

European Patent Office | 80298 MUNICH | GERMANY

To: Heads of Delegation in the Budget and
Finance Committee

Cc: Mr António Campinos
President of the EPO

By email:

council@epo.org

president@epo.org

European Patent Office
80298 Munich
Germany

Central Staff Committee
Comité central du personnel
Zentraler Personalausschuss

centralSTCOM@epo.org

Reference: sc24026cl

Date: 08/05/2024

OPEN LETTER

Risks to interpretation services at the EPO

Dear Heads of Delegations in the Budget and Finance Committee,

The EPO shall offer interpretation services during oral proceedings in opposition proceedings¹ and in appeal proceedings². Interpretation services are also provided to the delegations during meetings of the Administrative Council.

Presently, the EPO relies on freelance interpreters who are considered to be employees of the Office for the time they work for the Office. Their conditions of employment put in place since 2002 ([CA/136/02](#)) helped to build a pool of 160 highly qualified interpreters specialised in Patent Law.

The Office is now proposing to abolish the conditions of employment of interpreters and requests the BFC for their opinion on ([CA/35/24](#)). The Office did not consult any of its interpreters before tabling the document in the General Consultative Committee and does not provide the legal basis for the change. Upon learning of the proposal, the EPO interpreters expressed deep concern about the potential consequences.

The document states that the tax authorities in a member state consider that interpreters should be covered by the EPO's social security scheme, and as long as this is not the case, interpreters are covered under the national social security scheme of the member state in question for which

European Patent Office
Grasserstr. 9
80339 Munich
Germany

¹ [Rule 4\(5\) Impl Reg. to Part I of the EPC](#)

² [Article 7 RoP of the BoA](#)

employers are obliged to pay employee insurance premiums for the benefit of their employees. In the GCC, reference was made to problems in the Netherlands where only 6 interpreters reside. Abolishing the conditions of employment for all interpreters is hence disproportionate and leads to several issues explained in a document prepared by a group of interpreters³:

First, if interpreters work for the EPO without employee status, they bear the risk of being considered under false (bogus) self-employment by the country where they reside. Interpreters would have to reduce their availability for the EPO to mitigate this risk⁴.

Second, if EPO interpreters' fees become subject to national income tax, interpreters who optimise their income vis-à-vis national thresholds might limit their availability to the EPO. The proposed increase by 40% of the interpreters' daily rates— according to them, would be insufficient to compensate the taxation⁵.

Third, the EPO would have to pay VAT in non-EU countries such as in the United Kingdom and Switzerland where 25% of interpreters are residents⁶.

Fourth, Article 14 of the [PPI](#) would no longer apply to interpreters. Interpreters would for example no longer enjoy the inviolability for all their official papers and documents, including EPO documents.

Fifth, the EPO would not be competitive in comparison with other international organisations still using a hybrid model like the one currently in place at the EPO (EU, UN, WTO, CoE...) ⁷. The benchmark⁸ shows that the newly proposed model based on “framework contracts” would even put the EPO at the lowest place in the benchmark.

The specimen framework contract is not available. The reform is clearly not described in its entirety. In addition, the vast number of comments from the interpreters show that neither the legal nor the fiscal issues seem to have been properly considered in the document.

International institutions are already competing for a limited pool of interpreters. The EPO cannot afford to jeopardize its pool of interpreters specialised in Patent Law. A shortage of interpreters with the requisite skill set would ultimately result in risks to business continuity and quality of interpretation services for the users of the patent system.

The EPO should re-consider the planned change of the conditions due to the aforementioned shortcomings and properly consult the interpreters and the staff representation.

³ „EPO Accredited Interpreters Statement and Supporting Annexes“, 24-04-2024 **[Annex 1]**

⁴ see **[Annex 1]**, page 10

⁵ see **[Annex 1]**, page 7

⁶ see **[Annex 1]**, page 5

⁷ see **[Annex 1]**, page 2

⁸ “International organisations: comparative table” **[Annex 2]**

We recommend that the delegations request to be presented with document [CA/35/24](#) for information only, so that alternatives can be considered.

Sincerely yours

A handwritten signature in blue ink that reads "Derek Kelly". The signature is written in a cursive style with a large initial 'D' and 'K'.

