

**CA/46/04**

Orig.: de

Munich, 28.05.2004

**SUBJECT:** Draft basic proposal for a revision of the EPC implementing the organisational autonomy of the Boards of Appeal of the European Patent Office within the European Patent Organisation

**DRAWN UP BY:** President of the European Patent Office

**ADDRESSEES:**

1. Administrative Council (for opinion)
2. Committee on Patent Law (for information)
3. Budget and Finance Committee (for information)

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#### SUMMARY

This complete draft basic proposal for a revision of the EPC implementing the organisational autonomy of the boards of appeal takes account of the results of the final discussion at the 24th meeting of the Committee on Patent Law on 27 and 28 April 2004 and the opinion of the Budget and Finance Committee at its 81st meeting from 10 to 12 May 2004. It is forwarded to the Administrative Council for a final opinion, especially with regard to the alternative solutions for the appointment of judges of the Court of Appeals (see Article 21g EPC - alternatives A and B).

For the sake of completeness, the draft basic proposal also includes those EPC Articles in the text according to the Revision Act of 29 November 2000 which are to remain unchanged in the current revision exercise.

Should the Administrative Council decide at its June 2004 meeting to convene a Diplomatic Conference at short notice, it is proposed that this draft be adopted as the Basic Proposal and forwarded to the Conference. The editorial amendments to the Protocol on Privileges and Immunities necessitated by this revision of the EPC will be submitted to the Conference.

To inform the interested circles about the proposed revision and enable them to comment on the organisational autonomy of the boards of appeal, the draft basic proposal is to be published on the EPO website after it has been discussed by the Administrative Council.

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**Draft basic proposal for a revision of the EPC implementing  
the organisational autonomy of the Boards of Appeal of the European Patent Office  
within the European Patent Organisation**

Article 1

## **ARTICLE 1 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording**

**Revised wording**

**1. European Patent Convention**

**PART I**

**GENERAL AND INSTITUTIONAL  
PROVISIONS**

**Chapter I**

**General provisions**

**Article 1**

**European law for the grant of patents**

A system of law, common to the Contracting States, for the grant of patents for invention is established by this Convention.

*Unchanged*

Article 2

## **ARTICLE 2 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 2**  
**European patent***Unchanged*

(1) Patents granted under this Convention shall be called European patents.

(2) The European patent shall, in each of the Contracting States for which it is granted, have the effect of and be subject to the same conditions as a national patent granted by that State, unless this Convention provides otherwise.

Article 3

## **ARTICLE 3 EPC**

### **Explanatory notes**

The provision remains unchanged.



**Present wording**

**Revised wording**

**Article 3**  
**Territorial effect**

*Unchanged*

The grant of a European patent may be requested for one or more of the Contracting States.

## ARTICLE 4 EPC

### Explanatory notes

1. The proposed amendment to **Article 4(2) EPC 2000** separates the present Boards of Appeal and Enlarged Board of Appeal from the European Patent Office and gives them the status of a third organ of the European Patent Organisation. The constitutional principle of separation of powers into three branches - legislative, executive and judiciary - is introduced into the structure of the Organisation by establishing the European Court of Patent Appeals (hereinafter "the Court of Appeals") as its judiciary branch.
2. Under the **new Article 4(3), second sentence, EPC**, the Court of Appeals is to carry out the functions assigned to it under the EPC. These functions are identical to those of the Boards of Appeal and the Enlarged Board of Appeal under the EPC 2000.
3. As a direct result of the organisational autonomy of the Boards of Appeal, supervision by the Administrative Council is now also exercised over the Court of Appeals under the proposed **new Article 4(3), third sentence, EPC**. However, such supervision must not impinge on the independence of the judges of the Court.

**Present wording****Article 4****European Patent Organisation**

(1) A European Patent Organisation, hereinafter referred to as the Organisation, is established by this Convention. It shall have administrative and financial autonomy.

(2) The organs of the Organisation shall be:

(a) the European Patent Office;

(b) the Administrative Council.

(3) The task of the Organisation shall be to grant European patents. This shall be carried out by the European Patent Office supervised by the Administrative Council.

