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GCC meeting on 23 November 2021 A report and the opinions of its members

Dear Colleagues,

The President convened a GCC meeting by videoconference to tick the box of “statutory consultation” on several documents before the December meeting of the Administrative Council. As usual, in an email, the President thanked the members of the GCC for the “constructive ViCo session” and the “meaningful consultation” and asked for the votes of the GCC members. As usual, the ten members appointed by the President voted “in favour” of all documents.

The President seems to subscribe to the Manichean view, introduced by Mr Battistelli¹, that an opinion should be reduced to a ternary vote, i.e. either “in favour”, “against” or abstaining. We resist this simplistic approach: we appreciate the advantages but also recognise the risks and disadvantages of the President’s changes to the working conditions of staff. The opinions of the CSC members of the GCC² are drawn up accordingly. Sometimes they express a vote. Sometimes they do not express a vote, which the President then considers as an abstention³. In any case, they give a reasoned opinion.

The ten CSC members of the GCC gave the following unanimous opinions.

Financial topics

The main document was undoubtedly the adjustment with effect from 1 January 2022 of salaries and pensions paid by the Office (CA/71/21), i.e. the “zero” adjustments for 2022. Most financial documents directly derived from that adjustment. The CSC members of the GCC gave the following unanimous votes. The respective opinions are attached.

1. Adjustment with effect from 1 January 2022 of salaries and other elements of the remuneration of permanent employees of the European Patent Office and of pensions paid by the Office (CA/71/21) – ([GCC/DOC 17/2021](#)): **vote against**
2. Revision with effect from 1 January 2022 of the rates of the daily subsistence allowance (CA/72/21)– ([GCC/DOC 18/2021](#)) : **vote against**
3. Annual adjustment of young child allowance and education allowance with effect from 1 January 2022– ([GCC/DOC 19/2021](#)) : **vote against**

¹ See Article 38(3) ServRegs: “Following the consultation, the members of the General Consultative Committee shall express their opinion by voting at the meeting for or against each proposed measure or abstaining.”

² I.e. normally the ten full members of the CSC and in their absence their alternates; see Article 38(1) ServRegs.

³ See the “**Voting**” sections in the President’s own [report on the GCC meeting](#)

4. Circular 414 : Revision with effect from 1 January 2022 of the rates of the kilometric allowance ([GCC/DOC 20/2021](#)) : **vote against**
5. Circular 402 : Revision with effect from 1 January the rates of the lump sum compensation of removal expenses ([GCC/DOC 21/2021](#)) : **vote against**
6. Contribution for gainfully employed spouses to the healthcare insurance scheme in 2022 (Article 83a(1) (a) ServRegs) ([GCC/DOC 22/2021](#)) : **vote against**

Amendments of the Service Regulations concerning strikes and unauthorised absence (CA/79/21)

Most of the content was a direct consequence of several judgments delivered by ILOAT in its July 2021 session, in which the Tribunal concluded that the Office had violated the fundamental right to freedom of association. The CSC members of the GCC did not vote on the whole document, for the reasons outlined in the attached opinion.

New Ways of Working (CA/77/21)

Equally important for staff was the document about “New Ways of Working”. It was amended in the last minute after the meeting with the President on 16 November⁴. For the reasons set out in the attached opinion, the CSC members in the GCC were not in a position to vote on the document as it stood.

Orientation on recruitment (CA/100/20)

The CSC members of the GCC were not asked to give an opinion, let alone to vote on this document. They nevertheless gave the attached opinion.

Any other business

At the end of the meeting we addressed two further topics:

- Vienna building: We asked for proper involvement of the Vienna Staff Committee in the [new building project](#).
- Mandatory teleworking⁵: we questioned the necessity of escalating to the COO any request for being allowed to work on the premises in DG1, in a structure where line managers are supposed to be trusted and empowered. Razik Menidjel⁶ complained that the staff representatives were working against him and assured that it was all done to protect staff’s health and to ensure that all managers were moving in the same direction.

The Central Staff Committee

Annexes: opinions of the CSC members of the GCC

⁴ See our report on that meeting: “[Not seeing the forest for the trees?](#)”

⁵ See the announcement of 22 November “[Extended coronavirus measure](#)” and the later announcement “[Emergency measures extended until 31 May 2022](#)” of 30 November

⁶ Now the single COO: see announcement of 1 December on “[New appointments and ad interim arrangements](#)”

Opinion of the CSC members of the GCC on GCC/DOC 17/2021:**Adjustment with effect from 1 January 2022 of salaries and other elements of the remuneration of permanent employees of the European Patent Office and of pensions paid by the Office (CA/71/21)**

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. The new salary adjustment method was brought up by the Office in the GCC only once, merely a few weeks before the Administrative Council took decision CA/D 4/20. This was much too late. At this point in time, meaningful consultations could not take place anymore. Even though the final decision on the adoption of the new salary adjustment method had formally not been taken yet by the Administrative Council, all relevant decisions had long been made without staff representation involvement, for example the selection of the base-2 scenario which locked in the range of possible salary adjustments to be adopted, irrespective of subsequent consultations with staff. Moreover, 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.
- Furthermore, this review is based on the adjustment as decided in CA/D 9/20 by the Administrative Council on 16 December 2020. As said adjustment was already flawed, the present adjustment being mainly based on the salary scales for Belgium cannot be correct.
- The recommendation that the salaries and allowances remain the same as in 2021 is based on an exception clause in Article 11 of the salary adjustment procedure. The application of this exception clause is based on a decrease in the real gross domestic product of the Contracting States in 2020 when compared to 2019. The draft budget for 2022 (CA/50/21), however, foresees an operating result of EUR +304m. The performance of the RFPSS (EUR 11,3bn in Q3/2021) is significantly better than the forecast (EUR 7,3bn for 2021) in the chosen scenario 2 of the financial study (CA/83/19, page 92). The same applies to the EPOTIF, for which the current performance (EUR 3,5bn in Q3/2021) is much above the forecast (EUR 2,4bn for 2021) in scenario 2 of the financial study. In total, the current financial situation is more than EUR 5bn better than forecasted. Hence the application of the exception clause does not reflect the current financial situation of the EPO nor the current economic context, but outdated figures. Therefore, the application of the exception clause

with effect on the salary scales from 1 January 2022 is arbitrary and not justified by appropriate financial considerations.