Derek Kelly
Chairman of the Central Staff Committee

Annex 1: "Communication from EPO-accredited interpreters to Staff Representation", 14-04-2024

Annex 2: "International organisations: comparative table"

**EPO Accredited Interpreters Statement
and Supporting Annexes**
for GCC Meeting 30.4.24
re. Proposed Changes to Interpreters' Conditions of Employment

24th April 2024

Table of Contents

1. Statement by accredited interpreters to be read to GCC	
2. Table of detailed arguments	
2.1. Higher costs to the EPO	- p4
2.2. Legal uncertainty for EPO	- p5
2.3. Loss of competitiveness of EPO as an employer	- p7
2.4. Business continuity KPI	- p8
2.5. Quality of interpreting	- p9
2.6. Legal uncertainty for interpreters	- p10
3. Graph showing impact of proposal on net pay	- p11
4. Graph of interpreters' tax residencies by MS	- p12

**EPO Accredited Interpreters Statement
and Supporting Annexes
for GCC Meeting 30.4.24**
re. Proposed Changes to Interpreters' Conditions of Employment

24th April 2024

Statement from EPO-accredited interpreters

Part 1 - Introduction

EPO interpreters are deeply concerned about the proposed repeal of our Conditions of Employment (CA/136/02). We were left with little time to consider the ramifications of the proposal and reiterate our shock at the absence of consultation in advance of its submission.

If implemented, the proposed changes would dramatically impact interpreters and, as a consequence, the provision of language services at the Office.

We, the interpreters, are firmly convinced that the 2002 Conditions of Employment better serve the Office, its users and its interpreters.

Part 2 - The current model

The Conditions of Employment were approved to allow smooth operation at the EPO by ensuring good availability of interpreters (cf. GCC doc 02/2024), thus facilitating parties' right to be heard at hundreds of oral proceedings per year. This has been achieved.

Part 3 - The new model

The proposal as it stands would repeal interpreters' Conditions of Employment, move them to an independent contractor status and end tax-exempt pay, while offering a pay increase to purportedly mitigate the impact. No proposals have been communicated concerning any of the remaining working conditions.

The proposal - on which interpreters were not consulted - is based on a number of premises that we consider unfounded, for example but not only:

In parts A8 & A9, it is stated that "interpreters' position under the national social security law is uncertain in the contracting state at stake."

We would highlight that EPO interpreters are already affiliated to social security schemes in their countries of residence. There is no lack of certainty, and authorities have not queried this nationally for 20+ years.

Part A.10 states that "The complex model ... is outdated".

We would respond that similar systems are used in most international institutions (EU, UN, WTO, CoE, etc.) and function effectively when recruiting interpreters from multiple countries.

Part A.11 states that the proposal ensures business continuity and competitiveness.

Detailed feedback from EPO interpreters indicates that interpreters will be financially disadvantaged and will therefore no longer view the EPO as a competitive employer. This threatens business continuity. In the light of issues raised in input from interpreters and their

**EPO Accredited Interpreters Statement
and Supporting Annexes
for GCC Meeting 30.4.24**
re. Proposed Changes to Interpreters' Conditions of Employment

24th April 2024

accountants, it appears that the proposed changes would create rather than resolve legal uncertainty.

Detailed information regarding all the above points has been provided to the staff representatives and the interpreting service as an annex to this statement.

Part 4 - Risks to the EPO

Uncertainties around the proposed model and its administrative, legal, financial and fiscal ramifications have already led to interpreters reducing their availability while seeking to clarify the implications.

The proposed changes make the EPO less competitive when recruiting interpreters, compared to other international organisations such as the EU, UN, WTO, CoE, etc.

The planned changes come with unforeseeable fiscal risks, including retroactive tax claims, along with a considerable additional administrative burden for the EPO.

Part 5 - Conclusions

We are united in opposing this proposal and call for maintenance of the 2002 Working Conditions, which have a long and proven track record of securing smooth cooperation between the EPO and its dedicated interpreters. Any adjustment to Working Conditions should be consulted with us.

**EPO Accredited Interpreters Statement
and Supporting Annexes**
for GCC Meeting 30.4.24
re. Proposed Changes to Interpreters' Conditions of Employment

24th April 2024

2.1. RISK: HIGHER COSTS TO THE EPO

- **2.11m euro annually** cited as cost of implementation (VII.16)

No simulation/cost analysis has been presented for the alternative of the EPO paying social security contributions for interpreters.

