



Administrative Committee

Operating Model of the Unified Patent Court

Luxembourg, 19 October 2022

EXPLANATORY NOTE

The Administrative Committee, during its meeting on 22 February 2022, examined the document “Operating Model of the UPC” (AC/09/22022022), which outlines the details of staffing and operational management within the UPC. Furthermore, it also includes *Guidelines on the performance of duties of administrative support staff of the Court, provided under Article 37(1) of the Agreement on a Unified Patent Court* (hereinafter referred as “Guidelines”). On the meeting of 22 February 2022, no delegation raised any objection with regard to the content of the document.

The current draft contains two additions to the previous text:

- in point 3.2., it specifies a Contracting Member State’s obligation to designate a contact point at its national authority and inform the UPC Secretariat and the Head of HR about his/her contact details;
- among the Definitions (paragraph 1. (d)) of the Guidelines, it is clarified that the Guidelines are applicable to the mid-level managers, as well, as long as they are provided by the Contracting Member States under Article 37(1) of the Agreement on a Unified Patent Court.

The Administrative Committee is invited to **adopt** the presented document.

DECISION OF THE ADMINISTRATIVE COMMITTEE OF 19 OCTOBER 2022 ON THE OPERATING MODEL OF THE UNIFIED PATENT COURT

THE ADMINISTRATIVE COMMITTEE

HAVING REGARD to the Agreement on a Unified Patent Court and in particular Article 37 (1) thereof;

HAVING REGARD to the Statute of the Court and in particular Articles 16, 23 and 25 thereof;

CONSIDERING that, in accordance with Article 3 of the Staff Regulations of the Unified Patent Court, said Staff Regulations, with the exception of Articles 4, 5, 6 and 7, shall not apply to the administrative support staff provided under Article 37(1) of the Agreement on a Unified Patent Court;

CONSIDERING that the Contracting Member States of the Agreement on a Unified Patent Court have the responsibility to ensure the proper functioning of the Unified Patent Court;

HAS ADOPTED THE FOLLOWING DECISION ON THE:

Operating Model of the Unified Patent Court

1. INTRODUCTION

This document describes the operating model of the Unified Patent Court (UPC/ the Court), and consists of two major parts:

- the first part outlines the tasks and profile of the administrative staff, as well as the operational management of the UPC;
- the second part contains the “*Guidelines on the performance of duties of administrative support staff of the Court, provided under Article 37(1) of the Agreement on a Unified Patent Court*”.

2. STAFFING

2.1 General

Bearing in mind that the administrative support staff is recruited and remunerated by the hosting Member States¹, its effective number and specific job descriptions shall be decided and elaborated by said hosting Member States. However, since one of the principles of operation of the Court is to function as one entity notwithstanding the different locations of its divisions, it was considered beneficial to strive for a common understanding and provide some standards and guidance to hosting Member States for the staffing of the Court. This would also facilitate continuity, once the transitional period of 7 years ends and staff will be hired by the Court.

¹Hosting Member States are to be understood as Member States hosting a local or regional division of the Court of First Instance, a section or the seat of the central division of the Court of First Instance, or the Member State hosting the Court of Appeal.

2.2 Mid-level managers

At the Registry, and by decision of the Registrar, a **staff of the Court with mid-level management functions** (hereinafter, mid-level managers) should be created, performing delegated steering tasks required for the daily operations of the Court. During the initial 7 years, or until the caseload and hereby the general workload of the Court so requires, the particularly relevant mid-level managers are the Head of Information Technology, Head of Finance and Head of HR.

2.3 Administrative support staff

2.3.1. Categories

Administrative support staff include, on the one hand, **clerks** who deal with **judicial/procedural support tasks**, and on the other hand, staff dealing with tasks in the area of **functional support** such as **IT-, finance-, HR- and secretarial-support**. In this regards, hosting Member States should provide one or more contact persons for each relevant functional support area (i.e. IT, finance, HR, secretarial support, facility management) to co-operate/work together with the Registry (Luxembourg). In addition, once the extent of work justifies, a **communication officer** should be hired at the Registry (Luxembourg).

