

Opinion of the CSC members of the GCC on [GCC/DOC 12/2022](#) Circular 405: Extension & Conversion of fixed-term appointments

The CSC members of the GCC give the following opinion on document GCC/DOC 12/2022.

Introduction

Since the introduction of fixed-term contracts, Staff Representation has fought to diminish the risk of non-conversion. Civil servants need stability to be able to carry out their tasks with full independence, and this is even more valid for the intellectually challenging tasks that the staff of the EPO perform. Job security is crucial for anyone who wants to settle down with their family and everybody should be given the opportunity to do so. Countless studies have shown how gruelling the effect of temporary contracts is. Planning life or even just the next few years is practically impossible if your contract is due to expire.

The modalities and mechanisms for the extension/conversion of fixed-term appointments were listed as a priority in the [2020 social dialogue agenda](#). A review of the whole new employment framework with an initial focus on, *inter alia*, setting transparent time limits and criteria regarding the extension/conversion of fixed-term contracts is crucial for our colleagues who are suffering from the effects of job instability. Of course, the preferred solution would be the complete abolishment of fixed-term appointments.

A short history of fixed-term appointments at the EPO

From one generation of EPO staff to the next, work conditions have often worsened. Recent years have certainly not been an exception: fundamental changes have been introduced to the employment framework with the introduction of fixed-term contracts for all new recruits.

One leitmotiv of recent reforms is that risks related to uncertain future developments have been outsourced from the Organisation to the individual employee. The introduction of fixed-term contracts for all new recruits in 2018, for which extensions or conversions depend on “business needs”, or even a “strong business case”, is the most recent of a number of such reforms that are at the expense of staff. This dependency on “business needs” refers, among other things, to the number of incoming patent applications and the development of technical fields.

Colleagues on fixed-term contract also are ineligible for home leave or home loans; the former appearing completely unjustified when these colleagues are in the same situation as the rest of the staff, often living far from their families and friends; and the latter being particularly detrimental when considering the current state of the housing market in the places of employment of the EPO.

Fixed-term contracts before 2018

Before 2018 the EPO had three kinds of fixed-term contracts and the total number of staff with such contracts was limited to a maximum of 5% of the overall workforce.

- **Euro Contracts** were introduced in 1992 with [CA/D 15/92](#). They had a maximum five-year term, exceptionally extendable by two years. The introduction of this type of contract was contested in front of the ILOAT (Judgement No. 1618 of 30.01.1997).

They were introduced to respond “to a temporary staff shortage (...) for the purpose of carrying out occasional tasks (...) which justify limiting the term of the contract.”

- **Non-renewable contracts** (NRC) are contracts for the performance of short-term duties or to replace other staff for a maximum term of three years. NRC were introduced in 2009 in [CA/D 6/09](#). They had a term of at least six months and at most three years. As of 1 April 2018, staff can no longer be recruited on NRCs.
- 5-year contracts for directors, PDs and VPs.

Fixed-term contracts as of 2018

First proposal: Abolishment of permanent appointments for all newcomers

In October 2017, the EPO management reflected on expanding the use of fixed-term contracts. The initial plan was to exclusively use fixed-term contracts¹ (duration of some months up to five years) for all newcomers. Multiple renewals of contracts were possible, and newcomers would have been under contract until retirement. However, this did not find support by the Administrative Council (AC). Staff representation was alarmed by the plans for a further “precarisation²” of the EPO employment framework and its consequences on the working conditions of staff³ (see Figure 1).

In November 2017, a new proposal⁴ was presented which included a maximum duration under contract of 15 years followed by a possible conversion of the fixed-term appointment to a permanent appointment (under the discretion of the management). An upper ceiling on the proportion of staff on contract of 40% was introduced.

