

Opinion of the CSC members of the GCC on GCC/DOC 02/2022 Adjustment of the structures of the Office

Introduction

The European Patent Convention defines the core mission of the Office, which is essentially about granting European patents¹ (= searching and examining PCT/EP patent applications). Some tasks might come on top, such as administrating the European patent with unitary effect. However, in a nutshell, the core tasks do not evolve rapidly. But the President seems to consider that more or less comprehensive reorganisations must be done on a regular basis.

The Office has seen in the recent years already a number of reorganisations:

- Reorganisation in 2017 for DG1-DG2 ([GCC DOC 12/2017](#)) (Battistelli era), which we [commented on](#);
- Reorganisation of IM in February 2019 ([GCC DOC 02/2019](#)), which we [commented on](#);
- Reorganisation in October 2019 ([GCC DOC 15/2019](#)):
- Reorganisation in December 2020 ([GCC DOC 27/2020](#))
- Reorganisation DG1 in October 2021 ([GCC/DOC 16/2021](#))

Some relate to the core mission of the Office in DG1 but many others relates to services which should be subordinate. Staff is moved around, some managers are side-lined, removed, replaced, quickly promoted, or demoted. More often than not, the reason given for the change, if any, boils down to a managerial buzzword, with “agility”, “sustainability” and “efficiency” being the buzzwords of the day. In any case, reorganisations cause disruption in the affected services, not only in DG1.

The new structure officially concerns mainly managers². We wonder if the President is more interested in the career path of managers and in the individuals involved in “his” decision-making process than in “normal staff”, who will sometimes suffer collateral damages. We wonder whether the officially stated reasons are the real ones. As PD42 put it during the discussion, administrative reporting lines are different from operational information flows, so that merging structures does not necessarily affect the workflow (and data confidentiality)³. Conversely, it is also possible to “virtually merge” PD01 (the President’s Office) and VP4 Office without touching the hierarchical structure, in order to improve the workflow⁴.

On consultation

The entire Office is affected by the changes. Other International Organisations carry out real, good-faith, consultation in the case of comprehensive re-organisations. Before “Social Democracy” was introduced at the EPO by decision CA/D 2/14, the General Advisory Committee also gave a reasoned opinion on “*any proposal which concerns the whole or part of the staff*”⁵. Local Committees were also consulted when appropriate. It is even questionable whether the President should not have submitted the document for

¹ See Article 4(3) EPC

² See section 3.1

³ With regard to the reorganisation of the Health & Safety department

⁴ See section 2.1.2

⁵ See the changes shown in document [CA/4/14 Add. 1 e.](#)

consultation within “Social Democracy” since the change is so wide-ranging that it becomes a “*question of a general nature*”⁶.

DG0

- PD02 (PD Communication): staff inflation. We understand that these staff come from different departments. The question is: does an Office that actually diminishes in numbers need such a large communication department? The President replied that PD02 would have the right size after the reorganisation.
- PD03: the ratio of managers / staff is exceedingly high or very high in PD03 in comparison to DG1: (1 PD, 4 directors, 16 administrators), for instance one director with four subordinate staff, and one director with no subordinate staff at all. By comparison, in DG1; one director is responsible for 100 to 200 staff. The administration justifies the ratio as follows: it is not the number of staff that matters but the importance of the work these managers are doing. DG1 staff and managers will appreciate.
- Employment Law: the department is transferred from DG4 to DG0. **We welcome** the fact that Employment Law is removed from the DG responsible for enforcing the regulations, especially from PD43. We still think that a transfer to DG5 under the direct supervision of a Vice-President reporting to the Administrative Council, which is his/her appointing authority and the legislative body for employment law, would be best, less biased. The Administration simply answered that we are never satisfied.

We understand that Employment Law has now an increased budget (EUR 5.85 million⁷) to manage, with a view of combatting staff at ILOAT. Of course, we would have preferred if the 5.85 million would have been invested in the Education Allowance for instance so that the Employment Law won't have to combat staff at ILOAT. The department should be seen as the ethical and moral compass of the Office, by respecting the rules and advising senior management on what is legally right or wrong. Looking at the recent cases lost by the EPO at ILOAT, it seems that the department, and the Office with it, has lost its compass, trying to defend the undefendable by all means. In our view this may not necessarily be good advice to the President.

The Employment Law secretariat is to become a full department in view of '*the enhanced scope and complexity*' of their work. By contrast, the staff representation has been denied a single secretary to support over 40 staff reps spread over four places of employment dealing with all the policies of the Office, of which Employment Law is only a part.