Member States have a free choice regarding the number of staff employed, the employment contract type and the distribution of the necessary tasks. **Judicial/procedural support tasks and tasks in the area of functional support** can be provided by the same staff, especially in the early years of operation of the Court.

2.3.2. Clerks and staff in the area of IT

The work of **clerks** and that of staff working in the area of IT (**IT experts**) should be separated, and the minimum clerk- and IT-related staffing per sub-registry and Registry is recommended to be the following:

sub-registries (Local level <i>i.e.</i> first line of defence):	1 clerk* using the CMS (also CMS superuser at local level), 1 IT expert (local systems responsible)
Registry (Luxembourg):	1 CMS superuser (this clerk* has more extended "CMS privileges", 1 IT superuser, IT-Experts)

*In case a functional support staff performs clerical and functional support tasks at the same time and uses the CMS on a daily basis, this person can also be the CMS superuser, but cannot be an IT expert.

Notwithstanding the above recommended model, Member States have a free choice regarding the number of staff employed and the distribution of the necessary functional duties.

2.4 Functional support for the Mediation and Arbitration Centre and the Training Centre

Functional support for the Mediation and Arbitration Centre and for the Training Centre should be provided by the Registry (Luxembourg).

3. OPERATIONAL MANAGEMENT

3.1 General

Judges also having managerial powers (i.e. Presidents of the Court of Appeal (CoA) and of the Court of First Instance (CFI), Presidium members) should as much as legally possible and as deemed beneficial, be relieved from daily administrative works. For these, they should be supported centrally by the Registrar (Luxembourg) and/or the Deputy-Registrar (Paris). Judges should be able to primarily focus on their judicial tasks performing only those administrative tasks which are strictly attached to their positions (eg. supervision, regulatory steps, participating in HR- or finance-related decisions, etc.).

Due to their function of highest profile, the national authority at the CoA (Luxembourg) should provide **personal secretarial assistance** to the President of the CoA and to the Registrar. The same applies for the national authority at the seat of the Central Division of the CFI (Paris), which, as foreseen, shall provide secretarial assistance to the President of the CFI, but also for the Deputy-Registrar, already from the start of operations of the Court.

3.2 Operational management of staff

Operational management of the clerks and staff with functional support tasks should, within the UPC, be subject to double reporting as follows:

- **Clerks:** should report to their local manager (national authority) and to the Registrar (for clerks at the CoA) and to the Deputy-Registrar (clerks at the CFI) when fulfilling their duties for the Court.
- **Staff with functional support tasks:** should report to the local manager (national authority) and to the relevant mid-level manager at the Registry of the Court (eg. Head of IT) when performing their duties for the Court.

Work organization (eg. scheduling of tasks, holidays) should be implemented jointly by the UPC managers (Registrar, Deputy-Registrar or mid-level managers, as applicable) and the local managers (due to double reporting). In order to ensure smooth work organisation between the UPC managers and the local managers, Contracting Member States are required to designate at least one contact person among the local managers (preferably someone from the HR department of the national authority) and provide the UPC Secretariat, and well as the Head of HR, with the name and contact details (e-mail address and phone number) of said contact person. The national authority manages all decisions in personnel matters of the staff (e.g. vacation, sickness, time compensation, welfare benefits) after consulting with the Court. The assigned staff shall be subject, in accordance with national law, to the right of the Court to give instructions with regard to their duties to the Court. If conflicts arise for the assigned support personnel, the national authority decides after consulting the Court.

3.3 Execution and delegation of tasks

It has to be recalled that in performing their duties for the Court, the administrative support staff provided by hosting Member States will be under the authority of and report to the Registrar.

It is suggested, that, as far as appropriate, the Registrar delegates some of his/hers administrative/functional powers to the Deputy-Registrar or staff at the Registry (including to mid-level managers) and the Deputy-Registrar delegates some of his/hers administrative/functional powers to the mid-management at the Registry (eg. IT related powers to the Head of IT).

As for judicial/procedural support tasks (eg. formal checks of incoming cases), those should be delegated as far as appropriate to clerks of the Registry (for cases of the CoA) and clerks of the different sub-registries (for cases of the CFI).