Additional risk:

- Real cost underestimated (see 3. Graph... ; VAT; retroactive tax claims; over-time)
- Real cost underestimated if calculations based on an increase to current **net** pay rather than **gross** pay
- Set-up cost not included (contract award procedure, conclusion of individual contracts)
- Management cost over the long term not included (see points below)
- No information as to whether overtime hours in proceedings have been taken into account in the projected figure
- It seems that the pay indexation has not been taken into account in the projected figure.

- **Increased administrative burden** of processing hundreds of bids at regular intervals via the proposed open procurement method.

- **Increased administrative burden** of processing >10,000 (ten thousand) interpreter invoices annually.

- **Increased administrative burden** - regular review of contract conditions if link to a staff grade is removed.

- **Insufficient decision basis:** no calculation for alternatives such as affiliating interpreters to social security schemes or one social/pension fund for interpreters.

- **Tax payments will not be distributed equally among MS.** Over 90% interpreters are resident for tax purposes in DE, FR, CH, UK, BE.

- **EPO may have to pay VAT in non-EU countries.**

2.2. RISK: LEGAL UNCERTAINTY FOR EPO

- **retroactive tax demands made on EPO** (refund of "internal tax") by national authorities if the current system is deemed legally flawed. There is precedent for this... in the EU system, community tax on interpreters' pay was only codified by Regulation 723/2004. The EU had to reimburse "internal tax" to Member States for 1993-2003.

Example: EPO tax (ca. 8%) going back 10 years for only 1 interpreter with a yearly EPO income of 40.000€ = 32.000€. Multiplied by 150 interpreters working as part of the team before the pandemic.

- **Legal uncertainties** in respect of the **Platform Workers Directive** and interpreters' status thereunder.

- **Legal uncertainty** as to MS potentially defining interpreters as **Scheinselbststaendige and social security liability for EPO** resulting from that.

- **Drop in interpreting availability** and/or **quality** (see above) could affect parties' right to be heard.

- Uncertainty around bidding procedure 1

According to para. 10.1 c) of EPO's General Conditions of Tender (https://link.epo.org/web/general_conditions_of_tender_5_2019_en.pdf), "failure to mention a price in the bid" is an "exclusion criterion". If the EPO were to set a price in advance it would be non-compliant with established tendering principles. If it did not, it would not be offering equal pay for equal work and interpreters would be ethics-bound to reject.

- Uncertainty around bidding procedure 2

EPO rules on tenders require open tender above 15,000 euro. Average annual pay for many interpreters is higher than that at the EPO. Would the EPO be obliged to re-open a tender at regular intervals?? <https://www.epo.org/de/about-us/tenders/procurement-procedures>.

- **VAT payments** Is EPO exempt for non-EU countries? (ca. 25% of EPO interpreters are resident for tax purposes in the UK and CH).

- **All other elements of the interpreter package** would need to be reviewed eg. working time, travel, cancellation fees but also remuneration for tasks currently carried out on a good-will basis, such as sound checks, team-leader duties.

- **Liability for auditory health** of interpreters working in ViCo. Interpreters will expect new framework contracts to include measures protecting their auditory health. In the absence of conclusive scientific evidence, other international institutions are currently implementing the precautionary principle and taking measures to limit the dangers to auditory health posed by poor sound and algorithmically compressed sound.

**EPO Accredited Interpreters Statement
and Supporting Annexes**
for GCC Meeting 30.4.24

re. Proposed Changes to Interpreters' Conditions of Employment

24th April 2024

- **Fulfilment by EPO of its ISO 9001/ISO 23155** (Provision of CI Services) requirements. The current QM/QA system (accreditation, quality reviews, peer reviews) is based on our current legal status and carried out by peers. A system whereby independent contractors - essentially then competitors - review each other's work would likely not meet these ISO requirements.

- **IT access rights for interpreters.** Interpreters have access, via IAS External, to all Opposition and Appeal proceedings files as well as an administrative IntraNet for recruitment. According this sort of access to outside suppliers under the proposed system could be problematic.

