that the EPO should open up again some positions as senior expert. This would be achieved by accelerating promotion to a higher grade. The conditions must also be defined in the Service Regulations and Circulars.

It goes without saying that the EPO needs to recruit primarily examiners and to have them stay as examiners during their whole career, i.e. several decades. If examiners are quickly given to understand that there is no career in Job 3 at the EPO as an examiner but only as a manager (or in the Appeals Boards!) then the message to them is: please leave the examiner career as soon as possible! This is why the EPO came very early to the conclusion that examiners need a decent (average) career and introduced the A4-2 grade. The Battistelli administration forgot about this important fact.

The above is only for illustration of the principle of an average career and can and should be extended, *mutatis mutandis*, to other staff in other job groups in to order to provide all staff with a reasonable career expectation at the EPO.

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have still not been made available. In view of the complexity of the matter, a strong effort needs to be made right after the summer break.

Working group on Performance Management

**WG on performance management**  
**Orientation for the Appraisal in Search and Examination – OASE**

Three possibilities are presented in the document, which amounts to three different systems:

**Option 1** - system, where only the first examiner receives examination points

**Option 2** - system of points distributed among all members of the Division

**Option 3** - system of points given equal points to all members of the Division]

Further optional elements or alternatives are marked in purple.

## **I. INTRODUCTION**

The Office employs quite a variety of staff. For many the performance might be difficult to estimate, for example for those performing special administrative, technical or legal functions in DG's 4 and 5. The performance of staff performing patent granting duties in DG 1 seems easier to estimate, with two sizeable groups performing similar work. This first orientation paper provides guidance on the performance assessment of biggest distinct population – the examiners.

*For formalities officers, HR colleagues, facility management, technical services, BIT staff, buyers, patent information, lawyers and those we have not listed the staff committees lack the deeper insight yet. We are therefore looking for colleagues who can share appraisal issues they experience in the respective areas with us, so that we can provide guidance here, too, in future parts of the "Orientation for the Appraisal"-series. So please contact your local committee.*

The estimation of the work of individual examiners in DG 1 is often a source of conflict and litigation, as the legal aspects of the assessment are not an exact science. There is a need to address the lack of clarity and provide a commonly accepted orientation framework for judging the work of examiners to approach a fair assessment as stipulated in Article 47a (1) ServRegs.

## II. QUALITY OF WORK

It is noted that it is the team manager's task to check and guarantee the quality of work delivered. It is therefore assumed that every fully trained examiner does a work of "good" quality at least, as long as the responsible team manager is not able to prove a recurring lack of quality. In case the quality is disputed, by the team manager, the assessment of quality of the work done by individual examiners has to be based on substantial assessment of the work done, including all factors involved in the work done by a particular examiner, including in particular:

- The type and diversity of procedures performed
- The general compliance with the provisions of the EPC
- The richness and precision of the analysis
- The thoroughness and soundness of the decisions
- The extension, accuracy and depth of the searches performed

## III. QUANTITY OF WORK

The assessment of the individual evaluation of work done remains a managerial responsibility, which is to take into account all relevant aspects as listed below for the evaluation.

Relevant aspects of the work done when assessing the quantity of work including in particular:

- The type and diversity of procedures performed
- The number and type of intermediate action (communications, summons)
- The participation in Divisions as Second Member or Chairman
- The number of oral proceedings
- The difficulty of technical field
- Classification and opposition work
- The limitation of the number of applications in a particular technical fields
- Other tasks performed by the Examiner, like coaching
- Performing work in more than one technical field
- etc.



As an orientation for assessing the quantity of work it is proposed to distribute a number of standard points to all members of Divisions according to different types of actions.

**A) Distribution of standard points per action**

Standard points will be distributed according to the type of final action, according to this table.