**Revised wording****Article 4****European Patent Organisation**

(1) A European Patent Organisation, hereinafter referred to as the Organisation, is established by this Convention. **Its task shall be to grant European patents.** It shall have administrative and financial autonomy.

(2) The organs of the Organisation shall be:

(a) the European Patent Office, **hereinafter referred to as the Office;**

(b) **the European Court of Patent Appeals, hereinafter referred to as the Court of Appeals;**

(c) the Administrative Council.

(3) **The task of the Organisation shall be carried out by the Office. The Court of Appeals shall decide on appeals against decisions of the Office in proceedings under this Convention. The Administrative Council shall supervise the activities of the Office and, subject to judicial independence, the Court of Appeals.**

Article 4a

## **ARTICLE 4a EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 4a**  
**Conference of ministers of the**  
**Contracting States***Unchanged*

A conference of ministers of the Contracting States responsible for patent matters shall meet at least every five years to discuss issues pertaining to the Organisation and to the European patent system.

## **ARTICLE 5 EPC**

### **Explanatory notes**

**Article 5(3) EPC:** The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.

**Present wording****Revised wording****Chapter II****The European Patent Organisation****Article 5  
Legal status**

(1) The Organisation shall have legal personality.

(1) *Unchanged*

(2) In each of the Contracting States, the Organisation shall enjoy the most extensive legal capacity accorded to legal persons under the national law of that State; it may in particular acquire or dispose of movable and immovable property and may be a party to legal proceedings.

(2) *Unchanged*

(3) The President of the European Patent Office shall represent the Organisation.

(3) The President of the **Office** shall represent the Organisation.

## **ARTICLE 6 EPC**

### **Explanatory notes**

1. The Organisation has its headquarters in Munich. The same applies to the Court of Appeals, as an organ of the Organisation.
2. Leaving the headquarters of the Court of Appeals in Munich enables it to make optimum use of the European Patent Office's facilities and thereby minimise the cost of guaranteeing its independence as the Organisation's third organ.



**Present wording****Article 6**  
**Headquarters**

- (1) The Organisation shall have its headquarters in Munich.
- (2) The European Patent Office shall be located in Munich. It shall have a branch at The Hague.

**Revised wording****Article 6**  
**Headquarters**

- (1) The Organisation shall have its headquarters in Munich.
- (2) The Office **and the Court of Appeals** shall be located in Munich. **The Office** shall have a branch at The Hague.

## **ARTICLE 7 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.

**Present wording****Article 7**  
**Sub-offices of the European Patent Office**

By decision of the Administrative Council, sub-offices of the European Patent Office may be created, if need be, for the purpose of information and liaison, in the Contracting States and with inter-governmental organisations in the field of industrial property, subject to the approval of the Contracting State or organisation concerned.

**Revised wording****Article 7**  
**Sub-offices of the Office**

By decision of the Administrative Council, sub-offices of the **Office** may be created, if need be, for the purpose of information and liaison, in the Contracting States and with inter-governmental organisations in the field of industrial property, subject to the approval of the Contracting State or organisation concerned.

## **NEW ARTICLE 7a EPC**

### **Explanatory notes**

1. With the creation of the Court of Appeals as the Organisation's third organ, in addition to the European Patent Office and the Administrative Council, it would seem appropriate, for the sake of clarity and coherence, to insert a provision governing the official languages of the Organisation as a whole. This is the purpose of the **new Article 7a EPC**, based on Article 14 EPC 2000 but extending its scope, as it only refers to the languages of the Office. The amendments vis-à-vis Article 14 EPC 2000 ensure that the language provisions apply to all the Organisation's activities and responsibilities.
2. Article 7a(1a) EPC incorporates the provisions of the previous Article 31 EPC.
3. Up to now, the language arrangements for the Administrative Council, laid down in Article 31 EPC 2000, have been separate from the corresponding provisions of Article 14 EPC concerning the Office. Articles 14 and 31 EPC can now be deleted, as the new Article 7a EPC makes them both redundant.

**Present wording****Article 14****Languages of the European Patent Office, European patent applications and other documents**

(1) The official languages of the European Patent Office shall be English, French and German.

