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Conseil d'administration

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TITLE: **Unitary Patent**

SUBJECT: Update on the operational and financial aspects of the Unitary Patent

SUBMITTED BY: President of the European Patent Office

ADDRESSEES: Select Committee of the Administrative Council (for information)

MAJORITY: Not applicable

LEGAL BASIS: Not applicable

RECOMMENDATION: The Select Committee of the Administrative Council is requested to note the update report on the operational and financial aspects prepared by the Office.

SUMMARY: The report provides an overview of the status of the Unitary Patent at the EPO in February 2024, including the complete operational and preliminary budget implementation statement for 2023 as well as the preliminary information regarding the profile of the users of the system.

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1. Introduction

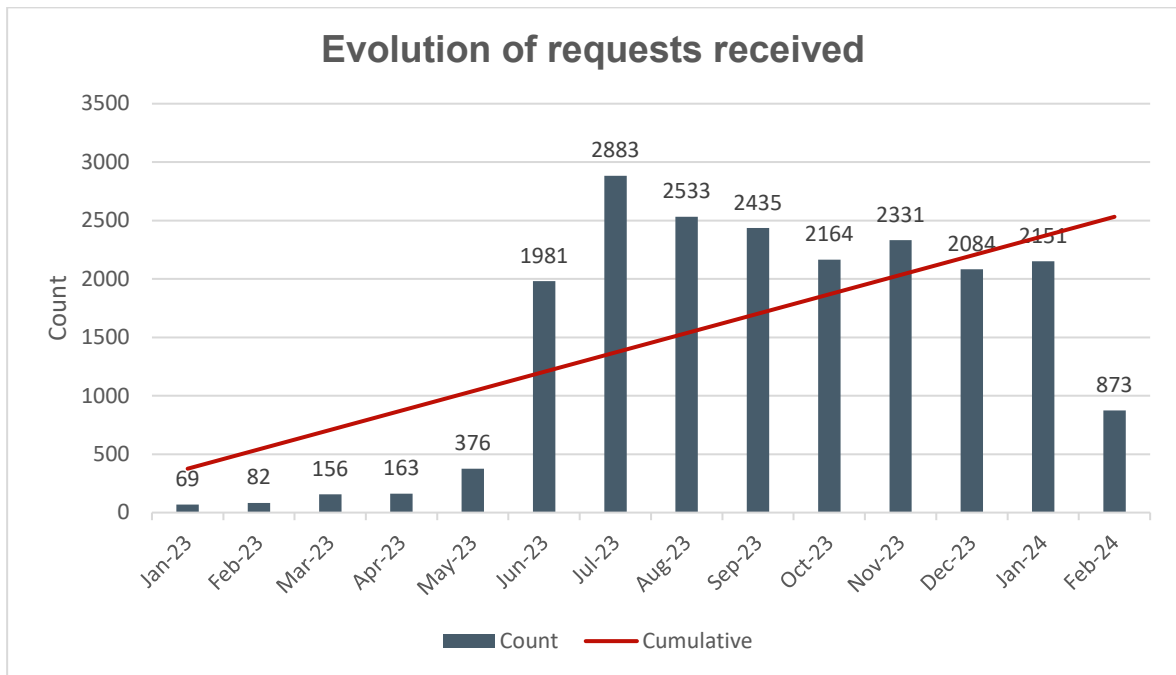
1. The Unitary Patent (UP) system was successfully launched on 1 June 2023. Users have since then shown that this historical achievement corresponded to their needs. An important milestone was indeed reached on 12 February 2024 with over 20k requests for unitary effect received by that date. In total, 17,257 requests for unitary effect were received in 2023, representing a higher-than-expected uptake of 17.5%.
2. The UP proves to be particularly attractive for European industry with two thirds of all UP requests originating from Europe, 15% from the US and 12% from Japan, the Republic of Korea and China. All industries are represented, with medical technology (12%), civil engineering (6%) and transport (5.5%) in the lead. Small and medium sized enterprises (SMEs) have shown a strong interest in the system.
3. Operationally, the processing of UP requests has been running smoothly, in a timely manner and with good quality input from the users. Only a handful of decisions rejecting the unitary effect have been taken so far. This good start shows that the system is user-friendly and fit for purpose. All aspects of the UP procedure are progressively unfolding. The EPO is now preparing a new set of Unitary Patent Guidelines which are foreseen to be published in March 2025.
4. To ensure transparency, the EPO launched the UP Dashboard in July 2023. Most of the information presented in this report is every weekday updated in the UP Dashboard, including the evolution of UP registrations and the uptake rate. New features are continuously added, such as the Top-25 proprietors and European proprietors' profiles.
5. Pursuant to Article 1(3) of the Budgetary and Financial Rules (BFR) in relation to the European patent with unitary effect, the President of the European Patent Office shall submit to the Select Committee a quarterly report and budget implementation statement on the income and expenditure of the tasks relating to the European patent with unitary effect during the preceding quarter. This report aims to provide a financial update since the last Select Committee meeting in October 2023, covering the fourth quarter of 2023, year to date. For completeness, the reporting tables for the third quarter are presented in Annex 1.