- The “monthly salary scales for other countries, drawn up in accordance with Article 2 of CA/D 9/20” as referred to on page 17 of the document are not part of the provided document. Even after request, the GCC has not been provided with sufficient information on such scales for other countries. The consultation is thus significantly hampered by this lack of information.
- The proposed salary scales violate the principle of purchasing power parity between the places of employment. The proposed monthly salary scales show for example the following net (basic) salaries in EUR 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 2021 were: Belgium: 1, Germany: 1,1287, The Netherlands: 1,1008, Austria: 1,0855. When comparing the basic salaries to each other, they do not reflect the corresponding ratios of the coefficients of purchasing power parities (PPPs) as supplied by the International Service for Remunerations and Pensions. The relations of salaries 5.381,47 : 5.991,89 : 5.921,26 : 5.676,87 results in the following different coefficients 1 : 1,1134 (instead of 1,1287) : 1,1003 (instead of 1,1008) : 1,0549 (instead of 1,0855). This illustrates that the purchasing power parity is not guaranteed but violated by the proposed salary scales.
- Maintaining the purchasing power parity between the places of employment would have resulted in different salary tables. A net (basic) salary for grade 7, step 1 in Belgium of 5.381,47 has the same purchasing power as $1,1287 \times 5.381,47 = 6.074,07$ in Germany, $1,1008 \times 5.381,47 = 5.923,92$ in the Netherlands, $1,0855 \times 5.381,47 = 5.841,59$ in Austria. For example, a colleague in Austria is harmed because the salary for grade 7, step 1 is only 5.676,87. This is 164,72 less than 5.841,59 being the amount with an equivalent purchasing power as the salary of a colleague working in the same grade and step in Belgium. The same applies *mutatis mutandis* to staff working in Germany or the Netherlands and as well to other grades and steps.
- Even when taking the calculated future adjustments according to Article 11(2) of the salary adjustment procedure into account, the principle of purchasing power parity between the places of employment would be violated. The resulting monthly salary scales after the future adjustments would show for example the following net (basic) salaries for grade 7, step 1: Belgium: $5.381,47 + 56,06 = 5.437,53$, Germany: $5.991,89 + 164,05 = 6.155,94$, The Netherlands: $5.921,26 + 63,37 = 5.984,63$, Austria: $5.676,87 + 163,21 = 5.840,08$. Also, when comparing the basic salaries after the calculated future adjustments to each other, they do not reflect the corresponding ratios of the coefficients of purchasing power parities (PPPs) as supplied by the International Service for Remunerations and Pensions. The relations of salaries after the future adjustments $5.437,53 : 6.155,94 : 5.984,63 : 5.840,08$ is equivalent to $1 : 1,1321 : 1,1006 : 1,0740$. This differs from the relations of PPPs: $1 : 1,1287 : 1,1008 : 1,0855$. The same applies *mutatis mutandis* to other grades and steps.

- The proposed salary scales furthermore result in an undue erosion of purchasing power of the active employees and (as far as this can be concluded from the scarce information provided in the document) the pensioners. The salary scales remain constant although the trend of the Harmonised Indices of Consumer Prices from June 2020 to June 2021 was +2,6% in Belgium, +2,1% in Germany, +1,7% in the Netherlands and +2,8% in Austria. The purchasing power parity coefficients with respect to Brussels rose by +1,0% for Germany and by 2,1% for Austria. This means that all employees and pensioners in Belgium, Germany, the Netherlands and Austria will lose purchasing power with the proposed scales.
- 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 101,9 (see Annex 1 of the proposal). The resulting limit should thus be calculated as 101,9 + 0,2% of 101,9, which is (slightly) bigger than the applied indexation of 102,1.
- The financial impact of the proposed salary adjustment is none (see paragraph 61). The draft budget for 2022 as well as the performances of the RFPSS and the EPOTIF, however, exceed the forecasts by more than EUR 5bn, as outlined above. This emphasises again that the results of the proposed salary adjustment method are not foreseeable. Furthermore, they make savings just for the sake of making savings, in particular regarding the fact that the Office forecasts an annual cash surplus amounting to EUR 310m (CA/51/21, paragraph 12). In addition, pensioners are permanently excluded from the redistribution pool and periodical settlement, without apparent justification (sections 26 to 28 of the document). 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.

The current proposal thus means severe losses for the employees and (as far as it can be understood from the document) pensioners. The above illustrative list of defects of the proposal further shows that it is based on a flawed consultation and decision procedure, it is in breach of fundamental principles of law 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 2022 of salaries and other elements of the remuneration of permanent employees of the European Patent Office and (as far as it can be understood from the document) of pensions paid by the Office as proposed in GCC/DOC 17/2021.

The CSC members of the GCC

Opinion of the CSC members of the GCC on GCC/DOC 18/2021:

Revision as at 1 January 2022 of the rates of the daily subsistence allowance (CA/72/21)

The CSC members of the GCC give the following opinion on the revision proposed in GCC/DOC 18/2021.

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%. This calculation is based on the application of the exception clause. The rates of the daily subsistence allowance thus remain the same as decided by the Administrative Council in CA/D 10/20 and presented to the GCC already in GCC/DOC 18/2020.

The CSC members of the GCC already gave a unanimous negative opinion on GCC/DOC 18/2020. As the rates of the daily subsistence allowance are proposed to remain unchanged and based on the adjustment procedure of CA/D 4/20, the position has not changed.

The proposed adjustment is the result of a proposal – reference is made to the opinion of the CSC members of the GCC on GCC/DOC 17/2021 – which is

- based on a flawed decision procedure of the Administrative Council resulting in CA/D 4/20 after the flawed consultation of the GCC on GCC/DOC 5/2020,
- based on an arbitrarily triggered exception clause,
- in breach of fundamental principles of law,
- showing technical inaccuracies.

Thus, the proposed 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 at 1 January 2022 of the rates of the daily subsistence allowance as proposed in GCC/DOC 18/2021.

The CSC members of the GCC

Opinion of the CSC members of the GCC on GCC/DOC 19/2021:

Annual adjustment of young child allowance and education allowance from 1 January 2022 (CA/82/21)

The CSC members of the GCC give the following opinion on the adjustment proposed in GCC/DOC 19/2021.

The proposed adjustment of the young child allowance and education 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%. This calculation is based on the application of the exception clause. The young child allowance and the education allowance thus remain the same as decided by the Administrative Council in CA/D 4/21 and presented to the GCC already in GCC/DOC 2/2021.

The CSC members of the GCC already gave a unanimous negative opinion on GCC/DOC 2/2021. As the young child allowance and the education allowance are proposed to remain unchanged, the position has not changed.

The proposed adjustment is the result of a proposal – reference is made to the opinion of the CSC members of the GCC on GCC/DOC 17/2021 – which is

- based on a flawed decision procedure of the Administrative Council resulting in CA/D 4/20 after the flawed consultation of the GCC on GCC/DOC 5/2020,
- based on an arbitrarily triggered exception clause,
- in breach of fundamental principles of law,
- showing technical inaccuracies.

Thus, the proposed adjustment of the young child allowance and education allowance is flawed as well.

Additionally, the proposed adjusting mechanism carries the inherent deficiency of having the adjustment of the relevant amounts described in GCC/DOC 19/2021 Annex IV, Table 1, not following the real evolution of childcare and education costs.