(2) A European patent application shall be filed in one of the official languages or, if filed in any other language, translated into one of the official languages in accordance with the Implementing Regulations. Throughout the proceedings before the European Patent Office, such translation may be brought into conformity with the application as filed. If a required translation is not filed in due time, the application shall be deemed to be withdrawn.

(3) The official language of the European Patent Office in which the European patent application is filed or into which it is translated shall be used as the language of the proceedings in all proceedings before the European Patent Office, unless otherwise provided in the Implementing Regulations.

**Revised wording****Article 7a****Languages of the Organisation, European patent applications and other documents**

(1) The official languages of the **Organisation** shall be English, French and German.

**(1a)** The languages used in the deliberations of the Administrative Council shall be the **official languages of the Organisation**. Documents submitted to the Administrative Council, and the minutes of its deliberations, shall be drawn up **in those languages**.

(2) A European patent application shall be filed in one of the official languages or, if filed in any other language, translated into one of the official languages in accordance with the Implementing Regulations. **In any proceedings under this Convention**, such translation may be brought into conformity with the application as filed. If a required translation is not filed in due time, the application shall be deemed to be withdrawn.

(3) The official language [...] in which the European patent application is filed or into which it is translated shall be used as the language of the proceedings in **any proceedings under this Convention**, unless otherwise provided in the Implementing Regulations.



**Present wording**

(4) Natural or legal persons having their residence or principal place of business within a Contracting State having a language other than English, French or German as an official language, and nationals of that State who are resident abroad, may file documents which have to be filed within a time limit in an official language of that State. They shall however file a translation in an official language of the European Patent Office in accordance with the Implementing Regulations. If any document, other than those documents making up the European patent application, is not filed in the prescribed language, or if any required translation is not filed in due time, the document shall be deemed not to have been filed.

(5) European patent applications shall be published in the language of the proceedings.

(6) Specifications of European patents shall be published in the language of the proceedings and shall include a translation of the claims in the two other official languages of the European Patent Office.

(7) There shall be published in the three official languages of the European Patent Office:

- (a) the European Patent Bulletin;
- (b) the Official Journal of the European Patent Office.

**Revised wording**

(4) Natural or legal persons having their residence or principal place of business within a Contracting State having a language other than English, French or German as an official language, and nationals of that State who are resident abroad, may file documents which have to be filed within a time limit in an official language of that State. They shall however file a translation in an official language of the **Organisation**, in accordance with the Implementing Regulations. If any document, other than those documents making up the European patent application, is not filed in the prescribed language, or if any required translation is not filed in due time, the document shall be deemed not to have been filed.

(5) European patent applications shall be published in the language of the proceedings.

(6) Specifications of European patents shall be published in the language of the proceedings and shall include a translation of the claims in the two other official languages [...].

(7) There shall be published in the three official languages [...]:

- (a) the European Patent Bulletin;
- (b) the Official Journal of the European Patent Office.





**Present wording**

(8) Entries in the European Patent Register shall be made in the three official languages of the European Patent Office. In cases of doubt, the entry in the language of the proceedings shall be authentic.

**Revised wording**

(8) Entries in the European Patent Register shall be made in the three official languages [...]. In cases of doubt, the entry in the language of the proceedings shall be authentic.

## ARTICLE 8 EPC

### Explanatory notes

1. A contractual relationship can only exist with the European Patent Organisation, as only it has legal personality.

Office employees are clearly servants, and therefore employees, of the Organisation.

The expression "employees of the Office" merely specifies the organ of the Organisation in which those concerned carry out their duties.

2. Therefore, if DG 3 becomes a separate organ of the Organisation, as distinct from the Office, the EPC must be systematically amended to replace the expression "[permanent] employees of the Office" with "[permanent] employees of the Organisation" where the provision refers to the staff as a whole.
3. The same amendment is required in Articles 9(2) and (3) and 33(2)(b) EPC 2000, and in the Protocol on Privileges and Immunities.

**Present wording****Article 8****Privileges and immunities**

The Protocol on Privileges and Immunities annexed to this Convention shall define the conditions under which the Organisation, the members of the Administrative Council, the employees of the European Patent Office, and such other persons specified in that Protocol as take part in the work of the Organisation, shall enjoy, in each Contracting State, the privileges and immunities necessary for the performance of their duties.