Action type -	Examination Points					
	Grant			Refusal		
SEARCH						
Search – Search Examiner	100			100		
<b>Total Search</b>	100			100		
FIRST ACTION						
First action Examination - First Examiner	40	50	20	40	50	20
First action Examination - Chairman	10	0	20	10	0	20
First action Examination - Second Examiner	0	0	20	0	0	20
SUMMONS						
Summons – First Examiner	40	50	20	40	50	20
Summons – Chairman	10	0	20	10	0	20
Summons – Second Examiner	0	0	20	0	0	20
FINAL ACTION						
Final action Examination - First Examiner	40	50	20	60	140	40
Final action Examination - Chairman	10	0	20	30	0	40
Final action Examination - Second Examiner	0	0	20	10	0	40
<b>Total Examination (without / with summons)</b>	<b>100/150</b>	<b>100/150</b>	<b>120/180</b>	<b>200</b>	<b>200</b>	<b>240</b>

If, for whatever circumstances, an application is re-allocated to a different Division, the first action points will be given again in the first action after reassigning.

The distribution of points according to this scheme presumes a randomization in the allocation of applications to the divisions/examiners.

## B) Classification / Opposition

The classification / opposition time will be deducted from the S/E time.

## C) Oral proceedings

For Oral Proceedings, the actual duration of the oral proceedings will be deducted from the S/E time of each of the three members of the Division. For proceedings in absentia, one hour will be deducted for each member of the Division.

## D) Productivity

The productivity will be defined as number of points per day.

## E) Learning curve

Learning curves will be given in terms of percentages of expected productivity, according to the following tables:

Grade	Learning curve (% expected productivity)
New Recruit	
Year 1	60%
Year 2	80% 70%
Year 3	90% 80%
Year 4	90%
Year 5	90%
Transfer technical field	
Year 1	80%
Year 2	90%

## IV. REFERENCES

### A) References for search and examination

Productivity references will be based on at least five years of historical data. Data from examiners with learning curve will not be taken into account.

Changes of the references will be consulted at the GCC on proposal from VP1 at least every three years. A joint subcommittee of the GCC will prepare a reasoned recommendation to the GCC before submission. Adoption of the references will have to be approved by a 3/4 majority of the GCC. They will have to be published before the start of the reporting exercise.

The essential parameter for the estimation of the quantity of work is the Basis Reference, which will be calculated for every technical field for which it is statistically relevant.

Technical field	Basis Reference
M&M	
Field one	36
Field two	30
Field three	30
HBC	
Field one	20
Field two	38
Field three	26
ICT	
Field one	22
Field two	18
Field three	24

All units of the table are expressed in points/day. Again, the validity of these references presumes randomization in the allocation of patent applications to the divisions/examiners.

The Basis Reference is defined for each technical field as:

$$\text{Basis Reference} = \min(\mu - 3 \cdot \sigma, 0,5 \cdot \mu)$$

$\mu$ : the arithmetic mean

$\sigma$  : standard deviation

## B) Publication of References

The number of points will be monthly published per team and per technical field, together with statistics on the different types of actions:

Month XX	Number of actions	Points
Searches	183	18300
First Actions	120	7200
Summons	35	2100
Decisions to Grant	102	6120
Refusals	34	4080
TOTAL	474	37800
S/E Time (days)		960
Productivity (points/day)		39

Where the S/E time is the time employed by all members of the Divisions

Also a list of anonymised points per examiner will be published for each team:

Month XX	Number of points	Productivity (points/day)
Examiner 10	2300	42
Examiner 9	2552	41
Examiner 8	2380	39
Examiner 7	1980	36
Examiner 6	1920	36
Examiner 5	2040	34
Examiner 4	1860	32
Examiner 3	1920	32
Examiner 2	1780	30
Examiner 1	1740	29

## V. REPORTING AND PERFORMANCE ASSESSMENT

While the assessment of the individual evaluation of work done remains a responsibility of the reporting officer, who has to take into account all relevant factors for the evaluation, the productivity and number of standard points may be used as an orientation.

For example, productivities higher than Basis Reference +50% might be assessed with an "excellent", respectively "far above the expected level", or any other corresponding assessment in a revised assessment system.

Productivities higher than Basis Reference +30% might be assessed with a "very good", respectively "above the expected level", or any other corresponding assessment in a revised assessment system.

Productivities above or at the Basis Reference shall be assessed at least with "good", respectively "at the expected level" any other corresponding assessment in a revised assessment system.