Furthermore, in the GCC/DOC 19/2021 Annex IV Table 1, it is prescribed that the amounts of the table will be reviewed regularly to take into account the evolution of childcare and education costs at the respective places of employment. Such a review, in order to be meaningful and avoid additional unnecessary financial burden on staff, should be carried out at least once a year and based on the real evolution of childcare and education costs.

Staff representation made an explicit request that the adjustment of the amounts be linked to the evolution of childcare and education costs at the respective places of employment. No reply from the administration followed.

Furthermore, the effect of the adjustment procedure on the childcare and education allowance reinforces the unequal treatment between the places of employment as well as discrimination against staff in lower job groups and/or places of employment where the costs of childcare and education are higher.

As an example, the Staff Representation points to the costs for the childcare in The Netherlands which is forecasted to increase in 2022 between 2.3% and 2.9%, whereas the adjustment proposed by the Office for the childcare education amount is 0%. Consequently, staff needing childcare facilities will face higher costs.

In summary, the CSC members of the GCC unanimously give **a negative opinion** on the annual adjustment of young child allowance and education allowance from 1 January 2022 as proposed in GCC/DOC 19/2021.

The CSC members of the GCC

Opinion of the CSC members of the GCC on GCC/DOC 20/2021:

Circular 414: Revision as of 1 January 2022 of the rates of the kilometric allowance

The CSC members of the GCC give the following opinion on the revision proposed in GCC/DOC 20/2021.

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%. This calculation is based on the application of the exception clause. The rates of the kilometric allowance thus remain the same as decided by the President after consulting the GCC on GCC/DOC 19/2020.

The CSC members of the GCC already gave a unanimous negative opinion on GCC/DOC 19/2020. As the rates of the kilometric allowance are proposed to remain unchanged and based on the adjustment procedure of CA/D 4/20, the position has not changed.

The proposed adjustment is the result of a proposal – reference is made to the opinion of the CSC members of the GCC on GCC/DOC 17/2021 – which is

- based on a flawed decision procedure of the Administrative Council resulting in CA/D 4/20 after the flawed consultation of the GCC on GCC/DOC 5/2020,
- based on an arbitrarily triggered exception clause,
- in breach of fundamental principles of law,
- showing technical inaccuracies.

Thus, the proposed 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 2022 of the rates of the kilometric allowance as proposed in GCC/DOC 20/2021.

The CSC members of the GCC

Opinion of the CSC members of the GCC on GCC/DOC 21/2021:

Circular 415: Revision as of 1 January 2022 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 21/2021.

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%. This calculation is based on the application of the exception clause. The rates of the lump sum compensation of removal expenses thus remain the same as decided by the President after consulting the GCC on GCC/DOC 20/2020.

The CSC members of the GCC already gave a unanimous negative opinion on GCC/DOC 20/2020. As the rates of the lump sum compensation of removal expenses are proposed to remain unchanged and based on the adjustment procedure of CA/D 4/20, the position has not changed.

The proposed adjustment is the result of a proposal – reference is made to the opinion of the CSC members of the GCC on GCC/DOC 17/2021 – which is

- based on a flawed decision procedure of the Administrative Council resulting in CA/D 4/20 after the flawed consultation of the GCC on GCC/DOC 5/2020,
- based on an arbitrarily triggered exception clause,
- in breach of fundamental principles of law,
- showing technical inaccuracies.

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

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 proposed 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 2022 of the rates of the lump sum compensation of removal expenses as proposed in GCC/DOC 21/2021.

The CSC members of the GCC

Opinion of the CSC members of the GCC on GCC/DOC 22/2021 (Circular 413):

Contribution for gainfully employed spouses to the healthcare insurance scheme in 2022 (Article 83a(1)(a) ServRegs)

Introduction

The CSC members of the GCC give the following opinion on document GCC/DOC 22/2021 (Circular 413).

The Office mandated Mercer Deutschland GmbH to perform the yearly market research in the health insurance sector for the locations in Germany and the Netherlands. Mercer observed an increase in the premiums and recommends an increase in the contributions for spouses earning a gross income higher than the basic salary G1(4). The Office does not follow the recommendation and will maintain the contributions for gainfully employed spouses in 2022 based on market premiums from 2020.

On the substance

On the definition of the threshold

The threshold triggering the obligation to pay contributions for working spouses with no healthcare insurance of their own rely on the grade and step G1(4). It is 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 threshold is disconnected from the real-life adjustment of spouses' salaries, which are statistically higher. Therefore, contributions are levied for a higher number of spouses than in the past.

On the calculation of the average premiums

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 the Netherlands and Germany. Insurances don't simply look at Eurozone inflation. Insurances adjust their prices according to the real evolution of medical costs. For the purpose of calculating the average premiums in Germany, Mercer chose two insurances, DKV and DeBeKa, which we consider expensive. A lower premium would have been found by using more moderate private insurances.

On the effects of the salary adjustment procedure

In 2020, Mr Campinos introduced a “sustainability clause” (Impl. R. Art. 64, Remun. Adj. Article 9) capping the overall growth in the basic salary mass to Eurozone inflation + 0.2%. The new salary adjustment procedure is disconnected from reality. The adjustment of basic salaries, pensions for EPO staff and pensioners is decoupled from the real-life adjustment and it is lower. The burden of the contributions therefore increases on households.

In 2022, the situation will not improve. There is a general freeze in salaries and pensioners due to a clause introduced by Mr Battistelli back in 2014, the “exception clause” (Impl. R. Art. 64, Remun. Adj. Article 11), and maintained by Mr Campinos as a double cut on top of the “sustainability clause” capping at Eurozone inflation + 0.2%. Any salary adjustment will be delayed until the Gross Domestic Product (GDP) ([MAC report](#) of 14 May 2021) of the Contracted States has recovered from its pre-crisis level. The EPO “exception clause” has no equivalent among other international organisations which, instead, carefully respect power of purchase parities.

On the decision

In 2022, salaries and pensions will be frozen. The report made by Mercer recommends an increase in spouse contributions. An increase in spouse contributions would have decreased the end salary of the employees concerned. In order to avoid this situation, the Office prefers to ignore the findings of Mercer and keep the contributions unchanged. This is just a way of postponing the problem instead of solving the root causes, which are to be found in the new salary adjustment procedure.

Conclusion

Back in 2019, the Financial Study was in the hands of Mercer together with Oliver Wyman. Mr Campinos chose a Base-2 scenario ([CA/83/19](#), page 20) foreseeing **deflation risks**, although inflation in Germany for instance has reached +4.5% in October 2021 (see [Statistisches Bundesamt](#)). In addition, Mercer saw billions disappearing in the EPO funds where billions actually appear (see [CAF 31/21](#), page 5/60). The new salary adjustment procedure was obviously based on a flawed Financial Study by Oliver Wyman and Mercer in 2019.

If the Office should have ignored a Mercer report, it should have been the 2019 Financial Study in the first place.

For the above reasons, the CSC members of the GCC unanimously give a **negative opinion** on the document.

