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Conseil d'administration

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SUBJECT: Working agreements on search co-operation - Triennial revision of financial aspects

SUBMITTED BY: President of the European Patent Office

ADDRESSEES: 1. Budget and Finance Committee (for opinion)
2. Administrative Council (for decision)

SUMMARY

In 2020, the Administrative Council adopted a new policy revising the financial aspects of the working agreements on search co-operation (CA/51/20).

A simplified fee calculation method with a harmonised fee was introduced to be applied to all present and future working agreements on search co-operation.

In addition, the new policy provided for an increased support for small entities for an initial trial period of three years. The currently applicable search fee and the support scheme for small entities will expire on 31 December 2023.

This document gives an overview of the financial implications of the new policy from 2021 to 2022 and proposes an update of the search fee for the next three-year period 2024-2026 based on the established calculation method. Furthermore, the document proposes an extension of the support scheme for small entities for this period.

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I. STRATEGIC/OPERATIONAL

1. Strategic

II. RECOMMENDATION

2. The Administrative Council is requested to:

- take note of the results of the 2020 policy revision (CA/51/20)
- approve the setting of the fees payable under all current and future working agreements with Contracting States for the next three-year period, i.e. 1 January 2024 to 31 December 2026
 - at EUR 2 468 for drawing up a search report plus written opinion and
 - at EUR 2 170 in cases where a supplementary search report is drawn up without written opinion
- approve the continuation of the existing support scheme for small entities (as introduced in CA/51/20) for a further three-year period from 1 January 2024 to 31 December 2026 for all Contracting States with working agreements on search co-operation in force.

III. MAJORITY NEEDED

3. Three-quarters

IV. CONTEXT

4. As the legal successor of the IIB, the EPO inherited the task to carry out searches on behalf of the four ex-IIB states right from the start of its existence.

5. In the past decades the European Patent Office (EPO) has extended this work-sharing scheme to provide further Contracting States within the European Patent Network (EPN) with an additional option for effective co-operation with the EPO via dedicated working agreements on search cooperation. The search conducted by the EPO for a national office is tied to and integrated in the national procedure and can either replace or complement the search carried out by the national offices. National offices are fully flexible in terms of the number of files and the technical fields they request the EPO to search. In addition, a working agreement provides national applicants with an early assessment of the prospects for protection of their invention at European or international level and facilitates a subsequent filing at the EPO, as applicants can benefit from a reduction of the European or international search fee if the previous search product can be reused.

6. The scheme has therefore a long history in serving the users of both smaller and larger offices and has proven its merits, which are highly appreciated by all parties involved. Work-sharing was consequently identified as one of the four pillars of co-operation between the EPO and the national offices of the EPC Contracting States under the Strategic Plan 2023 and it will remain an important element under the new strategic plan.
7. The EPO has working agreements on search co-operation in force with currently 16 Contracting States. Austria was the latest to join the scheme in 2023 (CA/31/22). Following the AC's approval in June 2023 (CA/24/23), Slovenia has just concluded a working agreement with the EPO which will enter into force on 1 January 2024. Portugal is well-advanced in the preparation of a working agreement whose conclusion was approved by the AC (CA/31/22). The UK has announced that it is currently examining whether it seeks to further extend its timely limited search co-operation with the EPO in 2024.
8. In 2022, a total of 28 493 national searches were carried out by the EPO under the working agreements on search co-operation, constituting a decrease of 4% compared to 2021. A detailed overview of the number of searches per Contracting State in the past years is given in Annex 1. While a country's innovation ecosystem and the duration of the search co-operation may account for the difference in numbers of national files searched by the EPO per state, the EPO stands ready to assist individual member states in promoting the search co-operation, including the use of the small entities support scheme, at their request. It is expected that the number of national searches under the working agreements will slightly decrease, in particular if the UK and the EPO eventually agree to stop the search co-operation.
9. The current work-sharing policy was approved by the Administrative Council in December 2020 (see CA/51/20). It contained new policy orientations to make the working agreements more attractive for users and to align with the commitment that co-operation projects and initiatives be equally open and applicable to all Contracting States under uniform rules and conditions (see CA/27/20). Additionally, it addressed the targeted measures announced by the SP2023 by offering greater support for small entities which often underuse the patent system and do not reap all the benefits it offers.
10. This policy included two main elements of the working agreements on search co-operation, a harmonised fee regime and an enhanced support scheme for small entities.
11. As regards the harmonised fee regime, the policy introduced a single fee payable for all searches done under the working agreements and thus abandoned the previous distinction between ex-IIB states and other member states. That policy also reiterated the fundamental aspect of budget-neutrality of the working agreements according to which the search fee payable by the national office must compensate the costs of the EPO. As a result, the search fee was set at EUR 2 336 for a three-year period from 1 January 2021 to 31 December 2023. For details on the fee calculation and its development see Annex 2.

