

Report from the 93rd Council Meeting held in Málaga, Spain on 22nd October 2022

L. Casey (IE)

The Presidium members at C93 were President Francis LEYDER (BE), Vice-Presidents Heike VOGELSANG-WENKE (DE) and Bogoljub ILIEVSKI (MK), Secretary General Olga SIRAKOVA (BG) and Treasurer Peter THOMSEN (CH).

131 Council members (with voting rights) were registered. Due to an air traffic control strike, only one Council member from Italy was able to attend. No Council member from Cyprus was present as the registered Cypriot member had to cancel participation at short notice.

1/ Meeting opening

President Francis LEYDER opened the meeting at 09:15 and welcomed all the participants. The meeting was immediately suspended to enable all Council members with voting rights to collect their voting devices. At approximately



09:20, the President declared the meeting resumed. A test vote was successfully conducted. Scrutineers Gabriele LEISSLER-GERSTL (DE) and Valérie MELLET (LU) were appointed.

2/ Adoption of the Agenda

The agenda was adopted by 96% in favour; 2% against and 2% abstaining with the following changes:

- Item 14B: (Amendments of the “Guidelines for Reimbursement – What is reimbursed”): withdrawn at the request of the Treasurer;
- Item 15A: Possible amendments of the By-Laws and CoD;
- Item 15C: Reinstatement of the Nominations Committee;
- Item 15D: Possible delegation from Council to the Board;
- Item 20: Motion by some members of the German delegation to be put to C93 in relation to the EQE.

3/ Confirmation of the list of nominations for elections to committees

The Secretary General confirmed the names of members for election to committees as follows:

For the Committees’ Election Committee:

Zelika BRKIC (RS)
Andreas DITLER (DE)
Moritz KOPLIN (DE)
Christian LÄUFER (DE)
Jean-Nicolas LONGCHAMP (CH)
Thomas MARX (DE)
Ana NEVES (PT)
Anders Kjer PEDERSEN (DK)
Alexandru Christian STRENC (RO)

For the Litigation Committee:

Konstantina KORiatopoulou (GR)

4/ Adoption of the Minutes of the 92nd Council meeting

The Minutes were approved. Action points arising were noted.

5/ Report of the President and Vice-Presidents

President Francis LEYDER referred to his report in the accumulated file which also included activities of the Vice-Presidents. He noted that there were five formal Presidium meetings and two Board meetings since his last report dated 25.04.2022. In a wide ranging report, the President noted, inter alia, that **epi** had successfully obtained observer status at meetings of the Administrative Committee of the UPC being represented by Peter THOMSEN (CH) assisted by Kim FINNILÄ (FI).



6/ Report of the Secretary General

Secretary General Olga SIRAKOVA referred to her report in the accumulated file and thanked the Deputy Secretary General Magdalena AUGUSTYNIAK for her assistance. She confirmed that, although subject to review depending on the COVID 19 circumstances, all **epi** Council meetings will revert to in-person meetings.

Among the items of her report were:

- (i) the next Council meeting (C94) will be held in the Copenhagen/Malmö region of Denmark/Sweden on 01.05.2023 – 03.05.2023.

The dates and location for C95 have not yet been finalised with Ljubljana and Budapest under current consideration;

- (ii) where possible, a Board meeting should be held in the same location as the immediate next Council meeting;

- (iii) **epi** membership as of 04.10.2022 comprises 13 905 **epi** members and 482 **epi** Students;
- (iv) on 15.07 2022, the Government of Montenegro deposited the Instruments of Accession to the EPC thus rendering Montenegro (ME) the 39th EPO Contracting State as of 01.10.2022.

The Secretary General thanked the **epi** Secretariat with a special acknowledgement to Danielle KHOURY, Avan AL DABBAGH and Jacqueline KALBE.

In relation to the dates of C94 and in response to a question from the floor, the Treasurer, Peter THOMSEN, explained that the dates selected were a compromise taking into consideration the cost of airline tickets at that time of the year. Prior to COVID 19, the average airline ticket cost was € 347; subsequently (to C93), the average cost had risen to € 366.