The CSC members of the GCC

**Opinion of the CSC members of the GCC on GCC/DOC 23/2021:
Amendments of the Service Regulations concerning strikes and
unauthorised absence (CA/79/21)**

The CSC members of the GCC give the following opinion on document GCC/DOC 23/2021.

The strike regulations – No vote

As mentioned by the administration, judgments 4430, 4432, 4433, 4434 and 4435 delivered by ILOAT in its 132nd session are clear: the strike regulations, especially the deduction of remuneration at the rate of 1/20th of the monthly salary, are unlawful.

Accordingly, Circular No. 347 was set aside without the necessity of a vote in accordance with Article 38(3) ServRegs. The Tribunal raised the issue of its own jurisdiction to set aside a provision of the Service Regulations as amended by decision [CA/D 5/13](#). The amendments (actually the deletions) in the relevant Articles 30a and 65(1)(c) ServRegs directly follow from a correct implementation of the judgments.

The CSC members of the GCC respect the judgments of the Tribunal and there is no room for them to deviate from its findings: these strike regulations are now illegal and need to be excised from the Service Regulations. An additional “opinion” of the staff representation, by voting on the implementation of the judgements, would be out of place.

The strike regulations – History

Before 2013, the right to strike at the EPO found its legal basis in the freedom of association pursuant to Article 30 ServRegs and in the general principles of law as well as in the further conditions as defined by the ILOAT’s case law.

An explicit mention of its exercise in the Service Regulations was not necessary since the inception of the EPO in 1977, i.e. for almost 40 years.

Since 2010, the Office has faced ongoing strikes and increasing litigation due to the continuous attacks on the staff’s rights by the Battistelli administration. These included the introduction of detrimental reforms such as the limitation of the career progression, the removal of invalidity insurance or the obstruction of the internal means of legal redress for staff. Because of this constant unrest the administration decided to constrain the right to strike irrespective of whether this reform was unlawful. This decision paved the way for eight years of violation of fundamental rights in an extremely turbulent period of social unrest and conflict in the EPO’s history. Several highly controversial - and consistently detrimental - reforms have

subsequently been introduced while staff faced highly contentious strike provisions and legal means of redress to show their discontent. The CSC explained the situation in a publication "[Welcome to EPOnia](#)" in September 2021.

The Administrative Council introduced the unlawful provisions in 2013 with decision [CA/D 5/13](#), in particular with a new Article 30a ServRegs on the right to strike. It was also implemented in Circular No. 347. Former President Battistelli stated in 2013: *"Recent events amply demonstrate that the new regulations do not deprive the staff of the right to strike. On the contrary, the provisions of Article 30a Service Regulations as well as of Circular 347 have introduced a fair, democratic and transparent way to exercise this right and give it a full meaning. I deeply regret that, because of ongoing disputes on the principles of our regulations, the staff representation is not ready to exercise its duty to represent staff and engage in meaningful discussions with the management."* ([Communiqué No. 38, 10.10.2013](#)).

An increased deduction of remuneration at the rate of 1/20th of the monthly remuneration for each day of strike on a working day, instead of 1/30th previously applicable, was also introduced in order to further discourage staff from going on strike. The industrial actions available to staff were also limited to strikes, excluding any other forms of protest, such as "work to rule".

Nevertheless, and despite all these constricting measures, strike took place on more than 30 days between the introduction of the new provisions in 2013 and the last strike in December 2020.

These strike regulations and the rules on salary deductions following a participation in a strike were challenged before the Internal Appeals Committee and subsequently at ILOAT. On 7 July 2021, the ILOAT issued essential judgments condemning the violation of workers' fundamental rights when the Administrative Council adopted the new strike regulations with CA/D 5/13 and when the Office implemented them with Circular No. 347.

The strike regulations as presented in document CA/79/21

Point 5 of the CA document

There was no question in any of the judgements that the rights to strike would be unclear or inconsistent. This argument was used in 2013 as a pretext to introduce the unlawful regulations. Today the same argument is used to excuse those who designed these unlawful regulations and exculpate them of any responsibility. As clearly pointed out under point 12.2 of the CA document, removing these unlawful regulations does not create unclarity with regards to strike rights or the deduction of salary when a strike occurs. The right to freedom of association is enshrined in Article 30 ServRegs and constitutes a sufficient basis for the autonomous organisation of strikes. This was the case in 2013 and remains the case is today.

Therefore, the CSC members of the GCC request that point 5 be correct to reveal the actual reason for the introduction of these constraints, namely to introduce a scheme to prevent staff from fully exercising their fundamental right to freedom of association.

Point 10 of the CA document

Point 10 mentions that the Office discussed the present proposal with the CSC in September 2021. The CSC members of the GCC protest against such a distortion of facts: at no point in time was there any discussion with the CSC on the present proposal. It is requested that this paragraph be deleted from the document.

From the very first day after the judgments, the CSC and SUEPO indicated their reasons and the way they should be implemented. Few elements have found their way into the proposal. For instance:

- Staff who intervened at ILOAT since August 2021 (i.e. after the judgements were delivered) will be excluded from any material or moral damages reimbursement;
- Reimbursing the entire deductions of the strikes against these unlawful regulations is wishful thinking.

Point 15 of the CA document – “Financial implication”

The mention of ‘No financial implication’ under point 15 is incorrect. The CSC members of the GCC request that the administration indicates clearly the details of the extent of the financial damage for the Office caused by the introduction of the unlawful strike regulations by the Battistelli administration. How much it costs the Office to defend these cases in court (legal costs for lawyers) and how much it costs the Office in reimbursements to staff (including administrative costs for the reimbursements). This is money that is missing for instance from the pension reserve fund. The CSC members of the GCC also believe that the extent of the financial damage could have been reduced if the current Campinos administration would have changed the strike regulations when he took office.

The strike regulations – The corrective measures

Corrective action should not be limited to changes in the legal framework but should also include issues of individual responsibility and accountability. For example, no consequences have yet been drawn for individual managers for this debacle, both in the Battistelli administration and in the current administration. Human resources staff, who are currently working very hard and overtime to handle the consequences of the ILOAT decisions, should be entitled to greater rewards this year. However, these rewards should not be paid from the EPO budget alone. The senior managers involved in implementing and maintaining these unlawful strike regulations should be held accountable, financially or otherwise.

The administration pointed out that this was just one case lost and that in the same ILOAT session only two cases have been won by staff representation while eight cases were lost. We are disappointed to note that the administration seems to treat ILOAT sessions like a football game where every goal counts the same and the one who scores the most wins at the end. Upholding and respecting fundamental rights should be a priority for all of us – it is not simply another point of business.

An apology for depriving the entire staff of their right to freedom of association for the past eight years would contribute to both strengthen fundamental rights (which lay at the very basis of our society) and to draw a line under this sad chapter in the EPO's history.