For specific UPC-related functional tasks (eg. UPC IT matters), managerial action (eg. assignment of tasks, control, etc.) should be taken by the UPC managers (Registrar, Deputy-Registrar or Head of IT, as applicable), without the intervention of local managers, who of course should be informed as needed. This method should also apply for other functional support tasks (eg. finance, HR, facility management). The amount of interactions between local and regional divisions and the central administration needs to be further examined and assessed.

4. SUPPORT PROCESS FOR IT

Support activity should be based on burden sharing and therefore have escalation levels:

- 1st local level,
- 2nd central level, and
- 3rd solution provider level.

Once local staff require support, the local IT expert should, where appropriate, be contacted first and determine whether it is a local IT-related matter or not, and whether 2nd level is to be reached or not.

In the beginning, there will most likely be only one clerk in many of the divisions, being the local CMS superuser. However, when the caseload raises the need of clerical support will also rise. Then the superuser at local level will be advising the other clerks before potential escalation to the 1st local level and 2nd level at the central administration.

Example for CMS-related support:

1. Level 1 – local CMS superuser,
2. Level 1.1 – if required, investigation with local IT-expert,
3. Level 2 – escalation to IT- or CMS-superuser at the Registry for investigation,
4. Level 2 – if required, investigation involving level 1,
5. Level 3 – escalation to IT provider of the CMS solution,
6. Level 3 – if required, investigation involving all levels (1, 2 and 3).

To provide a uniform delivery of services, this support process should be applied as standard model in case of issues with other (non-CMS) UPC IT systems used by the staff of the Court.

5. TRAINING

To provide for a centralized, predictable, transparent, coherent functioning of the UPC, not only the clerks but also staff with functional support tasks will receive training on the internal rules of the UPC, during

the period of provisional application of the Agreement on a Unified Patent Court. For IT experts, a lighter alternative will also be proposed and will only comprise material related to the special IT characteristics of the UPC systems (eg. initiation to UPC IT support model).

This training is considered essential for the local staff to be able to co-operate daily with the Registry (Luxembourg).

Guidelines on the performance of duties of administrative support staff of the Court, provided under Article 37(1) of the Agreement on a Unified Patent Court

CONSIDERING that the Contracting Member States of the Agreement on a Unified Patent Court have the responsibility to ensure the proper functioning of the Unified Patent Court;

CONSIDERING that, in accordance with Article 37(1) of the Agreement on a Unified Patent Court, the Contracting Member State setting up a local division, sharing a regional division or hosting a section of the central division, as well as the Contracting Member State hosting the Court of Appeal, shall, during a transitional period of seven years starting from the entry into force of said Agreement, provide administrative support staff to the Court, without prejudice to the Statute of that staff;

CONSIDERING that the administrative support staff shall have tasks and obligations in accordance with Article 16 of the Statute of the Unified Patent Court and Article 4 of the Staff Regulations of the Unified Patent Court;

CONSIDERING that, in accordance with Article 3 of the Staff Regulations, said Staff Regulations, with the exception of Articles 4, 5, 6 and 7, shall not apply to the administrative support staff provided under Article 37(1) of the Agreement on a Unified Patent Court;

the Court **advises** to observe the following guidelines regarding the performance of duties by the administrative support staff of the Court provided under Article 37(1) of the Agreement on a Unified Patent Court:

1. Definitions

For the purposes of these Guidelines:

- a) “the Court” means the Unified Patent Court;
- b) “the Agreement” means the Agreement on a Unified Patent Court;
- c) “the Statute” means the Statute of the Court, as set out in Annex 1 of the Agreement;
- d) “the administrative support staff” means the administrative support staff provided under Article 37(1) of the Agreement; for the purposes of these Guidelines, it also means mid-level managers, as long as they are provided by the Contracting Member States under Article 37(1) of the Agreement;
- e) “the Staff Regulations” means the Staff Regulations of the Unified Patent Court;
- f) “Contracting Member State” means the Member State party to the Agreement, which has set up a local division, shares a regional division, hosts the central division or a section thereof, or hosts the Court of Appeal;
- g) “national authority” means the administration or authority which, on behalf of the Contracting Member State, has agreed to provide the administrative support staff.

