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#### **Personal, individual responsibility**

The key line of the EPO's 2001 mission statement<sup>1</sup> was: "Essentially, the EPO wishes to cultivate an environment in which all staff take individual, personal responsibility for the relevance, quality and value of their work." Clearly, some staff are more "responsible" than others. The President, for example, who has the ultimate decision making power in the Office, is much more responsible for the current situation of the Office than any of our more than 3500 examiners. And Mr. Ciaran McGinley (now PD2.1; previously Controller, and since 7-8 years privileged advisor to successive Presidents). Mr. Ciaran McGinley seems to be the main driving force behind the transformation of the Office from a civil service to a semi-"business". More recently Mr. Archambeau (PD4.3) has risen to power. Mr. Archambeau seems very ingenious in finding ways to squeeze and punish ordinary staff. SUEPO has not hesitated to hold top managers personally, individually responsible for the relevance, quality and value of their work. But these key decision makers could not, however, do as much damage to the EPO if they were not supported by managers below them in the hierarchy who uncritically approve every idea coming from above and run to

implement them. We certainly do not condemn managers *en masse* and are well aware of many who try to carefully explain the levels above them why this-or-that is not a good idea, sometimes with success. There are even more managers who, although constrained to implement the orders coming from above, try to soften the impact on their staff by implementing them in the best possible way – for staff. But we are not impressed by the administration nominees in consultative bodies and in working groups who keep their heads down or actively defend everything coming from above. Worse: some are "holier than the pope" ("vorauselend gehorsam") when it comes to promoting and implementing proposals of their superiors that quite clearly have a negative impact on staff. Thus far we have avoided to publicly mention any of those who actually "make it happen", although collectively they carry a large part of the responsibility. But we have started to ask ourselves "why?" and could not come up with a valid reason answer. The first result you have seen in the form of the GAC poster. You will also find some new names herein below. This is not "harassment", as one of the managers on the GAC poster seems to have perceived it. This is a matter of transparency and accountability. The persons concerned have the choice: we will give criticism

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<sup>1</sup> The original document seems to have mysteriously disappeared from the intranet.

where criticism is due, but also laurels where laurels are due.

When any of the nominees from the administration feel that their position cannot stand public scrutiny, they should review their position rather than shoot the messenger.

### **Ethics standards**

The staff representation has repeatedly requested that the Office develop a Code of Conduct<sup>2</sup>. At some point we had some hope for progress because the EU apparently made some difficulties about funding projects in the Office because the Office failed to meet the required ethics standards, including a Code of Conduct. But things still do not seem to advance. What the situation in the Office is like can be assessed using a tool recently developed by two experts called “Global Ethics and Integrity Benchmarks<sup>3</sup>”. The authors have defined 12 categories covering “vision and goals”, “leadership”, “infrastructure”, “organizational culture”, “whistle-blowing” etc. For each of these categories they have compiled examples of worst practice (defined as “0%”) and best practice (at “100%”) and intermediate levels (at 50% and 75%). For e.g. “vision and goals” at 0% *“There is no explicit ethics and integrity vision, goals, policies, statement, or program.”* At 100% *“All employees behave in a way that shows their commitment to achieving the organisation’s vision for ethical action.”*

For “leadership” the 0% benchmark says: *“Leaders assume that their private moral codes are adequate to lead the organization.”* At 100% we find amongst others: *“Management pay, bonuses and promotions are tied to a variety of ethical indicators“* and *“Senior managers are seen as role models”*. For whistle-blowing the 0% level is *“Organisational policies are silent about protecting employees from retaliation and retribution”*, and at the 100% level *“The organization offers a number of confidential channels or resources to which employees may turn”*.

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<sup>2</sup> See e.g. CA/85/05 and CA/92/07

<sup>3</sup> [Global Ethics and Integrity Benchmarks](#)

We suggest that you have a look at these benchmarks and see where your working environment fits. We offer champagne to the department that can convincingly argue that it is at 50% for any of the benchmarks.

### **Re-balancing in PatAdmin**

Just how much the EPO is becoming a banana republic is shown by the re-balancing story in Patent Administration. As you will all know by now, Mr. Ciaran McGinley was put in charge of Patent Administration on the 1<sup>st</sup> of January 2010. Just a few weeks later, he announced a re-balancing and rotation policy involving forced transfers and aiming primarily at the longest serving staff in the units. Maybe significantly this mail was sent at the moment that Mr. Vermeij (VP2) was leaving for a business trip to China. The B-managers were instructed to provide the names before he would be back. This put VP2 pretty much in front of accomplished facts. The action also trod on the turf of Mr. Brian McGinley (VP4), normally responsible for HR policies. But neither of these Vice-Presidents said a word. Only the staff representation shouted “foul” and pointed out that such a new policy – other than being harmful to staff - could not legally be introduced without GAC and COHSEC consultation. The need for GAC consultation was grudgingly accepted by the administration, including Mr. Ciaran McGinley. His reaction was, however, typical. In a meeting with the staff concerned and their managers he announced that the first round of transfers would involve only volunteers, but that he would continue implementing his policy as soon as he had the decision of the President.

In any normal world giving one manager special privileges and special powers, as the proposed Patent Admin. staff re-allocation policy does, and thereby condoning and supporting an action that would have merited a warning letter, would be called favouritism or worse. Our President probably considers it the appropriate award for a courageous manager. What was it again? *“Leaders assume that their private moral codes are*

*adequate to lead the organization*". That's the 0% level in the global and integrity benchmarks referred to above.