12. Besides this uniform fee regime, the new policy on the working agreements included an enhanced support scheme for small entities. Since 2012, the EPO has offered financial support for specific categories of applicants through an administrative agreement accompanying the working agreements on search co-operation and reducing the search fee payable for SMEs, universities, not-for profit research institutes and natural persons (see CA/47/12 and CA/97/15). This group of applicants often underuses the patent system and does not reap all the benefits it offers. A high-quality search conducted by the EPO is especially beneficial for small entities as it enables them to make sound judgments about whether, in the light of prior art, to seek protection for their inventions in the form of European or international second filings.
13. With the new policy, this support was increased from 75% to 80% and extended to all Contracting States having a working agreement on search co-operation in place. In addition, the number of eligible cases was increased from 100 to 400 cases. The conditions under which a search fee reduction is granted are determined in dedicated administrative agreements which in the meantime have been concluded with all Contracting States having a working agreement on search co-operation in force. The support scheme has been fully financed from the EPO's co-operation budget. See Annex 3 for details on the support scheme.
14. Both the currently applicable fee and the support scheme for small entities were set for a three-year period running until 31 December 2023. The Council is requested to approve a recalculated fee and an extension of the small entities support scheme for the next three-year period (i.e., 1 January 2024 to 31 December 2026).

V. ARGUMENTS

A. **PROPOSED ADJUSTMENT OF THE SEARCH FEE UNDER THE WORKING AGREEMENTS FOR THE TRIENNIAL PERIOD 2024-2025-2026**

15. The fee regime introduced by the new policy on working agreements on search co-operation has simplified and harmonised the way the search fee is calculated for all Contracting States having a working agreement in force.
16. Applying the established formula using the updated unit costs and the current EP/PCT search fees and the average return rates in the years 2020-2022, the new fee for the next three-year period 2024-2026 amounts to **EUR 2 468** (see Annex 2 for details on the calculation).
17. The three elements which contribute to the new fee amount have developed as follows:
 - Unit costs of search: +9.8%, see Annex 2 for details.
 - EP search fee: +8.1%, resulting from a fee increase below inflation (5% as of 1 April 2023 being below the 9.6% inflation June 2021-June 2022).
 - PCT search fee: 0%, as the PCT search fee has been frozen since 1 April 2018.

18. In comparison to the currently applicable fee of EUR 2 336, the fee would therefore increase by EUR 132 or 5.7%.
19. The fee increase by 5.7% after three years is significantly below inflation, which was 19.2% from January 2021 to June 2023, and is 0.3% below the price which the non-ex IIB states had to pay from 2018 to 2020.
20. Under the working agreements, the EPO also issues search reports without written opinions in the specific case of supplementary searches that may be requested by some national offices when applicants respond to the search report by amending the claims of a national application and introducing new matter not previously searched (only around 12 cases per year). As in the past, it is proposed that the fee for a search report without written opinion be adjusted by the same percentage (+5.7%) resulting in a new fee of $EUR\ 2\ 053 * 1.057 = EUR\ 2\ 170$.
21. The working agreements provide for an increase of the search fee by a flat-rate amount to cover the costs for copies of the cited documents to be set by the EPO. So far, this flat rate amount has been EUR 6 for paper copies and EUR 4 for electronic copies. It is envisaged to abolish the fee for electronic copies while maintaining the fee for paper copies at EUR 6, thereby incentivising the use of electronic data exchange services offered by the EPO.
22. In order to adopt the new search fees, the working agreements do not need to be amended, as the respective Article in the working agreement (Article 13(1) or 14(1) for the ex IIB states and Article 11(2) for the other states) provides that the search fee is laid down by the Administrative Council for a period of three years.
23. As regards the fee for electronic and paper copies of the cited documents, it is determined by a decision of the President of the EPO.

