

Opinion of the CSC members of the GCC on GCC/DOC 6/2022: Professional mobility (CA/32/22)

The CSC members of the GCC give the following opinion on document GCC/DOC 6/2022, under protest.

Summary

In best Battistelli tradition, Mr Campinos has prepared a “package” to be submitted to the Budget and Finance Committee and to the Administrative Council for approval in June 2022, with various measures more or less closely related to “mobility”:

- [Young Professionals \(YP\), a new class of EPO employees](#)
- [Secondment for EPO employees](#)
- [Unpaid leave](#)
- [Seconded National Experts \(SNEs\)](#)
- [Language policy](#)
- [Praktika extern / intern](#)

Time will tell whether some measures can be combined, leading to unpredictable constellations. Some could also be combined with already existing provisions, leading to further situations in need of clarification. They may also result in treating persons performing essentially the same or similar tasks according to very different regulations, thus making the "One Office" mantra absurd.

Some points can be highlighted:

- Although many measures introduce new possibilities, hardly any of them lead to new entitlements or rights for individuals¹ working for the Office. They just extend the discretionary power of the appointing authority (i.e. the President of the Office in practice) to decide “*in the interests of the Office / service*”, which is vague enough as a criterion.
- Opacity: summary reports to the Administrative Council², if any, are no substitute for transparency. The selection of the candidates is consistently non-transparent. EPO staff (and their representation) will hardly be informed of discretionary decisions or bilateral agreements between the President of the Office and external employers, let alone their specific terms. The CSC members in the GCC regret this drift from service law to contract law, masquerading as “flexibility”, “agility” and “mobility”.
- Individuals will hardly be informed about how others have been treated, calling into question the principle of equal treatment, under the guise of “diversity”.
- Suddenly, financial “sustainability”, the buzzword used to justify many detrimental reforms of the past, no longer seems so important for some measures.
- Secondment is strikingly generous for the persons concerned and for the non-EPO entities concerned (mostly national IP offices), at a time when the President is campaigning for re-election.
- The generosity of the measures on secondment strikingly contrasts with the stinginess of the regime for Young Professionals, a new category of EPO employees.
- The language requirements are lowered, although they cannot be separated from the technical or professional expertise in order to guarantee the quality of the services the EPO offers.

¹ Either EPO staff or persons formally working for other employers e.g. national patent offices.

² E.g. a report on a yearly basis to the Administrative Council on the number of employees seconded (both outgoing and incoming) and the general application of the scheme (see §41 on page 9/25).

The EPO fulfils a mission of public service with the core task of granting European patents by a single procedure³, possibly soon with unitary effect. The Contracting States have also ratified a [Protocol on Centralisation](#). Until now, European civil servants appointed by the Office / Organisation have performed this core task under conditions of employment comparable to those in other international organisations. The new package allows “Seconded National Experts”, i.e. civil servants of central industrial property offices of the Contracting States, or “Young Professionals”, i.e. EPO staff far below the usual salary range, to perform this core task *de facto*, although they are not formally part of the departments under [Article 15 EPC](#), and in a limited number in a first phase.

The CSC members of the GCC believe that such a fundamental questioning of the EPC framework should at least be discussed in a conference of ministers in accordance with [Article 4a EPC](#).

³ See the [Preamble of the EPC](#).

1. On the consultation

An “Orientation Paper on Mobility” [GCC/DOC 05/2022](#) was submitted for information in the GCC meeting of 1 March 2022. The CSC members of the GCC expressed their concerns on various aspects of the paper⁴.

The present GCC document [GCC/DOC 06/2022](#) confirms our concerns. In comparison, the document adds concrete aspects and the legal texts.

A joint Working Group has had three meetings (90 minutes each) to discuss the substance of the package.

Some aspects of the document relate to health and social security, for which the COHSEC should have had the opportunity to give a reasoned opinion and to make proposals⁵. The issue was raised in the GCC meeting but the President did not allow the expert present in the meeting to reply.