Shock proposal: Abolishment of permanent employment also for current staff

As this new proposal also found no support in the AC, management switched to “attack mode” and, in February 2018, tabled a proposal⁵ including the *de facto* abolishment of the permanent nature of appointments for all new and current staff of the EPO⁶ (see Figure 2). This was quickly identified as a rather invidious but effective diversionary tactic. The ominous Article 53(1)(f) ServRegs proposal, helped to draw the attention and efforts away from opposing the introduction of fixed-term appointments for newcomers.

¹ Modernisation of the Employment Framework at the EPO, [CA/103/17](#) and [CA/103/17 Add. 1](#), 06.10.2017

² From “To render precarious”, the process by which the number of people who live in [precarity](#) increases. Precarity is a precarious existence, lacking in [predictability](#), [job security](#), [material](#) or [psychological](#) welfare.

³ The precarization of the Employment Framework, Central Staff Committee, 09.11.2017, [link](#)

⁴ Modernisation of the EPO's employment framework: Orientation paper, [CA/121/17](#), 24.11.2017

⁵ For Consultation – Modernisation of the Employment Framework of the EPO (CA 3/18), [GCC/DOC 1/2018](#), 13.02.2018

⁶ Abolishing permanent employment for all staff, Central Staff Committee, [link](#), 12.02.18.

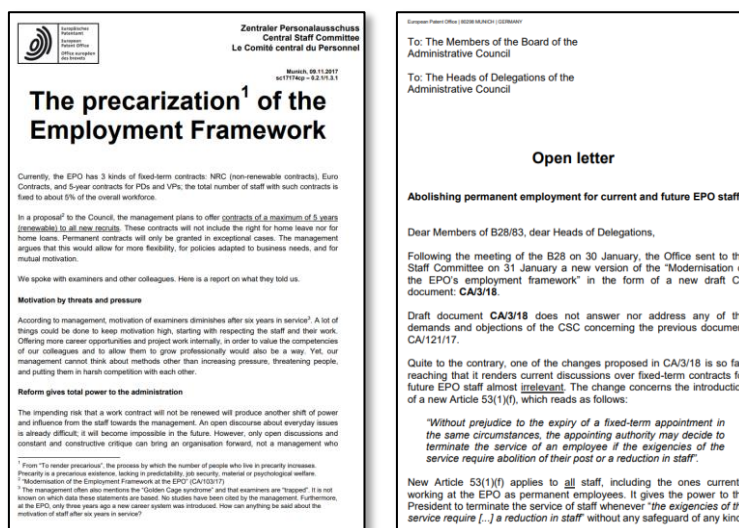


Figure 1: Publications on the new employment framework by the Central Staff Committee in 2017 and 2018

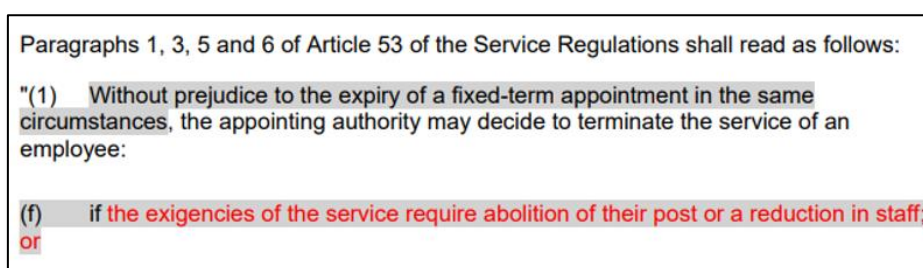


Figure 2: De-facto abolishment of permanent contracts for all staff. Proposal for new Article 53(1)(f) ServRegs⁵

March 2018: A consensus in the AC has been reached: maximum 10 years of contracts

In March 2018 the Administrative Council (AC) approved a revised proposal⁷ for introducing fixed-term appointments which did not include Article 53(1)(f) ServRegs. The proposal did still not find approval among all delegations: the delegations of Germany, Italy and Switzerland voted against the revised proposal⁸. The delegations from Ireland and Liechtenstein abstained.