2. Arguments

2.1 Operational aspects

6. From an operational perspective, the launch of the Unitary Patent in 2023 as well as the implementation of various procedural aspects has been successful. The higher demand than expected could be fluently met thanks to the support of colleagues from the whole office, duly trained and supervised by staff from the Unitary Patent Protection Division (UPPD). It took less than ten days to process a request for unitary effect, and as a rule formal deficiencies could be corrected within the 1-month time limit.
7. As noted at the last Select Committee, the transitional measures have contributed to the initial "wave" of UP registrations. Also, the possibility to file UP requests earlier than the publication of the grant, namely upon receipt of the decision to grant, has extended a useful transitional measure into a more standard practice. By 12 February 2024, 2,624 early requests have been received (13% of the total); this means that nearly 2,000 early requests have been received since the launch of the system in June 2023.

8. The amount of 17,257 requests for unitary effect received in 2023 implies an uptake rate of 17.5%, slightly higher than the forecast of last October. The uptake rate 2023, previously referred to as “transformation rate” (SC/11/23), represents the percentage of requests for unitary effect received compared to the overall EP grants published in 2023. This yearly uptake rate is reflected on the UP Dashboard.
9. By 12 February 2024, the cumulative uptake rate, including UP requests received in 2023 and 2024, has grown up to 17.8%. It is expected that this trend will continue as a result of a monthly uptake rate that has been continuously above 23% since November 2023. In average, over 100 UP requests are received at the EPO every working day (see Graph 1 for the evolution of requests received).



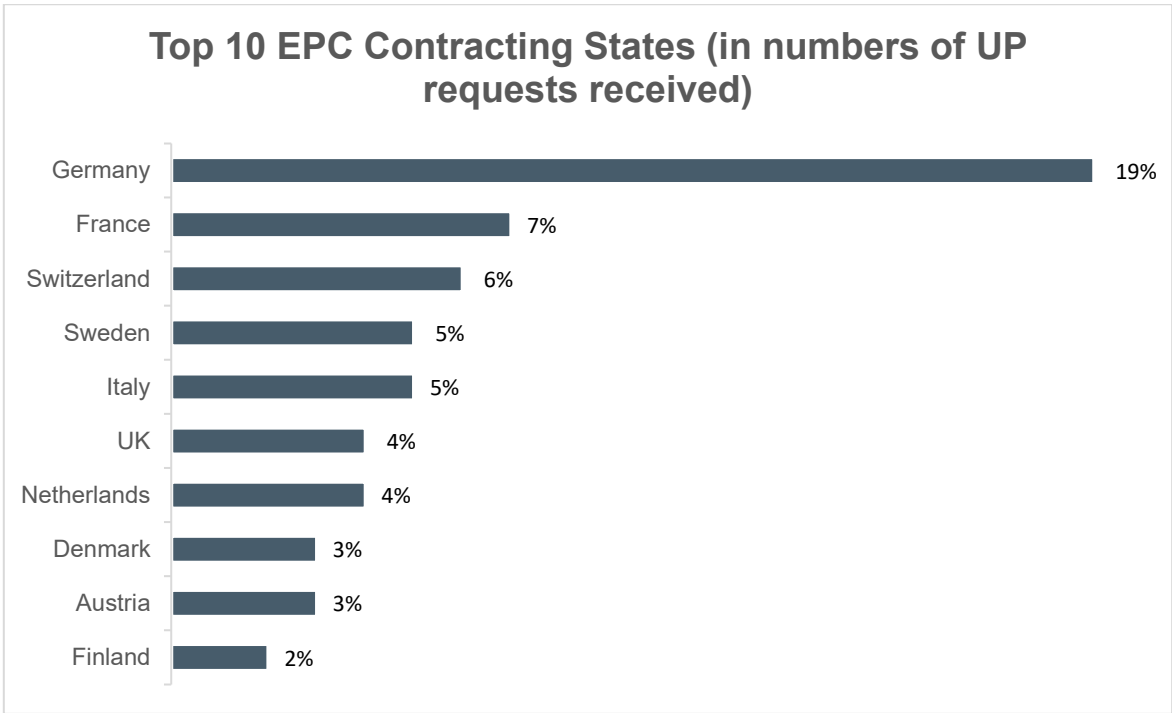
Graph 1 (as at 13.02.2024)