**Revised wording****Article 8****Privileges and immunities**

The Protocol on Privileges and Immunities annexed to this Convention shall define the conditions under which the Organisation, the members of the Administrative Council, the employees of the **Organisation** and such other persons specified in that Protocol as take part in the work of the Organisation, shall enjoy, in the territory of each Contracting State, the privileges and immunities necessary for the performance of their duties.

## **NEW ARTICLE 8a EPC**

### **Explanatory notes**

1. The **new Article 8a EPC** governs the obligation of confidentiality on employees of the Organisation. It corresponds to Article 12 EPC 2000, concerning the obligation of confidentiality on Office employees. However, the wording of new Article 8a EPC makes it clear that the obligation of confidentiality applies to all the Organisation's employees, irrespective of whether they work for the Office or the Court of Appeals. For the sake of consistency, it would seem preferable to replace the separate but substantively identical provisions in this area with a single Article governing the obligation of confidentiality on Office staff members and employees of the Court of Appeals.
2. Article 12 EPC is deleted.

**Present wording****Article 12****Duties of office**

Employees of the European Patent Office shall be bound, even after the termination of their employment, neither to disclose nor to make use of information which by its nature is a professional secret.

**Revised wording****Article 8a****Obligation of confidentiality**

Employees of the **Organisation** shall be bound, even after the termination of their employment, neither to disclose nor to make use of information which by its nature is a professional secret.

## **ARTICLE 9 EPC**

### **Explanatory notes**

The amendment to **Article 9(2) and (3) EPC 2000** is necessitated by the new structure of the European Patent Organisation.

**Present wording****Article 9****Liability**

(1) The contractual liability of the Organisation shall be governed by the law applicable to the contract in question.

(2) The non-contractual liability of the Organisation in respect of any damage caused by it or by the employees of the European Patent Office in the performance of their duties shall be governed by the law of the Federal Republic of Germany. Where the damage is caused by the branch at The Hague or a sub-office or employees attached thereto, the law of the Contracting State in which such branch or sub-office is located shall apply.

(3) The personal liability of the employees of the European Patent Office towards the Organisation shall be governed by their Service Regulations or conditions of employment.

(4) The courts with jurisdiction to settle disputes under paragraphs 1 and 2 shall be:

(a) for disputes under paragraph 1, the courts of the Federal Republic of Germany, unless the contract concluded between the parties designates a court of another State;

(b) for disputes under paragraph 2, the courts of the Federal Republic of Germany, or of the State in which the branch or sub-office is located.

**Revised wording****Article 9****Liability**

(1) The contractual liability of the Organisation shall be governed by the law applicable to the relevant contract.

(2) The non-contractual liability of the Organisation in respect of any damage caused by it or by the employees of the **Organisation** in the performance of their duties shall be governed by the provisions of the law of the Federal Republic of Germany. Where the damage is caused by the branch at The Hague or a sub-office or employees attached thereto, the provisions of the law of the Contracting State in which such branch or sub-office is located shall apply.

(3) The personal liability of the employees of the **Organisation** towards the Organisation shall be laid down in their Service Regulations or conditions of employment.

(4) The courts with jurisdiction to settle disputes under paragraphs 1 and 2 shall be:

(a) for disputes under paragraph 1, the courts of the Federal Republic of Germany, unless the contract concluded between the parties designates a court of another State;

(b) for disputes under paragraph 2, the courts of the Federal Republic of Germany, or of the State in which the branch or sub-office is located.

## **NEW ARTICLE 9a EPC**

### **Explanatory notes**

1. The **new Article 9a EPC** concerns the procedure for handling disputes between the Organisation and its employees. It corresponds to Article 13 EPC 2000, governing disputes between the Organisation and those employees who work for the Office. The wording of the proposed Article 9a EPC takes account of the fact that both Court and Office staff are employees of the Organisation; both groups of employees are covered by the new provision.
2. The definition in Article 4(1) EPC has not been included in the new Article 9a(1) EPC, in order to avoid linguistic confusion, especially in the French text of the provision.
3. Article 13 EPC is deleted.



