Alicante, 18 November 2022

Bi-annual report on the Office’s financial situation (2020 – 2021)

Abstract

This report analyses the financial situation of the European Union Intellectual Property Office (hereinafter, “the Office”) on a bi-annual basis. In this regard, it describes the legal requirement stemming from Article 172(9) of the Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (EUTMR)*, the financial situation for the 2020 and 2021 financial years, the financial operations performed under Article 152(5) and (6) and Article 172(5) and (7) EUTMR.*

Disclaimer

The information contained in this document is extracted from the Office´s annual accounts for the financial years 2020 and 2021. This report has not been adopted nor endorsed by the Office´s governing bodies.

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EXECUTIVE SUMMARY

This report has been drawn up by the Office pursuant to Article 172(9) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark ([1]) (EUTMR). It describes the Office´s financial situation for the period 2020 and 2021 and, in particular, the financial operations performed under Article 152(5) and (6) and Article 172(5) and (7) EUTMR, as follows:

- **European Cooperation:** financial support to promote convergence and tools in order to ensure effective participation of the national and regional IP offices of the Member States up to 15% of the yearly revenue of the Office;

- **Enforcement**: financial support to awareness raising and fighting against counterfeiting, focussing on establishing standards and practices as well as organising education and training activities within the European Cooperation context and within the 15% threshold;

- **Offsetting**: financial support to offset costs incurred by the national and regional IP offices of the Member States and by other authorities nominated by Member States based on the specific tasks which they carry out as functional parts of the EU trade mark system.

  The total amount for offsetting is 5% of the Office’s yearly revenue. The distribution amongst Member States is based on a distribution key determined by the Management Board.

  Offsetting can only take place if no budgetary deficit is incurred in accordance with Article 104(5) and (6) of the Regulation BC-1-2019 of the Budget Committee of the European Union Intellectual Property Office ([2]) (Office’s Financial Regulation).

The Office attaches great importance to the reporting obligations as a regular means of evaluating the health of its overall solid financial situation. Once again, the Office’s annual accounts underline the solid financial situation for the years 2020 and 2021. In 2021, revenues reached EUR 312.6 million and expenditure EUR 304.5 million whereby the Office’s productivity indicators show that unit costs evolve positively.

The Office manages an overall volume of treasury of EUR 578.6 million as at 31/12/2021, part of which is due to the reserve fund in order to ensure the continuity of the Office´s operations and the execution of its tasks as required by Article 172(10) EUTMR and which amounted to EUR 260.7 million by the end of 2021.

Regarding the remaining amount, the Office is also required to keep the advanced payments made by the customers including the provisioning of the customers´ current accounts, pre-financing received from the European Commission for EU-funded projects as well as funds reserved for future offsetting payments, in addition to the operational treasury needs. Therefore, in this context, the net amount of treasury available at the end of 2021 amounts to EUR 164.2 million.

([1]) OJ L 154, 16.6.2017, p. 1–99.
([2]) 10.7.2019.

Expenditure related to European Cooperation in line with Article 152(5) and (6) EUTMR reached EUR 33.2 million in 2021 (EUR 33.8 million in 2020) respecting the upper limit of 15% of the budgeted revenue for these years.

Following the budgetary result according to Article 104(5) of the Office’s Financial Regulation, the offsetting of costs to the Member States was triggered for 2020 and 2021 for EUR 13.9 million and 15.2 million respectively.

1. INTRODUCTION

According to the EUTMR, and in particular to Article 172(9) thereof, the Office shall prepare on a biannual basis a report for the European Parliament, the Council and the Commission on its financial situation, including on the financial operations performed under Article 152(5) and (6) and Article 172(5) and (7) EUTMR, as follows:

- **European Cooperation.** The Office provides financial support to projects that promote convergence and tools in order to ensure the effective participation of the central industrial property offices of the Member States and the Benelux Office for Intellectual Property. These projects must not exceed the total limit of 15% of the yearly revenue of the Office. This support can be done by means of grants or in-kind contributions (Article 152(5) EUTMR).

- **Enforcement**. The Office provides financial support to cover projects that contribute to awareness raising and fighting against counterfeiting, focussing on the implementation of established standards and practices as well as at organising education and training activities (Article 152(6) EUTMR).

- **Offsetting**. The Office shall, under certain circumstances, offset costs incurred by the central industrial property offices of the Member States, by the Benelux Office for Intellectual Property and by any other relevant authority to be nominated by a Member State as the result of the specific tasks which they carry out as functional parts of the EU trade mark system (offsetting). The total amount corresponds to 5% of the yearly revenue and the distribution amongst Member States must be based on a distribution key determined by the Management Board on the basis of fair, equitable and relevant indicators. (Article 172(5) EUTMR).

Therefore, the report reviews the information of the Office's financial situation for 2020 and 2021, covering its revenues, expenditure, treasury and reserve fund, followed by a detailed presentation of the EU cooperation activities and the offsetting of costs to Member States. Additional information regarding the activities and finances of the Office, in particular the Annual Report and the Annual Accounts, can be found on the Office´s website ([3]).

([3]) Links to the Annual Reports and to the Annual Accounts.

2. FINANCIAL SITUATION 2020 – 2021

2020 witnessed both a transition between strategic plans and the revision under extreme pressure of the COVID-19 pandemic of all operations and projects for the year.

Even though recovery in the number of applications was slow in some countries, and the consequences of Brexit continued to be felt, the Office ended 2020 with a 10.2 % increase in filings for EU trade marks (3.6 % for designs) compared to 2019. China also emerged as the top filing country for EU trade marks and the second highest for design.

With respect to 2021, it has been a year of record growth and expansion while volatility remained high. In 2021, the Office received 197 898 EUTM filings. During the first semester of 2021 alone, the Office received a record 101 042 EUTM applications, an increase of approximately 24 % compared with the same period in 2020. However, second semester results reflected a more constant growth rate of close to 1.5 % compared with the same semester in 2020.

Capitalising on provisions of its revised Financial Regulation, the Office is mobilising its past accumulated surplus in support of EU Policies since 2020. Its contribution to the EU-funded projects has been increased as from 2020 onwards following new agreements with the European Commission and is treated as 'separate budget item' within the meaning of Article 10(4) of the Office's Financial Regulation.

The contribution to EU Policies through the Office's financial reserves was further increased in 2021 to include the financing of the European School of Alicante as well and the contribution to the SME Fund.

Indeed, following initial reflections in 2020 on how to help the economic recovery, in 2021 our efforts focussed on SMEs, in particular, on the SME Fund. The Fund, based on a contribution agreement with the European Commission, received almost 13 000 requests for help from SMEs across all 27 EU Member States.

