



PAX: a prescription for ill-health

Summary

The forced introduction of PAX, against the will and the advice of almost everyone in the Office except VP1 and the head of the President's office, will worsen the health of the EPO's examining staff. The elements of increased demands combined with decreased control, imbalance between effort and reward, and sheer all-round unfairness create the perfect set of conditions for increasing mental and physical illness, according to the scientific consensus about what makes people sick at work. Against this background, the professed concern of the promoters of PAX for staff health is patently insincere.

1. INTRODUCTION

In a previous SUEPO publication we explained what the Whitehall study tells us about the factors which influence the health of office-based staff¹. Briefly, thirty years of research on 10,000 civil servants has identified several factors that result in a chronic stress state which disturbs body chemistry and increases both physical and mental ill-health (strokes, heart disease, diabetes, infectious diseases, most cancers, depression, etc).

These factors are:

- high work demands combined with low control over the work
- high level of effort combined with inadequate rewards and
- perception of injustice and unfairness

When we examine the features of PAX under all these headings, its negative impact becomes very clear.

2. DEMAND VERSUS CONTROL

High work demands – of course up to a point - *per se* are not necessarily harmful for your health. However, the Whitehall study unambiguously shows that high demand combined with low control is bad for staff health. It is clear from the PAX presentation given to all DG1 staff

¹ "What ails us? Or: what the Whitehall study tells us about the relationship between work and health", Nov. 2005, available at <http://www.suepo.org/archive/csc2405e.pdf>

that the overall demands dictated by PAX will be high. The orientation for a “good” will be based on the average of the directorate and peers within the cluster. The personalised objectives will have to be *at least* at the “good” level. In other words: staff who were below average productivity in the past will be asked to increase their productivity to at least average, and staff who produced above average will be asked to maintain or increase their already high productivity. This system is clearly designed to increase the average productivity in each reporting cycle, then incorporate the gains in the next reporting cycle and further “improve” on them.

The examiners’ level of control over the organisation of the work (freedom to set one’s own priorities, to combine related work, or to concentrate on one type of work for a period) will greatly decrease with PAX. Objectives will be set for each of the different examination “products”, a priori ignoring external factors such as actual filing figures or the behaviour of applicants. The output numbers will be monitored continuously and fed back to the examiners every month. Apparently a “Megalist” project is under way which will provide directors with the means to dictate the work of examiners on an almost daily basis. The current level of flexibility in the arrangement of the examiner’s work will simply disappear.

3. EFFORT VERSUS REWARD

Like high demand, high effort *per se* is not necessarily harmful, but when combined with inadequate reward this factor shows a strong association with ill-health. PAX will demand an extra effort from everyone. The now notorious “notes” on the slide presentation make it clear that even high producers will be given a “binding” target that is at least equivalent but probably higher than their previous level. But there is little or no certainty that this extra effort will be rewarded. In particular a high producer who performs above average and hence certain to have at least a “good” for productivity even with a lower output, will no longer be guaranteed a “good”, let alone a “very good” or “excellent”. The question as to whether the product “mix” is correct or not will add another level of uncertainty for all staff, low and high producers alike.

Rewards will not improve with PAX. There are no plans for a bonus, more “very goods” or anything of the kind. On the contrary: the planned introduction of performance-related pay based on unit costs (i.e. productivity only) will effectively punish staff for any increase in productivity achieved prior to its introduction. Rewards (in terms of “very good” and “excellent markings”) will furthermore still be dependent on a ranking system, thus increasing competition amongst staff at the expense of collegiality and team work.

4. PERCEIVED JUSTICE AND FAIRNESS

Recent scientific studies² have shown that the perception of injustice at work is associated with a higher incidence of heart disease and other negative health indicators independent of the other factors mentioned above. One of the most pernicious features of PAX is the deliberate use of terms that contradict reality, such as “negotiation” and “agreed” in the context of objectives. A pre-requisite for a fair negotiation is that the participants are on an equal footing, so that none enjoys a power advantage. Equally, an agreement should be freely entered into, otherwise it is not an agreement but mere coercion. Talk of “trust” rings hollow given the poor past record of the EPO’s top management and even the proponents of PAX no longer use this word, although they once claimed this was a pre-requisite for its

² See XP8055214

implementation. In the PAX negotiations one negotiation party reports on the other³, and a failure to agree on an “ambitious” target may thus result in a bad marking for attitude.

Given furthermore that the overall context for the PAX negotiations will be the Medium Term Business Plan⁴, it is clear that there is little room for freedom for staff, directors and even principal directors.

PAX eliminates any possibility for a realistic comparison between examiners in different technical fields and/or having different product mixes by refusing to consider technical difficulty factors between fields and weightings between actions. Even if examiners working in the same technical field have the same product mix in the same time there is no guarantee that they will have the same marking if one previously had a slightly higher production or productivity and the other a slightly lower production or productivity. The lack of transparency is allegedly in order not to interfere with managerial discretion. But managerial discretion becomes merely a synonym for arbitrariness if all available means for fairly comparing staff are eliminated. The result will be a strong sense of unfairness amongst the DG1 staff.

