Europäisches Patentamt
European Patent Office
Office européen des brevets

Zentraler Personalausschuss
Central Staff Committee
Le Comité Central du Personnel

Munich, 16/12/2022
sc22148cp

Report on the GCC meeting of 22 November 2022

Dear Colleagues,

There were fourteen (!) documents on the official agenda. Of particular impact on staff were the documents on:

- Adjustment with effect from 1 January 2023 of salaries and other elements of the remuneration of employees of the EPO and of pensions paid by the Office (CA/74/22; GCC/DOC 19/2022);
- Adjustments to the health services (CA/85/22; GCC/DOC 27/2022), which we requested to withdraw, in vain;
- Flexibilisation of parental leave (CA/87/22) & amendments to Circular 22 (GCC/DOC 28/2022);
- Adjustment in medical coverage for children beyond 18 years (CA/92/22; GCC/DOC 29/2022).

The President had scheduled two hours (!) for the meeting. He agreed to our request for additional time. The meeting lasted about 3,5 hours, which was too short, as usual.

For the second time, the President was absent and delegated the chairmanship to Vice-President DG5. He announced that he would personally chair the next GCC meeting on 16 December 2022.

We provided the President and the GCC members with a written and reasoned opinion on all documents submitted (see annexes).

The Central Staff Committee

Annexes

Opinion_GCC_DOC_19_2022

Opinion_GCC_DOC_20_2022

Opinion_GCC_DOC_21_2022

Opinion_GCC_DOC_22_2022

Opinion_GCC_DOC_23_2022

Opinion_GCC_DOC_24_2022

Opinion_GCC_DOC_25_2022

Opinion_GCC_DOC_26_2022

Opinion_GCC_DOC_27_2022

Opinion_GCC_DOC_28_2022

Opinion_GCC_DOC_29_2022_Rev

Opinion_GCC_DOC_30_2022

Opinion_GCC_DOC_31_2022

Opinion_GCC_DOC_32_2022

Opinion of the CSC members of the GCC on GCC/DOC 19/2022:

Adjustment with effect from 1 January 2023 of salaries and other elements of the remuneration of permanent employees of the European Patent Office and of pensions paid by the Office (CA/74/22)

The CSC members of the GCC give the following opinion on the adjustment proposed in GCC/DOC 19/2023.

The CSC members of the GCC appreciate that three meetings of the GCC SSPR could take place in which questions as to the proposed adjustment were discussed. The meetings on 24 October 2022 with the administration, on 25 October 2022 with the Advisory Group on Remuneration, and on 9 November 2022 with experts from the International Service for Remunerations and Pensions contributed to a better understanding of how the administration calculated the adjustment.

However, it could not be clarified in the three meetings nor in the GCC consultation itself how the calculation is derived from the existing Implementing Rule for Article 64 ServRegs. On the contrary, the CSC members of the GCC have to conclude that the calculation does not comply with the Implementing Rule as far as it can be understood. Reference is made to the "Comment by the Staff Representation" in Annex 1 of GCC/DOC 19/2022, which the CSC members of the GCC fully support.

In addition, the CSC members of the GCC agree on the observation that the GDP has reached its 2019 level (see section 7 of GCC/DOC 19/2022). The precondition laid down in Article 11(2) of the Implementing Rule is thus fulfilled.

Furthermore, the CSC members of the GCC agree to the observation that the Eurozone HICP inflation was at +8.6% at the relevant time (see section 25 of GCC/DOC 19/2022). However, the calculation of the cap according to Article 9(1) of the Implementing Rule should have resulted in +8.8172% instead of +8.8%. The Implementing Rule refers to a limit "indexed to annual Eurozone inflation **+0.2%**" (emphasise added, not percentage points), thus 1.086 * 1.002 = 1.088172.

Notwithstanding the above diverging opinion on the calculation of the limit, the CSC members of the GCC agree to the observation that the weighted increase is lower than the limit. The preconditions of Article 9(2) and (4) of the Implementing Rule is thus fulfilled. An adjustment foreseen in Article 9(2) of the Implementing Rule as far as it can be understood could be observed.

However, the application of Article 9(4) of the Implementing Rule remained obscure. It reads: "If the weighted increase is lower than the limit, any remainder of the previous annual adjustment resulting from the calculated adjustment and the limit set out in paragraph 1 shall be included in the current adjustment up to the limit." The remainder of the previous annual adjustment resulting from the calculated adjustment and the limit set out in paragraph 1 was calculated as +4.9% for Germany, +3.9% for the Netherlands, +4.1% for Austria, and +2.2% for Belgium (see CA/71/21, section 28). The CSC members of the GCC conclude that the "additional uplift of the adjustment percentages of 2.2% on average" (see section 56 of GCC/DOC 19/2022) is below the

possible percentage and not in accordance with the above regulation as far it could be understood. This inconsistency between the percentage available for an increase of the adjustment up to the limit between documents CA/71/21 and GDD/DOC 19/2022 was never explained by the administration in our meetings, nor in any of the documentation provided this year.

Furthermore, if the weighted average is below the cap, “the salary adjustment will be increased for all staff by the same proportion” (see CA/19/20, section 53). The administration was not able, even upon repeated request, to provide this common proportion factor according to which the salary adjustment was increased. The CSC members of the GCC rather observe that the increase of the salary adjustment was overproportionate for example for the Netherlands and for France and underproportionate for example for Germany and for Ireland. Different adjustment factors had to be observed. This is in contradiction to Article 9(4) of the Implementing Rule as far as it can be understood and its introduction in CA/19/20.

Finally, regarding the periodical settlement, the CSC members of the GCC disagree to the statement in section 57 of GCC/DOC 19/2022 that “implicitly that redistribution pool is entirely exhausted” and section 31 that concludes that “no periodical settlement will be necessary”. As the above-mentioned additional uplift of the adjustment percentages of 2.2% on average is not above the remainder (+4.9% for Germany, +3.9% for the Netherlands, +4.1% for Austria, and +2.2% for Belgium (see CA/71/21, section 28)), the redistribution pool cannot be exhausted. According to Article 10(1) of the Implementing Rule as far as it can be understood, the redistribution pool shall be paid out to employees as a lump sum. The CSC members of the GCC criticise that the amount of the redistribution pool was not explicitly calculated by the administration. This is in contradiction to the regulation for the periodical settlement as far as it can be understood.

The CSC members of the GCC

Opinion of the CSC members of the GCC on GCC/DOC 20/2022:

Revision with effect from 1 January 2023 of the rates of the daily subsistence allowance (CA/75/22)

The CSC members of the GCC give the following opinion on the revision proposed in GCC/DOC 20/2022.

The proposed revision 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 foreseen adjustment of +11.23% is a combination of the arithmetic average of the salary adjustments of +2.24% foreseen for 2022 but postponed and the arithmetic average of the salary adjustments of +8.79% calculated for 2023.

The CSC members of the GCC do not object to the geometrical combination of the average percentages for 2022 and for 2023. This is based on the observation that the average of the geometrical combinations of the adjustments for Austria, Germany and the Netherlands would have been only marginally different to the calculated value.

The salary adjustments foreseen for 2022 but postponed are the result of the calculation on which the CSC members of the GCC gave a detailed negative opinion (GCC/DOC 17/2021) after the consultation on 23 November 2021. The salary adjustments calculated for 2023 could not be understood as an implementation of Article 64 ServRegs according to the official Implementation Rules, which is further outlined in the opinion on GCC/DOC 19/2022.

The CSC members of the GCC are therefore of the opinion that the proposed revision suffers from the same deficiencies as the underlying annual salary adjustments for Austria, Germany and the Netherlands for 2022 and for 2023 respectively.

The CSC members of the GCC

Opinion of the CSC members of the GCC on GCC/DOC 21/2022:

Annual adjustment of young child allowance and education allowance with effect from 1 January 2023 (CA/75/22)

The CSC members of the GCC give the following opinion on the adjustment proposed in GCC/DOC 21/2022.

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 foreseen adjustment of +11.23% is a combination of the arithmetic average of the salary adjustments of +2.24% foreseen for 2022 but postponed and the arithmetic average of the salary adjustments of +8.79% calculated for 2023.

The CSC members of the GCC do not object to the geometrical combination of the average percentages for 2022 and for 2023. This is based on the observation that the average of the geometrical combinations of the adjustments for Austria, Germany and the Netherlands would have been only marginally different to the calculated value.

The salary adjustments foreseen for 2022 but postponed are the result of the calculation on which the CSC members of the GCC gave a detailed negative opinion (GCC/DOC 17/2021) after the consultation on 23 November 2021. The salary adjustments calculated for 2023 could not be understood as an implementation of Article 64 ServRegs according to the official Implementation Rules, which is further outlined in the opinion on GCC/DOC 19/2022.

The CSC members of the GCC are therefore of the opinion that the proposed adjustment suffers from the same deficiencies as the underlying annual salary adjustments for Austria, Germany and the Netherlands for 2022 and for 2023 respectively.

The CSC members of the GCC

Opinion of the CSC members of the GCC on GCC/DOC 22/2022:

Circular 426: Revision with effect from of [sic] 1 January 2023 of the rates of the kilometric allowance

The CSC members of the GCC give the following opinion on the revision proposed in GCC/DOC 22/2022.

The proposed revision 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 foreseen adjustment of +11.23% is a combination of the arithmetic average of the salary adjustments of +2.24% foreseen for 2022 but postponed and the arithmetic average of the salary adjustments of +8.79% calculated for 2023.

The CSC members of the GCC do not object to the geometrical combination of the average percentages for 2022 and for 2023. This is based on the observation that the average of the geometrical combinations of the adjustments for Austria, Germany and the Netherlands would have been only marginally different to the calculated value.

The salary adjustments foreseen for 2022 but postponed are the result of the calculation on which the CSC members of the GCC gave a detailed negative opinion (GCC/DOC 17/2021) after the consultation on 23 November 2021. The salary adjustments calculated for 2023 could not be understood as an implementation of Article 64 ServRegs according to the official Implementation Rules, which is further outlined in the opinion on GCC/DOC 19/2022.

The CSC members of the GCC are therefore of the opinion that the proposed revision suffers from the same deficiencies as the underlying annual salary adjustments for Austria, Germany and the Netherlands for 2022 and for 2023 respectively.

The CSC members of the GCC

Opinion of the CSC members of the GCC on GCC/DOC 23/2022:

Circular 427: Revision with effect from 1 January 2023 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 23/2022.