Productivities –10% below the Basis Reference shall be assessed at least with “sufficient”, respectively “below the expected level” any other corresponding assessment in a revised assessment system.

Productivities more than –10% below the Basis Reference shall be assessed with “insufficient”, respectively “far below the expected level” any other corresponding assessment in a revised assessment system.

## **VI. SIMPLIFIED REPORTING**

Examiners with productivities above the Basis Reference may request simplified reporting.

## **VII. ENTRY INTO FORCE**

The common orientation for judging the work of examiners will be applied from 1 January 2020.

Working group on Performance Management

## **WG on performance management Appraisal Committee & Harmonisation Committee**

### **1. INTRODUCTION**

In the recent years staff reported growing dissatisfaction with their Appraisal Reports, which increasingly result in calls for conciliation with the counter-signing Officer (CSO) and reporting Officer (RO), and subsequent submissions to the Appraisal Committee.

The Appraisal Committee currently consists only of members nominated by the President, Staff Representatives are not allowed. In most cases referred to the Appraisal Committee, the reports as drafted by the RO and the CSO are apparently confirmed without amendment. These final decisions are often challenged in front of the ILOAT in Geneva.

The perception of staff, due to the unbalanced composition of the Appraisal Committee, is one of arbitrariness and intransparent decisions.

Equal numbers of members appointed by the President and the Central Staff Committee (CSC), and a chairman chosen in agreement between the President and the CSC would contribute to a better acceptance of the decisions taken by the Appraisal Committee and thus could help to reduce complaints to Geneva.

Besides, a further positive effect would be restoration of trust in the administration, which would result in an improved staff engagement and return of professional pride.

This issue has been explained to the President during a meeting with the Central Staff Committee (CSC) which took place on 03/06/2019 and the President signalled support for an involvement of Staff Representatives in the Appraisal Committee.

A corresponding line of argumentation holds for the composition of the Harmonisation Committee.

## **2. AMENDMENTS TO THE SERVICE REGULATIONS**

**2.1** An involvement of Staff Representatives, respectively staff members appointed by the Central Staff Committee, in the Appraisal Committee requires amendments to the Service Regulations.

A proposal, which should be understood as an unbinding basis for discussion is provided below:

### **Article 110a1 Objection procedure for appraisal reports**

(1) In case of disagreement on an appraisal report referred to in Article 47a, the parties to the dispute shall endeavour to settle it through conciliation.

(2) If at the outcome of the conciliation, an employee is still dissatisfied with his appraisal report, he may challenge it by raising an objection with the Appraisals Committee.

(3) The President of the Office and the Central Staff Committee shall appoint in mutual agreement the chairman of the Appraisals Committee and his deputy.

(3a) The President of the Office and the Central Staff Committee shall both appoint 8 employees in active employment at the beginning of each year.

(3b) Amongst the 8 appointed members at least two shall be in job group 4, two in job group 5 and two in job group 6.

(3c) From each list of 8 employees the chairman or his deputy will choose two members for each session, in cases involving an employee in job group 4, 5 or 6, the chosen members shall be in the same job group as the employee who challenges his appraisal report before the Appraisal Committee.

(4) The Appraisals Committee shall review all relevant grounds for challenging an appraisal report.



**2.2** An Involvement of Staff Representatives, respectively staff members appointed by the Central Staff Committee, in the Harmonisation Committee requires amendments to Circular 364. The special case of the Boards of Appeal Unit should also be considered.

A proposal, also to be understood as an unbinding basis for discussion, is provided below:

**E. Process**

The President shall take appropriate measures to ensure a smooth reward process. The procedure and responsibilities are described *inter alia* in Part IV.A above. More specifically:

1. A Harmonisation Committee shall be created to ensure a consistent approach across all DGs, in particular to ensure a balanced distribution among all categories of staff (such as but not limited to gender, job group, etc.). The Harmonisation Committee shall be responsible for ensuring observance of the applicable criteria Office-wide.
2. The Harmonisation Committee shall be chaired by the President and composed of equal numbers of staff members of each DG appointed by the President of the Office and the Central Staff Committee (CSC), the total number of Harmonisation Committee members shall be determined by the President of the Office.