10. To tackle the high demand and strong trends described above, whilst keeping up with the expected quality standards in terms of services and timeliness, the support needs have transitioned into more resources being allocated to the UPPD in February 2024. This shift will be reflected in the budget report for 2024.
11. To date, most of the UP requests lead to registration of the Unitary Patent; the UPPD has rejected 12 requests for unitary effect, whilst 27 have been withdrawn, following an intention of rejection. Most rejections of unitary effect are because the set of claims of the EP grant was not identical for all participating member states. All in all, the low numbers reflect a well-functioning and purposeful system.
12. Also, 22 requests for reestablishment of rights have been received. They all relate to the 1-month time limit from the publication of the EP grant to submit the request for unitary effect. So far, most of such requests have been ultimately granted, with only two refusals. To date, none of the final decisions taken by the UPPD on unitary effect or reestablishment of rights have been appealed to the Unified Patent Court.

13. The EPO continues to extend its online services, also for the benefit of UP users. As of 1 April 2024, requests for the registration of transfers of right and licences may be submitted via MyEPO. This new filing option is attractive financially as no administrative fee will be due for the registration of transfers of rights and licences requested via MyEPO.¹ Also, as from 1 April 2024, MyEPO users will be able to request for certified copies of extracts of the UP Register or UP certificates, among other documents.
14. As from 1 April 2024, bulk requests for changes in names and addresses, or for the registration of transfers of rights and licences, may also be submitted online via MyEPO. This new service will cover all procedures at the EPO, including the Unitary Patent. Finally, signature requirements on assignment and licence contracts will also be relaxed as from 1 April 2024, including in the Unitary Patent procedure.²
15. UP proprietors may file a statement with the EPO to the effect that they are prepared to allow any person to use their invention as a licensee. Renewal fees for a Unitary Patent which fall due after receipt of such a statement are reduced by 15% (Article 3 of the Rules relating to Unitary Patent Protection). To date, the UPPD has registered 21 such statements, commonly called “intentions to licence”, essentially submitted by SMEs.
16. The relevant information relating to Unitary Patents, including the registration of transfers of rights, licences, and intentions to licence, are available in the Unitary Patent Register in a very transparent and complete manner. The UP Register is constitutive, i.e. only rights visible in the UP Register are legally valid and enforceable. The UP Register is also an integral part of the EP Register, which provides a unique and central place for users and the public to check the status of European applications and patents.
17. Turning now to the use of the UP system, and besides paragraph 2, above, our final 2023 data show interesting trends in Europe. Almost 19% of all UP owners come from Germany, 7% from France, 5.5% from Switzerland, 5% from Italy and Sweden, 4% from the UK and the Netherlands, 3% from Denmark and Austria, and 2% from Finland, Belgium and Spain (see Graph 2).