The proposed revision of the rates 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 foreseen adjustment of +11.23% is a combination of the arithmetic average of the salary adjustments of +2.24% foreseen for 2022 but postponed and the arithmetic average of the salary adjustments of +8.79% calculated for 2023.

The CSC members of the GCC do not object to the geometrical combination of the average percentages for 2022 and for 2023. This is based on the observation that the average of the geometrical combinations of the adjustments for Austria, Germany and the Netherlands would have been only marginally different to the calculated value.

The salary adjustments foreseen for 2022 but postponed are the result of the calculation on which the CSC members of the GCC gave a detailed negative opinion (GCC/DOC 17/2021) after the consultation on 23 November 2021. The salary adjustments calculated for 2023 could not be understood as an implementation of Article 64 ServRegs according to the official Implementation Rules, which is further outlined in the opinion on GCC/DOC 19/2022.

The CSC members of the GCC are therefore of the opinion that the proposed revision suffers from the same deficiencies as the underlying annual salary adjustments for Austria, Germany and the Netherlands for 2022 and for 2023 respectively.

The CSC members of the GCC

Opinion of the CSC members of the GCC on GCC/DOC 24/2022:

Circular 425: Contribution for gainfully employed spouses to the healthcare insurance scheme in 2023 (Article 83a(1)(a) ServRegs)

The CSC members of the GCC give the following opinion on document GCC/DOC 24/2022.

The calculations of the contribution for gainfully employed spouses are to be calculated with reference to the market prices for low premiums offered by reputable private healthcare insurers for the minimal cover required by law in the spouse's country of employment. The CSC members of the GCC appreciate that the document on the market analysis produced by MercerMarsh Benefits was pre-discussed in the GCC SSPR on 27 October 2022.

The CSC members of the GCC observe that the calculated contributions result from a comprehensible application of the Implementing Rules for Articles 83a, 84 and 84a of the Service Regulations – except for Germany. For many years Hallesche Krankenkasse has been taken as the reference for the contributions in Germany (and other countries than Austria and the Netherlands). However, it appears that reputable private healthcare insurers such as Debeka, DKV, Universa offer lower premiums. It is therefore difficult to understand that the market analysis of all 42 German private health insurance companies still resulted in the above choice as the reference.

The proposal by the administration to reconsider the choice in 2023 is in line with a long-standing claim of the Staff Committee. This step is very much welcomed.

The CSC members of the GCC

Opinion of the CSC members of the GCC on GCC/DOC 25/2022 (Circular 368):

Guide to cover under the healthcare insurance scheme
(Article 83a Service Regulations and Implementing Rules thereto)

Background

The CSC members of the GCC give the following opinion on document GCC/DOC 25/2022 (Circular 368).

The GCC-SSPR met to discuss the Guide to Cover three times in 2022 (28th Feb, 20th June, 4th Oct). While the members from the administration and those from Staff representation did not agree on certain issues, the discussions remained respectful throughout and agreement could be found in some limited instances.

On the substance

<u>On the amendments that were included in the revised version of the guide to cover</u>
In general terms, the amendments implemented this year have been rather limited in scope, with minor changes to the coverage offered to staff. These amendments resulted from proposals that were brought by the administration, and fine-tuned during healthy discussions across the three meetings.

The amendments include some areas where restrictions for cover have been broadened, such as removing the age limit for the HPV vaccination, and increasing the number of applicable situations for which rehabilitation treatments and Botulinum toxin therapy is reimbursable, which we fully support. Furthermore, following the trends that have developed over recent years, necessitated by the pandemic, consultations with a doctor via the internet are now also covered without restriction, which we also see as a benefit to staff. In addition, the percentage of reimbursement for treatments in nursing homes was also beneficially increased from 30% to 40%.

The amendments also include some clarifications, in particular regarding the calculation of the basic salary defined under section H, and under which conditions prior approval for reimbursement is required, which we appreciate and consider valuable to staff.

<u>On the suggested amendments that were rejected</u>
The Staff Representatives brought forward two topics for consideration by the Office to be included in the health care coverage. These two suggestions were related to the reimbursement of prescribed contraceptives and Doula services in the Netherlands.

Regarding contraception, the guide to cover currently states that contraceptives prescribed by a qualified doctor are "*reimbursable only if there is an underlying medical problem*". The reason for this restriction and therefore exemption from coverage was questioned by the Staff Representation, but no compelling reasons were given. Staff representation argued that refusal to provide coverage of contraception is counter to D&I policies, which is supported by a European Parliament Resolution related to women's access to contraception. Staff Representation further argued that other member states do provide reimbursement, either without restriction, or up to a certain age. The administration confirmed the latter point, and stated that in the UK, all contraceptives are free of charge. It is the opinion of the Staff Representation that the decision not to cover prescribed contraception has not been appropriately substantiated, and leaves staff disadvantageously treated compared to those covered by national health insurance schemes of member states.

Regarding Doula services, Staff Representation highlighted the differences between maternity care in the Netherlands and in Germany. In the Netherlands, maternity care is often provided by Doulas, and although it is acknowledged that Doula service providers do not require medical qualifications, this difference in practice of the national health systems between the Netherlands and Germany still needs to be addressed. The decision of the Office not to cover Doula services leads to a disadvantageous treatment of staff in The Hague.

Conclusion

It is a pity that topics raised by the Staff Representation were rejected and are therefore not included in the revised guide to cover. Nevertheless, the CSC members of the GCC support the changes that have been made to the guide to cover as set out in Circular 368.

The CSC members of the GCC

Opinion of the CSC members of the GCC on GCC/DOC 26/2022:

Circular 421 – Video Surveillance Policy

The CSC members of the GCC give the following opinion.

They understand that the Data Protection Rules (DPR) take precedence. The Circular also complements Circulars Nos. 380 and 381. Its form is somewhat unusual, mixing legally binding portion with explanations. This is *per se* not objectionable.

The CSC members of the GCC note the purpose as in Article 3, which is limited to addressing security and operational safety concerns. The Circular foresees processing for other purposes, provided those purposes are compatible with the primary ones. The application of this provision might be problematic in some cases and should be monitored. In such cases of "other purposes", sufficient information should be provided to the Staff Representation and to the data subjects concerned. The CSC members of the GCC understand that Article 6 DPR is applicable in its entirety.

The provisions seem to reflect common (and desirable) practice.

However, the CSC members of the GCC miss a mention of the data protection measures to be observed when informing the relevant Local Committee if an accident occurs on Office premises, as required in Article 38a(6) ServRegs, e.g. to be inserted in the section dealing with accidents or incidents.

The CSC members of the GCC

Opinion of the CSC members of the GCC on GCC/DOC 27/2022:

Adjustments to health services (CA/85/22)

The CSC members of the GCC give the following opinion on the "Adjustments to health services" proposed in GCC/DOC 27/2022 (CA/85/22).

On the consultation

Mandate of the Working Group

1. The Central Staff Committee (CSC) received several invitations from the President (the latter one dated 9 March 2022, see Annex 2 of sc22135cl) to constitute a Working Group on "Organisational Changes in the Health and Safety". The mandate was detailed in COHSEC/DOC 10/2022 (see Annex 1 of sc22135cl) and confirmed in the letter of the President as follows:

> *"In parallel, there are other aspects which will continue to be driven by the team and its management, as well as being discussed with the COHSEC members. The transition will focus on* ***defining the future repartition of services between the Occupational Health function and the Medical Advisory function****. It will also* ***determine the scope of the hybrid service delivery model****, the* ***definition of the future roles and responsibilities*** *and the* ***review of the service catalogue****. These reflections can then inform the tender procedures planned in 2022, as many of the existing contracts are coming to an end by end of 2022."*

2. The mandate even concludes that *"[t]he scope does* ***NOT*** *include […] any changes in the service regulations outside the defined scope"*.

3. The Central Staff Committee (CSC) appointed on 18 March 2022 (see Annex 3 of sc22135cl) two staff representatives to the COHSEC Working Group.

Meetings of the COHSEC Working Group

4. A series of 8 meetings took place during which the COHSEC Working Group discussed organisational changes in the Health and Safety. No amendment to the Service Regulations was ever presented nor discussed. The present document was never presented to the Working Group.

5. During the discussions, the Working Group understood that the envisaged seamless sick leave procedure would be a trust-based seamless procedure by the Occupational Health Services (OHS) to support the health of sick staff members until the transition to incapacity after 250 days, a transition following a medical opinion of the distinct Medical Advisory Unit (MAU). No merge of OHS with the MAU was ever discussed.

COHSEC consultation

6. On 3 November, the present document was made available to the staff representation and tabled for opinion in the COHSEC meeting of 14 November (as COHSEC/DOC 22/2022) and for GCC consultation in the meeting of 22 November.

7. In view of the wide implications, our COHSEC nominees repeated their concerns of 2 November 2022 by email of 8 November 2022 (see **Annex 1**, pages 3 and 4) to the COHSEC Chairman and asked to change the document category from *"for opinion"* to "*for discussion"* and to discuss it in a meeting in person. None of the proposed amendments to the Service Regulations were ever presented nor discussed before.

8. In a reply sent on the same day (see **Annex 1**, page 2), the Chairman rejected the request by stating that already an *"intensive amount of discussions"* took place and that the *"Working Group worked well and delivered results jointly supported"*. In particular, the Chairman stressed that *"the document COHSEC/DOC 22/2022 proposes a seamless sick leave process which is supported by all members of the working group as well as the members of the COHSEC."*

9. In an email of 10 November, the COHSEC members including the Working Group members rebutted the allegation.

10. The CSC addressed the President and VP4 by letter of 11 November (sc22135cl) and expressed a preliminary opinion concluding that the amendments proposed in the Service Regulations not only go beyond the scope of the mandate of the Working Group but introduce, after the 2015 reform, further restrictions on the rights of sick staff, calling into question whether the health and well-being of staff is the EPO's priority. **The CSC urged to withdraw this text and not to submit it to the Administrative Council.**

11. On 14 November, the COHSEC meeting took place during which no progress was achieved. Our COHSEC members provided their opinion on 18 November (see **Annex 2**)

GCC consultation

12. On 22 November, two hours before the GCC meeting, the President answered the CSC letter and repeated again the wrong statement suggesting that *"the recommendation related to the seamless sick leave process was supported by all members of the working group and, subsequently, integrated in the proposal to amend the regulations in CA/85/22."*

13. The GCC meeting took place on 22 November during which the administration attempted again to instrumentalize the COHSEC Working Group. The GCC members nominated by the CSC repeated that nobody in the staff representation supports the merge of OHS with the MAU and nothing in this sense was ever said by anyone. It was requested that this shall be put clearly in the minutes.