In the GCC meeting, the President interrupted the CSC members of the GCC and prevented them from speaking multiple times when the content was not complimentary of his policies or when the way of presenting it did not suit him. The hostility displayed by the President was so extreme that he was requested on several occasions, by staff representatives and even one member of the administration, to try to continue the meeting in a more respectful manner. The conduct of the meeting was highly unprofessional⁶.

A GCC meeting conducted under such conditions, where arguments could not be exchanged and where questions could not be answered, cannot be considered as meaningful consultation. It was also patently clear that the President had absolutely no intention of taking heed to any of the arguments that were presented by the CSC members of the GCC.

In a letter of 28 April, the CSC members of the GCC requested that the consultation on the agenda items of the 55th meeting be repeated; and that the official recording of the discussions in the meeting of the GCC be made available so that staff become aware of how the President chaired this official meeting.

By email of 29 April 2022, the President informed the CSC members that “*there are no reasons to repeat the GCC meeting*” and he did not address the question of the recording.

Therefore, the consultation process was flawed and the present opinion is given under protest.

⁴ See the [CSC report on the March GCC meeting \(sc22026cp\)](#), pages 23-26.

⁵ See e.g. the amended provisions on parental / maternity leave.

⁶ See also the [report on the GCC meeting of 26 April 2022 \(sc22050cp\)](#) as published on the Intranet.

2. On the merits

Conditions of employment for Young Professionals (YPs)

A new category of staff

The Office presents the Young Professionals programme as the “*flagship of the new framework*”. It introduces a new category of staff who are expected to perform the same work as permanent staff and staff on fixed-term contracts. However, the YP’s receive a quite different working package with significantly reduced benefits.

The YPs will join all DGs of the Office and will need only a bachelor degree and an excellent command of one single official language to start working for the Office. Either the programme aims to hire clerical assistants or YPs represent an alternative to recruitment on fixed-term contract, i.e. cheaper workforce under worse conditions.

In particular, they will have the possibility to work in the Patent Granting Process (PGP) but be no part of any department under [Article 15 EPC](#). However, they will work in these departments, which might be objected by parties as a violation of the EPC. Thus, this new category of staff constitutes merely cheap workforce for performing the same duties as the employees in these departments.

Staff presently performing PGP tasks are going to supervise and sign the work actually done by YPs. The gain in terms of efficiency compared to the current situation is unclear, at least if “permanent” staff really remain responsible for the work they officially validate with their signature.

Creating yet another category of staff, embedded in the workflow but distinct from permanent staff or staff on fixed-term contracts, does not seem quite coherent with the declared aim to fostering a culture of “[One Office](#)”. Their particular status is visible in the fact that their conditions of employment will be separate from the Service Regulations (Part 1 of the Codex).

Third-class, low-cost and low-rights employees

For the first year, YPs are paid 67% of G1(4) (currently 3.291,01 € for Germany), namely 2.205 € with an additional lump sum allowance of 92€.

Considering step increments of 66,63€ in Grade G1, 67% of G1(4) actually correspond to a virtual negative grade of G(-2) step 3. This puts YPs off-scale, below the EPO salary grid, or in a new virtual “Job Group 7”. The lucky (?) 30% who will make it to the 2nd and 3rd year will then be put at G1(4). It is still far below all other employees. Even Job Group 6 employees start at least at grade G2. This seems very far away from the first rule of the Noblemaire principle (equal pay for work of equal value)⁷.

The situation will become even worse with the new salary adjustment procedure which cuts and freezes EPO salaries, and deprives staff from any protection against high local inflation. G1(4) will soon lag behind the real evolution of costs of living and score below all benchmarks among International Organisations and the Industry.

YPs will receive no allowances except for the dependant and travel allowances. They will have no possibility to part-time work, to special or family leave, a somewhat limited maternity leave, no

⁷ See e.g. [ILOAT Judgment 825](#), consideration 1: “*The Noblemaire principle, which dates back to the days of the League of Nations and which the United Nations took over, embodies two rules. One is that, to keep the international civil service as one, its employees shall get equal pay for work of equal value, whatever their nationality or the salaries earned in their own country. The other rule is that in recruiting staff from their full membership international organisations shall offer pay that will draw and keep citizens of countries where salaries are highest.*”

career, no right to pension transfer, and *de facto* no SSP despite being members of the New Pension System.

