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**Zentraler Personalausschuss
Central Staff Committee
Le Comité Central du Personnel**

Munich, 09/06/2022
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GCC meeting of 2 June 2022 The Mobility Package reloaded

Dear Colleagues,

In a previous GCC meeting, the CSC members of the GCC gave a [negative opinion on the new package on mobility](#) corresponding to document [CA/32/22](#). In the latest GCC meeting on 2 June, the President submitted document GCC/DOC 9/2022 aiming at the implementation of the mobility package. In particular, the CSC members of the GCC had to give their opinion on:

- A new Circular on “Young Professionals”;
- A new Circular on (outbound) secondment and on leave on personal grounds (aka unpaid leave);
- Changes to Circular No. 364 lowering qualifications for external recruitment.

The circulars give us the occasion to revisit the buzzwords used by the Administration to make the package palatable to the Administrative Council¹ and maybe to some staff. They confirm that buzzwords are just that: empty words, and that we were right in our strong reservations against the package presented in CA/32/22 as it calls centralisation into question and establishes a separate set of Service Regulations² for a category of low-cost staff with fewer rights.

The Central Staff Committee

Annex: Opinion of the CSC members of the GCC on GCC/DOC 9/2022: Circulars on Professional Mobility

¹ The Budget and Finance Committee has already given a positive opinion on CA/32/22. The AC will decide on it in June 2022.
² The “conditions of employment for young professionals at the European Patent Office”; see pages 16/49 to 27/49 in CA/32/22.

Opinion of the CSC members of the GCC on GCC/DOC 9/2022: Circulars on Professional Mobility

The CSC members of the GCC give a unanimous negative opinion on document [GCC/DOC 9/2022](#).

Summary

In a previous GCC meeting, the CSC members of the GCC gave a [negative opinion on the new package on mobility](#) corresponding to document [CA/32/22](#). In the latest GCC meeting on 2 June, the President submitted document GCC/DOC 9/2022 aiming at the implementation of the mobility package. In particular, the CSC members of the GCC had to give their opinion on:

- A [new Circular on Young Professionals](#);
- A [new Circular on \(outbound\) secondment](#) and [on leave on personal grounds](#) (aka unpaid leave);
- [Changes to Circular No. 364](#) to lower qualifications for external recruitment.

The Circulars give us the occasion to revisit the buzzwords used by the Administration to make the package palatable to the Administrative Council¹ and maybe to some staff. They confirm that we were right in our strong reservations against the package and that buzzwords are just that: empty words.

“One Office” and [“Together, stronger”](#):

- Two separate sets of Service Regulations
In the GCC meeting, the Administration confirmed the intention to have two separate Service Regulations of equal ranking: the current ones (the “ServRegs”) and the ones for “young professionals” (YPs) to enter into force on 1 July 2022. We will thus have two classes of employees: the employees falling under Article 1 of the current ServRegs, i.e. you and us, and the future YPs.
- Contract law instead of public service (statutory) law
YPs and employees on secondment will be subject to individual contracts (“letter of appointment” and “agreement”, respectively) defining their individual working conditions², The Staff Representation will neither be privy to this, let alone be involved. It remains to be seen to which extent those conditions will lead to unequal treatment, possibly depending on the bargaining skills of the individuals and Organisations involved. The Administration refused to make any reassuring statement in the GCC meeting.

¹ The Budget and Finance Committee has already given a positive opinion on CA/32/22. The AC will decide on it in June 2022.

² E.g. their job description, working hours, place of work...

“Sustainability”:

- We already mentioned that the provisions on secondment in CA/32/22 were very generous for the staff concerned as well as for the hosting body at first sight. It turns out that the Circular on outbound secondment has to violate the higher-ranking ServRegs to achieve this.

“Transparency”:

- YPs and employees on secondment will be selected according to procedures and criteria different from those under the ServRegs and together with external bodies. Our request to involve the staff representation were simply ignored in the GCC meeting.