- Vienna sub-office (and PD54): the site manager is made a mere senior adviser to VP4 and an assistant to PD 44 (General Administration) in formal interactions with local Austrian authorities on the construction aspects. This seems inappropriate. In addition, it seems that Vienna does not have the standing it would deserve.

PD 54 has currently a single director left, who is at the same time director *ad interim* for another directorate, and as of 1 April a Principal Director *ad interim* who operates

⁶ See current Article 38(2) ServRegs

⁷ See document [CA/F 11/21](#): “New award of contract for outsourcing of ILOAT services”

from Munich. In 2020, the Patent Academy was moved from PD 54 to PD 51. Then one directorate out of three was moved from PD 54 to PD 02 at the beginning of 2021. The document does not mention that one of the remaining two director posts is vacant since April 2021 and PD 54's post will become vacant as of 1 April 2022.

The President answered that he hated the counting game about posts, windows, etc. He added that Vienna needed to find a new purpose since the days of CD-ROMs, when it was detached from WIPO and integrated into the EPO. According to him, what counts is the impact of the Vienna staff, and that we are "One Office", with the possibility for other staff (i.e. from other places of employments) to work in Vienna.

This does not sound like a strong commitment to the Vienna staff. Instead of strengthening the role of the site manager, **we propose** to strengthen the role and purpose of the Principal Directorate 54. We hope that the appointments for the new structure will also include the two vacant managerial positions within PD 54.

- Berlin sub-office: **we welcome** placing the responsibility for the Berlin sub-office at a high level with VP1. However, it seems important to have a German-speaking high-level representative permanently on site because of the current renovation and also to facilitate the contact with the German local authorities.

DG1

Again, in view of the substantial changes in the functional tissue of DG1, we should have been involved and informed thoroughly. Since the document does not describe the intentions (problems to be solved and results to be achieved) of the reorganisation, many questions arise as to the necessity and the benefits of it. The use of managerial buzzwords also obscures the content.

In general, the organigram of DG1 does not serve agility, it appears to be stiffer, more bureaucratic and centralised in comparison to the previous structures and to the other DGs. For instance, all have to report to the COO for any issue.

- The three "vertical" Principal Directorates (PDs "Operations"): what role will the 3 PDs play in the technology communities, which are different from the current three sectors and more numerous? Furthermore, the overall reduction in director posts in DG1 is questionable while we observe that, in other DGs, the number of management positions is either stable or increases.
- PD Quality and Practice Harmonisation: the Office has already a department for quality assurance (DQA in DG0) and operational quality control in DG1. Discussions on patent practices should involve DG1 ("the Communities of Practice" mentioned in the document?) as well as DG5, which is responsible for patent law. We wonder whether a new "horizontal" PD needs to be created just to show that they are priorities and to coordinate them. "Top customers" seem to be a major concern. We suggest that the Office has no customers, let alone privileged ones. Instead, all users should be equally considered in the spirit of harmonisation.
- PD Digital Change & Business Transformation: here again, the question arises as to why a PD should be created for coordination between other departments or PDs.

Management did not answer the question of the meaning of “transversal responsibility beyond organisational boundaries”⁸.

- PD Customer Journey and Key Account Management: here again, we suggest that the Office has no customers, let alone “key” ones. Instead, all users should be equally treated.
- PD Opposition and Central Formalities: opposition work is separated from the departments responsible for (search and) examination. We wonder whether this will reduce the variety of tasks for examiners and formalities officers, resulting in lower qualification and motivation. Management itself admits that this will require additional close cooperation and alignment with the COO operations.

DG4

- Health & Safety (H&S) department: in the meeting we referred to our reservations regarding the changes to the Health & Safety department to be split over different departments, which we expressed in the COHSEC opinion (annexed to this opinion). In our view, H&S should all remain in one unit, directly reporting to the President or to a Vice-President. One reason is that sensitive data must not be accessible outside medical circles in H&S (e.g. in Human Resources or Front Office) just for “efficiency” reasons. From now on it will be either Health or Safety, but not both, because the coordination has to go through multiple departments and PDs. In our view, splitting Health from Safety cannot be more efficient than keeping them together. That is why these two are called a Health & Safety unit in most organisations⁹. Another reason for not splitting them would be to align with the structure of the H&S services in the host countries.

H&S needs proper staffing levels, which is presently not the case. For instance, there is currently no safety officer in The Hague (and in the Berlin sub-office), and no psychologist in The Hague. The Medical Advisor and the Occupational Health Physician will retire soon. Management’s answer was that the Office needed to remain flexible and employ external staff for the sake of scalability.