    At the time of the GCC consultation, **the opinion of the COHSEC was not provided to the GCC**.

On the merits

Misrepresentation of the situation at the EPO

14. The document pretends that "the 2015 reform of sick leave and invalidity (CA/14/15 and CA/D 2/15) stimulated a shift from a disability culture to a culture of integration in employment at the EPO" (§ 39) and contributed "to balance staff's wellbeing and safety with business continuity as from the start of the pandemic in 2020" (§ 40). It is worth recalling that several Germany aspects of the reform are still being challenged and are currently negatively affecting staff:

- the computation of sick leave (Article 62a(7)(b) ServRegs) counting any part-time absence on a working day as a full day of sick leave is prejudicial to staff entering or in extended sick leave or (partial) incapacity because it resulted in them having salary deductions (e.g. in case of Covid-19 infections), contrary to the rest of staff.
- the abolition of the invalidity lump sum insurance[1] breached the legitimate expectations of EPO staff who had been contributing to the insurance for many years. The Appeals Committee unanimously considered that the Office breached its duty of care by not providing transitional measures. VP4, by delegation of authority, rejected[2] in February 2021 the opinion which was in favour of staff, thereby giving no other option to them than to challenge the decision in front the Tribunal right in the middle of the pandemic.
- the abolition of a medical committee (former Article 89 ServRegs) previously based on a balanced composition paved the way to an arbitrary and unbalanced procedure fully empowering the medical practitioner (advisor) chosen by the President of the Office alone for the purpose of providing medical opinions on incapacity.

15. Further misrepresentations of the situation are:

- the document alleges a "positive impact of the reform" on sick leave reduction although the average sick leave days had already started to decrease as of 2010 (see figure on page 2, §6) and sick leave is actually increasing again, especially in 2022. The decrease in 2021 was solely linked to very specific circumstances, the pandemic.
- there is no reference to the fact that our COHSEC members disagreed with the Mercer Marsh Benefits study which focused only on three countries. The United Kingdom was included (although it is not a host state) for the purpose of justifying a merge of the Occupational Health Service and the Medical Advisory Unit which is actually unlawful in our major host state, Germany.
- the statement that *"COHSEC members welcomed the inclusive and constructive approach, which had led to agreement in many areas"* is misleading because there are crucial points of disagreement on issues which are now the basis of the amendments proposed.

[1] See CA/14/15 Add. 1, page 20-21/40.
[2] See CSC publication of 19.03.2021.

Occupational Health Services (OHS) and Medical Advisory Unit (MAU) must stay separate

16. Currently, there are two separate teams:

    1) an **Occupational Health Service (OHS)** responsible for staff on sick leave (less than 125 days in 18 months) and who is providing advice and support to the staff member,

    2) a **Medical Advisory Unit (MAU)** responsible for staff on sick leave for more than 125 days over a period of 18 consecutive months and who drafts opinions for the President for the purpose of taking potentially adverse administrative decisions (e.g. salary deductions, forced return to work…)

17. By using the same broad terms "health professionals" (§15), "health experts" and "medical experts" for both teams, the document blurs the distinction between the current very different roles: who is from the OHS?, who is from the MAU?, who is a physician? and who is a nurse?

18. The document proposes (§18) to eliminate the organisational separation between the two health services teams: Occupational Health Professionals (OHP) and Medical Advisory Professionals (MAP). Such a change allegedly enables a staff member to be "supported" by the same "health professional" throughout a cycle of health-related absence.

19. While COHSEC members agree to the idea that the same Occupational Health Practitioner supports the sick staff members during the process from sick leave to incapacity, **that same practitioner should at no point in time be involved in preparing adverse decisions** (e.g. salary deductions, forced return to work) against the staff member. Such decisions must be prepared by another practitioner, a Medical Advisory Practitioner. The EPO's argues (§22) that the scope of services requested from Medical Advisory Practitioners, currently responsible for staff on long-term sick leave (beyond 125 days), would be considerably reduced. This argument is not convincing because it actually results in a shift (and increase) of the burden on Occupational Health Practitioners.

20. A sick staff member cannot build trust (§19) with the practitioner supposed to support him if this same practitioner is also actively involved in taking adverse decisions. The document pretends (§12) to maintain *"the independence of health experts in the execution of their tasks as enshrined in current Article 26c Service Regulations"* but this independence is at risk as the practitioner will find himself in an inherent conflict of interest.

21. In this respect, the two separate medical case management systems of OHS and MAU should not be merged. Contrary to the allegations in §35, it was an inherent strength of the system that medical data was accessed by different persons for different purposes: one to support staff, the other one (only if required) to be involved in taking adverse decisions. A merge of both systems would increase the number of "health professionals" and administrative support staff having access to the medical data of all staff and circulation without asking the staff member for their consent.

22. In the letter of 9 March 2022 (see Annex 2 of sc22135cl, page 2, paragraph 2), the President explained that *"Data Protection requirements will be re-evaluated with the new structure"*. In

this respect, the staff representation was never informed how the Data Protection Officer has been involved.

23. In the meeting of 22 November, the Data Protection Officer (DPO) explained that the CSC should contact her in case they have questions. Actually, it is up to the administration to present all necessary documents to the GCC including any DPO document to the President on the re-evaluation of Data Protection requirements with the new structure.

24. In conclusion, the proposed merge of the two separate teams is detrimental to staff, endangers the independence of the "health professionals", endangers medical secrecy and risks creating an atmosphere of mistrust.

Externalisation and reorganisation to save costs at the expense of staff health

25. Any medical task currently performed by OHS must be performed under the supervision of a medical doctor. Both medical doctors and nurses must be in-house staff. The advantages of in-house staff are:

- increased commitment to the mission of the EPO,
- internal knowledge of the Organisation, its practices and its culture,
- better continuity,
- higher quality of service and management,
- better knowledge of compliance with specific internal Data Protection Rules (DPR).

26. In view of the New Ways of Working (NWoW), the paperless workflow and the increasing number of tools, software ergonomics is even more important than in the past. The EPO needs an in-house software ergonomics professional and we suggest that a dedicated COHSEC Working Group on ergonomics be put in place.

27. There is no analysis, no business case, showing that externalisation would save costs. In addition, having only a *"small […] team of internal experts"* (§31) by putting the focus on *"managing their long- term costs and liabilities"* (§31), combined with the fact that externalisation would *"mitigate a potential lack of occupational health resources"* (§10) contradicts the alleged goal that the Office's priority would be the health of staff.

28. The document reveals that *"a tender was run and will be concluded by the end of 2022"*. This fait-accompli casts doubts as to whether the consultation was in good faith.

Amendments in the Service Regulations not within the scope and not discussed

29. The document pretends (§41) that the proposed amendments to the ServRegs are to support implementation of a seamless sick leave process. In our view, none of the amendments were necessary for this purpose. They have furthermore not been within the scope of the Working Group and were not discussed.

30. Our comments on particular amendments:

Abolition of distinction between medical adviser and occupational health:

31. The deletion of Article 26a ServRegs abolishes the distinction between medical adviser and occupational health (see section above). The merge is detrimental to staff, endangers the independence of the "health professionals", endangers medical secrecy and entails the risk of creating an atmosphere of mistrust.

Regular medical appointments at all times:

32. The introduction of *"[r]egular medical appointments [which] will take place during the three phases"* (sick leave, extended sick leave and incapacity (Article 62(2) ServRegs)) has not been within the scope of the Working Group and was not discussed.

33. This measure would allow the EPO to impose mandatory medical appointments at all times and even for short periods of sick leave. The regularity of such appointments is undefined and unlimited. Experience has shown that such appointments have been an instrument of institutional harassment against staff members. The generalisation to any phase of sick leave leads us to suspect that the EPO intends to put undue pressure on staff members to reduce sick leave registration.

No requirement for prior medical opinion to enter extended sick leave (125 days in 18 months). Medical opinion to enter incapacity at any point in time before reaching 250 days in 36 months:

34. The abolition of requirements and deadlines for the EPO (new Article 62a(7)(b) and Article 62b ServRegs) reduce predictability for sick staff because medical opinions for the potential purpose of taking an adverse decision can be triggered at any point in time and even long before reaching the limit of sick leave days.

Lack of transparency on the list of doctors:

35. The abolition of the requirement that the President draws the list of doctors every two years (Article 89(1) ServRegs) has not been within the scope of the Working Group and was not discussed.

36. The lack of deadline introduces a further lack of transparency, a potential risk of arbitrariness and a breach of the principle of regularity in the review of the list of doctors.

EPO medical practitioner may contact the employee's doctor without their consent:

37. For the purpose of the assessment, the medical (advisory) practitioner may now contact the employee's doctor without the consent of the employee (new Article 89(3) ServRegs). This measure has not been within the scope of the Working Group and was not discussed. It is intrusive and constitutes a breach of the employee's right to privacy and a blank check to breach medical secrecy. The EPO should not allow itself to ask a question, if having it answered would be illegal (or not deontological for the physicians involved).

Use of personal medical data for other purposes. New conditions for ignoring evidence voluntarily submitted by the employee:

38. The current provisions (Article 89(3) ServRegs) already give a broad margin of discretion for the medical (advisory) practitioner to take into account inter alia pre-existing medical reports, or certificates, if they were submitted in due time by the employee.

39. New Article 89(4) ServRegs now completely deprives the employee of this right to have voluntarily submitted evidence be taken into account. However, the new text allows the medical (advisory) practitioner to **access pre-existing medical reports or certificates provided by the staff member in the context of other medical procedures without their consent**. In addition, the conditions such as *"as long as they are not outdated, they are necessary and relevant, and their use if compatible with the purpose for which they had been originally provided"* are so broad and unclear that they may remain without effect in practice.

40. This (again) blurs the distinction between the distinct roles of supporting staff and advising the President, allows unauthorised access to medical data of the employees and a breach of the duty of care. It deprives the employee from the possibility of handling their own medical situation in front of the employer. These new provisions have not been within the scope of the Working Group and have not been discussed

Restriction of the employee's right to access medical data:

41. Currently, an employee may request the President of the Office to ask the medical (advisory) practitioner to provide access to medical information recorded or used in the course of preparing their opinion. The new text abolishes Article 89(6) ServRegs which guaranteed the employee's right to access this medical information. Now access to medical data will be defined only in a lower-ranking document, which weakens staff's rights[3]. This measure has not been within the scope of the Working Group and has not been discussed.