As of 1 April 2018, fixed-term appointments for all newcomers have become the reality

All newcomers are offered fixed-term appointments with the following terms (see CA/3/18⁷):

⁷ Modernisation of the EPO's employment framework, [CA/3/18](#), 23.02.2018

⁸ Draft minutes of the 155th meeting of the Administrative council, point 115, [link](#)

- For job groups 4 to 6: duration contract \leq 5 years (e.g., 2 years, 3 years, etc.), total duration of consecutive fixed-term appointments \leq 10 years (Article 8(2) ServRegs).
- Proportion of staff under fixed-term appointment up to 20% of the total budgeted posts⁷.
- Indemnity for loss of job⁹, safeguard of maternity leave¹⁰ and cases of incapacity¹¹.
- On termination of a contract possibility to keep office's health insurance for 12 months (contributions are to be borne by the employee) (Article 83(a) ServRegs).
- No obligation for the EPO to convert a fixed-term appointment to a permanent appointment. After 10 years of service, the Office may decide not to convert a contract into a permanent one because conditions such as needs of the service, satisfactory performance and quotas are not fulfilled (Article 11(4) ServRegs).

Today, 270 colleagues are on fixed-term appointment

As of the end of 2021 the number of staff on fixed-term appointment was 270, more than double the number at the end of 2017, when 105 staff had fixed-term appointments (see Table 1).

Headcount	Function	31 Dec. 2017	31 Dec. 2018	31 Dec. 2019	31 Dec. 2020	31 Dec. 2021
Permanent staff	Examiners	4 237	4 204	4 143	4 005	3 907
	Patent procedure support	613	615	623	497	556
	Other	1 593	1 506	1 412	1 345	1 332
Total permanent staff		6 443	6 325	6 178	5 947	5 795
Total language fixed-term contracts		152	69	5	0	0
Normal fixed-term appointments	Examiners	0	12	93	94	92
	Patent procedure support	105	0	6	7	7
	Others		124	141	159	171
Total normal fixed-term contracts		105	136	240	260	270
Members of Boards of appeal		150	166	185	196	196
Total		6 859	6 696	6 608	6 403	6 261

Table 1: Number of permanent and non-permanent staff at the EPO.

Source: [EPO Social Reports 2017-2021](#)

⁹ Article 53 ServRegs. One month's basic salary for the first five years of continuous service, 1.25 months' basic salary for the following five years of continuous service and 1.5 months' basic salary for any further years of continuous service, (ii) together with the household and dependant's allowance

¹⁰ Article 61 ServRegs: Should a fixed-term appointment expire during the period of maternity leave it is automatically extended for the fixed duration necessary to bring the maternity leave to a maximum of ten weeks after the birth of the child

¹¹ Article 62c ServRegs: Should incapacity be confirmed for a fixed-term employee upon termination of service the employee continues to receive a salary and full benefits under the social security scheme

2021-2022 Working group on conversion/extension of fixed-term contracts

The employment framework ([CA/3/18](#)) introduced in 2018 lacked details on how and when fixed-term appointments are to be extended/converted. To clarify this procedure the administration planned to draft a new circular. To this end a working group including members of staff representation and management has been set up. The mandate is illustrated in Figure 3.

Mandate

On the basis of the legal framework in place and in view of a transparent, proactive and harmonized approach, the mandate is framed to clarify the process and procedure on extension and conversion of fixed term appointments via a new circular.

Figure 3: Mandate of working group on conversion/extension of fixed-term contracts.

The administration stated that the aim of the new circular was to outline a proactive, harmonised, and transparent process that gives staff on fixed-term contracts greater clarity about their future prospects at the Office¹². The working group met seven times over the period January 2021 - Mai 2022.

The CSC appointees in the working group have made several publications during the consultation process:

- [A part](#) summarising arguments by the management & counter-arguments from Staff Representation
- [A part](#) explaining why fixed-term contracts are a serious cause for concern
- [A part](#) explaining our proposal for the conditions for conversion/extensions of fixed-term contracts

The initial time plan foresaw the implementation of a new Circular No. 405 as from 1 July 2021. Only on 5 July 2022 the new Circular No. 405 has been discussed in the General Consultative Committee (GCC). The entering into force was foreseen for 1 August 2022.