This financial support was able to reach SMEs thanks to the support of the European Union Intellectual Property Network, which celebrated its tenth anniversary in 2021, marking a decade of significant achievement that has helped modernise the two-tier EU trade mark and design systems, making them more user-friendly, effective and accessible.

The immediate future of the Office and its financial outlook are impacted by the global economic volatility and geopolitical uncertainty coupled with higher inflation, rising prices and loss of economic confidence which have a significant impact on the drop in volume of applications and a negative effect on both revenue and expenditure in 2022. The Office has taken measures to mitigate these impacts where possible, efforts which, under the current circumstances, are likely to continue in 2023 and 2024, after which a progressive return to normality is expected.

The main source of information about the financial situation of the Office are the Annual Accounts. Since the above-mentioned articles of the EUTMR have to be read in conjunction with the Office's Financial Regulation, and in particular Articles 6 and 104 thereof, the relevant part of the Annual Accounts for the purpose of this report are the chapters 3 and 4, that is the Report on Budget Implementation and the Report on Budgetary and Financial

Management.

Additional information on the financial situation of the Office can also be found in the Office´s Annual Reports for the years 2020 and 2021, in particular their appendix on resources management and assurance ([4]).

Previous reports of this kind were issued in 2018 and 2020 covering the financial years 2016 to 2019.

2.1 THE OFFICE'S BUDGET REVENUE

The Office's revenue is composed of its own revenue coming essentially from European Union trade mark (EUTM) and Registered Community design (RCD) fees. Other revenue concerns miscellaneous services and administrative fees for insufficient funds for current accounts. Another source of revenue concerns interest income.

Assigned revenue ([5]) concerns funds received from the European Commission in compliance with the corresponding contribution agreements. These funds are treated as external assigned revenue and relate on the one hand to the implementation of technical cooperation projects in the area of industrial property and on the other hand to the SME fund which provides financial support to SMEs with the aim of raising awareness and improving access to IP. Furthermore, assigned revenue also includes recoveries of amounts initially paid from the Office's budget treated as internal assigned revenue.

31-Dec-21
(EUR)

R E V E N U E		
	2021	2020
OWN REVENUE	**303 150 223.85**	**277 552 206.48**
Revenue from fees	302 941 311.29	277 266 499.75
Other revenue	208 912.56	285 706.73
INTEREST	**5 964.50**	**6 186.05**
ASSIGNED REVENUE	**9 479 570.17**	**6 195 760.76**
EU-funded projects and SME Fund	6 981 520.70	5 539 607.27
Other assigned revenue	2 498 049.47	656 153.49
TOTAL	**312 635 758.52**	**283 754 153.29**

2.1.1 OWN REVENUE

Compared to the execution of the year 2020, the number of EUTM applications received in 2021 reached 197 898, which represents a growth of 11.8% ([6]), broken down in 10.9% growth of direct applications and 17.0% growth of international applications under the Madrid

([4]) 2021 Annual Report, Appendix B. Management of Resources and Assurance, pp B.1-24.
2020 Annual Report, Appendix B. Management of Resources and Assurance, pp B.1-25.
([5]) Assigned revenue is treated according to Article 20 and 21 of the Office´s Financial Regulation. For the purpose of Article 104(5) and (6) of the Office´s Financial Regulation, only own revenue and interest income have to be taken into account, but not the assigned revenue.
[(6)] Trade mark filings in 2020 reached 176 987, 10.4% above the previous year.

Protocol.

Regarding RCD filings, 115 563 have been received in 2021, that is 0.2% below the 2020 filings ([7]), broken down in growth rates of 1.3% for direct filings and - 9.4% for international filings respectively.

In 2021, the Office accrued ([8]) 193 722 EUTM application fees and 113 396 design fees compared with 170 865 EUTM application fees and 115 150 design fees in 2020. The Office receives revenue not only from fees relating to the registration of trade marks and designs, but also from fees for post-registration procedures, such as renewals, recordals and inspections.

EUTM and design fees recorded as revenue increased by 9.3% in 2021 and 8.9% in 2020, compared with 2020 and 2019 respectively.

The distribution of revenue from EUTMs and RCDs is relatively stable. In 2021, the EUTM share of the total fees revenue stood at 89.5% and increased slightly compared with 88.6% in 2020 and 88.3 % in the two preceding years.

Basic fees, fees for additional classes, international application fees and renewal fees made up 96.9% of all EUTM fees received in 2021, a similar percentage as in 2020.

2.1.2 INTEREST

The Office's policy is to benefit from interest on its treasury generated mainly by short-term deposits and current accounts. As in former years, and given the situation of the financial markets, security aspects had clear priority over yield in 2021 and 2020.

The actual amount of revenue from interest on the deposits was EUR 5 965 for 2021. Given the Office's focus on security and the level of the European Central Banks deposit rate during 2020 and 2021 and the subsequent situation of the financial markets, negative interests had to be paid for the funds held with Central Banks and also with commercial banks. For more information, see also the chapter on treasury.

2.2 THE OFFICE'S BUDGET EXPENDITURE

The Office's expenditure is composed of the following elements ([9]):

- Title 1 – Staff expenditure (salaries and social security expenses, professional travel expenses, welfare, medical service, etc.);
- Title 2 – Buildings and equipment (all expenses related to the Office's premises, IT infrastructure and programming, technical and workplace-related equipment, telecommunications, administrative translations, consultancy, etc.);
- Title 3 – Expenditure related to the registration of trade marks and designs, as well as cooperation with National and Regional IP Offices and support for the Observatory;

([7]) Design filings in 2020 reached 115 815, 3.8% above the previous year.
([8]) This means that the fee payment has been received and the filing fee has been verified and included in the accounts.
([9]) For the purpose of Article 104(5) and (6) of the Office´s Financial Regulation, only expenditure related to titles 1, 2 and 3 has to be taken into account, but not the assigned revenue (EU funded projects, SME Fund, other assigned revenue), nor the offsetting to Member States.

- Title 4 – Contribution to EU policies: this contribution is reported in accordance with Article 10(4) of the Office's Financial Regulation and in line with agreements concluded pursuant to Article 7 thereof. It includes expenditure related to the implementation of technical cooperation projects in the area of industrial property (EU-funded projects), as well as the Office's contribution to the European School of Alicante and the SME Fund.
- Title 5 – Offsetting to Member States: Expenditure covering costs incurred by the Member States IP offices as foreseen in Article 172(5) EUTMR.

The following table and the subsequent analysis are made by using a presentation by nature of the Office's expenditure, in line with the presentation of the Annual Accounts.