Restricted access to the arbitration procedure:

Currently, in case of disagreement with a medical opinion, an arbitration procedure may be triggered (Article 90 ServRegs) either by the EPO or by the staff member. The new provisions remove the possibility that *"the employee contests a medical opinion recommending not to extend the maximum period of sick leave as foreseen in Article 62a, paragraph 7"* (former Article 91(1) ServRegs). This measure has not been within the scope of the Working Group and was never discussed. It contradicts the alleged preference of arbitration over litigation and constitutes a severe restriction on the means of redress of sick staff.

[3] See also Article 1b(4) ServRegs.

Conclusion

42. When asking the staff representation or the GCC for an opinion and a vote, all necessary information should be made available and the implications clearly understandable.

43. In this respect, we note that:

- The opinion of the COHSEC was not presented in the GCC
- An opinion of the Data Protection Officer on the merge of medical files from OHS and the MAU was not presented in the GCC.

44. The amendments in the ServRegs go beyond the scope of the mandate of the COHSEC Working Group. Furthermore, they introduce, after the 2015 reform, further restrictions on the rights of sick staff, calling into question whether the health and well-being of staff is the EPO's priority.

45. For the sake of sick staff, the document should be withdrawn and not submitted to the Administrative Council.

The CSC members of the GCC

Annexes:

1) Email exchanges between COHSEC members and Working Group member with the COHSEC Chairman (8 to 19 November 2022)
2) Opinion of COHSEC members on COHSEC/DOC 22/2022 (18 November 2022)
3) Letter from the President in reply to the CSC letter of 11 November sc22135cl (22 November 2022)

Annex 1

From:
Sent: 10 November 2022 15:30
To:
Subject: FW: 86th COHSEC Meeting

fyi

From: David de la Torre
Sent: 10 November 2022 15:30
To: Andreas Sattler <asattler@epo.org>; Social Dialogue <socialdialogue@epo.org>
Cc: JOINT SECRETARIATS <jointsecretariats@epo.org>; Raffaella de Greiff <rdgreiff@epo.org>; Detlev Schüder <dschueder@epo.org>; Michael Böcker <mboecker@epo.org>; Roberta Romano-Götsch <rromanogoetsch@epo.org>; Francesco Zaccà <fzacca@epo.org>; Richard Flammer <rflammer@epo.org>; Philippe Couckuyt <pcouckuyt@epo.org>; Jutta Haußer <jhausser@epo.org>; Ingrid Peller <ipeller@epo.org>; Barbara Bosch <bbosch@epo.org>; Yann Chabod <ychabod@epo.org>; Anne Boström <abostroem@epo.org>; Jakob Kofoed <jkofoed@epo.org>; Koen Lievens <klievens@epo.org>; Jürgen Mühl <jmuehl@epo.org>; Lutz Müller-Kirsch <lmuellerkirsch@epo.org>; Thomas Ellerbrock <tellerbrock@epo.org>; Carmen Schuhmann <cschuhmann@epo.org>; Susett Rolle <srolle@epo.org>; Barbara Wolff <bwolff@epo.org>; Jan Boulanger <jboulanger@epo.org>; Alexander Kirch <akirch@epo.org>
Subject: RE: 86th COHSEC Meeting

Dear Mr Sattler,

We regret very much that Article 4 of the COHSEC Rules of Procedure has not been observed and that the COHSEC meeting cannot take place in person. The added time slot of 1.5 hours of virtual conference seems to us still to be completely insufficient, also in view of the other topics in the agenda.

In your email, dated 8th November 2022, you found that the document COHSEC/DOC 22/2022 proposes a seamless sick leave process which is supported by all members of the working group as well as the members of the COHSEC.

Unfortunately, we have to disagree.

Firstly, we already said in our email of 2nd November 2022, that we understood and understand the envisaged seamless sick leave procedure as a trust-based seamless procedure by OHS to support the health of sick staff members until the transition to incapacity after 250 days, a transition following a medical opinion by a medical advisor.

Secondly, the document COHSEC/DOC 22/2022 asserts amendments to the Service Regulations to support implementation of a seamless sick leave process (p.8, par.41). However, many of these amendments have never been touched upon at all in the working group (WG), came to a complete surprise to the COHSEC members nominated by the CSC, and thus need further discussion and clarifications, e.g.:

- Art.62(2): Regular medical appointments during all phases
- Art.62b(1): the President ... declare ... them unable for reasons of incapacity
- Art.89(1): the medical practitioner shall be chosen ... from a list ... ~~every two years~~
- Art.89(3): For their assessment ~~and provided the employee agrees~~, the medical practitioner...
- Art.89(4): the medical practitioner may, ... , take into account ... pre-existing medical reports...
- Art.89(6): ~~Upon request of the employee, to provide the employee ... medical information~~

Thus, we consider that the content and implications of COHSEC/DOC 22/2022 go well beyond the mandate of the WG.

Furthermore, COHSEC/DOC 22/2022 states that the outcome of the working group … had led to agreement in many areas, but it is completely silent on the various points of disagreement.

For all of the above, we cannot consider COHSEC/DOC 22/2022 to be sufficiently mature for an opinion. We hereby kindly reiterate our request to modify the character of the document COHSEC/DOC 22/2022 from "for opinion" to "for discussion" and to schedule a meeting for at least half a day for the required discussions on this topic.

Yours sincerely,

David de la Torre
For the COHSEC members nominated by the CSC

From: Andreas Sattler <asattler@epo.org>
Sent: 08 November 2022 17:42
To: David de la Torre <ddelatorre@epo.org>; Social Dialogue <socialdialogue@epo.org>
Cc: JOINT SECRETARIATS <jointsecretariats@epo.org>; Raffaella de Greiff <rdgreiff@epo.org>; Detlev Schüder <dschueder@epo.org>; Michael Böcker <mboecker@epo.org>; Roberta Romano-Götsch <rromanogoetsch@epo.org>; Francesco Zaccà <fzacca@epo.org>; Richard Flammer <rflammer@epo.org>; Philippe Couckuyt <pcouckuyt@epo.org>; Jutta Haußer <jhausser@epo.org>; Ingrid Peller <ipeller@epo.org>; Barbara Bosch <bbosch@epo.org>; Yann Chabod <ychabod@epo.org>; Anne Boström <abostroem@epo.org>; Jakob Kofoed <jkofoed@epo.org>; Koen Lievens <klievens@epo.org>; Jürgen Mühl <jmuehl@epo.org>; Lutz Müller-Kirsch <lmuellerkirsch@epo.org>; Thomas Ellerbrock <tellerbrock@epo.org>; Carmen Schuhmann <cschuhmann@epo.org>; Susett Rolle <srolle@epo.org>; Barbara Wolff <bwolff@epo.org>; Jan Boulanger <jboulanger@epo.org>; Alexander Kirch <akirch@epo.org>
Subject: RE: 86th COHSEC Meeting

Dear Mr de la Torre, dear COHSEC Members,

We have taken note of your request but wish to recall the following:

In the COHSEC meeting of 23 February 2022, a mandate for a WG on health services was presented to the COHSEC. This was followed by 8 meetings of the WG between April and September 2022 in which the staff representatives were given the possibility to provide their input. Regular updates were also sent to the COHSEC and a presentation of the WG outcomes was given in the COHSEC meeting on 24 October. This WG has worked well and delivered results that were jointly supported. In the circumstances, the extensive discussion process should now conclude with the submission of the relevant document for "opinion". In particular, the document COHSEC/DOC 22/2022 proposes a seamless sick leave process which is supported by all members of the working group as well as the members of the COHSEC. The proposed document will therefore be maintained on the agenda for "opinion" in the upcoming meeting.

We also invite you to submit any written comments in advance of the meeting if you feel these could facilitate the exchanges which are to take place. Furthermore, it is noted that you will have the possibility to provide a reasoned opinion on the document following the meeting.

As regards your request to meet in person, please note that in accordance with the letter sent to the Chair of the CSC on 20 October 2022, the principles of less travel in general and more environmentally friendly travel when necessary are to be applied equally Office-wide and to all services. Furthermore, hybrid meetings – allowing both in-person and virtual attendance – are part of the Office's transition to a hybrid working environment under the new ways of working as well as of the Office's environmental policy. These have continued to prove as efficient as live meeting and allow for constructive discussions to take place on all matters.

Finally, we are confident that we can handle all topics on the agenda in the scheduled time, especially when considering the intensive amount of discussions that happened on the topic. Nevertheless, we will schedule an additional block at the same day, from 17.30 to 19.00 should it not be possible to conclude our exchanges in time. We are however hopeful that this will not be needed.

We look forward to our meeting.

Best regards | Mit freundlichen Grüßen | Sincères salutations
Andreas

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Europäisches Patentamt
European Patent Office
Office européen des brevets

From: David de la Torre <ddelatorre@epo.org>
Sent: 08 November 2022 09:38
To: Andreas Sattler <asattler@epo.org>; Social Dialogue <socialdialogue@epo.org>
Cc: JOINT SECRETARIATS <jointsecretariats@epo.org>; Raffaella de Greiff <rdgreiff@epo.org>; Detlev Schüder <dschueder@epo.org>; Michael Böcker <mboecker@epo.org>; Roberta Romano-Götsch <rromanogoetsch@epo.org>; Francesco Zaccà <fzacca@epo.org>; Richard Flammer <rflammer@epo.org>; David de la Torre <ddelatorre@epo.org>; Philippe Couckuyt <pcouckuyt@epo.org>; Jutta Haußer <jhausser@epo.org>; Ingrid Peller <ipeller@epo.org>; Barbara Bosch <bbosch@epo.org>; Yann Chabod <ychabod@epo.org>; Anne Boström <abostroem@epo.org>; Jakob Kofoed <jkofoed@epo.org>; Koen Lievens <klievens@epo.org>; Jürgen Mühl <jmuehl@epo.org>; Lutz Müller-Kirsch <lmuellerkirsch@epo.org>; Thomas Ellerbrock <tellerbrock@epo.org>; Carmen Schuhmann <cschuhmann@epo.org>; Susett Rolle <srolle@epo.org>; Barbara Wolff <bwolff@epo.org>; Jan Boulanger <jboulanger@epo.org>; Alexander Kirch <akirch@epo.org>
Subject: 86th COHSEC Meeting

Dear Mr Chair, dear Andreas,

We consider that the time scheduled (one and a half hours) and format (video-conference) for the next meeting of the COHSEC is insufficient in view of the number and density of the documents in the agenda. The complexity of COHSEC/DOC 22/2022 and its wide implications also requires an in-depth understanding of the impact and consequences for staff.