**Present wording****Article 13****Disputes between the Organisation and the employees of the European Patent Office**

(1) Employees and former employees of the European Patent Office or their successors in title may apply to the Administrative Tribunal of the International Labour Organization in the case of disputes with the European Patent Organisation, in accordance with the Statute of the Tribunal and within the limits and subject to the conditions laid down in the Service Regulations for permanent employees or the Pension Scheme Regulations or arising from the conditions of employment of other employees.

(2) An appeal shall only be admissible if the person concerned has exhausted such other means of appeal as are available to him under the Service Regulations, the Pension Scheme Regulations or the conditions of employment.

**Revised wording****Article 9a****Disputes between the Organisation and its employees [...]**

(1) Employees and former employees of the European Patent **Organisation** or their successors in title may apply to the Administrative Tribunal of the International Labour Organization in the case of disputes with the European Patent Organisation, in accordance with the Statute of the Tribunal and within the limits and subject to the conditions laid down in the Service Regulations for permanent employees or the Pension Scheme Regulations or arising from the conditions of employment of other employees.

(2) An appeal shall only be admissible if the person concerned has exhausted such other means of appeal as are available to him under the Service Regulations, the Pension Scheme Regulations or the conditions of employment.

## ARTICLE 10 EPC

### Explanatory notes

1. The reestablishment of the previous Directorate-General 3 of the European Patent Office as an independent organ of the European Patent Organisation, under a separate President and with its own budget, necessitates certain amendments to **Article 10 EPC 2000** governing the management of the European Patent Office.
2. In future there will be two Presidents: the President of the European Patent Office and the President of the European Court of Patent Appeals. The proposed rewording of **Article 10(1) EPC** makes it clear that the provision refers to the former.

**Present wording**

**Chapter III**  
**The European Patent Office**

**Article 10**  
**Management**

(1) The European Patent Office shall be managed by the President, who shall be responsible for its activities to the Administrative Council.

(2) To this end, the President shall have in particular the following functions and powers:

(a) he shall take all necessary steps to ensure the functioning of the European Patent Office, including the adoption of internal administrative instructions and information to the public;

(b) unless this Convention provides otherwise, he shall prescribe which acts are to be performed at the European Patent Office in Munich and its branch at The Hague respectively;

(c) he may submit to the Administrative Council any proposal for amending this Convention, for general regulations, or for decisions which come within the competence of the Administrative Council;

**Revised wording**

**Chapter III**  
**The European Patent Office**

**Article 10**  
**Management**

(1) The **Office** shall be managed by **its** President, who shall be responsible for its activities to the Administrative Council.

(2) To this end, the President **of the Office** shall have in particular the following functions and powers:

(a) he shall take all necessary steps to ensure the functioning of the **Office**, including the adoption of internal administrative instructions and information to the public;

(b) unless this Convention provides otherwise, he shall prescribe which acts are to be performed at the **Office** in Munich and its branch at The Hague respectively;

(c) he may submit to the Administrative Council any proposal for amending this Convention, for general regulations, or for decisions which come within the competence of the Administrative Council;

3. The proposed **Article 10(2)(d) EPC** takes account of the fact that the budget of the European Patent Organisation, while remaining unified, will in future consist of two budgets, one for the Office and one for the Court of Appeals (see proposed Article 42 EPC). Each budget will be prepared and executed by the President of the relevant organ.
4. The proposed **Article 10(2)(f) EPC** specifies - in consequence of the separation of DG 3 from the Office - that the supervisory authority of the President of the Office is confined to those staff members who are assigned to the Office itself.
5. The proposed **Article 10(2)(g) EPC** makes it clear that the President of the Office appoints only the employees assigned to the Office.
6. The proposed **Article 10(2)(h) EPC** specifies that the disciplinary authority of the President of the Office is confined to those staff members who are assigned to the Office itself. The reference to Article 11(3) EPC, concerning the appointment of chairmen and members of the Boards of Appeal, has been deleted, as the subject-matter is covered by the proposed Article 21f EPC.
7. The proposed amendment to **Article 10(3) EPC** takes account of the fact that in future there will be a President of the European Patent Office and a President of the European Court of Patent Appeals.