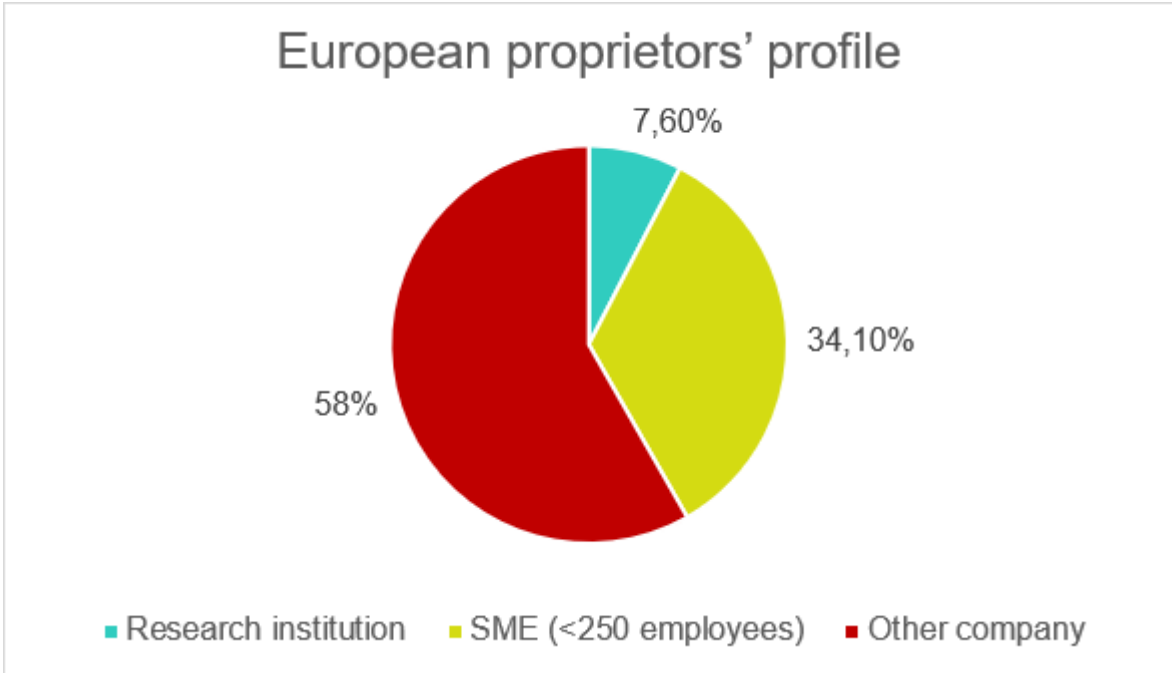
¹ See Decision of the President of the European Patent Office dated 9 February 2024 concerning the web-based online service MyEPO Portfolio and electronic notification to the Mailbox (OJ EPO 2024, A22).

² See Decision of the President of the European Patent Office dated 9 February 2024 concerning signatures on contracts and declarations relating to European patents with unitary effect (OJ EPO 2024, A22).