The initial one-year term may be extended for 30% of YPs, up to a maximum of three years: extension is therefore a competition. The Office argues that YPs will not be expected to carry out the same volume of work nor bear the same kind of responsibilities as other staff and that Circulars Nos. 365 and 366 will be applied to them with some “adjustments”. However, if they wish an extension after the first year, they will have to meet or surpass management’s expectations better than their competitors, in terms of loyalty and performance⁸.

Their conditions of employment are discriminatory and they violate the basic principle of equality, e.g. as defined in the [European Social Charter](#).

Equality in the conditions of recruitment

According to Article 3(2), the candidates will be selected from a pool provided by partner institutions in a list. Therefore graduates of other institutions / universities within the member states will be excluded. In addition, spontaneous applications are excluded. The selection process is totally non-transparent.

Moreover, YPs will have a competitive advantage over other candidates when applying for regular EPO posts. This constitutes *de facto* unequal treatment of nationals of the Contracting States, contrary to Articles 1a and 5 ServRegs. It is also detrimental to the interests of the EPO as it might discard valuable candidates with a degree from non-partner universities.

Budgetary impact / costs

In a first phase, 100 YPs are budgeted and 160 YPs will be active during the three years of the programme. This will represent an overall cost of ca. EUR 10,5m per year, representing an additional cost of ca. EUR 7,4m in comparison with the current programme⁹. The extension of the programme will bind additional EPO staff for training / tutoring the YPs. It seems that these costs have not been taken into account.

The program is presented as “a first job approach... aiming to boost its attractiveness, especially to candidates with an educational background in science and engineering” and “to provide recent high-achieving university graduates with an opportunity to gain their first postgraduate work experience in the international, diverse and inclusive environment of the EPO”¹⁰. The programme is also advertised as a “first employment” experience, offering an even richer training programme combined with hands-on work experience. In the working group, the administration also mentioned the EPO culture, the YPs applying for jobs outside the EPO and the promotion of the EPO culture around the world. While cooperation is a valid goal, the EPO is not a training institution for university graduates with a bachelor degree. It is unclear whether the balance between costs and benefits is being held here¹¹.

⁸ Officially: “ability, efficiency and conduct”.

⁹ See §§18 and 28 in the CA document.

¹⁰ See §18 in the CA document.

¹¹ E.g. with a cost-benefit analysis of the expenditures (Article 2 FinRegs)

Amendments to the regulations on secondment (for EPO employees)

Introduction

According to the Office, the amendments seek to help “*stimulat[ing] and intensify[ing] cooperation with other organisations*”¹² as a part of a strategic initiative to “*update[e] and redesign[.] the professional mobility landscape at the EPO*”¹³. Benefits are expected in areas as diverse and generic as “*productivity gains, transfer of knowledge, upskilling of staff, employee engagement, Office reputation and collaboration*”¹⁴.

Who is concerned?

The President admits that the policy has been applied scarcely so far¹⁵. In fact, the implementation has totally lacked transparency and it was mainly used, as far as we know, to second senior managers. The terms of the previous policy were extremely advantageous for the senior managers but the duration would normally not exceed two years¹⁶. The administration did not answer the staff representative’s questions as to which (category of) staff in which areas of the Office would be able to take a secondment as part of their career. The only information given was that it would probably be “only a few colleagues”. It is reported that DG1 upper management has already explained to staff that, for sustainability reasons, staff in the production line (such as examiners and formalities officers) should not dream of secondment. However, formally speaking, no limit has been set in the document.

The current specimen contracts of senior managers (Principal Directors and Vice-Presidents) seem to rule out secondment¹⁷. However, it is unclear to which extent actual individual and confidential contracts may deviate from the specimens.

With the present package, the President intends to extend the policy to Young Professionals, who would come from partner universities, receive an initial training and then could be directly seconded to work for national administrations for up to six months.