B. EXTENSION OF THE SMALL ENTITIES SUPPORT SCHEME FOR THE TRIENNIAL PERIOD 2024-2025-2026

24. Under the small entities support scheme, an 80% reduction of the search fee payable under the working agreements is granted for certain categories of applicants (natural persons, SMEs, universities, not-for-profit research institutes) having their residence or principal place of business within a Contracting State. The support is limited to 400 cases per year and state. For a detailed description of the small entities support under the administrative agreements see Annex 3.
25. The new support scheme has led to a steep increase in the support available for small entities. Whereas from 2016 to 2019, a total of only 134 files were supported, the number of supported cases rose to 2 237 in 2021 after the new support scheme was introduced.
26. Out of 28 493 national searches performed in 2022, 2 233 (7.8 %) received the 80% reduction. The support thus available amounted to EUR 4.2m and was fully funded from the co-operation budget. An overview of the number of supported cases per member state in 2021 and 2022 is given in Annex 4.

27. Due to the positive feedback received from the national offices, it is suggested to extend the small entities support offered under the administrative agreements for another three years, i.e. from 2024 to 2026 under the same conditions currently in place, i.e. for a maximum of 400 cases per state and per year for the same categories of applicants (SMEs, universities, individual inventors and not-for-profit research institutes). Article 8 of the administrative agreements provides for an extension of the agreement if the Administrative Council approves the continuation of the small entities support scheme. Therefore, it is not required to amend the already existing administrative agreements.

VI. FINANCIAL IMPLICATIONS

A. IMPACT OF THE FEE ADJUSTMENT

28. The fee adjustment ensures that budget neutrality is maintained in the context of the working agreements on search co-operation.
29. The income generated from the working agreements on search co-operation reached EUR 66.6m¹ in 2022. Applying the 5.7% fee increase on this amount would increase the income by EUR 3.8m.
30. However, although more states will join the scheme in the future, it is estimated that the number of searches done under the working agreements could slightly decrease in case the UK and the EPO were not to extend their search co-operation beyond 2024 (the UK accounts for almost 9% of the searches).
31. For 2024, it is estimated that the EPO will be entrusted with around 28 000 searches, which would generate an income of EUR 69.1m assuming the application of the adjusted search fee (see estimated fee cases and income in Annex 5). This amount would represent an increase of income by EUR 2.5m compared to 2022.

B. IMPACT OF THE EXTENSION OF THE SMALL ENTITY SUPPORT SCHEME

32. The administrative agreements aiming to provide financial support for small entities will continue to be financed from funds available under the co-operation policy.
33. The number of files eligible for support is expected to increase slightly. The forecasted decline of support cases for the UK will be compensated with the accumulated support cases for Austria, Slovenia and Portugal. The share of eligible files is expected to increase slightly to 8%-9% out of all files searched under the working agreements. The financial support can thus be estimated at EUR 4.8m per year (approximately 7% of the income from the searches done under the working agreements), close to the actual support in 2021 and 2022. See Annex 5 for an overview of the past and estimated future support cases and fee levels, including the full fee and reduced fee.

¹ Income before support, see Annex 5.

VII. LEGAL BASIS

34. Articles 33(4) and 10(2) EPC

VIII. DOCUMENTS CITED

35. CA/84/05, CA/154/05, CA/37/08 Rev. 1, CA/47/12, CA/97/15, CA/27/20, CA/51/20, CA/31/22, CA/24/23, CA/45/23, CA/45/XX and CA/F 5/XX

IX. RECOMMENDATION FOR PUBLICATION

36. Yes

ANNEX 1 NUMBER OF SEARCHES PER COUNTRY

	2017	2018	2019	2020	2021	2022
FR (2006)*	14 827	14 061	15 766	14 240	12 177	11 636
LU (2007)	323	277	294	371	475	559
BE (2007)	1 045	1 107	1 010	1 046	1 262	1 212
NL (2006)	1 502	1 419	1 506	1 663	2 098	2 253
IT (2008)	8 353	9 131	8 430	8 928	11 639	10 100
GB (2018)		8	151	1 026	1 889	2 668
GR (2009)	32	15	28	22	32	11
LV (2016)	8	14	24	26	34	38
LT (2014)	3	1	5	2	8	8
CY (2009)	2	9	1	2	2	3
MC (2017)			1			3
SM (2014)						
MT (2008)						
HR (2021)						2
AL (2021)						
AT (2023)						
Total	26 095	26 042	27 216	27 326	29 616	28 493

*Year of entry into force of the respective working agreement

ANNEX 2 FEE CALCULATION AND TRIENNIAL FEE DEVELOPMENT

In June and December 2005, the Administrative Council unanimously approved the revised working agreements on search co-operation (CA/84/05, CA/154/05) with the group comprising the four former IIB states. The revision involved a major reworking of the fee-calculation arrangements, which are still applicable today.