Therefore, and in view of the – in our opinion - immature status of the document, we request to change the nature of the document from opinion to discussion and to extend the time scheduled for the discussions on COHSEC/DOC 22/2022 to at least half a day. The importance of the topic in our view requires a meeting in person (as set out in Article 4 of the Rules of Procedure for the COHSEC).

Please provide us with the approval by Wednesday eob at the latest, so that we can arrange the duty travel requests in time for the meeting.

With best regards,

David de la Torre
For the COHSEC members nominated by the CSC

The members of the COHSEC nominated by the CSC give the following VOTE and OPINION on COHSEC/DOC 22/2022 on "Adjustments to Health Services (CA/85/22)":

I. PROPOSED CHANGES

(1) Terminology

The document COHSEC/DOC 22/2022 uses terminology through the text, which is non-harmonized or inconsistent within the document itself or with the Service Regulations. This causes severe ambiguities, both in the proposed changes of the Service Regulations and in the introductory part of the document, to the effect that some of the proposed changes cannot be understood.

We identified the following terms which need clarification:

- "health professional": This term is ambiguous and seems to refer to a wide range of health related jobs. The term does not occur in the Service Regulations, apart from Articles 11 and 17 of the Data Protection Rules, which restrict "health professional" to those "subject to the obligation of professional secrecy", i.e., doctors.
- In the proposed Article 89 ServRegs, the term "medical practitioner" seems to refer to any doctors who deliver opinions for the President of the Office. It remains unclear, whether the Occupational Health Physicians are part of such doctors or excluded, also in view of their independence requirement under Article 26c.

  We consider that the medical practitioners in charge of the medical opinions must have the formal qualifications of a doctor according to the national law in the respective host Member State(s). For the list of doctors under Article 89(1) ServRegs, they should be specialized doctors according to the national law in the respective host Member State(s)[1]. In both cases they must be authorised to practise such regulated professions in the respective host Member State(s)[2].
- "experts" (also cited as medical experts or health experts): The service regulations only define the "occupational health and safety experts" in Articles 26c, 38a. The implementing Rule of Article 38a also mentions "other experts".

(2) Description of the status quo / context of the changes

Document COHSEC/DOC 22/2022 makes a rather optimistic analysis of the effect and outcome of previous reforms, notably the reform of 2015. While general criticism of the 2015 reform does not belong to this opinion, we remark that the model for sickness management was readapted at that time, and that some of the current difficulties with reintegration were aggravated with the transition beyond 125 days sick leave adopted with this reform. We also consider the effect of the apparent decrease in the sickness statistics for a relative short period is much more complex than as presented in the summary[3]. The document itself[4] shows that the sickness statistics are indeed slightly increasing since 2017.

The proposed document must be seen within the context of the changes to the organisational structure proposed in COHSEC/DOC 5/2022 on "H&S Reorganisation", to which we gave a negative opinion (see COHSEC/AV 1/2022). The main deficiencies found in that document were:

- further erosion of the position of the occupational health physicians and the occupational health and safety officers, who are currently reporting to non-medical staff in the DG4;
- the merging between the Occupational Health Physician and Medical Advisor roles and resources creating conflicts of interest and
- Data Protection issues.

In our view, the proposed changes to the Service Regulations included in COHSEC/DOC 22/2022 do not successfully address the problems identified in our opinion to COHSEC/DOC 5/2022. While we understand that the intention of the present document is more reduced in scope – mainly the introduction of a seamless sick leave process – the text of the proposed changes introduces new

[1] The doctor selected from the list of doctors should have a speciality related to the nature of the sickness of the patient
[2] For Member States member of the EU those qualifications are harmonised through Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications
[3] Furthermore, some adaptions had to be made in the meantime concerning inter alia the removal of the obligation to be available at home during certain daytimes every day of the sick leave absence.
[4] See p.2, the graphic under §6

elements which will aggravate the problems created with the adoption of the H&S reorganisation. The plans to externalize an important part of the health-related resources in those areas do not contribute to address the detected problems neither.

Also, the present document needs to be seen in context with the fact that the responsibilities of the occupational health physicians, in charge of prevention, reintegration and support to employees, and the responsibilities of the medical advisors, in charge of the opinions for decisions to be adopted by the President (e.g. incapacity) should be separated. It is long understood at the EPO that merging those tasks leads to conflicts of interests, a further erosion of the independence of the Occupational Health physicians and a decrease of trust of EPO staff in the EPO health policy.

From the perspective of the data protection, the EPO has recently adopted with decision CA/D 5/21 a new Data Protection framework, including the EPO Data Protection Rules (DPR), which de facto transposes to the EPO the legal obligations defined by the EU GDPR. The treating of medical data within the seamless sick leave process and for the purposes of medical opinions have already been affected by this new framework, and the present proposal creates new implications within the EPO Data Protection framework.

(3) The seamless sick leave process

With amendments of Article 62a(7)(b) ServRegs, document COHSEC/DOC 22/2022 proposes a seamless sick leave process, which indeed removes the need of a medical opinion for the extension of the first period of sick leave of 125 days. On this aspect of the proposal, a consensus could be found among all members of the Working Group.

We understand that removing the medical opinion would substantially reduce the overall workload of the medical advisory services, which seems to be one of the main motivations for the changes proposed.

The document, however, proposes, in an addition to Article 62(2) ServRegs, regular medical appointments to take place during the three sick leave phases, depending on the employee's health situation. There are no limitations as to the frequency or timing of such appointments. The text also does not clarify the purpose of them. Are they there for absence verification, for treatment or for continuous health checks? Where would these appointments take place? At the Office premises or at the home of the employee? The text also does not make clear if such medical appointments will be made by the Occupational Health physicians or by other practitioners.

In view of such lack of clarity and the absence of limitations to protect the sick staff, e.g., from excessive administrative burden caused by too frequent appointments, we disagree with the changes proposed to Article 62(2) ServRegs.

(4) Incapacity

With the amendments of Article 62b(1) ServRegs, COHSEC/DOC 22/2022 proposes a new procedure for declaration of incapacity and discharge of duties. We have the following comments on this procedure:

(a) The amended text of Article 62b(1) ServRegs[5] implies that the declaration of incapacity takes place after reaching the applicable maximum period of sick leave, but with a medical opinion which is issued at a certain moment in time before or after reaching the applicable maximum period of sick leave.

It remains unclear from the text, however, which will be the status of the staff member during the time after reaching the applicable maximum period of sick leave and up to the declaration. Will such declaration be retroactive to the date of reaching the applicable maximum period ? This point should be clarified.

As such, the procedure is untransparent for the employee because the medical opinion can be established at any moment, and the employee can not foresee the steps of the procedure to come.

(b) According to amended Article 89(5) ServRegs, the medical practitioner chosen by the President for writing such medical opinion only informs the President.

[5] Also clarified during the meeting by the Office's Medical Advisor

As the medical opinion would be issued at a certain moment in time before or after reaching the applicable maximum period of sick leave, the staff member must be informed as soon as a medical opinion is in preparation about the name and contact of the doctor. The employee must also be informed when such medical opinion has been issued and must receive a copy of such medical opinion at the same time.

(c) It should be clarified that the declaration of incapacity under amended Article 62b(1) is indeed a decision of the President. The effects of such decision as well as the means of redress shall be communicated to the employee in writing.

(5) Conflicts of interests – Need to keep both roles separated

The introductory part of the document, in paragraph 24, seems to imply that the opinion for the declaration of incapacity under Article 62b(1) ServRegs would be made, based on the medical observations and the information available – e.g., the information given of the patient –, by the Occupational Health Physician who is supporting the staff member during the reintegration, as soon as the OH physician has sufficient indications that the sick leave period may take the total absence beyond 250 days in a period of 36 months.

While this idea is attractive at first sight, it creates in our opinion, a severe conflict of interest on the Occupational Health Physician, who will be in charge of two incompatible roles:

- advice, support, and prevention of occupational diseases and work-related disorders, the support for the employee's reintegration and the promotion of the health and safety of the employee; in this role, the OH physician must act in the best interest of the patient
- the issuance of opinions for the declaration of incapacity, which has a serious impact:
  - on the employee (administrative situation, reduction of salary) and
  - on the EPO itself (impact on the social security scheme, impact on the work capacity in the department in which the employee is working)

We consider that the impact of the incapacity declaration on the EPO itself is sufficient to create a severe conflict of interests on the Occupational Health physicians. The reduced independence of the Occupational Health physicians in the current and future organisational structure exacerbates even more such conflict of interests. These conflicts of interest are and will be especially acute in view of:

- their wrong hierarchical positioning, not reporting directly to the Site Manager, but to an intermediate layer embedded within HR[6];
- the job precariousness of future OH physicians;
- the risk of non-renewal of service contracts, in the case of external OH physicians;
- their reduced autonomy to administer resources for the performance of their duties[7]; and
- the application of performance management to OH physicians based on HR-defined criteria.

We note that such conflicts of interest need not necessarily be related to direct financial interests, but may also be associated with indirect, non-financial interests, or they can also be conflicts of loyalty or conflicts in professional duties and responsibilities[8]. We further believe that the OH physicians under the proposed construction would have to declare such conflicts of interest to the employees under reintegration and they likely would have to decline taking part in subsequent medical decisions on incapacity.

For those reasons, we consider that the issuance of medical opinions under such circumstances would further jeopardize the independence of the Occupational Health physicians which is required by law[9].

(6) Medical opinions

COHSEC/DOC 22/2022 proposes to amend Article 89(1) ServRegs so that the list of doctors for certain cases – i.e., Articles 90(2), 91(2) ServRegs - can be drawn at any time by the President of the Office, and not only every two years.