EPO active staff working in any Contracting State: merely geographic decentralisation?

The most wide-ranging change for the employees concerned is the change in their administrative status, from non-active status currently to active employment in the future¹⁸. New Article 45 ServRegs lists a few provisions applicable to employees on secondment and provides that “[t]he appointing authority may lay down further terms and conditions for the application of this Article.” These further terms and conditions in lower-ranking texts (e.g. Circulars or confidential agreements) cannot supersede the ServRegs. Thus, other provisions of the ServRegs applicable to active staff also apply to them, unless expressly excluded in the ServRegs¹⁹.

Until now, employees in active employment normally perform their tasks on the Office's premises²⁰. Accordingly, the Office has four places of employment (and an office in Brussels). Since EPO staff on secondment will remain in active employment, they will perform whatever tasks their appointing authority (in practice: the President of the Office) will assign to them at their place of secondment.

¹² See GCC/DOC 06/22, containing draft CA/32/22, point 31.

¹³ See CA/19/22 Corr. 1, point 5.

¹⁴ GCC/DOC 06/22, containing draft CA/32/22, point 32

¹⁵ See §33 of the CA document.

¹⁶ See previous Article 43(2)(b) ServRegs.

¹⁷ See the changes proposed in the specimen contracts.

¹⁸ See Articles 39 and 42 ServRegs.

¹⁹ See Article 1(1) ServRegs.

²⁰ See Article 55a(1) ServRegs.

Normally, secondment aims to provide training and the sharing of experience between the entities concerned. There is no concrete information available about the tasks that the President would assign to an employee on secondment, and to which extent they would be the same as the tasks performed by the employee concerned before secondment. In some case, secondment could be very similar to 100% teleworking abroad.

No transparency in the application of Article 45

There is no mechanism for making transparent the further terms and conditions, which will be agreed on between the President of the Office and the host entity. There is thus no means to check whether the tasks in secondment is reconcilable with the mission of the Organisation.

Moreover, staff at large is normally informed about a colleague's secondment²¹, typically by way of a publication of the monthly staff changes. Thus, there is a minimum of transparency as to the extent and fashion the appointing authority takes secondment decisions. Now, where a staff member remains in active employment during secondment, no such communication to staff will take place; secondment decisions can hence be taken in complete secrecy. However, internal transfers and changes of departments are still communicated to staff. This should *a fortiori* apply to "external" transfers to foreign entities. Data protection is no valid reason for hiding secondment from staff.

As outlined below, a secondment decision has a significant budgetary impact on the Office. Where both an engaged workforce and financial sustainability are considered as parts of the EPO's strategic objectives²², transparency towards staff in decisions with budgetary impact is key. Not communicating about a specific secondment decision hence runs entirely counter to these objectives.

Inevitably, the suspicion of favouritism towards the "happy few" and "friends & family" will arise amongst staff, with the foreseeable consequence that staff will become demoralised and cynical. In this case, it is *in fine* immaterial whether this suspicion is then justified or not.

Consequently, the CSC members of the GCC propose to change the legal provisions (suitably by amendment of Article 31 ServRegs) to communicate secondment decisions to staff.

The Office intends to report on a yearly basis to the Administrative Council on the number of employees seconded and the general application of the secondment schemes. However, since secondment, in the Office's own writing, is to "*offer considerable professional experience benefits to the employees concerned*"²³, staff should also be transparently informed about whom those "considerable benefits" are provided to, and about what type of professional experience is involved.

Unjustified budgetary burden for the Office

At present, the right to remuneration of a staff member seconded to a public or private body ceases (old Article 42(2) Service Regulations). This is justified because, when seconded, the concerned staff member provides his or her workforce to the organisation he or she is seconded to, and no longer to the EPO. Accordingly, and logically, the work done is to be remunerated by that other organisation. Because the EPO still has an interest in a staff member being seconded, and in order to make secondment an attractive step in a staff member's career, the current regulations provide for a pay differential, where the remuneration paid by the receiving organisation is lower than the remuneration received from the EPO before the secondment (old Article 43(2)(d)

²¹ See Article 31 ServRegs.