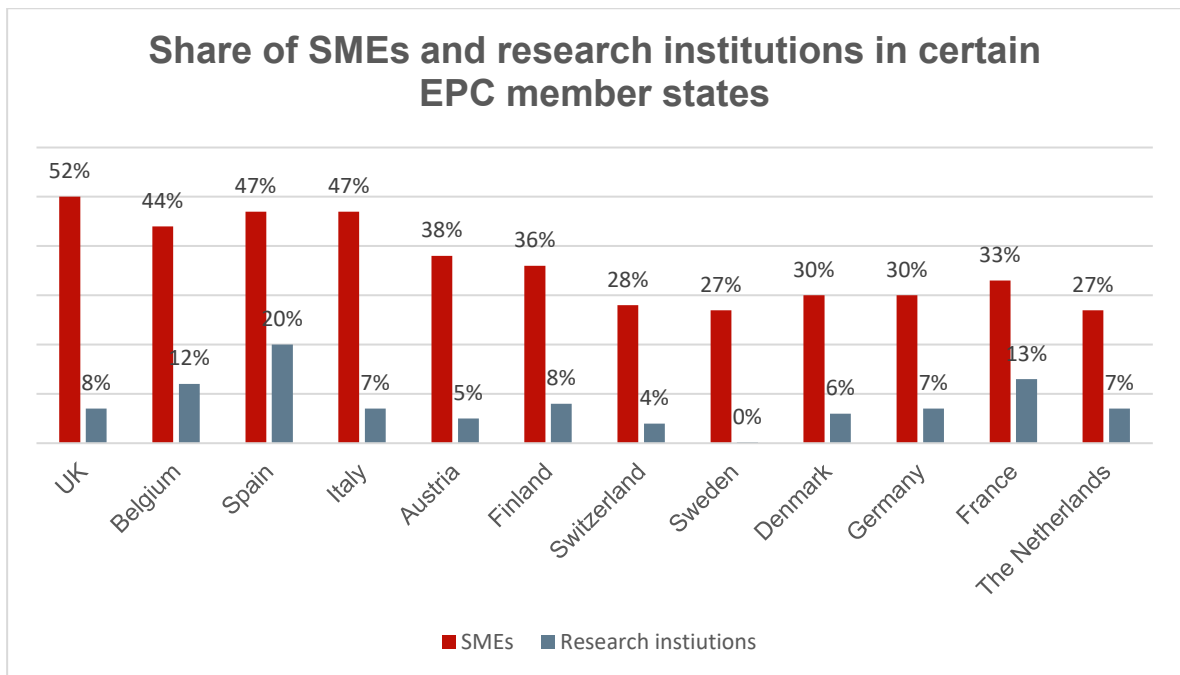


Graph 2 (as at 14.02.2024)

18. In terms of UP proprietors' profiles in Europe, SMEs represented a very large portion of UP owners in 2023, with 34.1% of the total, whilst research institutions are also well represented, with 7,6% of the total (see Graph 3). This trend is even stronger in some European countries (see Graphs 3 and 4). Finally, 15 from the Top-25 proprietors were based in Europe.



Graph 3 (as at 14.02.2024)



Graph 4 (as at 14.02.2024)

19. Beyond the leading industries in terms of volumes mentioned in paragraph 2, above, the uptake rate varies considerably from one WIPO field of technology to another. It is particularly high in food chemistry (31.5%), civil engineering (29%), environmental technology, and furniture, games (both at 26%), pharmaceuticals, chemical engineering, biotechnology, and analysis of biological material (all four at 25%).
20. In 2023, 694 requests for compensation of the translation costs have been received, representing less than 5% of the UP requests. By 12 February 2024, this amount has risen to 787, out of which 603 have been granted. This percentage is higher than the initially estimate share of 2% but it has stabilised. 55% of the requests relate to an application submitted in Italian, and 15% to an application submitted in Spanish.
21. In terms of languages, almost three quarters of the UP requests have been filed in English, and 30% of the translations received were in Spanish, followed by English (26%) and German (21%). With respect to the filing strategy, 64% of the UP users follow the Euro-PCT route, out of which the vast majority (68%) have selected the EPO as International Searching Authority.

2.2 Financial aspects

22. The following budget implementation statement (summary report and details) shows the financial situation after the entry into force of the Unitary Patent on 1 June 2023. The figures cover the period from 1 June to 31 December 2023 and are compared with the 2023 budget (SC/10/23, CA/D 1/22, Annex B) and the 2023 forecast (SC/10/23, CA/D 1/23, Annex 1). When compared to the budget, the main variations in income and costs are due to a later effective date of entry into force of the Unitary Patent system than planned (moved from 1 March to 1 June). Hence, the subsequent analysis will emphasise the deviations between actual figures and the forecast which considered the actual date of entry as of 1 June rather than with the budget. The preliminary figures reported here are prior to the audit of the EPO's 2023 accounts and may be updated during the year-end closing process.