[6] See, e.g., §8 of the Gesetz über Betriebsärzte, Sicherheitsingenieure und andere Fachkräfte für Arbeitssicherheit (ASIG)
[7] See, e.g., §2(2) of the Gesetz über Betriebsärzte, Sicherheitsingenieure und andere Fachkräfte für Arbeitssicherheit (ASIG)
[8] https://stephenmccaffreybarrister.com/conflicts-of-interest-guidance-for-doctors/
[9] See current Articles 26b and 26c ServRegs

We reiterate our general disagreement with construction of the arbitration procedure (Article 91 ServRegs) and the additional medical opinions (Article 90 ServRegs), as we consider that the points of view and the interests of the employee are not properly guaranteed through such procedures, and we believe that the medical committee[10] was a much better functioning organ as compared to the present situation. The proposed removal of the two-years limitation for the drawing of the list of doctors is considered a further worsening of the system from the perspective of the staff members, as it makes possible for the Administration to quickly substitute those doctors based on undefined criteria, thus weakening their necessary independence.

As indicated above, the medical practitioners in charge of the medical opinions must have the formal qualifications of a doctor according to the national law in the respective host Member State(s). For the list of doctors under Article 89(1) ServRegs, they should be specialized doctors according to the national law in the respective Member State(s). In both cases, they must be authorised to practise such regulated professions in the respective host Member State(s)[11].

(7) Medical file

Document COHSEC/DOC 22/2022 – see §33 to §35 of the introductory part – proposes to create a single medical file for EPO employees, instead of the two different medical files that exist nowadays (one for OHS and another one for the MAU).

During the 86th COHSEC meeting, we requested clarifications about the future handling of the medical file(s), which we consider to be essential to understand the scope of the proposal COHSEC/DOC 22/2022. Unfortunately, the Administration was not able to provide us with specific answers on this topic.

We oppose explicitly the merging of medical files which are used for the following two distinct purposes:

- advice, support, and prevention of occupational diseases and work-related disorders, the support for the employee's reintegration and the promotion of the health and safety of the employee; and
- the issuance of opinions for the declaration of incapacity, or other medical opinions under Article 89 ServRegs

We consider that, in any case, before the proposal is adopted, the following should be clarified:

- who would be responsible for the medical file(s) and who would grant access to them (who is the delegated controller under Article 28 DPR)?
- whether the delegated controller under Article 28 DPR is a health professional subject to the obligation of professional secrecy under Member State law or rules established by national competent bodies?
- what would be the content of such file(s)?
- who would have access to it/them (who are the processors under Article 30 DPR)?
- whether such medical file(s) would be internally or externally managed (are there joint controllers under Article 29 DPR)?
- for which purpose the information is collected (Article 4 DPR)?
- which are the compatible purposes of the data collection (Article 6 DPR)?

In our view, the delegated controller of the medical file must:

- be "subject to the obligation of professional secrecy under Member State law or rules established by national competent bodies"[12];
- have the formal qualifications of a doctor according to the national law in the respective host Member State(s)[13]; and

[10] See Article 89 ServRegs previous to CA/D 2/15.
[11] For Member States member of the EU those qualifications are harmonised through Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications
[12] See Art. 9 GDPR, compare with Article 11 EPO DPR
[13] For Member States member of the EU those qualifications are harmonised through Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications

- be authorised to practise such regulated profession in the respective host Member State(s).

(8) Processing of medical information

The proposed amendments to Articles 89(3), 89(4) and 89(6) ServRegs have a serious impact on data protection and the processing of medical information, which is regulated under the EPO Data Protection framework.

We strongly disagree with the removal of the employees consent for the consultation of the employee's doctor, as proposed in the new formulation of Article 89(3) ServRegs: The obligation to obtain a previous consent from the employee is an important guarantee of the medical secrecy that cannot be removed for the sake of the purely administrative convenience of the services. It is remarkable that the Administration has not provided any reasons for the removal of such consent so far.

In the same proposed Article 89(3) ServRegs, the addition of "without prejudice to any applicable deontological national rule" is clearly insufficient, as the consultation of medical information of the employee is not merely a deontological national rule, but also defined by law. In our view, the Article should indicate ""without prejudice to any applicable deontological national rule or without prejudice to the obligation of professional secrecy under national law or rules established by national competent bodies"[14].

The newly added Article 89(4) ServRegs specifies that "the medical practitioner may, in exceptional circumstances, take into account inter alia pre-existing medical reports or certificates provided by the staff member to the Office in the context of other medical procedures, as long as they are not outdated, they are necessary and relevant, and their use is compatible with the purpose for which they had been originally provided". Such Article give to the medical practitioner very wide powers to gather medical information from different internal sources, without clear restrictions.

It was also not possible to obtain information, during the 86th COHSEC meeting, about which "other medical procedures" are meant in this newly formulated Article 89(4) ServRegs. We could also not be informed about who and how the following will be evaluated:

(i) the compatibility of the purposes,

(ii) the relevance of the medical reports or certificates, and

(iii) the up-to-date character of the medical reports or certificates.

It would be welcome if the Administration could clarify that question and in particular, that the following procedures are excluded from such "other medical procedures" and that the medical practitioner cannot access pre-existing medical reports or certificates provided by the staff member to the Office in the context of:

- the procedures under Articles 26c ServRegs for the protection of the health and safety of employees;
- the procedures under Articles 62(1) to 62(7) for sick leave management; and
- the procedures under Article 83a ServRegs and under the Implementing Rules for Articles 83a, 84 and 84 ServRegs, e.g., the framework of reimbursement procedures by CIGNA or cures.

In any case we clearly express that we disagree with the present formulation as proposed in COHSEC/DOC 22/2022. Also in view of the requirements of data secrecy from Member State law, we highly recommend the Office that the evaluation of the compatibility of purposes, the relevance of the medical reports or certificates and their up-to-date character is made by professionals subject to the obligation of professional secrecy under Member State law or rules established by national competent bodies[15].

We don't understand the reasons for the proposed deletion of Article 89(6) ServRegs and the Administration did not give any. Reasons are also not apparent from the introductory part of the document[16]. In any case, we disapprove such deletion of a clear right of employees to know the content

[14] See Art. 9 GDPR, compare with Article 11 EPO DPR
[15] See Art. 9 GDPR, compare with Article 11 EPO DPR
[16] We would have welcome in the 86th meeting of the COHSEC that the discussions had not been prematurely interrupted and that we could have discussed this point.

of the medical information recorded or used in the course of preparing the medical opinion[17]. Even if the Administration would be of the opinion that Article 18 of the Data Protection Rules has made 89(6) ServRegs redundant, we consider that such right to consult the medical file should be explicitly reiterated in Article 89 ServRegs.

(9) Mixed internal-and-external-sourcing service delivery

One of the purposes of COHSEC/DOC 22/2022 – see §28 to §32 – is to strengthen the mixed internal-and-external-sourcing service delivery model. We can't really identify such an strengthening from the proposed changes of the Service Regulations, but we agree with the reasons given by the members of the COHSEC Working Group nominated by the CSC for providing health services by internal staff:.

- Internal staff is more committed to the mission of the EPO;
- Internal staff knows best the Office, e.g., site specific problems, internal processes and all aspects of the organisation (shared view of staff representation and health experts);
- Internal staff guarantees the quality and continuity of health services and surveys the quality external providers (shared view of staff representation and health experts);
- Internal staff safeguards data protection in a simple manner (shared view of staff representation and health experts); and
- external labour market for external health experts is difficult (shared view of staff representation, health experts and MercerMarsh).

We have certainly noticed that, in parallel to the running of a specific Working Group, the administration has been running different tenders for different health-related services in the occupational health area. We wonder why the COHSEC has not been provided with information about such tender procedures, which would have brought some better understanding of the present proposal, of its scope and other constraints.

(10) Consultation

We don't share the understanding that long discussions have to be avoided at all costs during the COHSEC meetings. While preparatory discussions within the context of Working Groups should happen, discussions on specific matters must also take place within the COHSEC, to make sure that the proposals lead to sound changes which are conducive to the Health and Safety of staff. We welcome very much, from this perspective, the few specific questions which were exchanged during the meeting, although we got the impression that the discussions on many of the topics were not finalised when the discussion was hastily closed after short 45 minutes of exchanges.

In addition, we notice that most details in the text to be adopted were not discussed within the COHSEC Working Group on the health reform and therefore the discussion which took place in the 86th meeting of the COHSEC was insufficient.

II. CONCLUSIONS AND WAY FORWARD

Because of the little time foreseen for the discussions in the COHSCE, and the premature conclusion of the discussions, we conclude that the Administration is not interested in a genuine consultation of the COHSEC. Many of the topics in the document were not discussed sufficiently. That leads to unclarities in the final legal text.

We request therefore to resubmit the document to the COHSEC for final consultation, once the deficiencies identified within this opinion are addressed.

In conclusion, for all the reasons and arguments set out above, the CSC members of the COHSEC give a negative vote and opinion on COHSEC/DOC 22/2022.

The Members of the COHSEC nominated by the CSC

[17] Excluding staff member's access to the medical file appears to be not in line with the ILOAT Jurisprudence, see for example Judgment no. 4260, considerations 2.

Annex 3

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By e-mail

Your open letter on CA/85/22 of 11 November 2022

Dear Mr Dumont,

Reference is made to your open letter concerning the adjustments to the health services (CA/85/22) sent on 11 November 2022.

First, please be assured that the Office has taken note of all your comments, especially the proposed adjustments. These elements have been subject to the ongoing information and consultation process of the COHSEC on 14 November 2022 and the upcoming GCC consultation today.

Second, as you know, the health of our staff is our priority. Our employees are the driving force behind the EPO and its achievements, and they are at the heart of our People strategy. This approach has not changed with the Office's proposal in CA/85/22. In fact it aims to optimise our support for sick staff. We would therefore like to clarify the essence of the proposed regulatory changes.

Seamless sick leave process

The Office wants to streamline the sick leave process across the three stages of sick leave, extended sick leave and incapacity. This is based on the experience of our health professionals over the past years, and enhanced by feedback from staff. The adjustments abolish the medical opinion at the cut-off date of the extended sick leave status at 125 days of sick leave. In fact, the change of status will occur automatically when 125 days of sick leave have been reached.

A medical opinion will still be required to determine whether an employee fulfils the condition of incapacity. This opinion can be issued as soon as the medical practitioner has sufficient indications that the sick leave period may

take the total absence beyond 250 days in a period of 36 months, and not necessarily exactly at the moment when the employee reaches the 250 days of sick leave.

These modifications will simplify the sick leave process and enable our team of Occupational health experts to assist and better support staff during the whole period of sickness. The Occupational health experts can flexibly arrange medical consultations with sick staff through the whole sick leave period.

It needs to be stressed that the independence of our health professionals remains guaranteed and enshrined in our regulations. The possibility to seek an additional medical opinion in case of disagreement or call for an arbitration procedure also continue to exist for our employees.