31-Dec-21 (EUR)

EXPENDITURE	2021	2020
STAFF EXPENDITURE (TITLE 1)	**128 548 158.83**	**125 663 711.60**
Expenditure paid during the financial year	127 810 579.54	124 952 739.19
Carryover of expenditure	737 579.29	710 972.41
OPERATING EXPENDITURE (TITLE 2)	**71 368 094.09**	**56 553 020.62**
Expenditure paid during the financial year	60 078 725.37	48 245 953.19
Carryover of expenditure	11 289 368.72	8 307 067.43
SPECIFIC EXPENDITURE (TITLE 3)	**51 298 570.87**	**52 052 754.58**
Expenditure paid during the financial year	43 213 050.27	42 733 157.43
Carryover of expenditure	8 085 520.60	9 319 597.15
CONTRIBUTION TO EU POLICIES (TITLE 4)	**38 029 727.75**	**20 142 085.38**
Expenditure paid during the financial year	21 861 777.34	6 267 370.77
Carryover of expenditure	16 167 950.41	13 874 714.61
OFFSETTING TO MEMBER STATES (TITLE 5)	**12 731 605.54**	**11 973 646.72**
Expenditure paid during the financial year	12 731 605.54	11 973 646.72
Carryover of expenditure		
OTHER ASSIGNED REVENUE	**2 498 049.47**	**656 153.49**
Expenditure paid during the financial year		
Carryover of expenditure	2 498 049.47	656 153.49
TOTAL	**304 474 206.55**	**267 041 372.39**

The expenditure in title 1 increased by 2.3% in 2021 and 2.1% in 2020 as compared to the respective previous year. This is significantly lower than the increases in 2018 (+9.0%) and 2019 (+7.9%). There are several reasons for this. Whereas the Office had to face an increase in remuneration of staff explained hereafter, mission expenses dropped significantly due to the COVID-19 pandemic and the fact that travelling had been suspended. Furthermore, following the renewed agreement regarding the financing of the European School of Alicante concluded in 2020, the Office´s contribution is treated since 2021 as a separate budget item in accordance with Article 7 of the Office's Financial Regulation and is therefore reported under a different category together with the other contributions to EU policies funded through the financial reserves.

The increase in remuneration of staff is the consequence of an increase of the average staff cost (indexation, steps, increase of weighting factor) and the staff level (of any type) by 6.1% in 2021 and 4.2% in 2020 compared to the respective previous year as can be seen in the following table. This increase has also to be seen in the light of the important growth of filings as shown in chapter 2.1.1.

Nº of staff in place

<table>
<tr><th>Year</th><th>Officials</th><th>Temporary agents</th><th>Contract agents</th><th>Agency staff (*)</th><th>Seconded national experts</th><th>Trainees</th><th>Special advisors</th><th>Total at year-end</th></tr>
<tr><td rowspan="2">2021</td><td>564</td><td>311</td><td>223</td><td rowspan="2">48</td><td rowspan="2">68</td><td rowspan="2">128</td><td rowspan="2">2</td><td rowspan="2">1 344</td></tr>
<tr><td colspan="3">1 098</td></tr>
<tr><td rowspan="2">2020</td><td>557</td><td>291</td><td>193</td><td rowspan="2">64</td><td rowspan="2">53</td><td rowspan="2">108</td><td rowspan="2">1</td><td rowspan="2">1 267</td></tr>
<tr><td colspan="3">1 041</td></tr>
</table>

The expenditure in title 2 increased in 2021 by 26.2% as compared to the year 2020. One of the reasons for this increase relates to the improvement of the Office's building infrastructure (e.g. campus hybridisation, further minimisation of environmental impact). Another reason are the increased investments in acquisition, licences and maintenance of software and hardware in line with the modernisation and simplification of the Office's technical IT infrastructure. Furthermore, expenditure on events and meetings also increase after a low level in 2020 due to the COVID-19 pandemic.

The expenditure in title 3 has decreased by 1.4% in 2021 as compared to 2020 when it was at the same level as in 2019. This is the consequence of a lower level of expenditure in EU Cooperation activities and IP translations, partially compensated by an increase of communication and promotion.

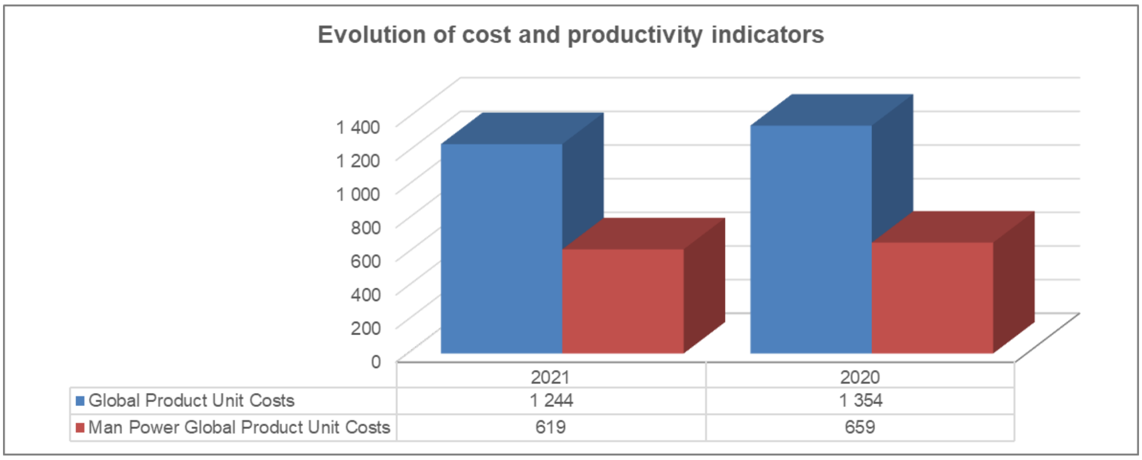
Expenditure in title 4 is related to contribution to EU policies. Since 2020, this title includes all the Office´s contributions to EU policies which are to be treated as "separate budget items" within the meaning of Article 10(4) of the Office's Financial Regulation. This includes the Office´s contribution to EU-Funded projects since 2020 but also, as of 2021, the Office´s financing of the European School of Alicante and the Office´s contribution to the SME Fund.

The Office also has an Activity Based Budget (ABB) to plan and monitor the use of resources and allow for performance-based decision making. The budget structure by nature (title, chapter, article and budget line) is therefore complemented with a hierarchic dimension based on strategic drivers (SP2025), cost headings and activities/projects.

In this context and with a view to have an objective measure of Office's global performance over time, showing the evolution of cost and productivity, two indicators are used ([10]):

- The Global Product Unit Cost;
- The Manpower Global Product Unit Cost.

[10] The Global Product Unit Cost represents the cost of a generic product and is the result of dividing the expenditure by the number of generic products. The number of generic products can be defined as the weighted average (by revenue) of the volume of individual products (e.g. EUTM applications registered, EUTM opposition decisions, EUTM appeal decisions, RCDs published). The Manpower Global Product Unit Cost is calculated in the same way as the previous but using only staff costs.