²² Strategic Plan 2023, Goals 1 and 5

²³ See GCC/DOC 06/22, containing draft CA/32/22, point 32.

Service Regulations). Further, the seconded employee continues to be affiliated to the social security and pension schemes, and to the salary savings plan, if applicable (old Article 43(2)(e) Service Regulations). In summary, the present regulations offer a balanced framework for secondment that takes into account both the organisation's interests in terms of financial sustainability and the staff member's interest not to be financially disadvantaged by a secondment decision.

The proposed amendments upset this careful equilibrium: a seconded staff member will remain in active employment, even though he or she no longer occupies a post in the Office and possibly does not perform any of the duties pertaining to this post. With the administrative status of "active employment" comes the right to the full remuneration from the EPO – hence an overly attractive status.

EPO staff on secondment will receive full EPO remuneration, including all allowances²⁴. In the past, any remuneration received from the "host" body (e.g. another international organisation) was taken into account to calculate a "pay differential"²⁵. With the new provision, the EPO staff on secondment will cumulate their full EPO remuneration with any remuneration they might receive from the host body. As in the previous regulation, their "additional expenses" will also be reimbursed.

The Office is expected to act in accordance with the principles of economy and sound financial management, in particular to perform a cost-benefit analysis of its expenditures (Article 2 FinRegs). The proposed financially attractive status of secondment at the same time comes at a burden to the Office's balance sheet: While performing no (?) work for the Office, those staff members retain all the benefits of active employment, namely remuneration, career progression, pensions and social security, regardless of the benefits provided by the host body.

This runs counter to the stated goal of financial sustainability, a reason that is readily cited whenever it is deemed appropriate to cut staff's benefits further. But it also raises the question to which organisations the future "happy few" are to be seconded: If the host organisation is not required and/or in a position to pay the seconded staff member at least a fraction of remuneration received by the EPO, what is the value of the work performed for this organisation?

Finally, the proposed regulations do not address the case where the seconded staff member occupies a highly remunerated post in the host organisation. There is no objective bar to the unjust enrichment entailed by cumulating the EPO remuneration and the remuneration from the host organisation (except for Article 14(2) ServRegs, which leaves it to the President's discretionary decision on such matters).

Prolonged secondment leads to estrangement and loss of competences

The reasons for the increase in the duration are unclear. Under the present regulations, secondment may not normally exceed two years (Article 43(2) Service Regulations). The regulations hence seek to strike a balance between the Organisation's interest to see its staff develop professionally (on secondment) while limiting those periods of absence such as to safeguard the absent staff member's sense of belonging to the EPO and the maintenance of his or her competencies upon return to the EPO.

These prolonged periods of absence are detrimental to the proper functioning of the Office: a colleague returning e.g. after five years of secondment will be estranged from the Organisation and plainly will have lost the operational competencies relevant to the EPO's operations, entailing considerable costs to re-skill.

²⁴ Entitlement to some allowances, e.g. the expatriation allowance, may be lost depending on the situation.

²⁵ See former Article 43(2)(d) ServRegs

The proposed prolonged duration is also at odds with the stated objective of “upskilling” and the offering of “development opportunities” to staff, as those objective would command a return of the concerned staff member to ensure the application of the newly developed skills to the EPO’s benefit.

Conflicts of interest

Once again, the proposed amendments upset this balance for no clear reason, potentially further increasing the costs, making “revolving doors” possible and paving the way for conflicts of interests, despite proclamations to the contrary²⁶.

The administration has identified the risk of conflicts of interest, which will arise for inward and outward secondment alike. We explain below the concrete risks of “institutional schizophrenia” or “dual embeddedness”. It remains to be seen how they can be resolved.

²⁶ See §40 in the document.

Amendments to the regulations on leave on personal grounds (aka “unpaid leave”)

Who is concerned?