23. The statement on Unitary Patent income and costs below provides an overview of the financial situation after the transitional period and the first seven months of operation of the Unitary Patent. The income from renewal fees and fees for belated payments shows the payments received until 31 December 2023 in accordance with the Rules relating to Fees for Unitary Patent Protection. The first period of operation of the UP system shows a more favourable financial outcome, with UP fees exceeding forecast while costs were kept in line with forecast.

Income (in € '000)	December YTD 2023			Variance Actuals vs. Forecast	
	Budget	Forecast	Actuals	(in €'000)	(in%)
UPP fees collected by EPO					
- Renewal fees for granted patents (Article 5320)	4 480	2 390	3 254	864	36%
- Additional fees for belated payment of renewal fees (Article 5320)	50	24	20	-4	-16%
- Administrative fees (Article 5520)	50	36	19	-17	-47%
Deduction of administrative fees collected on behalf of the participating MS	-50	-36	-19	17	-47%
A. Total EPO UPP budgetary income	4 530	2 414	3 274	860	36%
B. Member states share of UPP income (50%)	2 265	1 207	1 637	430	36%
Costs based on authorisation budget expenditure (in € '000)					
Direct operational costs and share of indirect operational costs	1 960	1 990	2 145	155	8%
Deduction of administrative fees collected on behalf of the participating MS	-50	-36	-19	17	-47%
Cost of EPO in management of UPP	1 910	1 954	2 126	172	9%
Translation compensation (Article 3320)	126	410	254	-156	-38%
C. Costs attributable to UPP according to Article 146 EPC	2 036	2 364	2 380	16	1%
Shortfall to be recovered in future year	-229	1 157	743	-414	-36%
Shortfall recovered from previous year					
D. = (B. - C.) Net UPP income to be distributed to participating MS	0	0	0	0	
E. = (A. - B.) EPO share of UPP income	2 265	1 207	1 637	-430	36%
- Prepayments (GL 2631100)			-109		
F. EPO UP revenues (Article 5320)	2 265	1 207	1 529	-430	27%

24. The report on Unitary Patent income includes a breakdown of the different types of fees collected by the EPO, including renewal fees for granted patents, additional fees for belated payment of renewal fees and miscellaneous administrative fees. It also covers the deduction of administrative fees collected on behalf of the participating Member States, which is included later as a deduction on the cost side as well.

25. The higher-than-expected demand, with an uptake of 17.5% in 2023, combined with other factors explained below, resulted in a higher amount of renewal fees paid in 2023. Revenue generated from renewal fees exceeded the initial forecast by 36%. This notable achievement can also be attributed to a higher number of grants than forecasted. Furthermore, this positive trend is reinforced by the fact that a higher proportion than expected of renewal fees were paid in the year of grant. Fees associated with belated payments and administrative fees have remained consistent with the forecasted values, reflecting their limited scale.

Income (in € '000)	December YTD 2023			Variance Actuals vs. Forecast	
	Budget	Forecast	Actuals	(in €'000)	(in%)
UPP fees collected by EPO					
- Renewal fees for granted patents (Article 5320)	4 480	2 390	3 254	864	36%
- Additional fees for belated payment of renewal fees (Article 5320)	50	24	20	-4	-15%
- Administrative fees (Article 5520)					
Registration of transfer	19	14	13	-1	-7%
Registration or cancellation of licences and other rights	0	0	0	0	-
Certified copy	9	7	2	-5	-71%
Communication of information from the files	0	0	0	0	-
Administrative fee R10(4) UPR	0	0	0	0	-
Fee for re-establishment of rights	21	15	4	-11	-73%
Subtotal	50	36	19	-17	-47%
Deduction of administrative fees collected o.b. of the participating MS	-50	-36	-19	17	-47%
A. Total EPO UPP budgetary income	4 530	2 414	3 275	861	36%
B. Member states share of UPP income (50%)	2 265	1 207	1 637	430	36%

26. The report on Unitary Patent income is completed by the breakdown of the fees per age class. In the first months of operation, the average age of Unitary Patent renewal fees is slightly younger than originally forecasted, causing a potential income decrease. However, this decrease is offset by the favourable effect of increased grants and a higher percentage of payments made in the year of grant, providing a strong compensatory effect.

