

# Judicial Salary

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## INTRODUCTION

The proposal on judicial salaries and allowances was presented to the UPC Preparatory Committee (PC) in July 2015, where it was positively received. Then, the Human Resources and Training Working Group (HR WG) discussed the issue on two occasions: 29<sup>th</sup> September and 20<sup>th</sup> October 2015, seeking compromise. On 8<sup>th</sup> December 2015, the PC was informed by the coordinator of the HR WG that compromise was achieved regarding allowances, and that on salary levels, different scenarios were explored and compromise is also within reach. On 21<sup>st</sup> of January 2016 the HR WG made another attempt to reach a compromise regarding salary levels, however, one delegation<sup>1</sup> could not accept the proposal. All other delegations endorsed the proposed levels.

The present proposal in part 1 establishes a salary level for the judges of the UPC, and in part 2 a package of allowances to be available for these judges.

This document works under the assumption that the UPC will have internal taxation of the income. Since the level of and the system for this internal tax is being elaborated in the Financial Working Group, the final gross salaries will depend on the outcome of those discussions. The proposed salaries are therefore net salaries.

The Preparatory Committee is invited to agree on the following proposal.

### 1. SALARY LEVELS

- **Judges of the Court of First Instance**                      **net monthly salary of 11,000EUR**
- **Judges of the Court of Appeal**                              **net monthly salary of 12,000EUR**
  
- **Part-time judges will receive the same salary level on a pro-rata basis, in proportion to the number of days worked for the UPC.**
  
- **The president of the Court of First Instance and the Court of Appeal are entitled to a monthly net basic salary that is equal to 105% of the judges of the court they are presiding.**

### *Justification*

The UPC will be a specialised pan-European court. Its decisions will concern matters of validity and infringement of European patents with a significant geographical coverage. The decisions will consequently have the potential of having huge financial and commercial

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<sup>1</sup> This delegation proposes to set the salary level of Judges of the CFI at 10,000 EUR and of the Judges of the CA at 11,000 EUR. This proposal is based on three grounds: salary levels would still be attractive for the judges; would be closer to national standards, and would help to keep the UPC budget on a reasonable level.

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impacts on private parties. The judges of the UPC will need to be able to handle complicated cases swiftly and in different languages. Furthermore they need to be highly flexible as to their physical whereabouts, since they will need to take part in proceedings in multiple divisions located in different Contracting Member States.

To secure the quality and credibility of the UPC it is necessary to attract the best possible judges in the field of patents.

There are two similar institutions in Europe, the European Patent Office (EPO) Board of Appeal and the EU General Court.

The EPO Board of Appeal examines appeals from the decisions of the receiving section, the examining and opposition divisions of the EPO. Its decisions consequently concerns strictly matters relating to decision to grant or not to grant a European patent - validity (patentability). Unlike what will be the case for the UPC the EPO Boards never have to consider infringement or the many complicated issues that goes with it. The conclusion is that the work of the EPO Board of Appeal is comparable to the work of the UPC judges but that the work of the UPC judges will be more complex. A member of the EPO Board of Appeal has an estimated average net salary of approximately 11 500 EUR/month, while a chairman of the EPO Board of Appeal has got an average net salary of 13 000 EUR/month.<sup>2</sup>

The EU General Court examines appeals from the Office for Harmonization in the Internal Market (OHIM) regarding Community trademarks and designs. Admittedly the General Court has also other important tasks. It should however be noted that a substantial share of the caseload of the General Court, (approximately 40%) consists of appeals from OHIM. It should also be noted that these cases are not technically complicated in the same way as a patent case. Furthermore, as is the case with the EPO Board of Appeal, the General Court will never have to decide issues relating to infringement. A reasonable conclusion is that the work of the General Court, as regards their work on the trademark and design cases, is comparable to the work of the UPC judges but that the work of the UPC judges will be more complex. A judge in the General Court has a net salary of approximately 12 400 EUR/month.<sup>3</sup>

**Against this background it is reasonable to find a salary level that is comparable to the actual level paid at the EPO Boards of Appeal and the EU General Court. The suggested salary levels are therefore set at a level that is a compromise taking into account the actual level paid to the judges of these institutions. The salary levels are expressed as basic net salary, without any allowances accounted for.**

In Annex 1 the costs for judges are estimated based on the suggested salary levels. Since the pension and health care system of the UPC is yet to be elaborated and agreed, the EU Staff Regulation is used merely as a reference/example not prejudging the decisions of the PC on these matters. Furthermore the experiences of the EPO are used to make an assumption as regards the costs for allowances. According to these assumptions and calculations the

<sup>2</sup> Decision of the Administrative Council of 17 December 2015, revising with effect from 1 July 2014 and 1 July 2015 the salaries and other elements of the remuneration of permanent employees of the European Patent Office, and the pensions paid by the Office

<sup>3</sup> Judges of the General Court get 104% of EU Grad 16 step 3, i.e. 18517,81 EUR, as basic (gross) salary; the Vice-President of the General Court gets 108% of EU Grad 16 step 3 (basic salary), the President of the General Court gets 112,5% of EU Grad 16 step 3; Presiding judges of the General Court get a special duty allowance of 739,47/month. See Art. 21a of EU Regulation 422/67/EEC: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01967R0422-20121007&qid=1447330572078&from=EN>

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proposed salary level would amount to a yearly "unit cost" for a judge of about 190 000 EUR and a cost per working day of approximately 880 EUR. The total cost of 20 judges would be 3 882 000 EUR.