“Diversity”:

- Lowering the language qualifications and academic degree in order to perform tasks normally assigned to staff with higher qualification is presented as a necessary step to attract staff with the appropriate “diversity”. In many departments, language skills are equally important as technical skills to meet the quality standards expected by the users and the public from an international organisation. Furthermore, they contribute to the international character of the Organisation. In this context, the language regime carries the concrete risk of giving more weight to national interests.

Circular on Young Professionals

A part of CA/32/22 establishes as an Annex of the Codex a second version of service regulations of equal ranking with the current Service Regulations (“ServRegs”), incorporating by reference parts of these current ServRegs. In particular, YPs fall under no category of current Article 1 ServRegs (“Field of application”). They are thus neither “employees of the Office”, “other employees on fixed-term appointments” or “a new category of employees under the Office's Service Regulations” as claimed in document CA/32/22³. There is no example of such a structure in another international organisation. This was confirmed by the Administration in the GCC meeting. The Circular on Young Professionals (YPs) implements that second version.

Recruitment:

- Selection procedure: non-transparent and expressly not aligned with the already non-transparent selection for EPO employees, since staff representatives have been excluded from selection boards.
- Lower academic requirement (actually corresponding to requirement for job group 5) and decreased language requirements for initial year. This is problematic especially for YPs participating in the work of the EPC departments in the patent granting process, or as administrators. A university diploma at bachelor's level is not the proper basis for training aimed at acquiring skills for useful participation in the patent granting process for instance, a task exclusively performed, with the exception of formalities task involving no technical or legal difficulties⁴, by technically or legally qualified examiners and senior experts, in job groups 4 and 3, respectively.
- 24-month extension without any requirement for knowledge of the third official language.
- Specimen “letter of appointment” missing.

Performance development:

- Performance development and appraisal are decisive for the duration of employment of YPs. They are said to follow the principles set out in Circulars Nos. 365 and 366. Some parts of those circulars are clearly not applicable to YPs. From the rest, it is sometimes difficult to identify which “principles” would apply concretely. The competency framework with “harmonised job profiles” including defined job skills and competencies is the basis for appraisal and professional development in Circular 365. It is a prerequisite for a uniform application and thus for equal treatment. However, and singularly, YPs lack a job profile and a job description.
- Tutors will be responsible for the YPs. The Administration confirmed that no time budget would be allocated for these tasks.

New Ways of Working (NWoW):

- Title IV of the Service Regulations applies in parts to YPs but it is unclear how Article 55a ServRegs (Place of work) applies. This provision seems to dispense from the obligation to work on the Office's premises according to Article 55a(1) ServRegs.
- There is also no express reference to the guidelines on NWoW ([Circular No. 419](#)), not even its “principles”. Formally speaking, it seems that it does not apply. The President may thus

³ See paragraph 17.

⁴ See [Rule 11\(3\) EPC](#).

define different terms and conditions, e.g. as regards the place of work, health and safety aspects and data security aspects for home working.

- New Circular 419 already qualifies the eligibility for newcomers during their probation (Circular 419, Article 2(1)). We suggest a wording modelled along this Article 2(1) specifying the principles for allowing telework of YPs (smooth onboarding, ensuring continuous contact and dialogue with tutor and line manager), which would provide more concrete guidance on how to decide whether a YP may telework or not.

Circular on (outbound) secondment

Secondment means outbound secondment to a public or private host organisation⁵.

Agreement and conditions of secondment:

- A specimen agreement is missing, so that the balance of responsibilities, job description and place of work of employees under the ServRegs or YPs will remain in the dark. The legal framework of the Organisation itself would be seriously undermined and the principle of equal treatment of officials breached if different agreement would be drawn up⁶.
- The question is whether the President can, on the basis of a circular, introduced by himself, make the Office enter into agreements with employees remaining in active employment with the result that part of the Service Regulations are derogated from or replaced by other rules. Most specifically, it is not apparent that new Article 45(4) ServRegs would allow the President to derogate from Article 1(1) ServRegs, providing that (all) the Service Regulations shall apply to (permanent) employees. Such derogations or the possibility to introduce them by contract or agreement are to be defined in the Service Regulations themselves, as is done for members of the Boards of Appeal or for the President, the vice-president(s), principal directors and other employees on fixed-term appointment⁷. As such, the competence to introduce the possibility of such derogations is exclusively vested in the Administrative Council⁸.