In June 2008, the Administrative Council adopted a proposal responding to the request for a simpler and more transparent calculation method (CA/37/08 Rev. 1). This proposal strictly adhered to the basic objective of financial neutrality for the EPO by applying two principles in calculating the fee:

- for national applications which do not subsequently result in a European or international application, the calculation uses the full cost price of a search report plus written opinion,
- for those which do, it uses the search fee which applicants would have paid for a first or second EP or PCT filing, had these working agreements not existed.

For national applications returning to the EPO as European or Euro-PCT applications the calculation of the fee thus takes into account other income generated by such applications, e.g. internal renewal fees. The exact rates at which these national applications return to the EPO as European or international filings are published each year in the EPO's statistics document (CA/F 5/xx Annex 2C). The fee also takes account of the general unit cost of drawing up a search report with a written opinion which is published yearly in CA/45/XX.

Moreover, a flat-rate reduction of 7% is applied to this amount, reflecting the EPO's estimated savings due to the national offices' important role in pre-filtering their domestic filings. They ensure that the dossiers forwarded to the EPO for searching are of better quality and contain no serious irregularities likely to complicate the examiner's work, such as lack of unity or clarity, or claims which are obviously non-patentable. In addition, as a majority of the incoming files have already been given a precise IPC classification, they can be allocated to the appropriate examiner more easily and more quickly.

The overall result is that the fee for a triennial period is calculated on the basis of the following agreed formula:

unit cost of search **x** % of dossiers staying national
+ amount of EP search fee **x** % of dossiers becoming EP
+ amount of PCT search fee **x** % of dossiers becoming PCT
- 7% reduction

Until 2020, two different fees had been applied to the group of the former IIB states and the other group of states having a working agreement in place, depending on their respective return rates of nationally searched files subsequently becoming EP or Euro-PCT applications. With the new policy (CA/51/20), the fee calculation was simplified by taking one single return rate based on cumulative date from all states having a working agreement in place. Thereby, one single fee for all participating offices was introduced.

Implementation in the triennial period 2024-2025-2026:

Unit cost of a search in 2022 amounted to EUR 3 914 (see CA/45/23, page 4).

The evolution of unit costs for search (+9.8% in year 2022 compared to 2019) can be explained as follows:

- Without the +12.5% impact caused by the discount rate change (CA/45/21), which received the support of the Contracting States, the costs would actually have declined by -2.4%.
- Staff costs in year 2022, which are the predominant factor of costs, would normally have been based on inflation until June 2021, thus not yet affected by the high levels of inflation since then. However, due to the exception clause in the salary adjustment procedure, EPO salaries were frozen in 2022.

Return rates for the participating countries for 2020-2021-2022: remain national 43.5%, subsequent EP application 16.4%, subsequent Euro-PCT application 40.1%.

$\text{EUR } 3\,914 \times 0.435 + \text{EUR } 1\,460 \times 0.164 + \text{EUR } 1\,775 \times 0.401 = \text{EUR } 2\,654.$

Flat-rate 7% reduction: $\text{EUR } 2\,654 \times 0.07 = \text{EUR } 186.$

$\text{EUR } 2\,654 - \text{EUR } 186 = \text{EUR } 2\,468.$

The fee payable for a search report plus written opinion is therefore to be set at **EUR 2 468** for the next three-year period 2024-2026 for all Contracting States having a working agreement on search co-operation in force.

This fee for each search report is increased by a flat-rate amount, fixed by the EPO, to cover the cost price of the copies of the documents cited in the report. This flat-rate amount is currently EUR 6 for a paper copy and EUR 4 for an electronic one. It is envisaged to abolish the fee for electronic copies as of 1 January 2024, representing a loss of income for the EPO of EUR 104 000. The abolishment of this fee does not require the AC's approval as the fee for copies of cited documents is set by a decision of the President.