Both indicators show a positive evolution of the Office´s efficiency.

2.3 THE OFFICE'S RESERVE FUND

2.3.1 THE CHARACTERISTICS OF THE RESERVE FUND

Since the entry into force of the EUTMR in 2016 and according to Article 172(10), the Office's reserve fund must cover the equivalent of the sum of the appropriations of titles 1, 2 and 3 of the budget of the corresponding year.

The mechanism for fund allocations and withdrawals is based on the following elements:

- The reserve fund aims to ensure the continuity of the Office's operations and the execution of its tasks, covering one year of its operational expenditure. The Office's tasks are defined by Article 151 EUTMR.
- Paragraph 1 of Article 100 of the Office´s Financial Regulation clarifies that the volume of the reserve fund, and therefore its allocations or reductions, depends on the estimated budget appropriations envisaged for titles 1, 2 and 3 of the Office's Budget.
- Pursuant to Article 101 of the Office´s Financial Regulation, the required level of the reserve fund does not include any amount for the offsetting of costs incurred by Member States in accordance with Article 172(5) EUTMR and Article 172(7) EUTMR. In other words, the offsetting does not constitute operational expenditure in the sense of Article 172(10) EUTMR and should not be taken into account when determining the necessary level of the reserve fund.

Allocations to or withdrawals from the reserve fund have to be included in the budget proposal for year N. The amount of allocation or withdrawal has to correspond to the difference between the existing reserve fund in year N-1 and the sum of titles 1, 2 and 3 of the budget proposal for year N:

- Allocation to the reserve fund is needed when the sum of titles 1, 2 and 3 of the budget proposal for year N is higher than the reserve fund for year N-1.
- Withdrawal from the reserve fund is needed when the sum of titles 1, 2 and 3 of the budget proposal for year N is lower than the reserve fund for year N-1.

2.3.2 THE BUDGETARY TREATMENT OF THE RESERVE FUND

An allocation to the reserve fund must be entered in the expenditure part of the budget (within title 10) as it represents an additional charge to the budget. Similarly, a withdrawal from the reserve fund must be entered in the income part (within title 3) as it represents an additional resource for the budget.

The amount to be allocated to or withdrawn from the reserve fund will be included in the budget.

- Allocations to the reserve fund are included in chapter 10.2 (Allocation to reserve fund) within title 10 on the expenditure side of the budget;
- Withdrawals from the reserve fund are included in title 3 on the income side of the budget (Balance from the previous year and Withdrawals from the reserve fund).

2.3.3 THE EVOLUTION OF THE RESERVE FUND

In compliance with the legal requirements and considering the existing level of the reserve fund at the end of previous year, the evolution of the reserve fund is as follows:

(EUR)

	2021	*2020*
Reserve fund as per 31/12 of the previous year	244 120 242.71	238 647 197.59
Allocation to the reserve fund corresponding to the year	16 535 933.88	5 473 045.12
Withdrawal from the reserve fund corresponding to the year		
Reserve fund as per 31/12 of the year	**260 656 176.59**	**244 120 242.71**

2.4 THE OFFICE'S TREASURY

Apart from seeking compliance with the Office´s Financial Regulation, in particular the principle of sound financial management, treasury should be managed respecting three main guiding principles:

- **Liquidity**: funds need to be available for budget execution and to achieve the Office's strategic goals;
- **Security**: risks in relation to the management of the Office's funds should be mitigated;
- **Yield**: yields should reflect the best market conditions available, while maintaining a high degree of security, as this is more important than the yield.

The cash and bank balances of the Office on 31 December were as follows:

(EUR)

	2022	2021
Current & saving accounts	427 022 089.72	320 047 072.72
Call accounts (between 35 and 100 days)	134 591 203.56	209 574 015.46
EU-funded projects	17 020 140.39	14 611 334.13
Petty cash	n/a	118.14
TOTAL	**578 633 433.67**	**544 232 540.45**

It is worth noting that, as part of the total treasury, the Office is required to keep, among other elements, the amounts corresponding to the reserve fund (EUR 260.7 million), customers balances (EUR 35.2 million), the pre-financing received from the European Commission regarding the EU-funded projects (EUR 17.0 million) as well as funds reserved for future offsetting payments (EUR 29.1million) generated in 2020 and 2021 and 3 months of expenditure as operational treasury for payments (approximately EUR 72.4 million).

Due to this, the net amount of treasury available is therefore approximately EUR 164.2 million at the end of 2021 and is being mobilised since 2020 to support EU policies, as mentioned earlier.

In compliance with the treasury guidelines updated in November 2019, the Office had its treasury distributed between three commercial banks that complied with the minimum rating A- from two of the three credit agencies Fitch, Standard & Poor's and Moody's ([11]), three central banks as well as three operational banks.

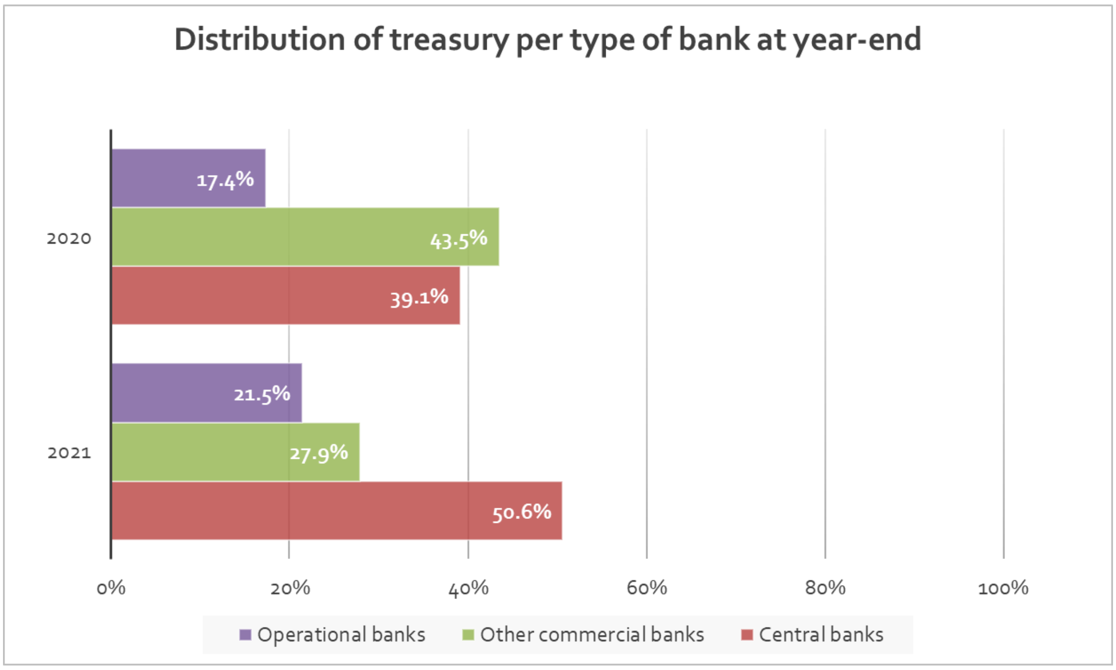
Operational funds for carrying out daily transactions regarding incoming and outgoing payments necessary for the normal functioning of the Office are held with operational banks that comply with a minimum rating of –BBB in accordance with the above-mentioned treasury guidelines.