Renewal fees for granted patents (Article 5320) per age class (in € '000)	December YTD 2023			Variance Actuals vs. Forecast	
	Budget	Forecast	Actuals	(in €'000)	(in%)
2	0	0	0	0	0%
3	74	39	40	1	2%
4	201	107	159	52	49%
5	412	220	428	208	95%
6	519	277	529	252	91%
7	565	302	479	178	59%
8	576	307	404	97	32%
9	545	291	288	-3	-1%
10	467	249	208	-41	-17%
11	365	195	164	-31	-16%
12	288	154	133	-21	-14%
13	178	95	122	27	29%
14	114	61	81	20	33%
15	74	39	102	63	159%
16	39	21	81	60	291%
17	32	17	36	19	110%
18	15	8	0	-8	-100%
19	12	7	0	-7	-100%
20	4	2	0	-2	-100%
Total	4 480	2 390	3 254	864	36%

27. The monitoring on Unitary Patent cost provides an estimate of the overall actual cost incurred by the Office since the start of the transitional period. The total costs allocated to the Unitary Patent amount to EUR 2 380k. The key drivers behind these costs are related to staff expenditure and translation compensations.

28. Staff costs total EUR 2 097k, slightly above the forecast of EUR 1 919k. Actual paid employee years dedicated to the tasks related to the Unitary Patent amount to 7.91, compared to the forecasted 7.18. These cost variances stem from an increase in UP requests processed at year-end, exceeding the forecast. Additionally, the number of UP requests processed on average per employee decreased slightly due to a higher complexity of the files in 2023. Credit card charges and IT maintenance costs were in line with the forecast, reflecting their limited scale. Select Committee costs were 40% lower than forecast due to the October meeting being held online, eliminating travel and catering costs. Translation compensation costs were 31% lower than forecast, mainly due to a lower-than-expected proportion (3%) of UP users obtaining compensation for translation costs, compared to the forecast of 5%. Furthermore, the deduction of administrative fees collected on behalf of the participating Member States has been taken into consideration.

Costs based on authorisation budget expenditure (in € '000)	December YTD 2023			Variance Actuals vs. Forecast	
	Budget	Forecast	Actuals	(in €'000)	(in%)
Staff costs	1 757	1 919	2 097	178	9%
Credit card charges	3	2	3	1	50%
IT maintenance costs	13	7	8	1	14%
Select Committee	187	62	37	-25	-40%
<i>Direct operational costs and share of indirect op. costs</i>	<i>1 960</i>	<i>1 990</i>	<i>2 145</i>	<i>155</i>	<i>8%</i>
Deduction of admin. fees collected o. b. of participating MS	-50	-36	-19	17	-47%
Cost of EPO in management of UPP	1 910	1 954	2 126	172	9%
Translation compensation (Article 3320)	126	410	254	-156	-38%
Costs attributable to UPP according to Article 146 EPC	2 036	2 364	2 380	16	1%

29. As expected for the first months after entry into force, the costs incurred exceed the fees collected, resulting in a shortfall of EUR 743k, significantly lower than the EUR 1 157k previously forecasted. This result will be retained from the next quarter in accordance with Article 4(2) of the BFR. Therefore, the report on the net UP income to be distributed per Member State, as foreseen in document SC/23/22, will not yet be issued. Similarly, the safety net mechanism will only come into play after the first annual liquidation of the Unitary Patent and has therefore not been included in this report. As soon as the net income of the Unitary Patent is positive, the participating Member States will be individually informed of the income and costs by means of a payment advice. The payment advice information will be provided electronically, facilitating its seamless integration into automated workflows.