In relation to Montenegro, the President noted that the EPO will appoint Montenegrin Council members. There is no patent attorney association in Montenegro.

7/ Report of the Executive Director

Executive Director Tatjana LISSAK presented her comprehensive report with, apart from day-to-day activities, emphasised on various projects including IT projects. Since May 2022, eleven projects were completed; ten are on-going; three are pending and there is a backlog of seven. She advised that the Document Management System project had been halted because it was not suitable for the Secretariat's requirements and was also cost prohibitive.

Apart from IT, the main focus until end of this year will be Compliance and the so-called Cultural Change; RACI (Responsible/Accountable/Consulted/Informed) Matrices and the Organisational Manual.

8/ Preparation for 2023 elections

The Chair of the Electoral Committee Markus MÜLLER was unable to attend the meeting. Instead, his report was presented by the Executive Director Tatjana LISSAK. It was noted that 2 November 2022 is the deadline date for receiving nominations to Council for the period 2023 – 2026. As in previous elections, nominations may include a candidates photograph and a short *curriculum vitae*.

9/ Treasurer's Report

The Treasurer, Peter THOMSEN, presented his report. In a wide ranging presentation, the Treasurer noted that:

- (i) the COVID19 pandemic that heavily influenced the previous two years is still affecting travelling and meetings in 2022 and likely beyond; increased geopolitical tensions including Russian



military aggression in Ukraine; the subsequent energy crisis; and continuous, high, partly double-digit inflation rates in the vast majority of European countries have created an environment with new uncertainties for the expenses and income of **epi**. Additionally, the shifting timelines around the new UP/UPC system have had their effect;

- (ii) following the historically high pass rates in the eEQE, **epi** has welcomed approximately 900 new members resulting in an annual subscription of approximately 2.4m EUR. However, he also noted that there will be a decrease in membership of approximately 200;
- (iii) income from educational activities will be with approximately 40% lower than originally budgeted due to changed plans and timelines for **epi** seminars and webinars, in particular in connection with preparing the profession for the upcoming UP/UPC system;
- (iv) many committees are still meeting electronically. Thus, committee expenses are lower than expected. However, the budget plans for at least 1 physical meeting per committee in the coming year;
- (v) in the Secretariat, expenses are slightly higher than expected in the areas of **epi** administration, representation and Finance & Law. The inflation that started to increase in 2021 is affecting secretariat expenses. In addition, energy costs will undoubtedly further accelerate secretariat costs during 2023;
- (vi) Finance & Law expenses are approximately 17% higher than originally planned due to further external opinion work to have a firmer understanding of the potential implications of the German Host State Law on **epi** in view of our legal status;
- (vii) all factors taken together from the forecast estimation are leading for 2022 to an overall expected deficit of 239k EUR which is only marginally higher than the originally budgeted - 193k EUR;

(viii) price increases and inflation are new factors for any budget. In September 2022, predictions for inflation rates were around 8% by the European Central Bank. The German Bundesbank and UK Bank of England have forecasted double digit rates. 2023 is also a special year for **epi** because it will be the year of electing a new Council; new Board/Presidium members; and, subsequently, new Committee members.

The Treasurer comprehensively outlined his assumptions for 2023 noting that the overall 2023 budget plans for a deficit of 371k EUR. He proposed an annual subscription fee of 190 EUR (if paid before 01.04.2023 and 240 EUR thereafter). The proposed Student membership is 95 EUR. Commenting on these proposals, the Treasurer noted that *"Although the planned deficit of 371k EUR is on the high side, our financial situation would allow, in my view, to absorb such a deficit for 2023 since we had, during the last 3 years, annual financial results with an overall surplus of together +590 k EUR. However, I am also alert that we need to closely follow and analyse the affects of inflation, particularly increases in travel costs during next year which may make it necessary to consider an increase in the annual subscription that has been kept stable since 2016"*.

The Treasurer also requested Council to take note of the planned investments in 2022-2024.