The review of the regime for unauthorised absences (Articles 63(1) and 65(1)(d) ServRegs)

The changes aim to reduce the deduction for staff on unauthorised absence from 1/20th to 1/30th of the days for which pay is due, if the annual leave of the employee concerned has been used up.

This change does not follow directly from the ILOAT judgments, as strike is an authorised absence. However, it is a logical indirect consequence. Working days are “worth” 1/30th of a monthly salary. Annual leave days are also “worth” 1/30th of a monthly salary (see Circular 22, Rule 5(f)(ii)). The Tribunal has found that deductions of 1/20th are punitive and unauthorised absence is expressly punished by disciplinary measures, as foreseen in Article 63(4) ServRegs. Maintaining a 1/20th deduction would have therefore been an unlawful punishment outside a disciplinary procedure.

The CSC members of the GCC regret that:

- no discussion with the CSC took place before the GCC meeting;
- the change has no retroactive effect;
- the presentation of the change is misleading in point 13 of the CA document, according to which the change would be made merely “for harmonisation purposes”.

Conclusion

For the above reasons, the CSC members of the GCC **do not express their opinion by voting** on the whole document.

The CSC members of the GCC

Opinion of the CSC members of the GCC on GCC/DOC 24/2021 - REV (CA/77/21): New ways of working

Introduction

1. The CSC members of the GCC give the following opinion on the “New ways of working” proposed in GCC/DOC 24/2021 (CA/77/21).

On the consultation

Meetings with the Working Group

2. The Central Staff Committee (CSC) received an invitation to constitute a Working Group on Teleworking on 20 May 2021 and proceeded to the nominations on 10 June. In a [letter](#) dated 22 June, the CSC nominees requested clarification on the mandate of the Working Group, the content and outcome of consultation and focus groups, and an overview of the savings made by the Office under the “Emergency teleworking guidelines”. Our requests were never answered.
3. A [first meeting](#) took place on 14 July without any agenda or supportive document. The Working Group decided to structure the meeting along the lines of their [letter](#). Essentially, the administration refused to provide the CSC nominees with an overview of the savings made thanks to teleworking and rejected upfront the idea of a teleworking allowance. The administration never mentioned nor suggested that there could be changes to the Guidelines on arrangements for working hours ([PART 4j](#) of the CODEX), in particular the abolition of flexi-time.
4. A second meeting took place on 29 September where the Office only presented its principles. In their view, teleworkers shall bear the costs and the responsibility to comply with Health & Safety requirements associated with teleworking. Teleworking may be limited, suspended or withdrawn by the line manager. The CSC nominees requested a fast joint conflict resolution panel for such cases.
5. On 18 October, the staff representation received a draft version of the Circular ignoring all the points previously raised. A [third meeting](#) of 1h30 took place on 22 October 2021. The CSC nominees of the Working Group explained three major points of concern: 1) the timeline for implementation, 2) the lack of specific conditions for mandatory teleworking, and 3) the abolition of accrual of flexi-hours for all staff. The latter came as a surprise as it had never been mentioned before by the administration. The CSC nominees requested copies of the legal assessments, on the basis of which the Circular had been drafted, especially on the questions of national income taxation and residence.
6. A [fourth meeting](#) of 1h30 took place on 4 November. In preparation of the meeting, the CSC nominees had sent an email with comments on the proposal (see annexes to the [report](#)). Despite this, the administration had not brought any of the proposed amendments into the Circular. In the meeting, the CSC nominees protested against the abolition of accrual of flexi-hours for all staff. In comparison, the Part-Time Home Working (PTHW) guidelines only suspends accrual of flexi-hours to home workers on the days on which they work from home.

Meetings with the CSC and the GCC

7. The CSC met with the President on 16 November, where it could only focus its intervention on flexi-hours given the limited time available. In a [letter](#) dated 18 November 2021, the CSC provided further arguments and made final proposals because it believed that a jointly agreed text was possible.
8. The final consultation in the GCC took place on 23 November during which a revised text was tabled. A few hours before the meeting, the CSC had received a letter (see ANNEX 1) explaining the minor amendments made and why our proposals on accrual of flexi-hours and the fast joint conflict resolution panel were rejected.
9. At the time of the final consultation, **neither the requested legal assessments nor the opinion of the COHSEC were provided to the GCC.**

On the merits

Geographical scope

Primary teleworking place

10. The Circular defines that the primary teleworking place shall be the employee's residence within their country of employment (Article 1(a)). However, the Service Regulations (Articles 25, 55a, see also [Judgment 2278](#), §11 of the considerations) currently do not contain any such requirement to reside in any particular country. This results in a lack of clarity of the regulation.
11. During the consultation, the administration clearly stated that the employee's residence shall be within the country of employment and that there would be no geographical limitation around the place of employment. For example, an EPO employee recruited in Munich or Berlin would be allowed to reside in Hamburg and to telework from there. Besides their residence, employees may also telework at any other location within the country of employment (Article 1(a)).

Teleworking from other territories

12. The proposed Circular defines that teleworking can be performed at any other place within European, continental or island, territory of the EPC Contracting States within the time zones UTC, UTC +1, UTC +2 and UTC +3 (Article 1(b)). The Canary islands, the Azores islands and Madeira would be considered as territory of EPC Contracting States.
13. The Protocol on Privileges and Immunities ([PPI](#)) ratified by all EPC Contracting States clearly states, Article 16(1), that "*salaries and emoluments shall be exempt from national income tax*". We believe we understand that allowing teleworking from territories outside the EPC Contracting States where the [PPI](#) is not applicable would have created issues in terms of national income tax.

Time scope

“Sense of belonging”

14. A minimum attendance of **40 working days** a year at the employee’s site of employment will be required, up to 20 of which may be spent at another Office site of the country of employment (in practice, this only applies to Munich and Berlin) and obviously subject to the workspace actually being available (Article 4(1)).
15. At the earliest stage of the consultation, the Office wanted to offer staff the possibility of spending **up to 20 days** at any other Office site (e.g. an employee recruited in The Hague could have spent these days in Vienna) to promote the “one-office concept”. The Office has actually designed the future new Vienna building to offer more space than required by the actual number of Vienna-based employees.
16. However, the administration explained that there was early reluctance from the host states. In addition, according to a legal assessment, with 60 days of telework in another territory and an additional 20 days outside the country of employment (plus weekends, annual and other leave etc) the employee might not meet the requirement to spend more than six months in the country of employment to be considered a resident and thus avoid taxation and social security issues. Although duly requested, **the legal assessment on this matter or any details of it have never been provided to staff representation.**
17. The Office may define **up to 20 days** either uniformly for all staff or for groups thereof as periods of common presence, i.e., where staff at Directorate General (DG) level, directorate level or team level would be subject to compulsory attendance instead of teleworking (Article 4(2)). These days could most likely be announced together with the public holidays and compulsory Office closure days. In the [Communiqué](#) of 15 November 2021, the administration clarified that these days are intended to be **full working days**.

