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SUBJECT: Towards a Human Resource Policy for the EPO

SUBMITTED BY: President of the European Patent Office

ADDRESSEES: Administrative Council (for information)

SUMMARY

This document is submitted by the staff representatives via the President of the European Patent Office, in accordance with Article 9 (2.2) (b) of the Administrative Council's rules of procedure (see CA/D 8/06).

The EPO has defined the purpose of the Organisation in a mission statement¹. It is currently trying to define "social partnership". However, the EPO has not yet formulated a personnel (human resource) policy to support its mission. The present document gives a brief overview of historical personnel policy developments outside and within the Office. It also discusses which type of policy would be best suited to the EPO.

¹

The first mission statement was from 2001. A revised version was issued in 2008 ("As the Patent Office for Europe, we support innovation, competitiveness and economic growth across Europe through a commitment to high quality and efficient services delivered under the EPC")

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I. INTRODUCTION

During the last decade major changes have taken place both in the structure of the EPO and in the way the EPO organises its work. Except DG3, all DGs have seen repeated major restructurings; DG1 and DG2 have seen the introduction of electronic search tools, BEST, the search opinion, EPC2000, the introduction of electronic filing etc.. Some departments in DG2, DG4 and DG5 have become increasingly reliant on external staff. The working conditions have also changed, in particular for newly recruited staff. More changes are planned². The administration normally argues that such changes are in response to needs imposed by the outside world, but arguments such as these are rarely supported by clear evidence. Some of the recent decisions seem to have been not thoroughly thought through and have suffered from unintended negative consequences for the Office and/or for staff³.

In this context it is noted that the EPO has never formulated a clear theory-based personnel or Human Resource (HR) management policy. This lack of a coherent and modern personnel policy has almost certainly contributed to the marked social unrest. Staff dissatisfaction with management style and views has been registered in various surveys. Also external experts have repeatedly criticized the way the EPO manages its staff.

There is a close link between HR policy and management relations with the staff representation ("social partnership"). Both are based on assumptions about staff motivation, competence and behaviour. HR and staff representation policies should thus be consistent.

With its "strategic renewal" the Office now aims at introducing a whole range of changes in the patent policies, in the structure of the Office and in staff working conditions. The "social partnership" discussions are part of this process.

It is essential that the Office formulates the assumptions on which it bases its HR policies before embarking on another wave of changes. The present document is to be seen as a contribution to the formulation of a coherent theory-based policy in the area of Human Resource management.

² See e.g. CA/100/09

³ E.g. the 50 million Euros hole in the EPO's budget due to the change in claim fees, and the extra work generated for Patent Admin. staff for administrating the latest changes in claim and page fees.

II. HISTORICAL SITUATION IN THE EPO

At the time of creation the EPO staff was given generous benefits that were considered appropriate compensation for European civil servants working at that level. It was also meant to ensure that the EPO could recruit from all of its member states "permanent employees of the highest standard of ability, efficiency and integrity" (Art. 5 ServRegs).

The EPO was created with a strongly authoritarian management structure typical of public services at the time. The obligatory interactions with the staff and the staff representation were, and still are, limited to formal consultation laid down in Arts. 33-38 of the ServRegs, followed by unilateral decision-making.

At the lower level, however, staff was initially trusted with more responsibility than is presently the case. This can be seen e.g. from the examiner reporting system that for the first 10 years only set out minimum productivity standards. Staff was simply **trusted** to do more, and did so, where possible. Similarly, examiners were trusted to organize their own tasks within a frame-work set by the logical demands of the system rather than, as is presently the case, instructed in detail. The same patterns can be seen in other areas.

There is limited documented evidence of the level of staff satisfaction in the EPO from before the year 2000. Since then sociological studies (e.g. Sciences Po⁴) and Staff Surveys have consistently found a strong dissatisfaction of staff with the EPO management style. An important finding in most of these studies is that staff satisfaction decreases with time, i.e. it seems that the Office actively demotivates its staff. The reasons given and the language used differ somewhat between the various reports, but all found a difference in culture between a highly professional staff that primarily focuses on service and quality, and a management that is mainly focused on finance and quantity ("numbers"). All studies found that the present "command and control" style of management is not appropriate for the EPO and conclude that a change is needed towards a more values-based management. The studies propose delegation of authority and "management-by-learning" or "management-by-objectives" as opposed to the current "management-by-instructions" style.

⁴ [Sociological Diagnosis, April 2001, Sciences Po](#) (EPO internal document)

In an attempt to follow the recommendations of external consultants, the implementation of “management-by-objectives” (MBO) has been undertaken as a means to evolve from "management-by-instruction" towards "management-by-learning". However, misinterpretation of MBO has led the administration to set detailed individual *quantitative* (production) targets for examining staff thereby inadvertently reinforcing the existing staff-management division. Similarly, "delegation of authority" has been interpreted by the administration as “delegation towards the lowest *management* level”, thereby reinforcing the “command and control” style of management on the work-floor level.

The earlier findings were confirmed in a recent “pulse survey” (April – May 2009) performed by Research International⁵. The consultants again found a strong staff dissatisfaction with the “overall leadership and management” and, not surprisingly a “worsening of the social climate”. The small improvement in staff satisfaction found in this survey was due to a further improvement in the already high satisfaction of staff with the actual work, but not with the working environment. This shows that the efforts by the administration to address the existing problems, thus far have not been successful.