10/ epi-Finances Committee Report

Claude QUINTELIER (Chair) presented his report referencing the Accumulated File. He noted that the late posting of the Treasurer's Report was not particularly advantageous which found agreement with the Treasurer noting that preparation of the budget in the present volatile circumstances was particularly difficult. This was compounded by the earlier date of the Autumn Council meeting being held approximately three weeks earlier than is usual. Claude QUINTELIER opined that there was a need to keep a very close control over the budget. Furthermore, he noted that the Committee gave cautious approval of the budget that more data are provided at the next epi-Finances Committee meeting, by which time some actual 2023 costs will have been incurred. The Committee also expressed its wish to have data relating to the evolution of costs and income of epi over the past years. In addition, the Committee noted that there has been no final decision on the revised EQE format, and that this is unlikely to be taken until the Autumn of 2023. In view of this the Committee is of the opinion that no training expenditure should be incurred until the revised EQE format is definitely known. However, the Committee supports the inclusion in the 2023 budget of a position to be used by the PEC once the revised EQE format is decided.

Council approved the budget by 87% to 9% with 4% abstaining. In addition Council approved the Annual Subscription of 190 € (and 240 € for late payment) by 91% to 5% with 4% abstaining.

11/ By-Laws Committee (BLC) Report

Pascal MOUTARD (Chair) presented his report. In a series of slides, he referenced in particular Articles 23, 64 and 12.

In relation to Article 23, amendment to Article sub-section 4a was proposed which now reads: *"In each election year the following agenda items shall also be dealt with at the Council's autumn meeting: validation of the electing of the members of Committees, other than the Disciplinary Committee, and the Electoral Committee and the Committees Elections Committee, for a term ending with the Council's autumn meeting of the next election year"*. This was approved by 95% with 2% against and 3% abstaining.

In relation to a new Article 23 Subsection (to replace current Article 23(6) which will subsequently be Article 23(7)), the following was proposed and to be referred to as Article 23(6): *"At the autumn Council Meeting in the year before each election year, the Council shall elect the members of the Committees Elections Committee"*. This was approved by 94% in favour, with 3% against and 3% abstaining.

In relation to Article 64, subsection 1), paragraph 1, the following was agreed to by 92%, with 3% against and

4% abstaining: *"Except for items specifically reserved for Council meetings in accordance with Articles 23.2 - 23.6 and for items mentioned in Art. 27.2, 50.2 and 50.3, the Council shall be entitled to take decisions by Internet voting"*.

Council approved by 80% in favour to 8% against with 12% abstaining the following amended Rule 12, paragraph 1 the following: *"Draft minutes of each Board and Presidium meeting shall be sent to all members of the relevant body as soon as possible and in any case within four weeks after the relevant meeting and they shall be deemed approved if none of the relevant members present at that meeting raises an objection within such time as shall be*



fixed by the relevant body at the relevant meeting. If an objection is raised, all parts of the minutes to which there is no objection shall be deemed approved. The Board or the Presidium respectively shall determine how to deal with any objection raised".

An amendment was also proposed to 5.2.2 ("Decisions concerning provisions for accounting") of the Collection of Decisions resulting the deletion of the reference to Article 4(2) of the Discipline Regulation by 94% in favour, 1% against, with 5% abstaining.

Amendment was also proposed to 3.3.2.15 ("Terms of Reference of the Nominations Committee") of the Collection of Decisions with 92% in favour, 2% against and 6% abstaining.

In relation to the “Recommendation of the Council concerning the title (the professional designation)” in Montenegro, Council decided to postpone the decision until Montenegrin members would have been appointed.

12/ Nomination Committees

The Nominations Committee was reinstated until C95 in its former composition with 85% in favour, 7% against and 7% abstaining:

Chris MERCER (GB); Paul-Georg MAUÉ (CH); Laurent NUSS (FR); and Mihaela TEODORESCU (RO).



13/ Powers of Council

Articles 3.1 and 3.2 of the By-Laws of the Institute confer certain duties and powers of the Council. The President proposed that the Board would have, in particular limited circumstances and until C94, the right to initiate an action before the Disciplinary Committee for their consideration. For reasons of confidentiality, the President was unable to elaborate on the particular limited circumstances. There was a robust discussion in relation to this matter and the appropriateness of such a delegation of power from Council to the Board. Various amendments were proposed with the following question put to the floor: *Does Council agree to delegate to the Board for a period*

ending on the date of the 2023 Spring Council the power to file in the name of epi disciplinary complaints against epi members? This did not find favour as voting on the matter was 36% in favour; 48% against; with 15% abstaining.