**EPO Accredited Interpreters Statement
and Supporting Annexes
for GCC Meeting 30.4.24**
re. Proposed Changes to Interpreters' Conditions of Employment

24th April 2024

2.3. RISK: LOSS OF COMPETITIVENESS OF EPO AS AN EMPLOYER

The current system was introduced in 2002 to secure business continuity, after a number of colleagues withdrew from engagements at the EPO to give preference to tax-exempt employment at e.g. the European Commission.

- **International institutions** are already competing for a limited pool of interpreters and offer some, or all, of the following as part of their package - **tax-free status, pension contributions and preparation days**.

- to compensate for taxation of EPO fees, the following minimum increases to net fees would be required in the following countries.

BE: 80% (varies depending on personal circumstances)

FR: >40% (depending on personal circumstances)

DE: 60%

UK: 55%

CH: 60%

AT: 8 days worked under proposed conditions at EPO triggers 26% social security payments

Further examples are available in Annex 3 EPO Tax figures.

NB. Over 90% of EPO interpreters live in DE (90), FR (40), CH (30), UK (25) and BE (20).

- Even those interpreters who would not be immediately disadvantaged due to taxation still **optimise their income vis-a-vis tax national thresholds**, thus limiting availability to taxable employers (under the new proposal, this would include the EPO).

- **Loss of goodwill** (as a result of non-consultation on these proposed changes) will aggravate the shortage and eliminate readiness to perform unpaid but valuable services within the team (peer reviews, liaison work etc.).

- **Health risks related to poor sound in ViCo** already make the EPO less attractive as an employer when other international institutions have largely returned to in-person simultaneous interpretation for meetings. This is due to increased risk of auditory incidents and vastly increased cognitive load when working in RSI.

- Interpreters more ready to **give preference to clients with smooth processes** (no red tape, no invoices, no fee negotiation, etc.), which is currently the case at the EPO but stands to change profoundly.

**EPO Accredited Interpreters Statement
and Supporting Annexes**
for GCC Meeting 30.4.24
re. Proposed Changes to Interpreters' Conditions of Employment

24th April 2024

2.4. RISK: BUSINESS CONTINUITY KP1

- All points above in "Loss of competitiveness" impact the availability of interpreters and therefore also business continuity.
- **Postponement of oral proceedings** due to a limited supply of interpreters with the required skillset. Training and on-boarding take time.
- **97% of EPO interpreting assignments are linked to oral proceedings:** being able to recruit enough highly qualified / accredited interpreters with the right working languages is critical to EPO's business continuity.
- **On-boarding process takes approx. 1 year;** and per se also makes interpreters providing induction training unavailable for interpreting duties.
- On-boarding and mutual professional support between interpreters largely rely on unpaid input provided by experienced colleagues. On-boarding will be slower if goodwill is eroded and team spirit replaced by competing "suppliers".
- **Inability to meet peak demand for interpretation.** Currently the EPO is meeting peak demand by "reactivating" retired interpreters; constant on-boarding; and allowing interpreters not yet fully accredited to work. In the context of tender procedures, however, bids normally have to be submitted by a closing date, and the contracts are concluded for a period running until the next tender. All of these business continuity solutions would become unfeasible under the new proposal.
- **A strong and positive team identity** is instrumental to smooth cooperation and in turn, the great quality valued by users of our services; this should not be compromised.
- **Time period between decision and implementation** (Oct 2024 and Jan 2025) is extremely short. Any delays in implementation would pose a serious risk to the provision of high-quality language services and therefore to timely scheduling of proceedings.

**EPO Accredited Interpreters Statement
and Supporting Annexes**
for GCC Meeting 30.4.24
re. Proposed Changes to Interpreters' Conditions of Employment

24th April 2024

2.5. RISK: QUALITY OF INTERPRETING

- The proposed changes would make the **EPO less competitive as an employer**, triggering a shortage of interpreters with the requisite skill-set. International institutions are already competing for a limited pool of interpreters.

- **Difficulties in scheduling oral proceedings** due to lack of interpreters.

- "Open procurement" is not compatible with the EPO Language Service's current **accreditation and quality assurance systems**.

- Competing contractors cannot "peer-review"
- Competing contractors cannot carry out quality reviews or tests in on-boarding processes
- Can accreditation (= vetting) be used as an exclusion criterion if the EPO does not give access to the accreditation/vetting procedure to all interested interpreters?