Granting leave on personal grounds remains a discretionary decision in “*exceptional circumstances*”²⁷. Presently, requests for short-duration unpaid leave (e.g. a few weeks, 86% of the requests) are often denied. The document mentions that about 2% of the requests are for longer leave. The administration has announced that unpaid leave for a longer duration would be easier to obtain because staff would be replaced by staff on fixed-term contract in such cases²⁸.

Currently, the CSC members of the GCC remain sceptical about future improvements.

The right balance for staff and for the Office?

Under the current regulations, leave on personal grounds shall not exceed one year, extendible twice for two further periods of one year each²⁹. The new regulation extends the maximum duration from three to ten years, officially to allow staff to explore more long-term professional activities outside the Office. This seems to be an improvement at first sight, which we could welcome. However, in practice it could be problematic.

Ideally, the regulations should seek to balance the staff’s interest to pursue personal goals and the Organisation’s interest in safeguarding the sense of belonging and maintaining the staff’s competencies if they return to the EPO.

The extended duration increases the probability that the employee will not be reinstated in their previous post but “*in the first post corresponding to their grade which falls vacant or is created*”³⁰. These extended periods of absence can thus be detrimental to the proper functioning of the Office, since a colleague returning e.g. after many years of unpaid leave will be estranged from the Organisation and plainly will have lost the operational competencies relevant to the EPO’s operations, or will have to retrain, which entails effort, resources and costs.

The extended duration is also at odds with the stated objective of “upskilling” and offering “development opportunities” to staff, as those objectives would command a return of the concerned staff member as soon as possible to ensure application of the newly developed skills for the EPO’s benefit.

Conflicts of interest

Finally, the extension also tips the previous balance, by making “revolving doors” a more concrete risk the longer the period is, and paving the way for conflicts of interests despite proclamations to the contrary³¹. The document mentions the issue and it will be “*reinforced with additional rules on conflict of interests*”, to be codified in a Circular.

²⁷ See new Article 44(1) ServRegs.

²⁸ See §§ 43-45 in the document.

²⁹ See current Article 45(2) ServRegs.

³⁰ See new Article 44(5)(d) ServRegs.

³¹ See §40 of the document.

The secondment of national experts (SNEs)

Introduction

For the EU institutions, SNE schemes already exist for civil servants from an EU Member State who are seconded for a specific period to a European Commission or European Parliament directorate, or to other institutions / agencies. The EPO policy is presented as following “*to a large extent*” the model of the European Commission and the EUIPO³². This is not the case in essential and concrete parts of the EPO policy.

Who is concerned?

In the EPO policy, there is in principle no limitation on who is eligible as a SNE, except that they must be in paid employment and have an excellent knowledge of one of the Office's official languages. It is explained that the SNEs should primarily be seconded from public entities. They should have at least three years' experience equivalent to the function they are to be seconded to. The policy is intended to strengthen the European Patent Network.

Under the EU scheme, SNEs are selected according to an open and transparent procedure, the practical details of which are stated in published SNEs vacancies. The geographical and gender balance, compliance with the principle of equal opportunities are being expressly monitored. It seems that the EPO intends to keep the selection process opaque and favour some (southern and eastern?) countries.

The “place of residence” remains the place where the SNE worked prior to the secondment. The actual place of work will be subject to a bilateral agreement between the Office and the sending entity, the actual employer. It can therefore differ from the “place of secondment”, which is the place where the Office department to which the SNE is assigned is located³³. In an initial two-year phase, the policy will remain a “pilot” with a number of SNEs that will not exceed 70³⁴. However, the secondment might last for a period of up to five consecutive years. In the EU secondment is limited to two years.

The assignment and the duties; a first step towards decentralisation?

There is in principle no limitation to the tasks assigned to SNEs, except that they must not be officially parts of the departments within the meaning of Article 15 EPC or take up official managerial tasks. In the EU scheme, under no circumstances may an SNE on his own represent the institution with a view to entering into commitments, whether financial or otherwise, or negotiating on its behalf. At the EPO, the President may authorise this in specific cases³⁵. The EU practice shows that SNEs are considered full-time staff for the purposes of their work, and carry out the same functions as *fonctionnaires*³⁶. At the EPO, SNEs are there to “assist” EPO staff, not to replace them. This has to be monitored so as to maintain a clear distinction between EPO staff and SNEs.