- Chief Sustainability Officer (CSO): a Chief Sustainability Officer (CSO) was appointed on 1 January 2022 to “take our environmental, social and governance (ESG) impact to the next level” and to “integrate sustainability into everything we do”¹⁰. She is invisible in the new structure, although her importance should increase in our opinion, e.g. given the extensive building programme. VP4 replied that this was just a mishap and this would be taken care of.
- Central Procurement: we referred to the reorganisation in October 2019 when Central Procurement was integrated under the Chief Financial Officer in PD41 Finance. At that time, VP4 identified that merging the finance and procurement departments would create synergies and efficiencies. When asked for the reasons for the new reorganisation, VP4 stated that the integration had not proved successful. She also commented on a worrying statement (“reducing the effort for direct placement in

⁸ See the document, page 8. last paragraph

⁹ The EU has a dedicated separate [Agency for Safety and Health at Work](#).

¹⁰ See the announcement “[Sustainability in our core structure](#)”

favour of competitive tenders”) in the document by announcing that more effort would be invested in giving the preference to competitive tenders and diversification of suppliers, rather than lowering the criteria for direct placement. It seems that staff in the department are not convinced by this move.

- “Remuneration and Welfare”, formerly known as “PD Corporate Policies (PD 4.3)”: the staff count has decreased considerably and is now around 10-15 staff. We questioned if this should remain a principal directorate at all, rather than just a directorate or a department? The ratio of one PD to 10-15 staff, two of them are directors, seems very high. As to welfare, we enquired whether the Office has someone in mind whose profile would fit the definition of the job, i.e. to look after the needs and welfare of the staff.. We enquired if this job would be advertised to find the best candidate. We also wondered what a newly created directorate “Prospects & Studies” would do in terms of analytics or benchmarks tat the present directorate “Compensation and Benefits” does not already do.

DG5

There is yet another reorganisation. It seems that DG5 has been reorganised about four times in the last three years.

- The “Observatory”: the ‘Observatory’ was announced for 2021 in the reorganisation of October 2019: This is also mentioned in the last available status report SP2023 on this topic, from October/November 2020. The benchmarking with other international organisations was completed in 2020¹¹. But the organisational structure of the Observatory and its positioning are currently still under review together with the member states. The President announced that a final document would be submitted in the June 2022 Administrative Council.
- The Chief International Legal Officer (CILO): the CILO is inserted between the operational units and VP5. His exact role is not clear. A Vice-President assists the President in managing the Office¹². He is primarily responsible for the operation of his/her DG and may be assisted by other staff in certain tasks. The role of the CILO seems unclear and at odds with the intention of the reorganisation to make the organisation leaner. VP5 stressed that he needs a CILO to ensure coordination but also emphasised that he also has direct contact with the departments below and he is the one who represents DG5.

¹¹ See its [“Status”](#)

¹² Article 10(3) EPC

Conclusion

Stability means an end to constant reorganisations. They inevitably have an impact on staff, even if management promises to keep the impact low. Sometimes the affected staff are consulted. We cannot confirm this as we are systematically kept out of the process, but the managerial statements seem so out of touch with what staff actually experience.

Full implementation is scheduled for 1st April, which is very ambitious, and many posts have to be (re-)filled, with staff sometimes having to apply for the position they currently hold. The timeline seems to exclude external recruitment and will merely re-deploy staff internally. We have not yet given up hope that the staff representation will be involved in the process.

In any case, we will keep an eye on the vacancy notices that will be published soon and report on the outcome of the exercise.

Annex: Opinion of the CSC members of the COHSEC on H&S Reorganisation (document COHSEC/DOC 05/2022)

**Opinion of the CSC members of the COHSEC on document
COHSEC/DOC 05/2022:
H&S Reorganisation**

The CSC members of the COHSEC give the following opinion:

On the consultation

Document COHSEC DOC 05/2022 aims at finalising a review process of the Health & Safety (H&S) services, which was kicked off by the administration in December 2020. The external consultant company MercerMarsh Benefits (MMB) was tasked to carry out a study, based on a mandate with objectives to be met, which were unilaterally defined by the administration and not even disclosed to the staff representation (SR). On 14 January 2022, the COHSEC was presented “for information” with the findings report of the Health & Safety study by MMB (COHSEC/DOC 2/2022). We pointed out the numerous deficiencies of the study during the discussion. Not only was it based on partly irrelevant data (e.g. the UK as a country of reference, Austria as one of the EPO’s host states being completely ignored) but the consultant’s lack of knowledge of the structure and regulations of the EPO (e.g. no mentioning of the PPI and national legislations with regards to H&S of the host countries, ISO 45001, international treaties) made us object the findings and recommendations as fit for purpose to draw final conclusions from it.