Teleworking from other territories

18. Teleworking from another EPC contracting state territory is limited to **60 working days** a year (Article 3(d)).
19. The [Willis Towers Watson survey](#) proposed five teleworking scenarios, one of them consisting of full teleworking from any EPC member state. Staff therefore expected that the Circular would offer this possibility and some even started to sell their house and move to another EPC Contracting State. The Office clearly failed in terms of expectations management and affected staff deserves full transparency on the underlying grounds for the change with all necessary supportive documentation.
20. Management justified the limitation to 60 days (plus weekends, annual and other leave etc.) by the fact that an employee would need to spend more than six months in the country of employment to be considered as a resident and hence avoid taxation and social security issues. Again, **the legal assessment in this matter was never provided to staff representation.**

Part-timers

21. The minimum attendance at the Office for part-timers will be calculated proportionally, but in no case can it be less than 20 working days a year (Article 4(3)).
22. We note that a 50% part-timer may thus be imposed to work 20 days in the Office without any flexibility as to these working days if the Office defines 20 specific days of compulsory attendance.
23. The Circular defines that employees may telework in blocks of full or half working days (Article 3(b)). We requested this to apply as well proportionally to part-timers. The administration did not bring any unambiguous clarification even in its [Communiqué](#) of 15 November.

Mandatory teleworking

24. The Circular defines teleworking as voluntary but, in exceptional cases, **the Office may request or instruct employees to telework** (Article 5(2)).
25. During the consultation, management explained that this would be limited to specific cases, for example, if it is imposed in the country of employment (e.g. terrorist attack, pandemic) or in case of severe problems with one of the EPO buildings. We warned also that with the planned construction and renovation projects, the Office's offer to "book a room for a day" might not be sufficient and colleagues might be forced to telework from home.
26. However, in the [Communiqué](#) of 22 November 2021, "Extended coronavirus measure" the Office showed that it can act beyond its promises during the consultation by unilaterally imposing the strictest mandatory teleworking measures since the beginning of the pandemic with no equivalent in the host states. Staff who are unable to work from home may come to work on Office premises only if their line management agrees. In practice, the request to work on Office premises is assessed by the Team Manager and the Director, and then escalated to COO and PD level for approval. Such micro-management goes against the principle of empowering direct line managers. Several groups of staff contacted the staff representation and considered the measure excessive.

Abolition of core-time and flexi-hours

27. All provisions of the Guidelines on arrangements for working hours concerning the accrual of flexi-hours and the establishment of core time are suspended by the Circular (Article 15(1)).
28. In comparison, the PTHW guidelines only suspended accrual of flexi-hours to home workers on the days on which they work from home. During the Working Group meetings, management could not give any explanation for the reasons for the pure abolition.

Counter-arguments and proposal

29. Flexi-hours (as they are called) are a means for flexibility in managing one's *working time/schedule*, when working on the Office premises. Teleworking is actually a means for flexibility in *working*

location. Hence, the two concepts are entirely different. Creating one and removing the other does not mean increasing flexibility, rather it removes one form of flexibility and introduces another, where the beneficiaries are not the same. A group of at least 25% of staff declared that they are not interested in geographical flexibility and others might not be allowed to make use of it due to the nature of their tasks. This group would be negatively affected by the reform as well as all others planning to work partly in the Office's buildings.

30. Just before the pandemic times, according to the [Social Report 2019](#) EPO staff used on average 3.6 days of flexitime per year. This represents office-wide 24.000 days of flexibility. The Working time framework (Article 3 of the "Guidelines on arrangement for working hours", [PART 4j](#) CODEX) still sets the working day at a minimum of six hours (maximum ten hours) and the minimum working week at 35 hours (maximum 48 hours). The abolition of accrual of flexi-hours would remove any possibility for staff to deviate from this framework. In addition, flexi-hours accrual is very simple to administrate and gives visibility and predictability for management, while helping staff to manage their work-life balance.
31. Flexitime is also a means for sick staff to attend [medical visits](#) outside working hours. And doctors, especially in Bavaria, only work during EPO working hours. In the past, time for medical visits was allowed in the Guidelines for Leave, Circular 22, but it was then removed from Circular 22 when flexitime was introduced. Now, if flexitime is abolished, there is nothing left for medical visits in the Guidelines for Leave. Such a change should rather have been part of an in-depth discussion on Time and Leave.
32. The New Normal staff survey results show that 82% of staff want flexibility in working times and 73% are interested in the removal of core-hours. We understood that, for the Human Resources Department, both are linked. In order to meet both ends, the CSC proposed (see [letter](#) of 18 November) to abolish accrual of flexi-hours only on days of teleworking and to change the purpose of core-hours to define them as a preferred timeslot for joint meetings, thus also for strengthening the "sense of belonging".

Rejection of the proposal

33. Mr Campinos rejected the proposal and gave his reasons in his letter of 23 November (ANNEX 1) on the day of the GCC meeting:

"First of all, we wish to reiterate our clear position that in a scheme that provides such extent of flexibility and suspends the core time, flexitime is redundant. Staff will have all means to define their working schedule and location in close alignment with their line managers, hence resorting to tools of a past scheme will not be necessary. Allowing the accrual of flexitime when working onsite, as you propose, would create two categories of staff whereas this is not justified in a scheme that guarantees equal conditions for all types of work. We note however your reference to the Guidelines on the arrangement of working hours and we will look into any adjustments to it the months to come."

Further counter-arguments

34. First, we find it ironical that Mr Campinos is suddenly concerned about creating categories of staff while his own past reforms have purposefully created different categories. The Education Allowance reform introduced a discrimination among sites at the expense of The Hague and Vienna, the salary adjustment procedure does not respect power of purchase parities among sites, the cash injections into the salary savings plan benefit the higher grades disproportionately, the draft Circular on fixed-term contracts still maintains two categories of staff without providing any certainty to the ones affected.
35. Second, the PTHW guidelines revised in 2018 were already suspending accrual of flexi-hours to home workers on the days on which they work from home. Maintaining this provision would not create two categories of staff because all staff will have to work from the Office at least 40 days per year. Furthermore, the teleworking scheme is defined as a **pilot scheme** (Article 16(1)) and remains on a **voluntary basis** (Article 2(2)).
36. Third, it is true that Circular, Article 8(1)(a) defines that: *“Employees are responsible for aligning with their line manager on a regular basis on their general working arrangements and their availability during the working day”*. There is however no guarantee that the line manager will offer the desired flexibility and that this flexibility will be higher than with the “past scheme”. Furthermore, the Circular defines line manager’s discretion for imposing meeting and events during working days (Article 15 2)). There is no guarantee that the line manager will respect the conventional working day.
37. Fourth, the promise to look into the “Guidelines on the arrangement of working hours” does not give any hint as to whether and which amendments will be made. This promise appears to be a last-minute improvisation due to the fact that the responsible HR Policy Department had overlooked this aspect when designing the Circular.