On-boarding, integration and training of SNEs will tie up EPO resources, in particular EPO staff.

The social security package

³² See §54 of the document

³³ See Article 16.

³⁴ See Article 1(6).

³⁵ See Article 3(3).

³⁶ See Yannick HARTSTEIN, “Rules of Secondment – The Role of Seconded National Experts in the Development of the CFSP and ESDP”, 11th EUSA Biennial International Conference, Los Angeles, 23-25 April 2009, page 11.

SNEs will remain under their national social security scheme but will be covered by the Office against the risk of an occupational accident³⁷. In case of prolonged sick leave, the allowances and any reimbursement of remuneration to the SNE's employer may be suspended. The criteria for suspension remain undefined, which might be a source of dispute. By contrast, the EU scheme is clearer in that the subsistence allowance is automatically suspended if the period of sick leave exceeds three months.

The provision on maternity leave of Article 61 ServRegs for EPO staff is taken over for SNEs, with the notable exception of the extension to bring the maternity leave to a maximum of ten weeks after the birth of the child³⁸. The reason for this exception is not clear and the administration could not explain it in the meetings of the Working Group. The document should have been submitted to the Central Occupational Health, Safety and Ergonomics Committee, since the COHSEC is in a better position than the GCC to make proposals and give a reasoned opinion on such matters³⁹.

The SNE's salary

In the EU scheme, SNEs keep their national salary during secondment. In the EPO policy, this is not required. If an SNE continues to receive a salary from their employer, the Office may even reimburse it to the employer, "*if its interests so require*"⁴⁰. No concrete reason was given as to when the Office would have an interest in reimbursing the salary. Since secondment is a training measure intended to benefit the employer as well, the CSC members of the GCC see no such reason. The provision, as well as the computation of the differential allowance, also seems quite complicated and counter to the ubiquitous need for simplification.

More importantly, an employment contract essentially establishes a work relationship where a person undertakes to work for the employer, in exchange for a salary. The four essential elements in an employment contract are the contract, the work, the salary and the employer's authority (the subordination relationship). For SNEs, the EPO would take over most elements of the relationship (possibly even the salary previously paid by the employer). This may dilute the subordination relationship with the employer, depending on the conditions of employment set by the employer or in the confidential bilateral agreement between the employer and the EPO. This contributes to blurring the distinction between EPO international public servants and national public servant performing tasks for the EPO.

These provisions strikingly differ from those for outbound secondment, where the Office reinforces its relationship by keeping EPO staff on secondment in active status, in particular with full payment of their remuneration.

The SNE's allowances

The CSC members of the GCC regret that this part (Articles 14 and 18) of the document was submitted only shortly in advance of the last 90-minute meeting of the Working Group, although concrete references to its content made in earlier versions of the draft showed that its content had already been worked out before.

This part differs substantially from the EU provisions, where the SNE's employer continues to pay the salary throughout the period of secondment. SNEs can be "cost-free SNEs", i.e. the host institution / agency does not pay any allowances during the secondment. Otherwise, SNEs are entitled to a subsistence allowance to cover the living expenses in the place of secondment on a flat-rate basis, based on a fairly simple (distance-based) computation. This allowance remains below 1000 EUR in all cases.

³⁷ See Article 8(4).

³⁸ See Article 61(2) ServRegs.

³⁹ See Article 38a(3) ServRegs.

⁴⁰ See Article 15(1).

The EPO SNE's allowances are quite different. In a nutshell, they are much more advantageous than in other international organisations. They consist of:

- a flat-rate monthly subsistence allowance (e.g. currently 4842 EUR for Germany)
- a monthly differential allowance in order to guarantee EPO salary G7(1), e.g. currently 6572,81 EUR for SNEs seconded to Germany.

SNEs are thus somehow assimilated, as far as income is concerned, to junior administrators / examiners in Job Group 4.