The balances regarding the accounts of the EU funded projects correspond to the funds received from the European Commission for the execution of the EU funded projects. These funds are also held with operational banks.

2.4.1 DIVERSIFICATION OF RISK – DISTRIBUTION OF FUNDS BY CATEGORY OF BANKS

The distribution of the Office's treasury by category of banks on 31 December was as follows:

([11]) These rating requirements are aligned with the European Commission practice.



Central banks and commercial banks are used for keeping ‘peaks’ of treasury, that is to say, the part of treasury that is not immediately needed to cover the Office’s operational needs. Operational banks are used for daily business activities (incoming payments from users and outgoing payments to suppliers and staff).

Given the Office’s focus on security, approximately half of the funds were held with central banks in 2021, which entailed also the paying of negative interests to these banks as a consequence of the European Central Bank’s level of the deposit rate which stood at – 0.5% during the last years. As a consequence of this and the situation of the financial markets, all commercial and operational banks also applied negative interest rates for amounts exceeding a certain threshold. This was the reason for increasing the central bank’s share in detriment of the share of the operational banks. In this context and in view of the fact of unsuccessfully trying to enlarge its bank portfolio and thus reduce its exposure to negative interests, the Office had to face them as the price to be paid for the level of security sought.

3. THE EXPENDITURE RELATED TO ARTICLE 152(5) AND (6) EUTMR

The expenditure related to the financial support given in compliance with Article 152(5) is shown from an Activity Based Budgeting (ABB) point of view and also by nature.

The reason for using such an ABB approach is that when looking at the expenditure, any type of expenditure related to an activity is included, without distinction of whether it comes from title 1, 2 or 3 of the budget. This facilitates more transparency of the costs of the different cooperation programmes.

3.1 THE 15% UPPER LIMIT OF FUNDING BASED ON THE BUDGET

In Article 152(5) EUTMR it is stated that "*The Office shall provide financial support to the projects referred to in paragraph 2 (…)*". That financial support may take the form of grants and in-kind contributions. The total amount of funding shall not exceed 15% of the yearly revenue of the Office. The beneficiaries of grants shall be the central industrial property offices of the Member States and the Benelux Office for Intellectual Property.

The concept of "yearly revenue of the Office" is clearly defined in the Article 6 of the Office´s Financial Regulation which in its paragraph 4 refers to the estimated revenue for the year.

The reference in Article 152 (5) EUTMR to "*the total amount of funding (...)*" has firstly to be read as the total amount estimated in the approved budget for year N for projects under EU Cooperation. Therefore, it follows that the 15% upper limit of funding has to be complied with at the moment of drafting and approving the budget.

3.2 EU COOPERATION

Pursuant to Article 152 of the European Union trademark regulation, The European Cooperation Programme represents the strategic definition of actions and arrangements required for the Office and the central industrial property offices (IPO´s) of the Member States and the Benelux Office for Intellectual Property to cooperate with each other to promote convergence of practices and tools in the field of trademarks and designs. MBBC approved, on 29/09/2019, the following portfolio of European Cooperation projects, based on a proposal from the Office:

- ECP1 — Consolidate the implementation of European Union Intellectual Property Network (EUIPN) tools;
- ECP2 — Improvement and upgrade of EUIPN tools;
- ECP3 — New tools;
- ECP4 — Convergence of practices;
- ECP5 — Sustainability of the Network;
- ECP6 — Supporting small and medium-sized enterprises;
- ECP7 — Implementation of the Directive;
- ECP8 — Collaborative services.

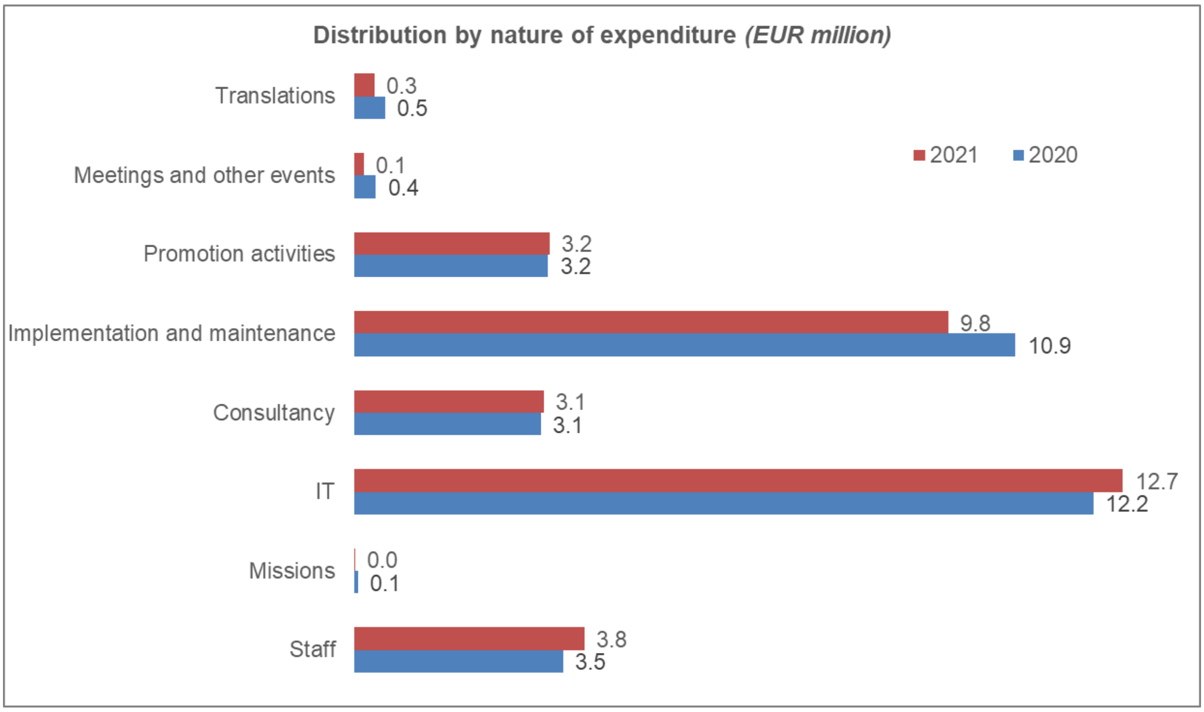
The following table shows the evolution of expenditure related to EU cooperation according to Article 152(5) and (6) EUTMR from an ABB point of view.