14/ Litigation Committee Report

The Chair of the Litigation Committee, Peter THOMSEN, noted, *inter alia* that **epi** had been granted observer status at the Administrative Committee of the Unified Patent Court. A new working group entitled the Administrative Committee UPC Advisory Group has been established to prepare for the meetings of the Administrative Council. The newly formed working group comprises the following members of **epi**:

- Francis LEYDER (President);
- Heike VOGELSANG-WENKE and Bogoljub ILIEVSKI (Vice Presidents);
- Peter THOMSEN (Chair of the Litigation Committee);
- Kim FINNILÄ (Vice Chair of the Litigation Committee and Chair of the Litigation Committee Rules of Procedure and CMS sub-committee);
- Triona WALSH (Secretary of the Litigation Committee);
- Giuseppe COLUCCI (Chair of the Litigation Committee Representation and Privilege sub-committee);
- Tilman PFRANG (Chair of the Litigation Committee Virtual proceedings sub-committee);
- John GRAY (Chair of the OCC);
- Yannick BIRON (Secretary of the OCC); and
- Nicole van der LAAN (Legal Advisor to the Litigation Committee).

Peter THOMSEN and Kim FINNILÄ, the Chair and Vice-Chair of the Litigation Committee respectively, have been selected as representatives of **epi** at the Administrative Council meetings.

A consolidated version of the Rules of Procedure of the UPC together with the fees as adopted by the UPC Administrative Committee, can be found on the Unified Patent Court website¹.

15/ Diversity and Inclusion Working Group Report

The report was presented by Fatema SARDHARWALA (GB) in the absence of the Chair Marc NEVANT (FR). It was noted that at C91, Council approved a motion on the use of gender-neutral language in **epi** documents. The work of the Committee is on-going and more substantial information can be viewed on the **epi** website².

¹ <https://patentepi.org/r/info-2204-01>

² <https://patentepi.org/r/info-2204-02>

It was requested that the Group continues its activities until at least C94 in order to:

- (i) help providing material to support our members to best address and adapt to the need of our clients; and
- (ii) propose actions to grow **epi**'s commitment to diversity and inclusion.

This was approved with 80% in favour; 15% against; with 5% abstaining.



It was also noted that there are currently 7 members in the Working Group (Marc NEVANT (FR) (Chair); Olga SIRAKOVA (BG); John GRAY (GB); Sally BANNAN (GB); Jonna SAHLIN (FI); Cyra NARGOLWALLA (FR); and Fatema SARDHARWALA (GB). It was requested that Nina FERARA (DE) be added to the group which was approved by 80% with 14% against and 6% abstaining.

16/ EQE

A presentation entitled “*Consultation Results and Considered solutions*” by Tiem REIJNS provided a comprehensive analysis in relation to the New EQE concept details of which are in the accumulated file. In the period May 2022 to August 2022, consultations with questionnaire and sample papers were issued to 712 participants. In addition, 15 letters were received: National Associations (3); Industry (2); Training Institutes (3); Other associations (2); Private Practice (2); Other (2) and a Candidate. The results were analysed. An aspect under the microscope was the suitability of Multiple Choice Questions (MCQ). It was suggested that MCQ are the source of the problems with the Pre-Exam and should be avoided. It would appear that research has shown that MCQ are suitable for basis level testing. In the New EQE:

- (i) the basic knowledge is tested through MCQ;
- (ii) creativity through open questions; and
- (iii) complexity is tested in open answer papers (M2 and M4).

It was also suggested that the variation in the different testing techniques should be within reasonable limits.

Also presented in the report were responses received from EQE-2022 candidates.

In this post Covid-19 era, there is a suggestion to move back to examination centres even though there are some disadvantages. For example, some candidates live close to an examination centre whereas others need to get their by air with the need to stay in hotels. In some cases there the further complications of a visa requirement.

The report arrived at a number of solutions of which the more significant were an annual examination; deferring M1 to 24 months and M3 to 36 months; drafting, responding and opposing to be always present in one paper.