Working group on Performance Management

## WG on performance management Target setting (Circular 366)

The mandate given to the Working Group on Performance Management comprises a redesign of the target/goal setting procedure provided in Circular 366; the current Office practice is to cascade the Office goals down to the individual employee<sup>1</sup>. However, Circular 366 also stipulates that the targets given to an individual employee must be collaboratively agreed-upon<sup>2</sup>.

This is a contradiction in itself and requires a redesigned and amended Circular 366.


Furthermore, the e-learning module “Guide to Performance Development at EPO” teaches that goals must be S.M.A.R.T, thus attainable:

Module 2: Goal setting (04:42 / 05:36)

### S.M.A.R.T. goals

- Specific
- Measurable
- Attainable
- Relevant
- Time bound

#### Attainable



Goals must be within your capacity to reach. If goals are set too far out of your reach, you cannot commit to accomplishing them. Goals need to stretch you slightly so you feel you can do it and it will need a real commitment from you. Success in reaching attainable goals keeps you motivated.

<sup>1</sup> Circular 366 (January 2018), section II.4: “cascaded down through the units.” See also section III:1, 1<sup>st</sup> paragraph

<sup>2</sup> Circular 366 (January 2018), section I: “Performance development is the process by which managers and staff collaboratively agree upon the contribution...”. See also section III.1, 2<sup>nd</sup> paragraph.

The following aspects are therefore proposed to be incorporated into Circular 366:

- For each employee the average value of the quantitative goals he/she actually achieved -and not the goals he/she has been given- during the past five years is considered, possibly *pro rata temporis*.
- This average achievement plus not more than 1.5% defines the attainable goal for the following year of an individual employee.
- The average achievement expected for subsequent following years must not increase by more than 10% over a period of 10 years.

## **Opinion of the CSC members of the GCC on GCC/DOC 26/2020:**

### **Revision of Circular 367 – Absences for Health Reasons**

The CSC members of the GCC give the following opinion on the revision proposed in GCC/DOC 26/2020.

The revision of Circular 367 only addresses the provisions requiring employees on sick leave to stay at home from 10:00 to 12:00 and from 14:00 to 16:00 for the purpose of sick leave verification, also known as “house-arrest”.

#### **On the consultation**

The document refers to “*a recent opinion of the Appeals Committee [which] assessed the provisions framing sick leave verifications*” and considered that the provisions requiring employees on sick leave to stay home during core hours were disproportionate. This opinion was neither tabled at the COHSEC meeting nor at the GCC meeting.

In the GCC meeting, the President argued that the opinion was sent to the appellants and that the abstract was available in the INAP database of the Appeals Committee. First, it should be noted that appeals are by nature confidential and one cannot expect that appellants would send the opinion to the staff representation and one can even less expect that they would send it to members of statutory bodies. Second, an abstract is insufficient to fully inform a statutory body of the issue at stake. Finally, at the time of drafting this opinion, no abstract of the opinion could be found in the INAP database.

#### **On the substance**

##### The context

“House-arrest” at home was introduced with Circular 367 and CA/D 2/15 known as the “Sick leave and incapacity” reform of Mr Battistelli. At the time, in 2015, the reform triggered a wave of [unrest among staff](#)<sup>1</sup> shocked by the brutality of the reform. The staff representation even [wrote](#)<sup>2</sup> to the Bayerische Landesärztekammer (BLAEK), which in [reply](#)<sup>3</sup> expressed strong reservations as to the compliance with German Law. The HR department was obviously wrong in not taking due account of these warning signs.

The document states that:

*“the provisions of impromptu sick verifications have been rarely used since the introduction of the new sick leave scheme in 2015”.*

Even if we can assume that sick leave verification was rarely performed, all sick employees were in principle subject to “house arrest” and liable to a disciplinary procedure for misconduct in case of absence from home during core hours. Indeed, the provision was relied on in concrete disciplinary cases. This threat put vulnerable employees under undue pressure by forcing them to adapt their schedule and therefore adding on top of the burden

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<sup>1</sup> “Another Sickening Health Reform” by SUEPO Central ([su15060cp](#)) on 13-02-2015

<sup>2</sup> “Fragen zu Pflichten Arzt / Patient” by SUEPO Munich ([su15017ml](#)) on 04-03-2015

<sup>3</sup> “Offener Brief an die Bayerische Landesärztekammer mit Fragen zu Arztpflichten im Zusammenhang mit der Reform der Arbeitsbedingungen im EPA” by BLAEK ([su15034ml](#)) on 02-04-2015

already caused by their sickness. It is such (in)human policies which triggered staff representation to draft strong publications against the responsible HR department.