EU COOPERATION	2021	2020
ECP1 - Consolidate the implementation of EUIPN tools	5 621 136.49	4 952 654.60
ECP2 - Improvement and upgrade of EUIPN tools	2 731 553.73	3 676 634.39
ECP3 - New Tools	1 304 609.04	1 470 966.12
ECP4 - Convergence of practices	1 529 926.59	2 276 620.61
ECP5 - Sustainability of the network	11 909 724.57	13 536 718.88
ECP6 - Supporting SMEs	1 746 694.02	114 641.08
ECP7 - Supporting the transposition of the Trade Mark Directive (TMD)	946 723.06	362 225.31
ECP8 - Collaborative Services	7 402 927.78	7 435 235.25
TOTAL	**33 193 295.28**	**33 825 696.25**

The level of effective expenditure on EU cooperation is below the limit of 15% of the yearly budgeted revenue of the Office, as laid down in Article 152(5) EUTMR.

	2021	2020
Total budgeted revenue	282 574 722.24	267 293 084.45
15% upper limit	42 386 208.34	40 093 962.67
Total budget execution in EUR	***33 193 295.28***	***33 825 696.25***
Total budget execution in percentage of budgeted revenue	***11.7%***	***12.7%***

Looking at the expenditure by nature, the main expenditure items per nature are IT, implementation and maintenance of tools, including running costs of TMView and DesignView, followed by staff, promotion and consultancy expenditure.



4. OFFSETTING OF COSTS TO THE MEMBER STATES

4.1 OFFSETTING MECHANISM

Pursuant to Article 172(5) EUTMR, the Office's Management Board, on a proposal by the Office and after having consulted the Office's Budget Committee, will determine a distribution key on the basis of the following four indicators:

(a) the annual number of EU trade mark applications originating from applicants in each Member State;

(b) the annual number of national trade mark applications in each Member State;

(c) the annual number of oppositions and applications for a declaration of invalidity submitted by proprietors of EU trade marks in each Member State;

(d) the annual number of cases brought before the EU trade mark courts designated by each Member State in accordance with Article 123 EUTMR.

The revisited distribution key was adopted by the Management Board on 23 November 2022([12]) following three years of effective application. Member States must submit to the Office, by 31 March of each year, statistical data corroborating the figures corresponding to each of these four indicators for the preceding year, which will then be included in the proposal to be made by the Office to the Management Board. Finally, it is provided that, on grounds of equity, the costs incurred by the authorities in each Member State will be deemed to correspond to at least 2% of the total offsetting.

The timing for the fixing of the amounts to be paid for a given year and their actual payment

([12]) Decision No MBBC-22-12.

by the Office is established by Article 172 EUTMR and Article 104(8) of the Office´s Financial Regulation. In accordance with these provisions the compensation for year N is calculated and paid as follows:

(1) The first step in the process is to determine whether any compensation is to be paid for year N, that is to say whether no budgetary deficit occurs in year N (Article 172(6) EUTMR). On the basis of the Annual Accounts ([13]), it can be determined (first provisionally, and then finally) whether any budgetary deficit or surplus has occurred in year N, in accordance with the provisions of Article 104(5) and (6) of the Office´s Financial Regulation.

(2) Pursuant to Article 172(5) EUTMR, second subparagraph, the central industrial property offices of the Member States must submit to the Office by 31 March of year N+1 statistical data demonstrating the figures referred to in points (a) to (d) of the first subparagraph thereof for year N. The purpose of this submission is to substantiate the costs referred to in Article 172(4) EUTMR. When doing so, Member States must inform the Office of the nomination of any other relevant authorities whose costs would be eligible under Article 172(4) EUTMR in view of the specific tasks that they carry out as functional parts of the EU trade mark system.

(3) If there were a budget deficit, as defined in the previous paragraph, the exercise described in Article 172(4) to (7) EUTMR for year N would end at this point since the obligation by the Office to offset costs would not apply. Therefore, the Office would not need to submit any proposal to the Management Board for the distribution of an offsetting amount for that year. If there were no budget deficit, the Office would proceed to the next step.

(4) Once the final accounts for year N are available, no later than 1 July of year N+1, the Office prepares its draft proposal for the distribution among the Member States of the overall amount, corresponding to 5% of its yearly revenue, by applying to the statistical data for year N submitted by the Member States the distribution key previously determined by the Management Board (Article 172(5) EUTMR).

    In the event of a budgetary surplus above 5% of its yearly revenue (as defined in Article 104(6) of the Office´s Financial Regulation, the Office may also decide to include in its proposal an increase in the overall amount to be distributed. Such proposal may consist of a percentage increase of up to a maximum of 10%.

(5) The Office subsequently presents its proposal regarding the payment of the offsetting at the Management Board meeting that will take place in November of the year N+1. Should the proposal be approved by the Management Board, it will be included in the budget for year N+2, to be approved by the Budget Committee after the meeting of the Management Board. The decision of the Management Board will constitute a financing decision within the meaning of Article 72(1) of the Office´s Financial Regulation.

(6) The budgetary appropriation of the compensation amounts corresponding to year N

([13]) Pursuant to Articles 106 and 107 of the Office´s Financial Regulation, the provisional accounts of year N have to be sent to the Budget Committee by 31 March of year N+1 and the final accounts no later than 1 July of year N+1.

to each of the Member States will therefore be included in the budget of year N+2 under title 5 (Offsetting to Member States). The actual validation of expenditure and authorisation of payment by the Office's authorising officer related to such appropriation can be implemented as from January of year N+2, as provided for under Article 104(8) of the Office´s Financial Regulation. To that end, the authorising officer will act in accordance with Article 45 of the Office´s Financial Regulation.

4.2 THE OFFSETTING AMOUNT

According to Article 172(5) EUTMR, the overall offsetting of the costs identified in Article 172(4) EUTMR shall correspond to 5% of the yearly revenue of the Office. The Office's Financial Regulation establishes in Article 6(5) thereof that for the purpose of the offsetting the yearly revenue shall be the revenue collected under Article 6(3) points (a) and (b) of the Office's Financial Regulation.

Therefore, the revenue to be considered relates to:

(a) revenue consisting of all fees and charges and any other revenue which the Office is authorised to collect by virtue of the tasks entrusted to it;

(b) revenue consisting of any other type of income, such as interest, revenue from exchange rate fluctuations or extraordinary income.