Last but not least: the increased production and/or productivity demands will increase the individual examiner's difficulty in balancing quality and quantity. Examiners are public servants and strongly aware of their duty toward the European public and the European economy, i.e. the need to protect them against unjust or trivial patents. Granting patents is easy: a quick search will yield few documents and a half-page votum is equally quickly written. The applicant will certainly not disagree with the proposal for grant, and the competitors may not oppose if there are no conflicting interests. However, refusing a trivial application and/or limiting overly broad claims *is* hard work: it requires a thorough search for useful documents, usually more than one communication as well as oral proceedings, and possibly a reasoned decision of several pages. Refusals strongly risk being appealed by the applicant and DG3 rightly demands high standards of reasoning. All of these steps require a considerable amount of time.

In a SUEPO survey held amongst Munich examiners two years ago 77% of the respondents already indicated that the productivity demands at the time no longer allowed them to enforce the quality standards set by the Convention, and a full 90% indicated that they no longer had sufficient time to keep up with the jurisprudence, changes in procedures, changes in databases, technical literature, etc. PAX will only worsen this situation by further increasing the productivity objectives. Examiners will be forced to choose between their professional conscience and the productivity demands from their line management. The result is an overwhelming feeling of injustice, if not despair, amongst the examiners, which will certainly have an impact on their health. By strongly pressurising examiners to increase productivity – something which cannot be achieved without loss of quality - PAX may also have a strong negative effect on the health of the European patent system.

5. HYPOCRISY ON HEALTH

For many years, the EPO top management simply ignored occupational health as an issue. Now the MAC can no longer ignore the worsening figures for sick-leave and permanent invalidity which are starting to have an impact on the productivity and cost effectiveness of the EPO, and which have attracted negative comments from the Council and the Auditors. Nevertheless, many of the recommendations of the Working Group on Long-term sickness and invalidity from 2003 and of the TNO Report on Upper Limb Disorder from 2004 remain

³ Reporting for directors and principle directors is in preparation.

⁴ See the document "Medium Term Business Plan 2007 - 2011: strategic directions to clusters" issued by VP1, available at http://www.suepo.org/archive/ex_mtbp_strategic_directions_to_clusters.pdf

unimplemented. SUEPO's paper on the Whitehall study and its applicability to the EPO has had an impact mainly in that the MAC made efforts to discredit it. According to some managers the Whitehall studies are not applicable to the EPO staff because they are a different population. This reasoning ignores the fact that the findings of the study, already the most comprehensive of its kind, have been replicated in many different working populations and found to be generally valid. The TNO study recognised such factors in the EPO and among its highest priority recommendations are to change the system of evaluation of productivity (but not to a worse one!), to increase autonomy, to change the criteria for manager selection ...

Instead of taking a serious approach to staff health and implementing the recommendations of the above reports, the Presidential cabinet organised a two-day PD/MAC workshop in Landshut. In order to guarantee intimacy (or avoid embarrassment as the ignorance of some of the participants became clear?), the President refused to allow staff representatives to be present even as observers.

The quality of the results of this two-day off-site meeting and the resulting Communiqué is desperately low. Ignoring the bombastic, rambling style of the document, the main "conclusion" would be laughable if it were not so scandalous. According to the Communiqué there was a *"remarkable consensus on the main underlying reason for sickness as such, namely, isolation (i.e. the lack of team-work, social cohesion and social contact)"*. The prescribed cure seems to be "combi-offices" (next step: cubicles ?). The MAC has not provided any evidence for this new theory and even a casual observation of the EPO's sick leave data seems to contradict it. For instance: members of the Boards of Appeal have a lower average sick leave than examiners despite their higher average age, and they do not necessarily engage in more "team-work" than examiners. Equally: patent administration staff have a higher average sick leave despite more social contact and team-work. The main virtue of the above consensus (which is "remarkable" indeed) is that, at least at a superficial level, it is politically convenient and seems to require little self-reflection of our management. But even if social isolation were a major contributor to staff ill health, PAX would certainly not be the way forward. The increased productivity pressure has already led to some staff withdrawing from social activities, e.g. with Amicale, because they feel they no longer have the time for it, and the highly competitive nature of PAX will certainly not stimulate team-work⁵.

6. CONCLUSION

The work-related factors causing ill-health are well-known and established, and they exist in the Office. PAX will make them worse. The introduction of PAX amounts to reckless endangerment of the health of the staff, and of the health of the European patent system. The current management has been amply warned of the negative consequences and will be held fully responsible for the results by the staff, and by the public.

The Central Bureau

⁵ Interestingly Mr. Hammer (VP1) has appointed the same Principal Director (Mr. Stamatopoulos) as the PD responsible for PAX and for "health". Mr. Stamatopoulos has been provided with a personal copy of the earlier SUEPO Whitehall paper pointing at the likely negative impact on PAX for staff health, but apparently decided to ignore it.