¹² Fixed-term appointments, announcement EPO intranet on 17.06.2021, [link](#)

Opinion on Circular No. 405

Circular No. 405 provides minor improvements of working conditions for staff on fixed-term appointments. However, it still falls short of providing more predictability and work stability. Every decision regarding conversion/extension is at the discretion of the administration and the administration does not commit to anything with regard to the employees, e.g., offering alternative posts in case a job position is abolished.

There are some positive aspects in Circular No. 405, which are worth mentioning:

- Contracts must have a length of 5 years and the fixed-term appointment can only be extended once. While 5-years contracts were the de facto practice already for all newly recruited examiners since 2018, this was not true for non-examiner colleagues on fixed-term appointments. In future, contracts with a length of less than 5 years (e.g., 1 year, 2 years) are no longer possible.
- The uniform notice period of 12 months for all decisions on extensions/conversions, the transitional measures for colleagues currently under fixed-term contracts, and the fact that employees have the possibility to comment in case a contract risks not to be converted/extended are further improvements.

However, **two crucial issues remain**:

- the lack of predictability and the general principle of the total duration of 10 years on fixed-term appointment for (almost) all. Staff representatives in the WG challenged this proposal, by asking whether this would allow colleagues to take major decisions, for example to start a family, to settle down, to purchase a house. The answer is no: Circular No. 405 and especially the 10 years do not make it any easier to plan the future.
- the only vague criteria for deciding on conversion/extension are not further specified “business needs” and “performance”. Colleagues on fixed-term contracts might have shown a good performance but their post might still run the risk to disappear after 10 years because of changing “business needs” which are out of their control.

The lack of predictability and the 10 years are two points which have been raised times and times again by colleagues on fixed-term contracts. Figure 4 shows feedback which staff representation gathered during MS Teams meetings and from emails from colleagues on fixed-term contracts. After the publication of draft Circular No. 405 many colleagues expressed their disappointment of the outcome of the working group. Every publication of the administration stated that the goal was to give greater clarity to our colleagues. The preamble of the circular mentions the term predictability four times. But the outcome on predictability is indeed modest.



Figure 4: Feedback from staff on fixed-term contracts

Ten years are too long

Ten years on fixed-term appointment is far too long. Job security is crucial for anyone who wants to settle down and have a family and everybody should be given the opportunity to do so. Constant insecurity has a tremendous impact on health and wellbeing.

Fixed-term appointments not only put undue pressure and stress on our colleagues, but also create many risks for the EPO and have inevitable negative effects. It jeopardizes the attractiveness of the Office as an employer, collaboration, employee engagement, corporate culture, diversity and inclusion, and many others. These are all essential ingredients for an environment in which knowledge workers can thrive and produce the high-quality work that the European economy and public expect from the EPO.

The CSC members of the GCC are surprised about the rather dogmatic view of the administration on the 10 years and they believe that the management is pushing the issue on contracts to a counterproductive extreme without sound arguments. Flexibility for the administration is still very high with a single 5-year contract (followed by conversion) but holding staff on a contract for 10 years just creates more problems than it solves.

The following questions remain without answer:

- Administration claims that the 10 years would be good for EPO finances. What would be the difference for EPO finance if we had only 5 years on contracts as opposed to 10 years. How are the risks for example on recruitment and patent quality quantified?
- Administration states that the 10 years would not have a negative effect on recruitment. Was there a change since 2018 in the numbers of people refusing an EPO job-offer as compared to before the introduction of fixed-term contracts ?

The administration was reluctant to discuss these issues.

Reality check of the CSC proposal: European Space Agency (ESA)

The EU Commission offers contracts for up to 10 years but it seems that they are struggling to recruit the best. At the German patent office employees get permanent after 5 years. In France, Germany, the Netherlands and Italy (to name but a few), contracts of 10-year duration are not possible.