The following table shows how the amounts for the offsetting have been calculated.

(EUR)

	2021	*2020*
Own revenue	303 150 223.85	277 552 206.48
Interests	5 964.50	6 186.05
Any other type of income		
Total yearly revenue in accordance with Art. 6 (5) of the EUIPO Financial Regulation	**303 156 188.35**	**277 558 392.53**
5% of the yearly revenue in accordance with Art. 172 (5) EUTMR	**15 157 809.42**	**13 877 919.63**

4.3 BUDGETARY RESULT ACCORDING TO ARTICLE 104(5) AND (6) OF THE OFFICE´S FINANCIAL REGULATION

According to Article 172(6) EUTMR, the Office shall offset the costs referred to in paragraph 4 of the same article and incurred in a given year. This shall only apply to the extent that no budgetary deficit occurs in that year.

In order to define such a budgetary deficit, the Office´s Financial Regulation sets out in Article 104(5) thereof the following definition:

For the purposes of Article 172(6) EUTMR, a budgetary deficit shall be the negative result consisting in the difference between:

- the yearly revenue, as defined in Article 6(5) of the Office´s Financial Regulation, plus any unused appropriations carried over from the previous financial year,
  and
- the total of the budget execution of titles 1, 2 and 3 of that financial year, comprising the payments and the appropriations carried over against that financial year's budget,

less any eventual allocations to or plus any withdrawals from the reserve fund,
less the amount that would correspond to the offsetting foreseen in Article 172(5) EUTMR,
and excluding the positive/negative balance from the previous financial year.

The following table shows in detail the calculation related to the potential activation of the offsetting mechanism.

(EUR)

	2021	2020
Own revenue EUIPO Financial Regulation Art. 6 (3) a	303 150 223.85	277 552 206.48
Interests EUIPO Financial Regulation Art. 6 (3) b	5 964.50	6 186.05
Exchange rate differences EUIPO Financial Regulation Art. 6 (3) b	- 77 127.35	- 96 148.87
Carryover not used from previous year related to title 1, 2 and 3 and assigned revenue	2 592 882.23	2 848 199.49
(A) Total yearly revenue according to Article 104 (5) and (6) of the EUIPO Financial Regulation	**305 671 943.23**	**280 310 443.15**
Staff expenditure (title 1)	- 128 548 158.83	- 125 663 711.60
Operating expenditure (title 2)	- 71 368 094.09	- 56 553 020.62
Specific expenditure (title 3)	- 51 298 570.87	- 52 052 754.58
(B) Total budget execution (title 1- 3)	**- 251 214 823.79**	**- 234 269 486.80**
(C) Difference (A) - (B)	**54 457 119.44**	**46 040 956.35**
(D) Less allocation to reserve fund	- 16 535 933.88	- 5 473 045.12
(E) Plus withdrawal from reserve fund		
(F) Less expenditure relating to the offsetting based on Art. 172 (5) EUTMR	- 15 157 809.42	- 13 877 919.63
(G) Budgetary result according to Article 104 (5) and (6) of the EUIPO Financial Regulation (C) - (D) + (E) - (F)	**22 763 376.14**	**26 689 991.60**

The above table shows that the offsetting mechanism was triggered for the financial years 2020 and 2021 for EUR 13.9 million and 15.2 million respectively.

It is also worth mentioning that the planned level of expenditure has a twofold impact in terms of mobilisation of appropriations: on the one hand, on the expenditure side of the budget, and, on the other, on the allocation to the reserve fund. Although an excessive mobilisation of funds on the expenditure side of the budget is overridden by the budget execution, this is not the case for the allocation to the reserve fund. This is the reason why the relevance of the Office’s budget’s accuracy (where necessary through an amendment, timed as to preserve the forecasting nature of a budget) increases, following the provisions in the Office’s founding and financial regulations specifying the mechanisms of the offsetting. In this context, the budget execution level reached 96.4% in 2021 and 96% in 2020, showing the good results of the Office´s efforts to precisely plan and estimate expenditure.

5. ANNEX

This annex includes extracts of the legal basis mentioned in the report.

5.1 ARTICLE 152 EUTMR – EU COOPERATION TO PROMOTE CONVERGENCE OF PRACTICES AND TOOLS

(1) The Office and the central industrial property offices of the Member States and the Benelux Office for Intellectual Property shall cooperate with each other to promote convergence of practices and tools in the field of trade marks and designs.

Without prejudice to paragraph 3, this cooperation shall in particular cover the following areas of activity:
(a) the development of common examination standards;
(b) the creation of common or connected databases and portals for Union-wide consultation, search and classification purposes;
(c) the continuous provision and exchange of data and information, including for the purposes of feeding of the databases and portals referred to in point (b);
(d) the establishment of common standards and practices, with a view to ensuring interoperability between procedures and systems throughout the Union and enhancing their consistency, efficiency and effectiveness;
(e) the sharing of information on industrial property rights and procedures, including mutual support to helpdesks and information centres;
(f) the exchange of technical expertise and assistance in relation to the areas referred to in points (a) to (e).

(2) On the basis of a proposal by the Executive Director, the Management Board shall define and coordinate projects of interest to the Union and the Member States with regard to the areas referred to in paragraphs 1 and 6, and shall invite the central industrial property offices of the Member States and the Benelux Office for Intellectual Property to participate in those projects.

The project definition shall contain the specific obligations and responsibilities of each participating industrial property office of the Member States, the Benelux Office for Intellectual Property and the Office. The Office shall consult with user representatives in particular in the phases of definition of the projects and evaluation of their results.

(3) The central industrial property offices of the Member States and the Benelux Office for Intellectual Property may opt out of, restrict or temporarily suspend their cooperation in the projects referred to in the first subparagraph of paragraph 2.

When making use of the possibilities provided for in the first subparagraph, the central industrial property offices of the Member States and the Benelux Office for Intellectual Property shall provide the Office with a written statement explaining the reasons for their decision.

(4) Once having committed to participate in certain projects, the central industrial property offices of the Member States and the Benelux Office for Intellectual Property shall, without prejudice to paragraph 3, participate effectively in the projects referred to in paragraph 2

with a view to ensuring that they are developed, function, are interoperable and kept up to date.

(5) The Office shall provide financial support to the projects referred to in paragraph 2 to the extent that is necessary in order to ensure, for the purposes of paragraph 4, the effective participation of the central industrial property offices of the Member States and the Benelux Office for Intellectual Property in those projects. That financial support may take the form of grants and in-kind contributions. The total amount of funding shall not exceed 15 % of the yearly revenue of the Office. The beneficiaries of grants shall be the central industrial property offices of the Member States and the Benelux Office for Intellectual Property. Grants may be awarded without calls for proposals in accordance with the financial rules applicable to the Office and with the principles of grant procedures contained in Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council and in Commission Delegated Regulation (EU) No 1268/2012 ([14]).