- Non-consultation has eroded years of goodwill. Goodwill cooperation in areas like ViCo and on-boarding is now called into question.

- A strong and stable team of regularly deployed interpreters is instrumental to upholding high-quality services. The less consistent the pool, the larger the intervals between assignments, which impacts negatively on consistency and quality.

- NB Article 3(2) of the Conditions of employment: "Recruitment shall be directed to securing for the Office the services of interpreters of the highest standard of ability, efficiency and integrity".

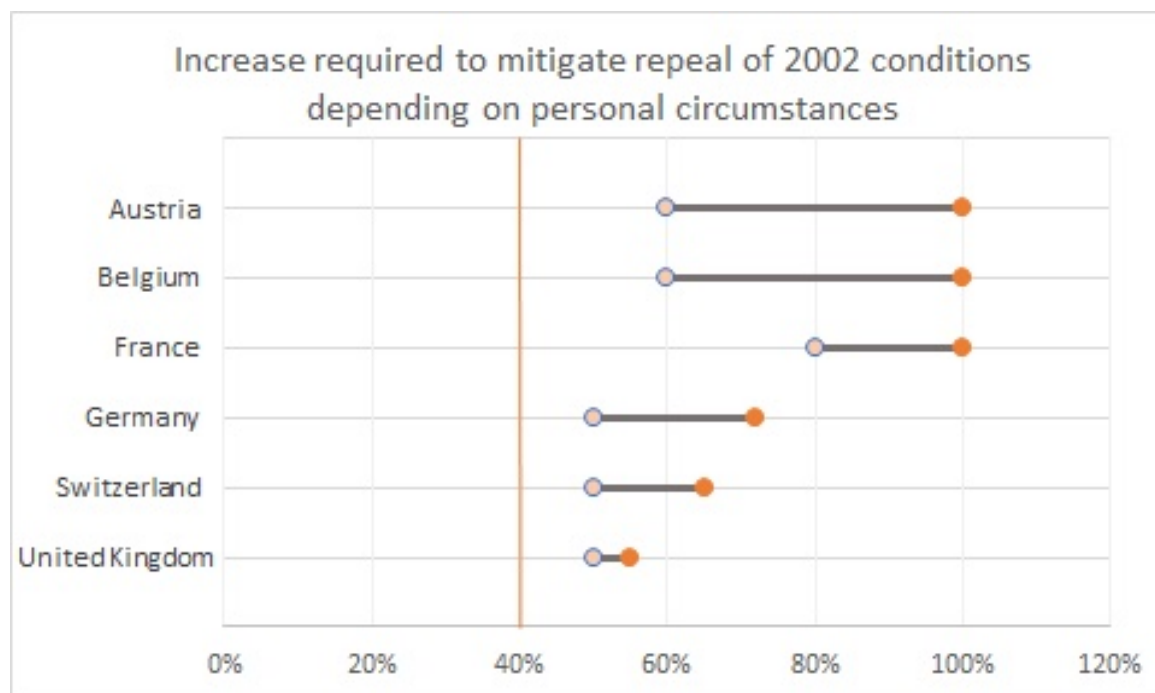
2.6. RISK: LEGAL UNCERTAINTY FOR INTERPRETERS

- **Discriminatory tax treatment** of interpreters. N.B.: tax exemption was deemed the only solution to this issue by the European Commission following an industrial dispute around the issue of tax status in the late 1990s (including interpreters boycotting the Commission's interpreting service, SCIC, for 18 months).
- Difficult to know all details of fiscal implications of status change in advance.
- **Retroactive liability for tax arrears.** There are precedents in which consultants working for the UN in CH and interpreters working for the EU have been required to retroactively pay tax on past earnings from these institutions.
- **Social security status...** some interpreters work exclusively for tax-exempt international institutions. Under the proposed change the EPO would be their only taxable customer. It would be difficult or impossible for them to join a social security scheme as a freelance interpreter working only for one customer. (Scheinselbstständigkeit issue).
- Uncertainty re. **bidding process and award criteria.**
 "Open procurement procedure" (GCC document) makes reference to the form of tender procedure with the lowest degree of restrictions, creating uncertainties re.
 - how existing accreditations will be treated
 - the intervals at which tenders will be carried out
 - the jurisdiction governing contracts.
- Open tender (and the price requirement in bids) suggests the possibility of **different fees for different interpreters.** Many EPO colleagues are members of AIIC (Association Internationale des Interprètes de Conférence) and **uphold its Code of Professional Ethics** which includes the principle of equal pay for equal work. The proposal is therefore not compatible with their membership of the largest and oldest professional association in the sector.
- **Possible liability in case of technical failure** during ViCos.
- **All other working conditions** are now under threat, e.g. indexation of fees, travel allowances, overtime provisions, provisions concerning cancellation of assignments.
- Unclear if the proposed 40% increase refers to net or gross rate paid to interpreters at the EPO.