It is worth having a look at the working conditions at the European Space Agency (ESA). At ESA employees become permanent after 4 years and only in exceptional cases will the contract be extended. This shows that our proposal to convert appointments after 5 years is not only positive, but also realistic. (See [here](#) and Rule 9/3 of Staff Regulations of the ESA [here](#))



- Initial 4-year contract
- Permanent after 4 years
- 1-year notice period

Rule 9/3	Contract – Category A and L staff
(i)	Category A and L staff other than those covered by Rules 9/1, 9/4, 9/5 and 9/6 shall be appointed for an initial period of 4 years.
(ii)	Their letter of appointment shall state that, not later than by the end of the third year of their appointment, they will be informed either: <ul style="list-style-type: none"> (a) that their appointment will not be extended, or (b) that their appointment will be extended for an indefinite period, or again (c) that their appointment will be extended for a fixed period, if the Director General considers it inappropriate to grant an indefinite appointment at that stage. Not later than one year before expiry of this extension, the staff member concerned shall be informed of one of the three decisions mentioned in this paragraph (ii).
(iii)	For scientific staff serving in the Space Science Department on the basis of fixed-term contracts, the non-extension of a contract after eight years of service shall confer an entitlement to an indemnity for loss of job calculated under the provisions of Rule 21.7/2 (ii).
(iv)	Reasons will not be given for decisions concerning the extension or non-extension of appointments; however, the staff member concerned shall be heard by his Director before the Director General takes a decision.
(v)	An A-grade staff member's previous service in Category B shall be taken into account in the calculation of the periods referred to in paragraphs (i) and (ii) above. If such service amounted to three years or more by the time he transferred to Category A, he shall immediately be given an indefinite-term contract.

Figure 5: Working conditions at ESA

Core value of the EPO: Fairness – but not for the younger generation

With the introduction of the new employment framework in 2018, the challenges and unpredictability of the future (e.g., fluctuations in incoming workload, ongoing digitalisation, technical fields which are dying, etc.) have been delegated to a young generation of new employees, whereas in the past these challenges have been partly taken over collectively by the Organisation. If the EPO were to face problems, these colleagues could conveniently be let go and with them the risks and related problems are externalised.

In the time of a global pandemic, colleagues on contracts and especially those who are parents with younger children have been working under more pressure than just about everyone else at the Office. They are literally fighting for their livelihoods, there is no room for mistakes or excuses. If production targets were set at high levels, they did everything humanly possible to meet these targets.

Putting the risks of the future on the shoulders of a young generation is conflicting with the core values of the EPO. Individual responsibility of each employee for their work and for the future of the EPO is very important; however, a better balance must be found between what risk should be shared and handled by the Organisation as a whole and what risk can be put on the shoulders of individual colleagues and to the younger generation. Circular No. 405 does not at all address this issue.

Criteria for conversion/extension

The only criteria for deciding on conversion/extension in Circular No. 405 are not further specified “business needs” and “performance”. Conversion of a contract before the end of the 10 years of continuous service is possible but will be exceptional. The circular lacks clear criteria which could provide greater clarity or predictability.

20%-ceiling on budgeted posts

The number of employees on fixed-term appointments may not account for more than 20% of the total of budgeted posts (see [CA/D 2/18](#)). The apparent motivation behind using the

budgeted posts for the 20%-limit was to define a limit which would not fluctuate very much but would approximately mirror the actual number of staff working at the EPO. However, today there is a gap of about 10% between the actual headcount at the EPO and the budgeted posts.

It is proposed to use headcount instead of the budgeted posts to calculate the limit. According to our simulation in this way the 20%-limit would be reached in 2029 (based on data from the [Actuarial report 2021](#) and the [Orientation paper on recruitment 2022](#), active staff members reduced by 1000 over the next 10 years and replacement rate of 64%). If budgeted posts were used, the 20% limit would be reached only in 2032.