17/ Presentation by the German Delegation

The German Delegation submitted a number of questions in relation to EQE for Council's consideration. The Delegation considered it essential to seek the opinion of Council regarding some important aspects to have a reliable mandate for proper discussions in the future with the EPO or in the Administrative Council, as indicated in their letter to the Presidium of 9 October 2022. The questions and Council's responses (following debate) were as follows:

- (i) *does Council agree that the essential element of the examination is not only the testing of knowledge but also the testing of practical skills, such as drafting a patent application and preparing arguments?*
89% in favour, 3% against; 8% abstaining;
- (ii) *single and multiple choice is certainly an effective questioning technique to test knowledge. However, according to our view, practical skills can only be tested with free-form questions and answers that are based on a given set of facts. Does Council agree that a rule is introduced in the Regulation on the European qualifying examination for professional representatives (REE) or at least in the Implementing provisions to the Regulation on the European qualifying examination (IPREE) that the EQE as a whole is only considered passed, if at least one paper addressing the core competences – drafting claims and/or a patent application on the basis of information on facts provided and developing arguments on the basis of information on facts provided – is produced in free-form and passed?*
71% in favour ; 19 % against, 10% abstaining;
- (iii) *before the pandemic, the exams were held in presence at test centres. In the last two years, candidates sat at home by necessity. However, experience at universities and colleges has shown that with online*

exams, the threshold for cheating is significantly lowered. Recent reporting has revealed that even chess grandmasters are not afraid to cheat. Does Council agree that there should be a possibility that the EQE will again be conducted in test centres, in particular to enable reliable invigilation and to ensure a fair examination?

58 % in favour, 25% against, 17% abstaining;

- (iv) does Council agree that the Professional Education Committee (PEC) be tasked with investigating what opportunities candidates have to cheat during EQE and whether candidates have been caught in past online exams?

37% in favour, 47 % against, 16% abstaining;

- (v) *It is a fundamental principle that the profession, i.e. professional representatives, and examiners at the European Patent Office draw up and also correct the EQE. This ensures that not only academic knowledge but also practical knowledge is conveyed and examined. This principle, which is also practised by national professions, such as patent attorneys and tax advisors in Germany, has proven itself, but has long been viewed critically by the European Commission from an antitrust perspective. Is Council in favour of EQE continuing to be carried out by the profession, i.e. by professional representatives and examiners, and not by third-party providers such as universities, educational institutions, etc.?* 77% in favour, 9% against, 14% abstaining.

18/ Presentation by the EPO Vice-President Steve ROWAN

Vice-President Heike VOGELSANG-WENKE introduced Steve ROWAN, EPO Vice-President Patent Granting Process, who addressed the Council followed by a question/answer session.



Steve ROWAN comprehensively responded to a plurality of questions posed by Heike VOGELSANG-WENKE.

19/ Update on UPC

Chris MERCER gave a brief presentation entitled “Considering the benefits and disadvantages of the UP/UPC”. A more comprehensive presentation had been made the previous day at the Pre-seminar Meeting.

20/ UPC: designation of practitioner

Giorgio CHECCHACCI (IT) made a presentation on how a practitioner could indicate that they are UPC qualified. The presentation centred on the title “European Patent Litigator”. Following a debate on the matter, Council adopted the recommendation to use the professional title “European Patent Litigator” for **epi** members who are authorized to represent parties before the UPC according to Art 48.3 UPCA with 71% were in favour; 22% were against with 15% abstaining.

21/ Review of Decisions and actions and closing of meeting.

The Secretary General listed all decisions made and actions taken during the meeting.

The President referenced the pre-Council seminar held the previous afternoon entitled “Considering the benefits and disadvantages of the UPC and UP”. He thanked the participants for their attention, various reports and debate; and the **epi** Secretariat for their diligence and unstinting support before declaring the meeting concluded at approximately 19:00. Subsequently, participants travelled to the Corocoro Restaurant in Marbella located some 40km from the Hotel where they were entertained by Flamenco Show with guitarists and singers accompanying the dancers followed by a well earned Dinner and an interesting selection of local food and wines.