Conflicts of interest

During secondment, SNEs must behave solely with the interests of the Office in mind, remain independent and loyal to the EPO⁴¹, but they would at the same time remain employees of their sending entity, albeit possibly with a diluted relation of subordination to their employer, as mentioned above. This leads to “institutional schizophrenia” or “dual embeddedness”⁴², which creates tensions and a problematic framework for assessing conflicts of interest.

During the three years after the period of secondment an SNE must inform the Office of any duties which they are required to carry out for their current employer which may give rise to any conflict of interest in relation to their duties while seconded to the Office. There seems to be no clear way for the Office to enforce this provision and to take corrective action.

Disagreements and disputes

Since SNEs are not EPO staff, the statutory internal means of redress (managerial review, internal appeal) are not available. Instead, a specific single-step review process is foreseen, similar to statutory managerial review⁴³. The route to ILOAT⁴⁴ also seems unavailable. National jurisdiction also seems not available due to Office immunity. Thus disagreements and disputes must be solved amicably. If no agreement is reached, the Office might terminate the secondment, with or without advance notice.

In conclusion, SNEs operate in a legal limbo, potentially leading to unfair treatment as well as risks on the reputation of the Office in case of abuse. In order to mitigate this, the minimum would be to set up a joint committee including staff representatives giving an opinion, on request, on any dispute arising between the Office and the SNE.

⁴¹ See Article 5(1)(a), (c) and (e).

⁴² See Yannick HARTSTEIN, op.cit.

⁴³ See Article 22.

⁴⁴ See Article 13(1) EPC.

Flexible language policy on recruitment

The measure actually boils down to lowering the language requirement. The CSC members in the GCC already express reservations in their opinion on GCC/DOC 5/2022⁴⁵. Under the guise of “diversity” and encouraging candidates from under-represented countries⁴⁶, the President intends to facilitate access to the Office to staff not having a sufficient command of the EPO official languages.

The language requirements of an international organisation are set high for good reasons. Multilingualism contributes to the international character of an organisation because it promotes tolerance, increased participation of all Contracting States in the organisation’s work, as well as greater effectiveness, better outcomes and more involvement of staff. More concretely, it contributes to eliminating the disparity between the use of English and the use of the other official languages and to ensure the full and equitable treatment of all the official languages.

Since its foundation, the EPO has succeeded in attracting talents with very good language skills. Many recent reforms have weakened the attractiveness of the EPO as an employer. Lowering the language requirements is not a viable attempt to continue attracting applicants from all contracting states.

Furthermore, the work at the EP, especially in the Patent Granting Process, is specific in that a sufficient command of EPO languages cannot be dissociated from professional / technical expertise since both are necessary to fulfil the EPO’s core mission with the appropriate efficiency and quality standards. IT tools and automatic translation will not be a stopgap in the foreseeable future.

In conclusion, the CSC members of the GCC consider that lowering the language standards does not increase the diversity or attractiveness of the Office as an employer, but rather lower the standards and the quality of the services offered.

Update on the Office’s Praktika Extern / Intern

The Praktika Extern scheme was introduced in the 1990ies in order to enable patent examiners to work in a patent law firm or department, for up to three months. The scheme was updated in 2010 with a much reduced duration and an extension to formalities officers. The CSC members of the GCC welcome the extension to all DGs in principle. However, they wonder whether a “virtual” or “hybrid” setting makes sense for the very short duration of the traineeship.

3. Conclusion

The CSC members of the GCC do not oppose the general buzzwords of “mobility”, “agility” or “flexibility”. Some isolated measures might be beneficial if correctly applied by a reasonable appointing authority.

However, the package proposes measures that are potentially costly and depart from clear, consistent and predictable conditions of employment, and which are based on bilateral and confidential agreements and/or discretionary decisions, without any concrete checks and balances:

Therefore, the CSC members of the GCC give a **negative** opinion on the document as a whole, under protest.

The CSC members of the GCC

⁴⁵ See the published [GCC report \(sc20026cp\)](#).

⁴⁶ See the CA document, §60