3. Financial implications

30. See above.

4. Documents cited

31. CA/D 1/22, SC/23/22, CA/D 1/23, SC/10/23, SC/11/23

Annex 1 Financial aspects of the Unitary Patent for the third quarter of 2023

Monitoring of the Unitary Patent Budget – Summary:

Income (in € '000)	Sep-2023		Variance	
	Budget	Actuals	(in €'000)	(in%)
UPP fees collected by EPO				
- Renewal fees for granted patents (Article 5320)	2 625	1 127	-1 498	-57%
- Additional fees for belated payment of renewal fees (Article 5320)	26	0	-26	-100%
- Administrative fees (Article 5520)	35	3	-32	-91%
Deduction of administrative fees collected on behalf of the participating MS	-35	-3	32	-91%
A. Total EPO UPP budgetary income	2 651	1 127	-1 524	-57%
B. Member states share of UPP income (50%)	1 326	564	-762	-57%
Costs based on authorisation budget expenditure (in € '000)				
Direct operational costs and share of indirect operational costs	1 516	1 423	-93	-6%
Deduction of administrative fees collected on behalf of the participating MS	-35	-3	32	-91%
Cost of EPO in management of UPP	1 481	1 420	-61	-4%
Translation compensation (Article 3320)	126	149	23	19%
C. Costs attributable to UPP according to Article 146 EPC	1 607	1 569	-38	-2%
Shortfall to be recovered in future year	281	1 006	724	258%
Shortfall recovered from previous year				
D. = (B. - C.) Net UPP income to be distributed to participating member states (Article 3325)	0	0	0	
E. = (A. - B.) EPO share of UPP income	1 326	564	762	-57%
- Prepayments (GL 2631100)		-89		
F. EPO UP revenues (Article 5320)	1 326	474	762	-64%

Monitoring of Unitary Patent Income

Income (in € '000)	Sep-23		Variance	
	Budget	Actuals	(in €'000)	(in%)
UPP fees collected by EPO				
- Renewal fees for granted patents (Article 5320)	2 625	1 127	-1 498	-57%
- Additional fees for belated payment of renewal fees (Article 5320)	26	0	-26	-100%
- Administrative fees (Article 5520)				
Registration of transfer	14	3	-11	-78%
Registration or cancellation of licences and other rights	0	0	0	0%
Certified copy	6	0	-6	-100%
Communication of information from the files	0	0	0	0%
Administrative fee R10(4) UPR	0	0	0	0%
Fee for re-establishment of rights	14		-14	-100%
Subtotal	35	3	-32	-91%
Deduction of administrative fees collected o.b. of the participating MS	-35	-3	32	-91%
A. Total EPO UPP budgetary income	2 651	1 127	-1524	-57%
B. Member states share of UPP income (50%)	1 326	564	-762	-57%

UP Renewal fees for granted patents per age class

Renewal fees for granted patents (Article 5320) per age class (in € '000)	Sep-23		Variance	
	Budget	Actuals	(in €'000)	(in%)
2	0	0	0	#DIV/0!
3	43	15	-28	-66%
4	118	55	-62	-53%
5	241	148	-94	-39%
6	304	152	-152	-50%
7	331	156	-175	-53%
8	338	130	-208	-62%
9	319	107	-212	-67%
10	274	66	-208	-76%
11	214	70	-144	-67%
12	169	46	-123	-73%
13	104	65	-39	-37%
14	67	32	-35	-52%
15	43	31	-12	-28%
16	23	36	13	57%
17	19	18	-1	-4%
18	9	0	-9	-100%
19	7	0	-7	-100%
20	2	0	-2	-100%
Total	2 625	1 127	-1 498	-57%

Monitoring of Unitary Patent Cost

Costs based on authorisation budget expenditure (in € '000)	Sep-23		Variance	
	Budget	Actuals	(in €'000)	in%
Staff costs	1 381	1 419	38	3%
Credit card charges	2	1	-1	-61%
IT maintenance costs	9	4	-5	-58%
Select Committee	125	0	-125	-100%
<i>Subtotal</i>	<i>1 516</i>	<i>1 423</i>	<i>-93</i>	<i>-6%</i>
Deduction of admin. fees collected o. b. of participating MS	-35	-3	32	-91%
Translation compensation (Article 3320)	126	149	23	19%
Costs attributable to UPP according to Article 146 EPC	1 607	1 569	-38	-2%