There is more bad news. With the administration failing to do so, the Staff Committee submitted the GAC document to the COHSEC<sup>4</sup>. In the COHSEC the Occupational Health department very reasonably questioned "*whether compulsory re-allocation would actually lead to more flexibility in staff, and not just create psychological opposition and personal stress*". However, one of the line managers in the COHSEC, Marco Mergoni (DG1), argued that the COHSEC should not "*interfere with normal management decision-making processes*" (sic!) and opposed the statement. In this Mr. Mergoni was supported by Ms. Valerie Van Broeckhuijsen-Forsheuw (DG2). The result is that at the time of writing (three weeks after the meeting) the COHSEC still has not been able to formulate an opinion.

*Still: we appreciate that the Occupational Health department has the courage to speak out for staff.*

### **Raising the Bar in PatAdmin**

In an attempt to react to both internal and external criticism on the EPO's quality, our administration has started the "Raising the Bar" initiative. By now the majority of staff concerned has had the training course. Most examiners will probably have shrugged the training off as "not much news under the sun". But for the formalities officers the changes are much more significant and apparently not very well explained in the course. They also mean considerable extra work. This comes on top of additional work caused by CLOCQ, and additional work caused by the latest change in claims and page fees. As usual the changes are implemented in such a way that the formalities staff must cope with 2-3 e-mails a day about bugs and ways to work around them. We are at the moment trying to get an overview of

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<sup>4</sup> Central Occupational Health and Safety Committee, the EPO equivalent of the German "Arbeitssicherheitsausschuss"

the extra work caused by all these changes and the way they were implemented. This may help dispel the dual myth of PA staff being in a "comfort zone", and PA staff soon to be made redundant by SPP.

### **Reorganisation of PD Finance**

In 2009 PD Finance was reorganized and placed directly under the responsibility of the President – contributing to the steady growth of DG0. At a meeting in December 2009 the President congratulated our colleagues in FAMA (one of the departments of PD Finance) on their dedication and expertise. At the occasion she assured that their jobs would not be outsourced. The same assurances were made to the Munich Staff Committee. Only a few weeks later the staff representation became aware of an open tender (tender 1442) that testified of the contrary. The staff representation sent a letter<sup>5</sup> to the president asking her for an explanation. This letter remains until today without reply.

### **Miscellaneous health matters**

We have the impression that the Office has changed its **policy for granting cures**. Please get in touch with us if your request for a cure has been refused or downgraded from absolutely medical necessary cure to a normal cure, or if you are experiencing problems with the reimbursement by Vanbreda. We have also noticed that the Personnel Department has started inviting staff for **medical examinations** under Art. 26(2) of the ServRegs., sometimes in combination with Art. 6(13) of the ServRegs (= verification of sick leave). We advise you to contact the staff representation ([help@suepo.org](mailto:help@suepo.org), or [mnstcom@epo.org](mailto:mnstcom@epo.org)) if you have received or receive an invitation under either of these Articles.

### **The limits of immunity**

International organizations like the EPO enjoy immunity *in the exercise of their functions*. How far this immunity reaches is, however, a matter of dispute. International organizations tend to go very

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<sup>5</sup> See [sc10032ml](#)

far in claiming their immunity and national courts are often reluctant to judge disputes involving international organizations. But in a recent dispute the EPO found itself up against a Dutch court that denied its immunity. The matter at hand was a tender for the catering in The Hague. The canteen in The Hague has been served for 3 decades by an organization called “Restour” that was set up by staff in The Hague. Restour applied for the contract. Chairing the tender committee was Mr. Thomas Michel (PD4.4). The tender procedure was won by Aramark and subsequently challenged by Restour for irregularities, including making confidential information available to the competitors and involving an expert presented as independent that wasn’t. As its first line defense the Office tried to rely on its immunity. The Dutch judge ruled, however, that catering for staff did not form part of the official duties of the Office and was therefore not covered by its immunity. The judge furthermore concluded that the Organisation had acted in “*flagrant breach of the principle of equal treatment and transparency.*” In case the Office still wants to tender the catering, it will have to start again. This doesn’t mean that the problems in The Hague are solved. Often a bad loser, the Office apparently now threatens with a disruption of the canteen services in The Hague.

### **Mr. Battistelli’s contract**

The selection procedure that led to Mr. Battistelli’s nomination was in many ways inelegant:

- Mr. Battistelli participated in drafting his own job advertisement and job description, which not surprisingly only attracted candidates from the Council,
- in June 2009 Mr. Battistelli needed to be reminded that he could not be candidate for the Presidency of the Office and Chairman of the Council,
- in October 2009 Mr. Battistelli and Mr. Kongstad proposed a deal wherein Mr. Battistelli would be President of the Office and Mr. Kongstad Chairman of the Council,
- upon rejection by the Council, Mr. Kongstad withdrew his candidacy only to

reclaim his position as acting Chairman of the Council,

- in his function of acting Chairman of the Council Mr. Kongstad was responsible for chairing the procedure that led to the election of his previous partner, Mr. Battistelli, and for the contract to be signed.

This contract has now apparently been signed, but its contents remain obscure because Mr. Kongstad has refused to show it to the Council, despite repeated requests by the delegations. Evil tongues say that this is because it has “Saint Germain en Laye” (the town of which he is deputy mayor) as our new President’s place of employment, and an annex granting him full pension at the end of his 5-year contract. We obviously do not know whether this is true. But it seems clear that if Mr. Kongstad feels he has to hide the contract that there is *something* to hide.

During the next Council meeting a new Council Chairman must be elected.

Mr. Kongstad is expected to be a candidate. The interesting question will be whether now that his level of transparency has become clear, he will nevertheless get the support of a Council.

The Committee