**EPO Accredited Interpreters Statement
and Supporting Annexes**
for GCC Meeting 30.4.24
re. Proposed Changes to Interpreters' Conditions of Employment

24th April 2024

3. Graph showing impact of proposal on net pay

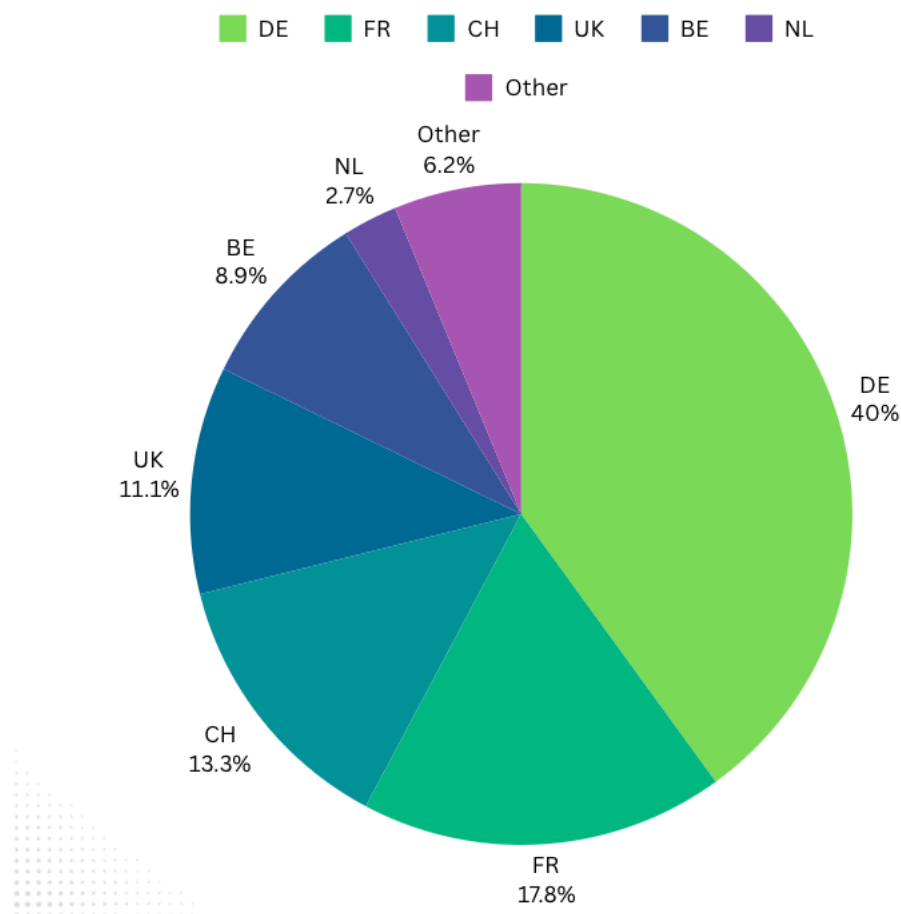


**EPO Accredited Interpreters Statement
and Supporting Annexes**
for GCC Meeting 30.4.24
re. Proposed Changes to Interpreters' Conditions of Employment