Data privacy

The protection of personal data, and data protection oversight mechanisms are integral to our legal framework. The proposed amendments in the relevant provision under Article 89 ServRegs clarify and strengthen data protection, providing more legal certainty.

Regarding access to medical records, the Data Protection Rules have established this right of the data subject, which has also been confirmed by ILOAT case law. The concerned staff member can always exercise this right before the Office or before the medical practitioner.

COHSEC working group

The mandate for the working group was presented to the COHSEC of 23 February 2022. In total 8 meetings took place between April and September 2022 on the agreed subjects in a collaborative atmosphere. The COHSEC was regularly updated on the proposed changes, and discussed them thoroughly. The final recommendations of the working group were presented to the COHSEC in the meeting of 24 October. In particular the recommendation related to the seamless sick leave process was supported by all members of the working group and, subsequently, integrated in the proposal to amend the regulations in CA/85/22. In sum, comprehensive and intense discussions in the COHSEC have taken place before submitting the proposed changes to the consultation procedure.

We trust this letter further clarifies the Office’s proposal and look forward to further constructive exchanges on the matter.

Yours sincerely,

António Campinos

Opinion of the CSC members of the GCC on GCC/DOC 28/2022:

Flexibilization of parental leave (CA/87/22) & Amendments to Circular 22

Introduction

1. The CSC members of the GCC give the following opinion on the "Flexibilization of parental leave (CA/87/22) & Amendments to Circular 22" proposed in GCC/DOC 28/2022.

On the consultation

2. A technical meeting took place on 28 October 2022 during which the administration made a PowerPoint presentation explaining its intention to "flexibilize" parental leave.

3. The presentation focused on providing additional flexibility when taking parental leave compared to the current provisions. The enhancements presented were:

   - a shorter minimum period of parental leave (reduced from 14 to 7 calendar days),
   - a short period of notice (reduced from one month to 3 days),
   - pension and Long-Term Care spouse contribution as default with possibility to opt-out

4. The PowerPoint presentation was never provided to the staff representation after the meeting and no other meeting took place.

5. The document GCC/DOC 28/2022 was provided on 7 November 2022 for consultation in the GCC meeting of 22 November 2022.

On the merits

Parental leave

6. The proposed enhancements are presented as being more flexible compared to the current provisions. However, they remain less flexible than the emergency measures introduced during the pandemic. Indeed, the minimum period of parental leave was reduced down to one day.

7. While the administration announces "more flexibility", it also gives more discretion to line managers for granting a request for an extended period of parental leave:

   > Circular 22, Rule 3, Article 44a Parental leave (c) Procedure (i)
   >
   > *Employees who want to take an extended period of parental leave must discuss this well in advance with their Line Manager.*

8. This aspect was not addressed in the technical meeting of 28 October.

9. In the current provisions, 14 days represent the minimum period for parental leave. The new provisions define the minimum period as being 7 days. A period of 14 days now becomes

an extended period of parental leave, hence subject to line manager discretion if it was not discussed well in advance. This goes against the alleged goal of flexibilization.

10. At the same time, we have become aware that Directors in DG1 are already announcing that periods of parental leave which have not been defined already in the planning exercise will not be taken into account for the purpose of assessing productivity during the appraisal exercise.

11. VP 1 did not comment on this information in the meeting. Instead, it was the Chief Operating Officer (COO) who took the floor and explained that he was not aware of this. The COO refused to answer our question as to whether this practice should be implemented by Directors or not.

Family leave

12. The topic of family leave was not addressed in the technical meeting of 28 October and it came as a surprise that it was introduced in the GCC document.

13. Similar changes are now added to the scheme of family leave which is now subject to a new requirement:

> Circular 22, Rule 3, Article 44b Family leave (c) Procedure (i)
>
> *Employees who want to take an extended period of family leave must discuss this well in advance with their Line Manager.*

14. This new requirement goes against common sense because it is “difficult” to plan in advance serious illness or disability.

Conclusion

15. The proposed enhancements are presented as being more flexible compared to the current provisions, which is welcomed. However, they remain less flexible than the emergency measures introduced during the pandemic and they regrettably give more discretion to line managers in some cases, therefore increasing the risk of unequal treatment.

The CSC members of the GCC

Opinion of the CSC members of the GCC on GCC/DOC 29/2022 REV:

Adjustment in medical coverage for children beyond 18 years (CA/92/22)

Introduction

The dependant status of a child is codified in Article 69(3) ServRegs. This article is important for staff as it defines when a child is to be considered dependent on the EPO employee. This dependant status has implications on several areas such as the children's health insurance or the orphans' pension. Hence, it is very important how this dependant status is determined as well as the exact starting point for the calculation of the six-month period according to amended Article 83a ServRegs (and the relevant Implementing Rules).

Article 69(3)(a) ServRegs defines the criteria under which a child is considered to be a dependent child:

(a) the legitimate, natural or adopted child of a permanent employee, or of his spouse, who is mainly and continuously supported by the permanent employee or his spouse;
(b) the child for whom an application for adoption has been lodged and the adoption procedure started;
(c) any other child who is normally resident with and mainly and continuously supported by the permanent employee or his spouse.

Article 69(4) to (6) ServRegs relate to the dependants' allowance.

Article 83a(1) links the entitlement to the health insurance to the dependant status:

(a) In accordance with the Implementing Rules, an employee, their spouse, their children and other dependants within the meaning of Articles 69 and 70 shall be insured against expenditure incurred in case of sickness, accident, pregnancy and confinement.

There is no reference in Article 83a to the dependants' allowance.

A circular should define details on the implementation of articles of the higher-ranking law (i.e., articles in the ServRegs) but shall not restrict them further. Circular No. 82, Rule 1(1)(b), however, defines further restrictions to Article 69(3) ServRegs:

*(1) Subject to paragraph (2), a legitimate, natural or adopted child (Art. 69(3) (a) ServRegs) shall be assumed to be mainly and continuously supported by the employee or his spouse if the child is not gainfully employed (**Rule 3**) and is*
*(a) under 18 years of age, **or***
(b) has not reached the age of twenty-six and is receiving educational or vocational training, or...

Current practice

Once a dependent child reaches the age of 18, the Office requests confirmation from the employee that the child is receiving educational or vocational training (e.g. has enrolled into

university). Otherwise they lose their health insurance for the child. This practice is not supported by the Articles of the ServRegs. In fact, the Office gives precedence to Circular No. 82, Rule 1(b) over the less restrictive Article 69(3) ServRegs. The criterion of educational or vocational training causes dependent children to lose their dependant status, and thus the health insurance, e.g. between the end of the secondary education and the start of university.

On the consultation

The administration was repeatedly confronted through letters, in meetings and in legal challenges with the inconsistency of the application of Article 69(3) and Circular No. 82. In a meeting in October 2022, the administration explained that the underlying issue of the (inconsistent) definition of the dependant status would not be amended but that the envisaged change was limited to filling coverage gaps in the health insurance for dependent children.

This GCC document consequently also only refers to one aspect of this known problem namely to the provision of a health insurance to dependent children according to Article 83a.

On the document

The administration stresses that the new additional text to Article 83a will extend the health insurance of dependent children for six months following the end of the dependant status.

Additional text to Article 83a, 1(c)

c) *Where an employee whose child who ceases to be treated as a dependent child within the meaning of Article 69 can provide evidence that the child is not in gainful employment, the child will continue for a maximum of six months to be insured as provided for in paragraph (a). This cover shall not give rise to the levy of a contribution. The six-month period shall commence on the date of the loss of status of dependent child within the meaning of Article 69. This cover shall cease at the end of the six-month period, or when the child reaches twenty-six years of age, whichever is the earlier.* ***(emphasis added)***

On a positive note, we appreciate the effort of the administration trying to address the reported deficiencies of the current practice. This will allow parents of children falling in the described bridging periods, e.g. after finishing secondary school, due to breaks between study cycles or before taking up employment, to avoid unnecessary hassle, such as re-insuring a dependent child.

On a negative note, the amendment to Article 83a does not solve the problem of the incorrect interpretation of the dependant status. Therefore, dependent children according to Article 69(3) will not be covered by the health insurance after the six-month bridging period, if the Office continues to link the definition of the dependant status with a criterion relevant for the payment of an allowance according to Article 69(4).

In addition, the following issues remain:

- The provision does not define the exact start day of the six-month period. The administration was not in a position to clarify this in the GCC meeting. It is still unclear whether the starting point is the end of the exams, the end of the academic year, the date of the diploma or any other possible trigger. This uncertainty might lead to litigation, if the Office would re-claim retroactively from the employee costs incurred to Cigna after the bridging period ends, as calculated by the Office.
- With regards to a dependent child who enters the obligatory civil service or military service after finishing their secondary school, or who signs up for a voluntary year of social services, the document did not provide any clarity whether the same bridging periods would apply to them, i.e. before as well as after the end of such obligatory or voluntary service. The Office was not in a position to provide us with the information during the GCC meeting but announced that they would look into the matter.

There are further situations, which the Office should consider:

- A dependent child takes a gap year after secondary school. This child will only be insured for 6 months after which a different insurance is needed for the rest of the year. Is the child during the first 6 months still considered dependent? Should the employee die following these 6 months bridging period but before the child receives educational or vocational training, would the child be eligible to an orphan pension?
- A dependent child finishes the post-secondary education at the age of 22 or 23, still lives at home and cannot find a job. Will the health insurance cease after the six-month period, although they still depend on their parents?

Conclusion

The Office portrays this amendment as six months of additional health insurance for dependent children. This is misleading: it offers a workaround for an incorrect practice but does not go to the root of the problem.

In our view, and according to Article 69(3) ServRegs, the meaning of a “dependent child” is well defined. All children have the dependant status and retain that status if they meet the requirements of Article 69(3). As such, they are already covered by health insurance under Article 83a(1)(a) ServRegs. We do not agree with the restrictive interpretation of the dependant status based on a circular, which cannot take precedence over the definition in the higher-ranking law.

Furthermore, no calculation has been provided for the alleged additional health insurance coverage for dependent children.

The CSC members of the GCC

Opinion of the CSC members of the GCC on GCC/DOC 30/2022:

Code of Conduct for members of the Administration of the Reserve Funds (RFPSS/SB/xx/23)

The CSC members of the GCC give the following opinion on the revision proposed in GCC/DOC 30/2020.

The revision of the Code of Conduct is a good practice and has been revised the last time in March 2018 (RFPSS/SB 30/18).