III. TOWARDS A SOLUTION - THEORETICAL BACKGROUND

At the basis of all management – staff relations is the question “*how do we see each other?*” In the early ‘60’s Douglas McGregor formulated a hypothesis⁶ that is still very relevant today. McGregor noticed that management of companies essentially adhered to one of two opposing theories about staff motivation, referred to as “theory X” and “theory Y”. Managers adhering to “theory X” assume that employees have an inherent dislike of work and will avoid it if they can. Because of this, workers need to be closely supervised and comprehensive systems of controls developed. A hierarchical structure is needed with narrow span of control at each and every level. The opposing “theory Y” assumes that employees tend to be self-motivated and enjoy their work, that they will perform well given the proper conditions to exercise self-control and self-direction in accomplishing objectives to which they are committed. A “theory Y” manager believes that, (s)he does not need to control staff, but rather to create the right conditions.

⁵ [Results of the Pulse Survey 2009](#) (EPO internal document)

⁶ http://en.wikipedia.org/wiki/Theory_X_and_theory_Y

Obviously, the assumptions held about staff motivation strongly influence the management approach to staff working conditions. Theory X managers tend towards what are now called “calculative HR management practices”. Individual reward systems (e.g. performance related pay) are a typical example. Theory Y managers support what has become known as “cooperative HR management practices” that focus on creating understanding on commitment for the organisational goals and rely on the staff member to act responsibly in working towards these goals. There is evidence⁷ that the latter approach is more successful in creating high levels of competence, motivation and performance, in particular in the civil service and in so-called “knowledge organizations”.

Knowledge organizations are characterized⁸ by a large information asymmetry⁸, in that the work performed is too complex to be entirely understood and controlled by management. In such situations attempts by management to measure and control the work tend to have a negative impact and limit performance rather than increase it⁹.

A calculative management style may not be suited for the civil service either. It has long been observed that e.g. performance-related pay is only marginally effective even in the private sector. It is, however, known that performance-related pay is much less effective in a civil service environment. The likely reason is that staff motivation in the civil service tends not to be based primarily on financial rewards, but on a desire to contribute to the public good (Vandenabeele et al.)¹⁰. This intrinsic motivation is maintained by the perceived social and societal significance of the job. In line with the theories of Herzberg et al. the intrinsic motivation “to do good” is sensitive to being “crowded out” by external drivers¹¹. There are also high costs for administering performance related pay systems and negative effects through perceived unfairness¹²,

⁷ See e.g. Rizov, Croucher "Human Resource Management and Performance in European Firms", http://www.mdx.ac.uk/bs/departments/econ_stats/docs/EconPaper125.pdf

⁸ See http://en.wikipedia.org/wiki/Principal-agent_problem

⁹ See e.g. Robert D. Austin “Measuring and managing performance in organizations” (Dorset House Publishing Co. (1996)

¹⁰ W. Vandenabeele, “Toward a public administration theory of public service motivation”, Public management Review 9:4, p. 545-556 (2007).

¹¹ Frey, [Journal of Economic Surveys](#). Volume 15 (2001) Issue 5 (December) Pages: 589-611

¹² “It is intuitively appealing to link bonuses to yearly performance in terms of specific output measures. However, the facts show that bonus schemes have been only marginally effective in improving performance, even in the private sector and especially in the public sector, where outputs are difficult to quantify. Performance pay schemes may also introduce an element of political control over a career civil service... Even if such schemes are fairly administered, it is next to impossible to prevent the perception of favouritism” Salvatore Schiavo-Campo, cited in the OECD report “Performance-

Based on recent research, Vandenabeele et al. conclude that an appropriate HR policy for the civil service should therefore concentrate on creating a working environment that supports the intrinsic motivation by:

- developing self-regulative work structures (basic need satisfaction vs. control systems),
- developing cooperative interpersonal relationships (co-worker and supervisor), based on public sector values,
- creating incentives that result in a fit between personal and organizational values.

IV. TOWARDS A SOLUTION FOR THE EPO

The EPO systems for reporting on examiners and formalities officers seem to be prime examples of dysfunctional measurement and control systems based on a calculative HR policy. Both systems focus the attention of staff and management on the numbers (quantity) of “points” or “messages” rather than on the higher goals of the organization. As such these systems tend to distort the actual performance in terms of reaching these overall goals. The individual target setting (delegation of responsibility *without authority*) has furthermore mostly had a negative impact on the relations between staff and the line managers with whom the target needs to be negotiated.

It is striking that the suggestions made by the consultants who have performed the social studies done in the Office and those from the scientific literature on HR management in the civil service are consistent, in that all recommend a positive culture characterized by mutual trust (called variably: value-based management, delegation of authority or self-regulative work structures). Past experience has shown, however, that the EPO management is prone to misinterpreting such recommendations in a Tayloristic, control driven manner¹³. As a consequence the social climate within the Office has degraded to a level that can only be described as catastrophic. It is having a serious effect on staff motivation and commitment, it is certainly a major factor in sickness levels within the EPO, and it has resulted in shockingly low levels of staff confidence in the EPO administration.

related pay in the civil service (2002).

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http://en.wikipedia.org/wiki/Scientific_management

This has been recognized to a degree by the administration in so far as it declared, for 2009, “social partnership” as its first priority. While staff relations are about a lot more than “how we talk with the Union”, there is nevertheless a close link between management relations with the staff representation (“social partnership”) and HR policy, since both are based on assumptions about people and organisations including staff motivation, competence and behaviour.

The Central Staff Committee therefore recommends that the Office formulate a clear HR strategy which must include explicit assumptions, before it embarks on another wave of changes. This task should not, as in the past, be delegated to a working group but be performed at the highest management level namely the MAC. This is the only way to guarantee buy-in and understanding at this level. The policy must be based on the principles underlying modern co-operative HR strategies and take full account of the numerous EPO studies on this matter. The process must be supported throughout by one or more experts who have a solid understanding of staff motivation in the public sector.