Relocation and additional expenses:

- The Administration stated in the GCC meeting of 2 June 2022 that secondment would not entail a change in the place of employment within the meaning of the ServRegs, e.g. by transfer. The provisions on some of the allowances according to Article 67(1) ServRegs, are based on the place of employment, not the place of actual residence.
- Consequently, according to the wording of Article 73(1) ServRegs, staff on secondment is not eligible for the installation allowance, which is reserved to either recruitment or to transfer from one place of employment to another place of employment. Similarly, according to Article 80(1) ServRegs, they are also not eligible for travel expenses. Finally, according to Article 81(1) ServRegs, they are also not eligible for lump sum compensation for removal expenses.
- Thus the President changes provisions in the ServRegs with lower-ranking legislation, i.e. with a circular. This is in our opinion clearly illegal. Reimbursement of these additional

⁵ See Article 45(1) ServRegs.

⁶ See Judgment 4018, consideration 7.

⁷ See Articles 1(4) to (7) ServRegs.

⁸ See Article 33(2)(b) EPC; see also Judgment 4430, consideration 9.

expenses would have necessitated changes in the ServRegs. In the GCC meeting, the Administration explained that one should be fair and pragmatic as regards the conditions for seconded staff. The CSC members of the GCC prefer to remain within the bounds of legality.

- Secondment causes the post previously occupied to be considered vacant (only after six months). There seems to be no basis in the ServRegs for this.

Duration

- There seems to be no basis in new Article 45 ServRegs for terminating secondment before the agreed duration. It seems that any decision on start and termination of secondment should have an express basis in the ServRegs, not in a circular. Here again, the provision seems to be *ultra vires*.

Working time

- The full-time working hours of the host organisation will apply to the seconded employee. This is in contradiction with the mandatory requirements set forth in Article 55(2) ServRegs, which limits the normal working week to forty hours, and leaves no discretion to the President to provide for derogations.

Appraisal:

- Circular 365 is already quite vague. Here the new Circular adds another vagueness (“*applied to the extent possible with due regard to the specificities of the secondment*”). This may lead to dispute, where the staff member on secondment will be in a weaker position than other staff members since the President is allowed to terminate secondment unilaterally in case of disagreement.

Vacancy of post:

- The relationship with transfer, or Chapter 2 of Title I of the ServRegs, is not clear.
- The consequences of retroactively confirming that a post as vacant are unclear and might lead to more disputes than necessary.

Circular on leave on personal grounds (aka unpaid leave)

These provisions supersede Rule 1 of Circular No. 22.

Conditions:

- Leave remains a discretionary decision. The reasons for it might be diverse. Which interest of the service should be served in case of personal, non-professional grounds / activity, e.g. family reasons or the “social grounds” according to the superseded Rule 1 of Circular No. 22? The provision must not be abused to refuse requests because social grounds would not serve the interest of the service.

Conflicts of interest:

- an employee may not engage in an activity, which could lead to a conflict with the interests of the Organisation. This provision goes further than Article 17(2) ServRegs, which refers to “*any real or apparent conflict of interest that arises*” (not: “*that could arise*”). It is unclear

whether this provision would apply e.g. to the activity of patent attorney, which is in principle an incompatible activity⁹.

- What are the consequences of non-compliance? The ServRegs are silent on this: termination of unpaid leave or maintenance in unpaid leave does not seem to be provided for in the ServRegs.