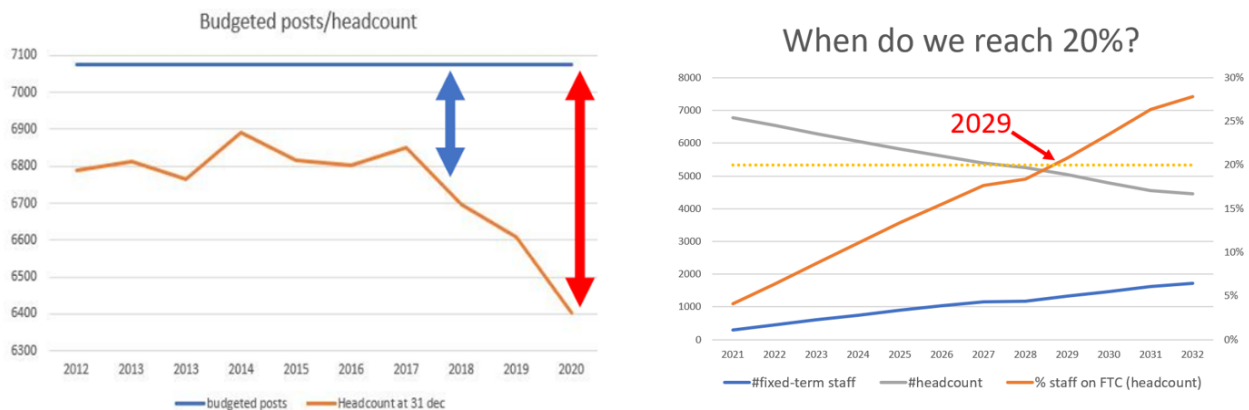


Figure 6: Difference between budgeted posts and the actual headcount (left). When will the 20% limit be reached considering the predicted evolution of the headcount at the EPO (right).

The problem of the gap has been acknowledged. However, the President decided to approach the problem differently. Instead of defining a new 20% limit based on headcount the President will propose to the AC to adapt the number of budgeted post (currently 7,075 posts) to bring it closer to the actual headcount, which is currently 6,261 ([Social Report 2021](#)). A concrete number has not been mentioned. The CSC members of the CSC do not support this approach.

It is difficult to evaluate the impact of a reduced number of budgeted posts. What can probably be said with certainty is that colleagues currently on fixed-term contracts will unfortunately not benefit from this, they will not be converted earlier than 10 years because of the 20%-ceiling. They will suffer the consequences of the recruitment freeze in recent years.

A general model of one 5-year contract and then conversion should be implemented also to avoid the issue with hitting the 20%-limit. What would happen once the 20% limit is reached? The administration assumes that colleagues will probably be converted earlier if the requirements on performance and business needs are met. Seniority should in any case be the primary criteria for conversion. Circular No. 405 is silent on this issue which causes yet another point of insecurity for staff on fixed-term contract.

Conversion earlier than 10 years

A conversion should take place for all colleagues before 10 years as a general rule and only in exceptional cases at the 10-year mark. The 20%-limit will be reached at some point in time, there is no doubt. Following that point, at a steady state of recruitment and retirement,

contracts will probably have to be converted after 5 to 6 years in order to comply with the 20%-limit.

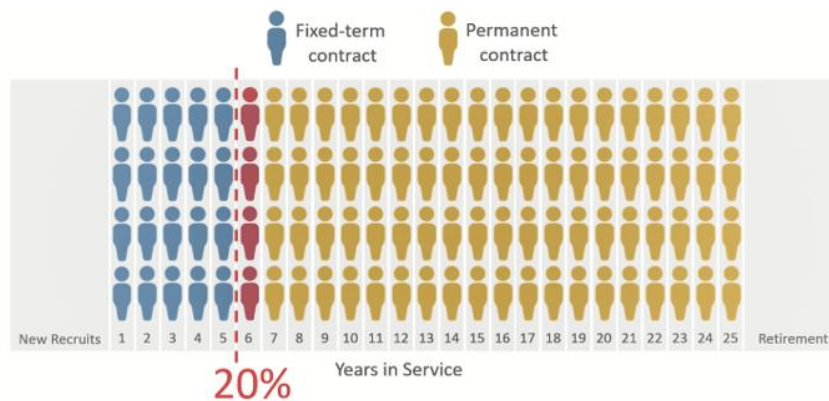


Figure 7: At a steady state of recruitment and retirement, contracts will definitely have to be converted after 5 to 6 years to comply to the 20% rule (see [explanatory video](#)).