Even if such sick leave verifications were rarely ordered, we observed that they were carried out in a very zealous way by an HR manager against specific groups of people (at least two staff representatives) and also against his own staff. It has been a powerful tool of institutional harassment. We would be very concerned if such an HR manager would ever be considered again as an influential advisor among the HR department.

### The opinion of the Appeals Committee

The amendment to the provisions on “house arrest” is solely triggered by the fact that the Appeals Committee provided a unanimously opinion against them<sup>4</sup>. We regret that staff had to resort once again to litigation to prompt the President to abolish provisions which were blatantly flawed from the outset.

Appellants provided members of the staff representation with a copy of the Appeals Committee opinion, as well as a copy of the pleadings. The appellants essentially pleaded that “house-arrests” were infringing the fundamental right to privacy explicitly stated under Article 12 of 1948 Universal Declaration of Human Rights:

*“No one shall be subjected to arbitrary interference with his privacy family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to protection of the law against such interference or attacks”*

As we read too often in position papers signed by the Employment Law Department, the Office argued in its pleadings that it is not a signatory to this Declaration and therefore not bound to it. The Appeals Committee **unanimously** recalled that *“the Office, like any other public authority in a civilised, democratic legal order, is bound to take duly account any applicable general principles of law, including those concerning human rights.”*

We would have welcome an open and global discussion on this outcome with the President, his HR managers and his Employment Law Department.

### Our partial opinion

On this specific aspect of house arrest, it goes without saying that we welcome the deletion of the provision.

### The outstanding issues

“House arrest” is only one aspect of the whole “Sick leave and invalidity reform” (CA/D 2/15). In this respect, we endorse the reservations expressed by the staff representatives in their COHSEC opinion of 1 December 2020 (attached) and in previous GCC meetings [opinion](#)<sup>5</sup> and [report](#)<sup>6</sup> already in 2015.

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<sup>4</sup> See also the CSC open letter to the President [sc20165cl](#).

<sup>5</sup> “Opinion of the 9 GCC members also members of the CSC on GCC/DOC 1/2015 (CA/14/15)” by the CSC ([sc15128cp](#))

<sup>6</sup> “Report on the GCC meeting of 29 April 2015” by the CSC ([sc15191cp](#)) on 11-05-2015

We note that although Circular 367 is proposed for amendment, the Service Regulations may take precedence and they still provide that:

*“The President of the Office may verify by means of medical examinations whether the employee’s state of health justifies sick leave. These medical examinations may be conducted at the present address of the employee”*  
(Article 62(a)6 ServRegs)

We believe that this Article should also have been amended by a decision of the Administrative Council.

First, we question whether medical examinations should be conducted at all at the present address of the employee, even on a voluntary basis. We have seen HR managers apply coercive techniques on employees so that they voluntarily submit themselves to unlawful regulations. Sick employees may be tempted to abandon their right to privacy to improve their situation vis-à-vis their Office to reduce risks of disciplinary procedure and increase their chance of entitlement to incapacity benefits.

Second, the Service Regulations still allows any President of the Office to reintroduce mandatory sickness verification and “house arrest” at will without the need for consulting the Administrative Council. The Administrative Council should be empowered again as an additional safeguard on this issue.

Among the other remaining issues are:

- The computation of sick leave days under Article 62a(7) ServRegs, which are disproportionate and discriminatory by nature towards employees on part-time sick leave when compared with employees on full sick leave: why should 7 hours of work per day be counted as a full day of sick leave?
- The lack of independence of medical practitioners under the new regime of CA/D 2/15 (no balanced medical committee composed of an Office nominated practitioner, the employee’s practitioner and a third doctor commonly agreed with the staff representation),
- The absence of special provisions for disabled employees who are treated like other sick employee,
- The abolition of the lump-sum of the invalidity insurance,
- The requirement to provide a medical certificate for more than three days of sick leave per year.