The proposal for the revised Code of Conduct has been presented by the internal auditors to the SB RFPSS on 10 May 2022 and to the Administrative Council (AC/171) on 29 June 2022 (CA/20/22) and takes into account adjustments to digital working and references to the Service Regulations based on recommendations by the auditors.

The CSC members of the GCC support the Code of Conduct as presented in GCC/DOC 30/2022.

The CSC members of the GCC

Opinion of the CSC members of the GCC on GCC/DOC 31/2022:

Orientation on recruitment (CA/100/22)

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 are vital to it.

The cautious planning approach of the Office based on the pandemic situation and in view of a forecasted dire economic situation accompanied by a 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 finding themselves in a critical situation.

According to the document the recruitment policy of the last years has an important impact in specific areas. For instance, examiner recruitment proves to be difficult in the technical communities “Digital” and “Electronics & Physics”, as well as in several corporate areas.

On the replacement ratio

We also note that in 2022 the Office followed a cautious planning approach as presented in CA/100/21 foreseeing a replacement ratio between 64% and 72% for the examiners for 2022-2026.

As a result of a higher workload, we acknowledge the efforts made during the course of the year (2022) to increase the replacement ratio to 80% for the examiner workforce for 2023. While we consider the adjusted replacement ratio as a step in the right direction, we doubt it is sufficient as the restrictive recruitment policy of the past years reflects in the lower production figures. The reduced workforce (around -10% examiners and formalities officers over the last 5 years) cannot cope with a steadily increasing workload (+13% incoming applications).

Further, we estimate that the continuation of a planned replacement ratio of only 50% in the non-examining areas will not be sufficient to make up for the damage already caused by the freeze over the last years.

On demographics (CA/40/22)

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 overestimated and the half-hearted attempts to solve the issue of understaffing through rebalancing (i.e. internal mobility) and upskilling 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.

On 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 situation 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 date of resignation or retirement is known.

Proper succession planning, however, is too seldom in the Office. Recruitment procedures 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 has left the Office. Despite the fact that an 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 the part of the Office is observed in most cases.

It appears that the succession planning regarding core business relies considerably on the young professionals. We note that the document mentions that the Office has already "*welcomed 128 young professionals*" since the scheme has been introduced. We wonder whether this matches the figures announced in document CA/32/22. By contrast, only 77 examiners were recruited in 2022 to compensate for leavers[1].

On internal mobility

The Office seems to consider internal mobility for addressing all shortages of staff across the Office. The CSC members of the GCC appreciate the possibilities offered to all staff in terms

[1] See page 4/11.

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. What understaffed units need are full moves on a permanent basis. 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 suitable 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 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, also in units outside the core business, remain vacant for months or years. Initial training and knowledge transfer of new recruits – if provided at all – are necessary elements which help ease the situation of understaffed units. In addition, however, we need to allow for experience, which only comes with time, 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 workforce has only partially come true, despite all the commendable efforts of the colleagues in BIT.

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

The CSC members of the GCC

Opinion of the CSC members of the GCC on GCC/DOC 32/2022:

Adjustments to the Organisational Structure

Introduction

In view of the potential impact of the proposed organisational changes on staff, document GCC/DOC 32/2022 should have been presented to the GCC for "consultation" and not just "for information". In addition to the information provided, which already points to substantial changes, we were informed during the GCC meeting that this document is to be seen as a first set of changes, the second set of organisational changes will be provided to the GCC beginning of 2023.

Due to the short time available for this item in the GCC meeting, the Office noted down but did not answer some of the questions and comments raised by us, others were addressed only shortly. The acting chair of the GCC, also in his capacity as VP 5, offered to continue the information exchange and discussion on the still open questions later.

The members of the CSC make the following observations and raise questions with regards to the main organisational changes for DG 0 and DG 5 as set out in GCC/DOC 32/2022

General observations

The document reads like verbiage, a random choice of words. It unfortunately fails to provide our colleagues with the long awaited clarification of content, objectives and roles. Its content is vague, i.e. it lacks sufficient details and arguments to explain the rationale behind or the need and added value for this reorganisation. From the first feedback gathered amongst the affected colleagues, the document raises more questions than it would help to answer.

Main changes DG 0:

- Principal Director PD 01: The document is silent about the PD 01 Chief of Staff. In the meeting, we were informed that the position still existed but was vacant for the time being. No further information was given.
- Principal Directorate 02: Staff from directorate Event Management was informed of a transfer to Directorate Channel management, as the first of the two directorates was going to disappear. The same directorate still features in the new organisational structure – can the Office confirm that Directorate Event Management will continue to exist?
- Current Principal Directorate 03 (Corporate Governance Service CGS) does not appear in the new organisational structure. Will the implementation of the future strategic plan SP2028 not require a similar coordinating unit? The end of SP2023 only affects one of the three current directorates. Still, staff of this and the other two directorates will be regrouped and transferred as one directorate to DG 4. Should the remaining directorate not better remain in DG 0 in view of their mission, i.e. delivered supporting effective decision-making and office-wide independent monitoring of

processes and risk-related activities? In addition, as three directorates become one, will there be a competition for the single remaining director post?

- Observatory: In the current organigram, which can be viewed and downloaded on the intranet, the Observatory is shown as a Principal Directorate within DG 5 (PD 53). In GCC/DOC 32/2022, this "detail" has been omitted in chapter 2.2.1 (Current organisational structure of DG 5). The Observatory is now presented to become a directorate within the new PD Patent Research and Policies. The document fails to list the underlying reasons for the change from DG 5 to DG 0 and why it will become a directorate in the new organisational structure. In addition, from the document, it is not clear what the staffing of this unit will look like.
  In view of the hub approach, how will priorities be set when EPO internal expert resources are needed for Observatory-related activities and at the same time in the experts' default units? In addition, this question is all the more relevant considering the shortage of resources due to missing replacements in the experts' default units.

Main changes DG 5:

- With the proposed changes, DG 5 is supposed to be made leaner, more empowered, and effective. The need for the increased collaboration and empowerment, according to the document, was also identified in the study on future-readiness. In our view, increased empowerment would mean that tasks and issues should be dealt with at the most immediate level, where the competent staff is. Can the Office confirm that this is the intention here as well? The same argument of empowerment was already used back in 2020 to motivate the last major reorganisation. Did the Office fail to meet this goal since the last reorganisation?
- The CILO and CILO Office, according to the document, will have successfully delivered their assigned mandate, This might be true for one part of the mandate, namely the delivery of services of SP2023. Can the Office confirm that something similar will not be needed for the delivery of SP2028?
  The second main task of the CILO and CILO Office was to oversee the diverse and complex portfolio of DG 5. The portfolio of DG 5 is still at the same level of diversity and complexity. Is such a coordinating role not any longer necessary and this task therefore obsolete? In the meeting, the Chair, in his capacity as VP 5, confirmed that all PDs would report directly to him.
- PD Cooperation and Academy – the former two directorates European co-operation and International co-operation will become three units with "team leads". Where will the current directors be transferred to and were they involved/consulted beforehand? Will the structure become leaner through this change from two directorates to three teams?
- PD Legal Affairs: We are returning to the status quo of before 2020, i.e. before the two principal directorates 52 and 53 were merged into one with the aim of fostering efficiency and synergies. The arguments provided to explain the added value of splitting PD Legal Affairs again into two (apart from adding a new PD post) are not convincing.
- Current Principal Directorate Patent Knowledge will be reduced to one directorate only (Knowledge) within the future PD 54. The document fails to explain how this

meets the goal of establishing a stronger sense of purpose. If a stronger sense of purpose was intended, role clarity, a definition of the content and objectives should be provided for staff of current PD 54.

- A new denomination ("Patent Intelligence") for a "new" principal directorate, PD 54, does not on its own suffice to contribute to clarity, unless the meaning and intention are understood. This problem was already apparent with the previous change of denomination from "Patent Information" to "Patent Knowledge" and has not been solved by yet another change of name.

  The Academy was only recently (i.e. back in 2020) separated from former PD 54, to join PD 51. The alleged goal was to "increase the cooperation role of the Academy", with the intention "to enhance awareness within the European Patent network". With the new organisational changes, the Academy returns to new PD 54, a step which according to the document should reinforce the importance of the Vienna site (although the colleagues of the Academy remain in Munich). We would like to know, whether the arguments used to justify the last reorganisation proved to be incorrect? In the GCC meeting we received confirmation that the Principal Director would be located in Vienna. Vienna staff will appreciate this.

  The merge of the Academy and Patent Knowledge should consolidate the numerous learning activities and knowledge initiatives that already exist. Is this in line with any future development? We would hope that these would not only be consolidated but also strengthened and developed further. These learning and knowledge activities are only a small part of the current activities of staff of PD Patent Knowledge – core tasks relating to Patent Information Services, such as processing and treatment of patent data for the EPO's patent information products and services, publication of legal texts, user support, marketing and promotion etc. are not mentioned in the GCC document. This unclarity is of great concern to the colleagues in PD Patent Knowledge. Can the Office confirm that their activities will continue, and in addition will NOT only be consolidated but even reinforced?

  Moreover, as the document is silent on this, can the Office also confirm that none of the teams currently in PD 54 will be transferred outside the future PD Patent Intelligence/Directorate Knowledge?

Conclusion

As explained in the GCC document, reorganisations of this magnitude have a huge impact on many more colleagues than the managerial staff who are moved around,. This is even more true if reorganisations occur frequently, with no clear justification or discernible direction. At the same time, the latest future readiness study identified a need for a clear business portfolio and for a sense of purpose, especially for DG 5.

The difficulties to cope with the workload in many areas has become apparent in the last staff survey among staff of all DGs. This is not addressed by the planned reorganisations. In this context in particular, recurrent organisations should be avoided and phases of

consolidation are needed to reduce the stress level for our colleagues. Therefore, a “cautious approach” and proper consultation should have taken place and is still required for any implementation.

The document is vague in many aspects, it lacks arguments for changes which correct or reverse actions of recent years. One gets the impression that posts are created or eliminated to move heads around and create “opportunities” for some in grace or to disgrace others. It seems that time-honoured skills are considered less important than the career aspirations of a few.

The document raises more questions amongst our colleagues as regards their needs and concerns than it contributes to answer.

The GCC chairman has offered to continue discussions with the CSC on the details of the planned adjustments to the organisational structure, of which GCC/DOC 32/2022 is only the first part. We look forward to it…

The CSC members of the GCC