(6) The Office and the relevant competent authorities of the Member States shall cooperate with each other on a voluntary basis to promote the raising of awareness concerning the trade mark system and the fight against counterfeiting. Such cooperation shall include projects aiming, in particular, at the implementation of established standards and practices as well as at organising education and training activities. The financial support for those projects shall be part of the total amount of funding referred to in paragraph 5. Paragraphs 2 to 5 shall apply *mutatis mutandis*.

5.2 ARTICLE 172 EUTMR – BUDGET

(1) Estimates of all the Office's revenue and expenditure shall be prepared for each financial year and shall be shown in the Office's budget. Each financial year shall correspond to the calendar year.

(2) The revenue and expenditure shown in the budget shall be in balance.

(3) Revenue shall comprise, without prejudice to other types of income, total fees payable under Annex I to this Regulation, total fees as provided for in Regulation (EC) No 6/2002, total fees payable, under the Madrid Protocol, for an international registration designating the Union, and other payments made to Contracting Parties to the Madrid Protocol, total fees payable, under the Geneva Act referred to in Article 106c of Regulation (EC) No 6/2002, for an international registration designating the Union and other payments made to Contracting Parties to the Geneva Act, and, to the extent necessary, a subsidy entered against a specific heading of the Commission section of the general budget of the Union.

(4) Every year the Office shall offset the costs incurred by the central industrial property offices of the Member States, by the Benelux Office for Intellectual Property and by any other relevant authority to be nominated by a Member State, as the result of the specific tasks which they carry out as functional parts of the EU trade mark system in the context of the following services and procedures:

([14]) The regulations to which the legal text refers to have been repealed and replaced by Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012; OJ L 193, 30.7.2018, p. 1–222.

(a) opposition and invalidity proceedings before the central industrial property offices of the Member States and the Benelux Office for Intellectual Property involving EU trade marks;
(b) provision of information on the functioning of the EU trade mark system through helpdesks and information centres;
(c) enforcement of EU trade marks, including action taken pursuant to Article 9(4).

(5) The overall offsetting of the costs identified in paragraph 4 shall correspond to 5% of the yearly revenue of the Office. Without prejudice to the third subparagraph of this paragraph, on a proposal by the Office and after having consulted the Budget Committee, the Management Board shall determine the distribution key on the basis of the following fair, equitable and relevant indicators:

(a) the annual number of EU trade mark applications originating from applicants in each Member State;
(b) the annual number of national trade mark applications in each Member State;
(c) the annual number of oppositions and applications for a declaration of invalidity submitted by proprietors of EU trade marks in each Member State;
(d) the annual number of cases brought before the EU trade mark courts designated by each Member State in accordance with Article 123.

For the purpose of substantiating the costs referred to in paragraph 4, Member States shall submit to the Office by 31 March of each year, statistical data demonstrating the figures referred to in points (a) to (d) of the first subparagraph of this paragraph for the preceding year, which shall be included in the proposal to be made to the Management Board.

On grounds of equity, the costs incurred by the bodies referred to in paragraph 4 in each Member State shall be deemed to correspond to at least 2 % of the total offsetting provided for under this paragraph.

(6) The obligation by the Office to offset the costs referred to in paragraph 4 and incurred in a given year shall only apply to the extent that no budgetary deficit occurs in that year.

(7) In the event of a budgetary surplus, and without prejudice to paragraph 10, on a proposal by the Office and after having consulted the Budget Committee, the Management Board may increase the percentage laid down in paragraph 5 to a maximum of 10 % of the yearly revenue of the Office.

(8) Without prejudice to paragraphs 4 to 7 and paragraph 10 of this Article and to Articles 151 and 152, where a substantive surplus is generated over five consecutive years, the Budget Committee, upon a proposal from the Office and in accordance with the annual work programme and multiannual strategic programme referred to in Article 153(1)(a) and (b), shall decide by a two-thirds majority on the transfer to the budget of the Union of a surplus generated from 23 March 2016.

(9) The Office shall prepare on a biannual basis a report for the European Parliament, the Council and the Commission on its financial situation, including on the financial operations performed under Article 152(5) and (6), and paragraphs 5 and 7 of this Article.

On the basis of that report, the Commission shall review the financial situation of the Office.

(10) The Office shall provide for a reserve fund covering one year of its operational expenditure to ensure the continuity of its operations and the execution of its tasks.

5.3 ARTICLE 104 (5), (6), (7) AND (8) OF THE OFFICE´S FINANCIAL REGULATION

Paragraph 5

For the purposes of Article 172(6) of the constituent act, a budgetary deficit shall be the negative result consisting in the difference between:

– the yearly revenue, as defined in Article 6(5), plus any unused appropriations carried over from the previous financial year,
  and
– the total of the budget execution of titles 1, 2 and 3 of that financial year, comprising the payments and the appropriations carried over against that financial year's budget, less any eventual allocations to or plus any withdrawals from the reserve fund,
  less the amount that would correspond to the offsetting foreseen in article 172(5) of the constituent act,
  and excluding the positive/negative balance from the previous financial year.

Paragraph 6

For the purposes of Article 172(7) of the constituent act, a budgetary surplus shall be the positive result consisting in the difference between:

– the yearly revenue, as defined in Article 6(5), plus any unused appropriations carried over from the previous financial year,
  and
– the total of the budget execution of titles 1, 2 and 3 of that financial year, comprising the payments and the appropriations carried over against that financial year's budget, less any eventual allocations to or plus any withdrawals from the reserve fund,
  less the amount corresponding to the offsetting foreseen in article 172(5) of the constituent act,
  and excluding the positive/negative balance from the previous financial year.

Paragraph 7

For the purposes of the substantive surplus generated during five consecutive years provided for in Article 172(8) of the constituent act, a budgetary surplus shall be the positive result in each year consisting in the difference between:

– the yearly revenue, as defined in the Article 6(5), plus any unused appropriations carried over from the previous financial year,
  and
– the total of the budget execution of titles 1, 2 and 3 of that financial year, comprising the payments and the appropriations carried over against that financial year's budget, less any eventual allocations to or plus any withdrawals from the reserve fund,
  less the amount corresponding to the offsetting foreseen in articles 172(5) and (7) of the constituent act,

and excluding the positive/negative balance from the previous financial year.

Paragraph 8

Where applicable, the offsetting foreseen in Article 172(5) of the constituent act corresponding to a specific financial year N will be distributed to the Member States in year N+2, i.e. in the budgetary exercise following the closure of the accounts of that financial year.