With the introduction of the 20%-limit the Administrative Council's intention was that in exceptional cases a staff member should remain on a contract for 10 years, but the normal cases should be converted earlier. If the intention would have been to keep everyone on a contract for 10 years, then the Administrative Council would have set the limit not to 20% but to 40%.

Unsatisfactory possibility to comment in case of non-conversion/non-extension

Circular No. 405 stipulates a possibility for a colleague to submit comments to the administration within a 10-day time limit in case of non-extension/non-conversion. The CSC members of the GCC generally welcome this approach.

It is required that colleagues are notified in writing of the underlying reasons for non-conversion/non-extension of a contract before they are expected to give counter-arguments. Staff would learn about the non-conversion/non-extension in informal meetings with their line managers or through HR. However, written communication offers less space for ambiguity and interpretation. The administration has rejected the requests to include such a written communication before being invited to comment and the extension of the time limit for comments to 20 working days.

Staff Representation involvement

Staff representation involvement should be part of the circular. This would allow for more transparency and support for all colleagues on fixed-term contracts, especially in view of possible non-extensions/non-conversions. In addition, it was proposed to jointly monitor the implementation of the circular. The administration rejected a direct involvement but promised to provide information about the implementation of the circular during regular meetings with the CSC.

Alternative job allocation

An "extra effort" should be made by the administration for job re-allocation, so that colleagues whose contracts could not be extended or converted, would be preferentially offered alternative job opportunities within the EPO.

The administration confirmed their effort to accommodate colleagues in another suitable post in case non-extension/non-conversion was linked to a non-availability of a budget post in the current unit. According to them, this has been common practice also in the past, as the intention is to retain talent. Unfortunately, the circular is silent on this topic. Only in the preamble reference is made to this intention.

Equal treatment

A safeguard for colleagues on fixed-term contracts should be added to the circular, so that their vulnerable position during their contractual period cannot be abused to exert extra pressure. All colleagues should be equally treated and colleagues on fixed-term appointment should not be asked to perform more than other staff. Further, non-conversions and replacement by cheaper new recruits or overrecruiting so that newcomers have to compete for a limited number of permanent appointments must not happen.

The home loan scheme should be accessible to colleagues on fixed-term appointments, preferably under the same conditions as permanent staff, or at least after they have been at the Office for 5 years. The loan is protected by entry in the land register, the Salary Savings Plan and the severance grant, hence the risk for the EPO is low.

Furthermore, colleagues on contracts are generally more hesitant to ask for parental, special leave, etc. , to which they are entitled. This should be monitored to ensure inequality does not increase further.

Oral assurance that everybody should and will be treated equally is welcome. However, the introduction of a safeguard in the Circular No. 405 on these issues has been refused.

Transitional measures

Circular No. 405 will be applied also to those colleagues currently on fixed-term contracts and Article 4 vaguely defines the “transitional measures”. The CSC members of the GCC insist on transparency and fairness when applying the new rules. The assurance that colleagues will be treated on a case-by-case basis and that colleagues in the same situation will be treated in a similar way is no commitment. The CSC members of the GCC request that clear rules be defined for the transitional measures and that the Staff Representation be involved in the process.

Conclusion

During the consultation process, the administration has taken up some of the suggestions made by the Staff Representatives. However, the CSC members of the GCC are of the opinion that the outcome of the process, i.e. Circular No. 405, contains too many stumbling blocks and is too far from aligning the interests of the Office and those of the new staff.