## 2. ALLOWANCES

Taking into account the different allowances that are generally provided in similar international organisations, it has been deemed appropriate to offer the following allowance package to the judges of the UPC.

Expatriation allowance 10% of the net monthly basic salary

The expatriation allowance shall compensate the additional expenses of judges posted outside the contracting Member State of their permanent residence. The level of expatriation allowances varies from 10% to 20% in other international organisations.

Child allowance 296 EUR/child per month

The family allowance should compensate the additional costs of judges having a dependent child. The amount has been set taking into account the range of the current levels paid at the EPO (296.17EUR/child) and the EU Courts (375.59EUR/child).

Education allowance ceiling of 255 EUR/child per month

The education allowance should compensate the additional actual costs related to the education of children of expatriated judges. A monthly ceiling of 255 EUR should apply based on the relevant ceiling used in the EU.

Removal allowance ceiling of 5 000 EUR

As regards the EPO and the EU Courts a lump sum, one-off payment of up to a maximum of 2 months basic salary is paid to staff having to move outside the contracting Member State of their primary residence when taking up employment. This has been considered excessive in the context of the UPC. Instead a ceiling of 5,000EUR will be applied.

The actual removal costs (e.g. shipment costs for furniture or other personal belonging at the time of taking up or termination of the service) should be covered separately.

Household allowance 2% of the net basic salary of the judge

The Household allowance should compensate for the additional cost occurring for spouses of expatriate judges in finding an employment in a contracting Member State other than their primary residence. This allowance should be set at a level of 2% of the net basic salary of the

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judge and should be available only to expatriate judges with spouses while the spouses have no employment.

### Part time judges

Part-time judges should be eligible for dependent child allowance only, on a pro-rata basis.

### *Comments*

It is only the child allowance out of the different allowances that will apply to non-expatriated judges. It is assumed that only a few judges will be full time judges in the early years of the Court. It is reasonable to assume that part time judges will be non-expatriates. In addition at least some of the full time judges will not be expatriated since they can be expected to be UK, FR or DE nationals working in a part of the Court located in their own country. To conclude, the allowances (with the exception of the child allowance) will not apply to the majority of judges.

# Annex 1

## Indicative costs for UPC judges under the proposed salary levels

1. The currently proposed net salaries for UPC judges (full time equivalents) are:

Judge CFI (LQJ, TQJ)	11000 EUR
Judge CA (LQJ, TQJ)	12000 EUR
President CFI (105% judges' salary)	11550 EUR
President CA (105% judges' salary)	12600 EUR

Using the EU internal tax scheme as model, the gross salaries necessary to get these net salaries would be:

Judge CFI (LQJ, TQJ)	17135,81 EUR
Judge CA (LQJ, TQJ)	18675,57 EUR
President CFI	17982,67 EUR
President CA	19599,42 EUR

2. Under the EU staff regulations, employee's contributions to the pension scheme are (currently) 10,1% of the gross salary and (up to) 2% for health insurance. These contributions shall cover one third of the related costs of the pension scheme and health insurance. Using this EU scheme as model, the following amounts would have to be borne by the UPC judges for pension and health insurance:

Judge CFI	1730,72+342,72 EUR
Judge CA	1886,23+373,52 EUR
President CFI	1816,25+359,65 EUR
President CA	1979,54+391,99 EUR

3. Using the EU model, two thirds of the costs related to the pension scheme and health insurance are borne by the employer. This means that 24,2% of the gross salary of judges must be added to the net salary to reflect the UPC expenses for salaries, pension and health insurance. The resulting amounts of costs for UPC judges per month / per year are:

Judge CFI	15146,87 EUR /	181 762,40 EUR
Judge CA	16519,49 EUR /	198 233,90 EUR
President CFI	15901,81 EUR /	190 821,70 EUR
President CA	17343,06 EUR /	208 116,70 EUR

4. On the basis of the figures above, the unit cost for a judge can be calculated. To avoid special circumstances like in year 1 of the UPC but still give an idea of the situation in the initial phase, the estimated number of judges for year 3 is chosen for the model calculation. In year 3 the estimated manpower would comprise the two Presidents, 32 LQJ and 6 TQJ in the CFI, 5

LQJ and 1 TQJ in the CA (always full time equivalents are referred to). The total the cost for those judges – without taking into account any allowances – would be 8 495 312.<sup>4</sup>

5. A certain amount has to be added to the sum mentioned under point 4 to take into account for expenses for allowances. It is the experience of the EPO that expenses for pension, health insurance and the relevant allowances sum up to approximately 30% of the net salary sum. Since contributions to pension and health insurance are already taken into account, some 6-7% of the net salary sum should be added to the costs mentioned under point 5 to take into account expected costs for allowances. 7% of the net salary sum amounts to 431 886 EUR.
6. The total costs for UPC judges would under these circumstances be 8 927 198 EUR for the 46 judges (full time equivalents) and Presidents in year 3.
7. The unit cost for a UPC judge would be 194 069,50 EUR, i.e. about 194 100 EUR.
8. The cost of a UPC judge per working day would be 194 100 EUR divided by 220 = 882 EUR.
9. Cost of 20 judges would be 3 882 000 EUR  
Cost of 25 judges would be 4 852 500 EUR  
Cost of 30 judges would be 5 823 000 EUR  
Cost of 50 judges would be 9 705 000 EUR

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<sup>4</sup> Yearly costs of the Presidents 190821,70+208116,70 EUR + yearly cost of 38 CFI judges 6 906 971 EUR + yearly cost of 6 CA judges 1 189 403 EUR.