The following table shows the updated fee calculation in comparison to the previous calculations for the triennial periods 2018-2020 and 2021-2023. Thereafter, the evolution of the fees over the period 2009 - 2026 is presented.

Fee calculations for triennial periods 2018-2020, 2021-2023, 2024-2026

Year for unit cost	2016		2019	2022
Unit cost of Search	€3 524		€3 564	€3 914
Year for fees	2017		2020	2023
EP search fee (1 April)	€1 300		€1 350	€1 460
PCT search fee (1 April)	€1 875		€1 775	€1 775
Return rate period	ex IIB 2014-2016	others 2014-2016	2017-2019	2020-2022
No subsequent EPO search	43%	53%	45%	43.5%
Return as EP	15%	15%	16%	16.4%
Return as PCT (EPO=ISA)	42%	32%	39%	40.1%
Fee application period	ex IIB 2018-2020	others 2018-2020	2021-2023	2024-2026
Calculation	3524*0.43 +1300*0.15 +1875*0.42	3524*0.53 +1300*0.15 +1875*0.32	3564*0.45 +1350*0.16 +1775*0.39	3914*0.435 +1460*0.164 +1775*0.401
Weighted Fee	€2 498	€2 663	€2 512	€2 654
7% reduction	-€175	-€186	-€176	-€186
Resulting fee after 7% reduction	€2 323	€2 476	€2 336	€2 468

Evolution of the fees over the period 2009 – 2026

Fee	2009-2011	2012-2014	2015-2017	2018-2020	2021-2023	2024-2026
1st Group (FR, NL, BE, LU)	EUR 2 136	EUR 2 334	EUR 2 491	EUR 2 323	EUR 2 336	EUR 2 468
Change		+9.3%	+6.7%	-6.7%	+0.6%	+5.7%
2nd Group (11 countries)	EUR 2 136	EUR 2 586	EUR 2 683	EUR 2 476	EUR 2 336	EUR 2 468
Change		+21.1%	+3.8%	-7.7%	-5.7%	+5.7%

ANNEX 3 SCHEME OF FINANCIAL SUPPORT FOR SMALL ENTITIES

The financial support scheme is open to all Contracting States having a working agreement on search co-operation and applies to national first filings from the following categories of applicants qualifying as small entities and domiciled in one of the 39 EPC Contracting States:

- natural persons;
- small and medium-sized enterprises as defined by the European Commission Recommendation 2003/361 of 6 May 2003, i.e. staff < 250 persons, turnover < EUR 50m and/or balance sheet < EUR 43m, no more than 25% of capital held by another company;
- universities or not-for-profit research institutes.

If the national patent application has multiple applicants, all the co-applicants must belong to one of the above categories in order to be eligible for the reduction. The financial support is limited to five applications per year for the same natural person and to ten applications per year for the same university or not-for-profit research institute. National offices are responsible for verifying applicants' eligibility by means of their own procedures (simple declaration or proof required).

The administrative agreement limits the number of dossiers qualifying for the reduction to no more than 400 per year and state.

The partial refund of the search fee corresponds to 80% of the search fee and has to be passed on in full to the small entities, by ensuring that the fee level charged by the Member State does not exceed the reduced cost of a search charged by the EPO, irrespective of whether there are any additional subsidies at national level.