2. General

1. The Court is responsible to give to the administrative support staff a description of their duties, before said staff begins performing duties for the Court.
2. In performing their duties for the Court, the administrative support staff shall be responsible to the Registrar, under the authority of the President of the Court of Appeal and the President of the Court of First Instance, as per Article 16 of the Statute.
3. The performance of duties under paragraph 1 shall be in line with the Court’s functional organigram.
4. The national authority in cooperation with the Court should define in a written form the minimum formalities of performing duties for the Court by the administrative support staff, such as the amount of time to be allocated to duties of the Court, the premises for the performance of said duties and the rules of substitution in case of absence.
5. The performance of duties for the Court is without prejudice to the Statute of the administrative support staff.
6. In performing their duties, the administrative support staff, in their quality of agents of the Court, are expected to abide by the values contained in the Code of Ethics as set by the President of the Court of Appeal.

3. Support process for IT

When fulfilling their tasks, the administrative support staff of the Court should be aware of the IT support structure of the Court, based on burden sharing with the following escalation levels:

- 1st: “local” level, at the sub-registries of the Court,
- 2nd: “central” level, at the Registry, and
- 3rd: “solution provider” level, at the provider.

Once administrative support staff require support, the local IT expert should, where appropriate, be contacted first and determine whether it is a local IT-related matter or not, and whether 2nd level support is to be reached or not.

To provide a uniform delivery of services, this support process should be applied as standard model in case of issues with all UPC IT systems used by the administrative support staff of the Court.

4. The national authority

1. During the period when the administrative support staff performs duties for the Court, the national authority should ensure:

- (a) continuing to pay the administrative support staff their full salaries and other benefits, including but not limited to periods of paid leave in accordance with the contract of employment and applicable national law;
- (b) maintaining all insurance coverage the administrative support staff are entitled to, as well as social and pension plans, in accordance with the contract of employment and applicable national law;
- (c) allowing the administrative support staff to participate in any activities as needed for the performance of their duties at the Court, including but not limited to training; and
- (d) reimbursing the administrative support staff, no later than 30 days, for any reasonable and pre-authorized expenses incurred by said staff, in connection to their duties at the Court, including but not limited to travel expenses.

2. For the purposes of paragraph (1)(a) and (d), the Court shall provide to the national authority all relevant information to enable for the payment and compensate the administrative support staff as necessary.

5. Leave and approval of leave requests

1. It is expected for the administrative support staff to continue accruing leave during the time of performance of duties for the Court.

2. During the time of performance of duties for the Court, the national authority and the Court shall ensure that leave of the administrative support staff does not affect the proper functioning of the Court.

3. In the event of sickness of an administrative support staff member, the national authority is to notify the Court.

4. The national authority and the Court shall ensure that leave of the administrative support staff member is administered in accordance with the procedures foreseen for these purposes by the Court.

5. During a period of incapacity of an administrative support staff member due to illness or injury or as otherwise foreseen under his/her contract of employment, the Court, in agreement with the Contracting Member State concerned, can take the necessary measures in order to ensure that during this period, the duties of the administrative support staff member are fulfilled. Such measures can include, *inter alia*, the temporary allocation of tasks of said staff member to other administrative support staff member of the Court, either in the same or in other divisions of the Court.

6. Performance appraisal and discipline

1. The Court will give regular performance appraisals to the administrative support staff and duly inform the national authority. Any key performance targets in relation to the duties for the Court shall be based on targets set by the Court in cooperation with the national authority.

2. The national authority and the Court are to ensure that any case of unsatisfactory performance of the administrative support staff in the context of their duties for the Court is identified and solved, if required with the involvement of the national authority.

7. Confidentiality

The Court and the national authority must allow that, during the course of performance of duties for the Court, the administrative support staff may obtain and have access to both the Court's and authority's confidential information and that such information shall remain confidential to the Court and to the authority respectively.

8. Conflict of interest

It is the shared responsibility of the Court and the national authority to make the administrative support staff aware of situations of possible conflict of interest and request for the staff to report any such situation.

9. Entry into force

This decision shall enter into force on 19 October 2022.

For the Administrative Committee

[Signatures and name of the Chairperson]

The Chairperson