24th April 2024

4. Graph of interpreters' tax residencies by MS

EPO INTERPRETERS' DOMICILES



International organisations: comparative table

International Organisation (IO)	EPO	ECJ	SCIC (European Commission Directorate-General for Interpretation)	UN	OECD	ICJ	ICC
Interpreter days per annum	C. 6,000 (average long-term figure, pandemic effect factored in)	2022: C. 3,300 2023: C. 3,500 (2022: FR 685, EN 690, DE 137)	C. 89,000 pre-pandemic. Over 89,000 post-pandemic	2019: 50,000+ interpreting days, 57% in Geneva	2010: C. 4,000 900 freelance interpreter days	N.A.	N.A.
Status of interpreting team: Full-time staff interpreters // freelance interpreters (employee status on contract days) // freelance interpreters (without employee status on contract days)	Freelance (employee status on contract days)	Full-time staff interpreters and freelance interpreters (employee status on contract days)	Full-time staff interpreters and freelance interpreters (employee status on contract days)	Full-time staff interpreters and freelance interpreters (employee status on contract days)	Full-time staff interpreters and freelance interpreters (WITHOUT employee status on contract days)	Full-time staff interpreters (also with translation revision duties) and freelance interpreters (employee status on contract days)	Full-time staff interpreters and freelance interpreters (employee status on contract days)
Number of working languages	3	24	24	6	2	2	2
Type of meetings	specialized (legal/technical)	specialized (legal)	broad range of topics, mostly technical / political	broad range of topics, mostly technical / political	broad range of topics, technical / political	specialized (legal)	specialized (legal)
Max. standard working hours/day	10 hours	(ECJ pays for one day of preparation per case). Up to 8 hours/day	When working on platforms (Interactio): 6 hours/day No platforms: 8 hours/day	6 hours	7 hours	6 hours (in court) 6 hours (for meetings)	4.5 hours (in court) 6 hours (for meetings)
Team strength in each booth	3 for distributed RSI; 2 for meetings on EPO premises	2 to 5	2 to 3	2 to 3	3 (When in distributed RSI: (2.5hrs = 2 interpreters ; 4hrs = 3 interpreters; 5hrs = 4 interpreters)	3 FR 2 EN (Court) 2 FR 2 EN (Meetings)	3 FR 3 EN (Court) 2 FR 2 EN (Meetings)

International organisations: comparative table

International Organisation (IO)	EPO	ECJ	SCIC (European Commission Directorate-General for Interpretation)	UN	OECD	ICJ	ICC
Distributed RSI (= remote simultaneous interpretation not on IO premises)	YES	NO	NO	NO	Sometimes. (Distributed) RSI subject to different conditions	NO	NO
Overtime	Up to 2 hours per day	NO	NO	YES, exceptionally	NO	YES	YES
Accreditation	YES	YES	YES	YES at HQ, NO in specialized agencies	NO	Team members are specialized in international criminal law / public international law or background at an international court. Formal application process.	Security vetting and team members are specialized in international criminal law / public international law or background at an international court
Quality checks	YES, currently carried out by experienced colleagues who submit reports to Head of Department; Head of Department (Interpreting and central support) is however responsible for quality decisions	YES, carried out by staff interpreters	YES, carried out by staff interpreters	YES, carried out by staff interpreters	YES, carried out by staff interpreters	YES, carried out by staff interpreters	YES, carried out by staff interpreters

International organisations: comparative table

International Organisation (IO)	EPO	ECJ	SCIC (European Commission Directorate-General for Interpretation)	UN	OECD	ICJ	ICC
Is fee subject to national income tax?	NO	NO	NO	NO	YES	NO	NO
Does IO pay an employer's contribution to a <i>private-sector pension fund</i> for freelance interpreter per contract day?	NO	YES (employers' contribution to private-sector pension fund)	YES (employers' contribution to private-sector pension fund)	NO unless the interpreter requests it.	NO	NO	NO
Does IO pay an employer's contribution for health insurance cover to a <i>private-sector health insurance fund</i> for freelance interpreter per contract day?	NO	YES (employers' contribution to private insurance company)	YES (employers' contribution to private insurance company)	NO (but some exceptions / depending on staff regulations, e.g. ILO)	NO	NO	NO
Does IO pay into a <i>national state pension insurance fund</i> on behalf of freelance interpreter per contract day?	NO	NO	NO	NO	NO	NO	NO
Does IO pay into a <i>national state social security insurance fund</i> on behalf of freelance interpreter per contract day?	NO	NO	NO	NO	NO	NO	NO