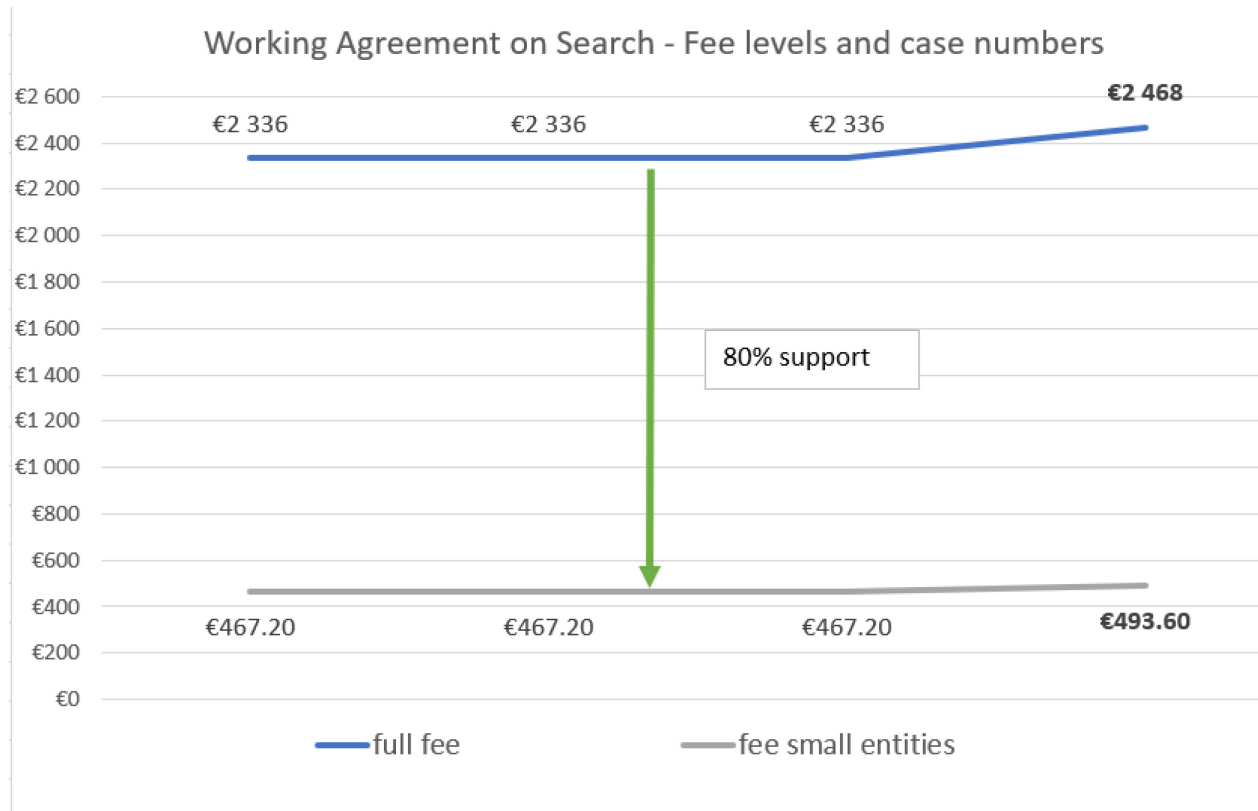
The search-fee reduction arrangements are organised as follows in the administrative agreement:

- the national offices pay for searches under the working agreements on search co-operation at the full rate set by the Administrative Council;
- the national offices send the EPO a list of the dossiers for which they have paid the search invoices and which meet the eligibility criteria for financial support under the administrative agreement;
- the national offices request the partial refund of the search fee by sending an invoice to the EPO;
- these invoices are charged, monthly or quarterly, to the EPO's co-operation budget with the national office concerned.
- Alternatively, the EPO could send the usual monthly search invoice, but the national office would have to pay only 20% of the invoiced amount if, in parallel, it sent the EPO the list of applications eligible for the reduction (80%).

ANNEX 4 FINANCIAL SUPPORT 2021 AND 2022 BY MEMBER STATE

Country	Supported cases 2021	Support 2021	Supported cases 2022	Support 2022
AL	0	€0	0	0
BE	400	€747 520	382	€713 882
CY	0	€0	4	€7 475
FR	400	€747 520	400	€747 520
GB	400	€747 520	400	€747 520
GR	19	€35 507	10	€18 688
HR	0	€0	2	€3 738
IT	400	€747 520	400	€747 520
LT	6	€11 213	7	€13 082
LU	175	€327 040	190	€355 072
LV	37	€69 146	35	€65 408
MC	0	€0	3	€5 606
MT	0	€0	0	€0
NL	400	€747 520	400	€747 520
SM	0	€0	0	€0
Total	2 237	€4 180 506	2 233	€4 173 030

ANNEX 5 FEES, DISCOUNTS AND FEE CASES 2012-2024



Fee Cases	2021	2022	2023 est.	2024 est.
— full fee	27 379	26 260	25 750	25 550
— fee small entities	2 237	2 233	2 250	2 450
— total	29 616	28 493	28 000	28 000
Income, Support				
Income before support	€69.2m	€66.6m	€65.4m	€69.1m
Support	€4.2m	€4.2m	€4.2m	€4.8m