Employee responsibilities

Costs borne by the employee

38. The Circular clearly states that the employee’s choice to telework shall carry no costs to the Office (Article 2(5)), bar a few exceptions (Article 5(1)).
39. As explained in the [letter](#) of 22 June 2021, the Office made huge savings during the pandemic thanks to teleworking and the employee incurred extra costs (e.g. electricity, Internet, water, heating and canteen subsidy, adaptation of the home).
40. Management rejected our claim for a *teleworking allowance*. Even in the case of mandatory teleworking, the Circular defines that the employee shall bear all the costs associated with teleworking.
41. Costs savings still appear to be one of the Office’s main drivers for introducing teleworking.

Health and safety

42. The employee remains responsible for arranging a suitable workplace for teleworking. This applies even in the case of mandatory teleworking.
43. During the Working Group meetings, management seemed to believe that by now all staff should be equipped to be able to work from home and therefore to comply with mandatory teleworking. We explained that some residences are simply not suitable for teleworking. During the GCC meeting, a COO finally admitted that it is indeed the case for some staff members after having had a personal look at the requests for working on Office premises despite mandatory teleworking.
44. The PTHW Guidelines defined ad hoc checks by mandated persons at the home workplace to provide support for occupational health and safety and ergonomics. The new circular does not foresee any such provision, instead the Office will only provide guidance to the employee. In the [Communiqué](#) of 15 November, the administration merely stated that virtual visits of the Ergonomics Work Unit Coordinators (Ergo-WUCs) at home working locations will be considered as a means of supporting teleworkers with **health and safety** requirements.
45. As is the case within the PTHW guidelines, also for the new Circular, the Office will not be liable to employees or third-party for any damage, material loss or injury suffered because of teleworking, unless such damage, loss or injury was caused by equipment supplied by the Office. It reduces to the bare minimum the responsibility of the Office and the scope of (tele)work accidents.
46. The Office has not provided an assessment of psychosocial risks linked to teleworking. We are not convinced by the management's argument that risks, if any, are solely linked to the pandemic. No monitoring of unhealthy working patterns (rest breaks, maximum hours per day / week) is foreseen. In the CA document (paragraph 13), the Office makes a wrong presentation of the correlation between teleworking and short-term sick leave during the pandemic. We are aware that colleagues register themselves as teleworking although they are sick.
47. Serious issues were not addressed and should be improved before the entry into force.

Line manager responsibilities

Eligibility

48. The Circular defines that all employees are eligible for teleworking in principle. However, teleworking may be limited or excluded if incompatible with the nature of the tasks.
49. Management explained that it is the direct line manager who would make this assessment. We believe, however, that different line managers may take diverging decisions for actually similar tasks. There is therefore a risk of lack of harmonisation.

Limitation, suspension or withdrawal

50. The Circular defines that line managers shall take decisions pertaining to the Circular.

51. In this respect, it details that teleworking shall be limited or suspended, or the approval withdrawn, in cases of non-adherence to the minimum attendance requirements, a negative impact of teleworking on the employee's performance, any behaviour which is not compatible with the needs of effective team collaboration (e.g. non-attendance to team meetings) or other operational needs.
52. We argued that the criteria are vague and could open room for arbitrariness. More clarity was needed but was not provided during the consultation.

Period of notice

53. In its first version, the Circular defined that the decision to limit, suspend or withdraw the approval is taken with at least one month's notice (Article 7(5)). This was half of the period of notice for PTHW (two months) although negative decisions as to PTHW had a lower personal impact because the scheme was limited to an area of 100 km around the place employment. We explained that the notice period should have been increased instead of reduced.
54. At the final stage of the consultation, the administration decided to align the notice period back to two months in accordance with the PTHW scheme.

Fast conflict resolution panel

55. The Circular does not define any clear process and steps for negative decisions on teleworking, and the criteria remain vague (Article 7(4)). Teleworking has a significant impact on personal and family planning which cannot be reconciled with long delays incurred by the management review and internal appeal systems, let alone the AT-ILO as the ultimate end of any dispute.
56. We are aware that even during the pandemic, some line managers instructed staff teleworking in another EPC Contracting State to come back to their place of employment (because of alleged low performance) and to leave their family behind.
57. We proposed to define a fast joint conflict resolution panel for dealing with such cases. Unfortunately, the administration clearly stated that it was not convinced by our proposal.
58. We are aware that with the current applicable "Emergency Guidelines" during the pandemic, line managers instructed staff teleworking in another EPC Contracting State to come back to their place of employment and leave their family behind because of alleged low performance.

Entry into force

59. The Circular is designed to replace both the Emergency Teleworking Guidelines in place since March 2020 and the revised PTHW Guidelines in place since May 2018.
60. In its first version, the Circular set the entry into force on 1 February 2022 (Article 16(1)) and transitional measures until 1 September 2022 (Article 17). Transitional provisions were to apply

only for employees who on the date of entry into force of the Circular have a dependent child enrolled at pre-school, primary or secondary level in another EPC Contracting State than the country of employment.

61. In view of the evolution of the pandemic, the administration tabled a revised version setting neither a date of entry nor a precise transition period. The revision also includes the extension of transitional provisions (Article 17) to employees with a dependent child enrolled at a childcare facility.

Conclusion

62. We are aware that when designing “New ways of working”, it is not possible to meet the expectations of all our colleagues. We believe that parties should try to find a compromise which meet the needs of staff, the need of the Office and respects the legal implications. Also, when asking the staff representation for an opinion and a vote, all necessary information should be made available and the implications clearly understandable.

63. In this respect, we note that:

- The opinion of the COHSEC was never presented in the GCC
- The legal assessments in particular on national income taxation and residence were never provided to the staff representation.
- The abolition of accrual of flexi-hours in combination with the applicable “Guidelines on working hours arrangements” reduces working time flexibility without any objective need and the administration did not give any hint as to whether and how these Guidelines will be revised.
- The [Communiqué](#) of 22 November announced the extension of the “Emergency Guidelines” until end of May 2022 at the earliest. There is therefore ample time to continue the discussions within the Working Group on the “New ways of working” with the aim to arrive at a clarified and jointly agreed text.

For the above reasons, the CSC members in the GCC are not in a position to vote on the document as it stands.

The CSC members of the GCC

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Date: 23.11.2023

Your open letter dated 18 November 2021 regarding GCC/DOC 24/2021
“New ways of working”

Dear Mr Chair,

Thank you for your letter dated 18 November 2021 regarding GCC/DOC
24/2021 “New ways of working”.

As you know, our proposal on the “New ways of working” has been
extensively discussed in the WG and most recently directly with the CSC at
our meeting on 16 November. We note that you recognise that this scheme
provides an even larger flexibility to achieve a work-life balance while
securing our sense of belonging.