In order to improve the atmosphere in the Office and to restore its reputation as a model employer, we urge the President to instruct his Employment Law Department to stop arguing that the Office is not bound by fundamental rights and to perform as soon as possible an independent review of any provision which could infringe these rights.

The abolition of the “house arrest” for sick staff will surely come as a relief to staff. EPO staff did not deserve to suffer five years long under a disproportionate measure, especially the vulnerable sick ones.

The CSC members of the GCC

Annex: Opinion of the COHSEC members nominated by the CSC on document COHSEC/DOC/22/2020

**Opinion of the COHSEC members nominated by the CSC on  
document COHSEC/DOC/22/2020:  
Revision of Circular 367: Absences for Health Reasons**

From: Members of the COHSEC nominated by the CSC

COHSEC Meeting: 71st meeting  
Date: 1 December 2020

The COHSEC members nominated by the CSC give the following Opinion on the proposals detailed in COHSEC/DOC/22/2020.

We welcome very much the removal of the requirement for employees to be available at his/her address during specific hours when in sick leave. We are convinced that such requirement was legally unsound and should have never been adopted in a first place. For this reason, and also because it is urgent to comply with the recommendations of the Appeals Committee on the cited appeals, the correction of Articles (B)(1) to (B)(3) of Circular 367 must take place without any further delays with effect 1 of January 2021 at the latest.

We have in addition the following comments:

- (a) The proposed changes of Circular 367 still consider the possibility to perform medical verifications at the address of the employee and under his/her request. EU Staff regulations also do not consider medical visits for the purposes of sickness verifications at the address of the employee, independently of whether these medical visits are instigated by the Institutions or requested by the employee. While at first sight this proposed possibility could be looked as convenient for sick staff, we consider that medical verifications should not happen at the address of the employee, also not under request. We think that such verifications should better take place at a doctor's practice close to the employee's current address.
- (b) We also observe that the proposed changes of Circular 367 do not remove to three days the maximum of uncertified days that an employee can take in a calendar year, also contrarily to the EU Staff Regulations, which allow twelve days of uncertified sickness days in a calendar year. Under the proposal currently made, the staff of the EPO is treated substantially worse than staff from EU, for no apparent reason.
- (c) The proposed changes still require the staff member to contact their immediate superior by phone and on the first day of absence, and to provide reasons, e.g. on the likely duration of the absence and on the impact on the proper functioning of the service, also under more astringent conditions than staff of the EU.
- (d) Further, at the EU, in case of absences considered to be unjustified, the procedure leads first to deductions from annual leave and then to salary reductions, in a more progressive mechanism than in Circular 367, which directly leads to salary reductions.
- (e) A minimum time period for arranging the medical appointments – e.g. one week - for verification should be described.



- (f) We consider that current arrangement for medical visits is unbalanced and requires further discussion and should lead to future discussion on this specific topic.

In the cases cited above we consider that there are not specific circumstances at the EPO that would justify this different treatment with the European Institutions, and we request alignment with Article 59 of the EU Staff Regulations on these specific topics. In the annex attached we specify the scope of the changes that would be needed.

The members of the COHSEC nominated by the CSC

**ANNEX**  
Proposed changes<sup>1</sup>

(A)(2) Where an permanent employee's inability to perform his duties exceeds three working days, or where he has already taken uncertified sick leave for ~~twelve~~ three working days in a given calendar year, he will be required to produce a medical certificate.

~~The employee must further indicate the likely duration of the absence and its impact on the proper functioning of the service.~~

(B)(2) Pursuant to Article 62a(6) of the Service Regulations, the President may decide an ad hoc verification upon the initiative of the employee's immediate superior or that person's deputy or the Occupational Health Service.

To that end, the employee is given prior notice of the date and time of the medical examination. Such examination takes usually place in the Office's premises or at the doctor's practice. Where appropriate and upon the employee's request, the medical examination may be organised at a doctor's practice close to the employee's address.

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<sup>1</sup> See Article 59 - EU Staff Regulations