Supported by a request from the Central Staff Committee to the President (sc22004cl), we proposed in the meeting that a task force should be set up to draw up scenarios for possible future changes of the H&S services of the Office.

The requests were ignored. Instead, document COHSEC/DOC 05/2022 – H&S Reorganisation, proposing the intended modifications of the organisational structure of H&S, was sent to the members of the COHSEC for opinion only a few days later. We consider this to not constitute a bona fide consultation.

Legal context

Already back in 2005, had the Office recognized the need for a proper policy on health, safety and treatment of sick staff. A Working Group on Legal Matters was set up to prepare the legal framework for such a policy. This WG concluded that, in the Health and Safety area, the organisation is bound by international conventions and regulations in the H&S field, which codify widely accepted principles. These principles are complemented by and find their concrete expression in the H&S regulations found in the internal law of the Organisation and in the legislation of the host countries (see Article 20(1) PPI).

The occupational safety legislation (*Arbeitssicherheitsgesetz*) of at least Germany and Austria define *inter alia* the different functions, roles and tasks of occupational health and safety experts, as well as their independent status and position in the organisational structure.

Partially positive aspects of the proposed changes

We agree that it is of utmost important to maintain and improve the H&S services offered to staff. Staff trust and respect our colleagues working in H&S. Their in-house expertise is appreciated and should be further strengthened. This would require replacement of all H&S experts, physicians, safety officers and support staff who have already left, will retire or were transferred to other posts. Whilst this was confirmed by the members of the COHSEC nominated by the President during the COHSEC meeting, the document only partially reflects this intention.

Main deficiencies of the proposed changes

The position of the occupational health physicians and the safety officers has already eroded dramatically over the last years by numerous reorganisations. This present proposal, however, seems to be a new low. The impact of this proposed change would be detrimental to the already very weak independence of the above roles and functions and is clearly contrary to the interests of staff and also contrarily to the requirements of the Article 20(1) PPI. The value that the Organisation places on staff health's interests is very much reflected in the hierarchical position of those roles.

While the roles of the Medical Advisor (MA) and the Occupational Health Physician (OHP) should not be merged, the units supporting these roles shall be merged according to the proposal, together with a so-called Front Office, all managed and led by HR. Responsibilities, tasks and access rights, e.g. to sensitive health data, are not well described and it is not clear to staff who can or cannot access their data. Data protection issues may arise. The MA and OHP units must remain separate units, as there is a clear conflict of interest between the two. In addition, we object that the merged administrative unit should be named "core health team", whilst it is situated within HR. This would mislead our colleagues into believing that their medical and health data is dealt with by health experts.

The new position of a so-called Operations Manager should in no way undermine the independence and role of the OHP. We believe that, in order to best safeguard the independence of the OHP and to provide administrative support, an administrative position under the supervision of the OHP should be created to free the OHP for exercising the main responsibilities and important role that this position entails.

The Safety Officers (SOs) have a similar role to play within the H&S organisation. Their independence should also be guaranteed. Not only should the vacant post of one of the SOs be

filled again, but their position in the organisational structure should be on the same high level as the position of the MAU and OHP. The independence and importance of the advisory role of the expert is put at risk if the position is not at the highest possible level in the organisational structure. It is not clear from the proposal at what hierarchical level the SOs will be positioned and which will be their reporting lines. The positioning within PD 44 could be incompatible with independently advising facility management on the implementation of safety regulations.

Finally, it is doubtful that according to the legal framework, the Health & Safety services can be split in two different units in different organisational sections.

Conclusion

Health & Safety services are indispensable for the Office to fulfil its duty of care. They are conducive to staff's health and wellbeing. They are therefore essential for the proper functioning of the Office. All H&S related topics should be properly consulted together with independent H&S experts and the Staff Representation. H&S services should therefore have remained in their prominent position they held before their roles were eroded dramatically over the last years, throughout the envisaged reorganisations. The further fragmentation of H&S into separate units in separate Principal Directorates, as proposed now, can be seen as the last step towards a complete dismantling of H&S within the Office. This, together with the trend to further outsourcing of all H&S services is not only alarming, but to a great extent contrary to Article 20(1) PPI, and therefore illegal.

For the reasons and arguments set out above, the CSC members of the COHSEC give a negative opinion on COHSEC/DOC 05/2022.