At our most recent meeting the Office accepted your formal requests to
extend the notice period to two months (Article 7 (5)) and to cover under the
transitional measures (Article 17) parents with children enrolled in a crèche
(childcare facility) away from their country of employment. Given your
express commitment at that meeting that the CSC members appointed in the
GCC would not object to the submission of a new document to the GCC
agenda, the Office’s services integrated these changes into a new draft along
with a few linguistic improvements recommended by the Language Services.

Furthermore, at that meeting we announced to you that the new scheme will
not enter into effect on 1 February 2022 as initially scheduled. Regrettably
the most recent developments in our host and other member states oblige
us to extend the current Emergency guidelines until the end of May 2022 and
we will continue monitoring the pandemic closely. The new draft reflects also
this change of planning (Article 16).

As regards the final three points of your letter, we would like to note the following:

First of all, we wish to reiterate our clear position that in a scheme that provides such extent of flexibility and suspends the core time, flexitime is redundant. Staff will have all means to define their working schedule and location in close alignment with their line managers, hence resorting to tools of a past scheme will not be necessary. Allowing the accrual of flexitime when working onsite, as you propose, would create two categories of staff whereas this is not justified in a scheme that guarantees equal conditions for all types of work. We note however your reference to the Guidelines on the arrangement of working hours and we will look into any adjustments to it the months to come.

Regarding the conflict resolution panel, the Office considers that the creation of a special resolution mechanism is not necessary. Let's not forget how well a similar scheme of teleworking has been functioning over the last 20 months without such panel, in fact under more challenging circumstances. We have no reason to believe that the application of the new scheme, which is based on trust and transparent communication, and which is in the common interest of staff and the Office, will require additional formal ventiles. However, also on this point, the Office's services are preparing appropriate workflows which will ensure that good coordination and understanding will prevail in the vast majority of, if not all, cases. Of course, this will be a pilot scheme and will be subject to close monitoring. Whichever improvements are deemed necessary will be undertaken along the way. This, I trust, reflects the essence of your latest proposal.

Finally, as regards the Health & Safety matters, those that were already mature for consultation were discussed on 18 November in the COHSEC. More relevant points are currently in process and will be submitted to upcoming COHSEC meetings.

I look forward to our discussions.

Yours sincerely,

António Campinos

Opinion of the CSC members of the GCC on GCC/DOC 25/2021:

Orientation on recruitment (CA/100/21)

The CSC members of the GCC regret that the document has not been tabled for consultation, the impact of recruitment (or its freeze) on staff is obvious. In view of the importance of this document, we would like to share with you the following observations.

On a general note

We appreciate the confirmation of the Office of the role of EPO staff in the success story of the Office, namely that they build the foundation of it.

We also acknowledge that the obvious is addressed in the document, the fact that the EPO has a public service mission and is therefore not to be confused with a profit-oriented institution. In order to fulfil its public service mission and the corresponding legal obligations, adequate resources need to be provided in all areas of the Office, not only in the examining units.

The so called “prudent” approach of the Office in view of a forecasted dire economic situation and corresponding huge drop in incoming applications – which has fortunately not proven true – has had a huge impact on staffing levels in many areas, some units now already finding themselves in a critical situation.

The planned future replacement ratio of only 50% in the non-examining areas and 64% in the examining area will not be sufficient to make up for the damage already caused by the lack of recruitment over the last two years.

On the substance of the document

Demographics

It is again confirmed that more than 40% of all staff will leave the Office in the next 10 years. Already now there are many units throughout the Office, where the remaining colleagues suffer under the higher workload and the loss of knowledge and experience due to a resulting understaffing and a lack of proper replacement, insufficient knowledge transfer and completely missing succession planning.

The promised positive results of digitalisation and automation efforts are overrated and the half-hearted attempts to solve the issue of understaffing through internal mobility only are considered to be a faint response to the critical situation.

The issue of an ageing population can anyway not be addressed by simply shifting colleagues from one unit to another. However, what the Office needs is a healthy distribution of staff of all ages to avoid in future a similar wave of retirements as we experience now and which will continue in the coming years.

Timely Recruitment and Succession Planning

We definitely differ on the notion of a “timely” recruitment. If a recruitment is to be considered as “timely”, it must fulfil the following criteria:

- the demographic conditions in the area are considered
- minimum staffing level in a given unit is defined (taking into account workload, delivery obligations, deadlines, holidays, other types of leave, etc.)
- time for proper handover / knowledge transfer (from the leaving colleague to the new recruit) is allowed for
- time for training efforts (from the unit members to the new recruit) is taken into consideration
- the duration of employment of the new recruit is balanced with the training investment and the complexity of the duties
- the recruitment procedure starts immediately once the letter of resignation is received or the retirement date is known.

Proper succession planning, however, is very rare in the Office. Recruitment procedures – if at all allowed – are often initiated only after colleagues have retired or stepped down from their duties. Some vacant positions are published only several months or even years after the former colleague left the Office. Despite the fact that the employee, who wishes to terminate their service, needs to inform the Office months in advance of the date of resignation or retirement, no timely reaction on part of the Office is observed in most cases.

Internal Mobility

The Office seems to consider internal mobility as the panacea for addressing all shortages of staff across the Office. The CSC members of the GCC appreciate the possibilities offered to all staff in terms of talent development measures and training offers. The effort of the Office to prepare colleagues for future posts in case their own tasks are earmarked to disappear is noted. Internal mobility, however, cannot be considered as the all-in-one device suitable for every purpose.

Understaffing in certain units cannot be addressed in the same way as resources needs for temporary shortages or project-related work. If internal mobility is to serve as the primary source for recruitment purposes, partial mobility is not enough. What understaffed units need are full moves either on a permanent basis or for at least five years. Only then would it make sense for the receiving units to invest time and effort – on top of their already heavy workload – to properly train the new colleagues.

In order to equip the Office for the future, and at the same time avoid a huge brain-drain due to retirements in large numbers, we need to revert to a level of external recruitment in addition to internal mobility, which allows for a rejuvenation of the EPO staff and a broad distribution of ages amongst them.

Conclusion

The Office has far too long hidden behind the “knock-out argument” of a prudent or cautious approach to avoid replacing staff in units, where the nature of tasks and the staffing level would have required to react long ago. Even key positions, mainly in units within the so called “Others” group, remain vacant for months or years. Initial training and knowledge transfer of new recruits – if provided at all– are necessary elements which help to ease the situation of understaffed units. In addition, however, we need to allow for experience, which takes time to build up, which is why a long-term perspective must be guaranteed.

Furthermore, the Office’s assumption that new IT tools and Artificial Intelligence would compensate to a certain extent for the losses in work force has only partially come true, despite all the commendable efforts by the colleagues in BIT.

The European Patent Office needs to equip all areas of the Office with sufficient staff resources to meet the legal obligations which are required to fulfil its public service mission.

The CSC members of the GCC