Right of return and vacancy of post:

- The terms “government agencies”, “international organisations” and “public service bodies” have each a different and distinct meaning. While government agencies and international organisations are bodies governed by public law, this is not necessarily so regarding “public service bodies”, which may be bodies organised under private law but fulfilling a public service mission (e.g. most postal, telecommunication and railway operators in Europe). It would be useful to clarify under which circumstances the extension provided for in Article 14(2) is meant to operate.
- Article 14(3) (retroactive vacancy and extension to 12 months corresponding to probationary period and to the maximum duration) does not seem to serve legal certainty.

Reinstatement to the Office:

- It is understood as an implementation of Article 17 ServRegs: information on potential conflicts of interest must be given to the Office. However, any decision of the appointing authority must be based on conflicts actually arising (“*any real or apparent conflict of interest that arises*”), not on potential conflicts. “*Independence*” is not a criterion in the ServRegs.

Circular No. 364

Qualifications:

- The Administration explained at the working group meeting on 10 May 2022 that the typical candidate for the present Pan-European Seal would hold a master’s degree or be at the brink of obtaining a master’s degree. It appears important that if a Young Professional (YP) does not hold a diploma of completed university studies at master’s level, the professional experience gained throughout the YP program cannot be considered as “*equivalent professional experience*” exceptionally allowing appointment to job group 4 and above, in order not to give them an undue advantage when competing with other candidates for post vacancies. This would be in line with the statement made by the Administration in the meeting of 10 May 2022 that the participation in the YP programme would not be considered as professional experience but as a traineeship.

Language qualifications:

- During the working group meeting on 10 May 2022, the rationale of this amendment was explained as being the desire to increase diversity in the EPO’s workforce, and the ability to attract talent from underrepresented Contracting States whose language is not one of the official languages of the EPO. It was further explained that in some areas and functions of

⁹ See Article 16(1) ServRegs.

the Office, knowledge of more than one official language would not be required to perform the duties of the post, with the example given of an employee in BIT.

- It is not proven that a language barrier is the main obstacle to attracting and recruiting talents with a diverse origin, rather than the non-competitive benefits package offered to newcomers or the poor reputation of the Office as an employer.
- The aim and requirement of diversity, as far as recruitment is concerned, appears to have been conclusively dealt with by the legislator by prescribing that (at least) permanent employees are to be “*selected without reference to ethnic origin, opinions or beliefs, gender, sexual orientation or disabilities*” and by prescribing that “[*n*]o particular post shall be reserved for nationals of any specific Contracting State”¹⁰.
- Nowhere in these provisions can it be found that the legislator intended to allow a trade-off between “diverse” recruitment and language abilities of the staff recruited, much less can it be read that the legislator would have intended to envisage that the employee’s language abilities could be compromised.
- The lower requirements of new Circular 405 apply for the second and third official language, i.e. at the latest one year before the date of the possible extension of a five-year contract. This means that the requirement for employees in JG4 may be lower than for employees in JG6 on day one or for young professionals in the virtual JG7 after 8 months.
- The proposed policy will have as an absurd consequence that there may be two colleagues within the Office which are unable to communicate in a single common language of which they both have an excellent command or at least can understand. Here “diversity” jeopardises the stated aim of increased collaboration amongst employees and the ‘One Office’ culture.
- The deteriorated language regime calls into question the ability to discharge official duties with the standard applied until now, which should be done with the “*highest standard of ability, efficiency and integrity*”¹¹ and sometime even sets lower requirements for higher job groups than for lower job groups. This has become practice for senior management posts but now extends to staff in lower job groups, who are supposed to do the actual work.
- As an illustration in DG1, the right to be heard, e.g. in oral proceedings (Articles 113 and 116 EPC) presupposes that examiners understand the parties’ submissions. Various avoidance strategies will be increasingly used by examiners and their line managers to avoid processing of applications or oppositions in which the examiners concerned are less proficient, or not proficient at all.

The CSC members of the GCC

¹⁰ See Articles 5(2) and (3) ServRegs.

¹¹ See Article 5(1) ServRegs.