**Present wording****Revised wording**

(d) he shall prepare and implement the budget and any amending or supplementary budget;

**(d)** he shall prepare and implement the budget, **and** any amending or supplementary budget, **of the Office**;

(e) he shall submit a management report to the Administrative Council each year;

**(e)** he shall submit a management report to the Administrative Council each year;

(f) he shall exercise supervisory authority over the staff;

**(f)** he shall exercise supervisory authority over the staff **in the service of the Office**;

(g) subject to Article 11, he shall appoint the employees and decide on their promotion;

**(g)** subject to Article 11, he shall appoint the employees **of the Office** and decide on their promotion;

(h) he shall exercise disciplinary authority over the employees other than those referred to in Article 11, and may propose disciplinary action to the Administrative Council with regard to employees referred to in Article 11, paragraphs 2 and 3;

**(h)** he shall exercise disciplinary authority over the employees **in the service of the Office** other than those referred to in Article 11, and may propose disciplinary action to the Administrative Council with regard to **the** employees referred to in Article 11, **paragraph 2**;

(i) he may delegate his functions and powers.

**(i)** he may delegate his functions and powers.

(3) The President shall be assisted by a number of Vice-Presidents. If the President is absent or indisposed, one of the Vice-Presidents shall take his place in accordance with the procedure laid down by the Administrative Council.

**(3)** The President **of the Office** shall be assisted by a number of Vice-Presidents. If **he** is absent or indisposed, one of the Vice-Presidents shall take his place in accordance with the procedure laid down by the Administrative Council.

## ARTICLE 11 EPC

### Explanatory notes

1. **Article 11(3) EPC 2000** governs the appointment of chairmen and members of the Boards of Appeal and the Enlarged Board. The provision is deleted, as the subject-matter is covered by the proposed Article 21f(1) to (3) EPC.
2. With the deletion of the previous paragraph, Article 11(4) EPC 2000 becomes **Article 11(3) EPC**.
3. **Article 11(5) EPC 2000**, concerning the appointment of external members of the Enlarged Board of Appeal, is deleted, as these appointments are governed by the proposed new Article 21f (4) EPC.

**Present wording****Revised wording****Article 11****Article 11****Appointment of senior employees****Appointment of senior employees**

(1) The President of the European Patent Office shall be appointed by the Administrative Council.

(1) The President of the **Office** shall be appointed by the Administrative Council.

(2) The Vice-Presidents shall be appointed by the Administrative Council after the President of the European Patent Office has been consulted.

(2) The Vice-Presidents shall be appointed by the Administrative Council after the President of the **Office** has been consulted.

(3) The members, including the Chairmen, of the Boards of Appeal and of the Enlarged Board of Appeal shall be appointed by the Administrative Council on a proposal from the President of the European Patent Office. They may be re-appointed by the Administrative Council after the President of the European Patent Office has been consulted.

*deleted*

(4) The Administrative Council shall exercise disciplinary authority over the employees referred to in paragraphs 1 to 3.

**(3)** The Administrative Council shall exercise disciplinary authority over the employees referred to in paragraphs 1 and 2.

(5) The Administrative Council, after consulting the President of the European Patent Office, may also appoint as members of the Enlarged Board of Appeal legally qualified members of the national courts or quasi-judicial authorities of the Contracting States, who may continue their judicial activities at the national level. They shall be appointed for a term of three years and may be reappointed.

*deleted*

## **ARTICLE 12 EPC**

### **Explanatory notes**

The provision is deleted. See the explanatory notes on the new Article 8a.



**Present wording**

**Article 12**  
**Duties of office**

...

**Revised wording**

**Article 12**  
*deleted - substance moved to Article 8a.*

## **ARTICLE 13 EPC**

### **Explanatory notes**

The provision is deleted. See the explanatory notes on the new Article 9a

**Present wording**

**Article 13**

**Disputes between the Organisation  
and the employees of the  
European Patent Office**

...

**Revised wording**

**Article 13**

*deleted - substance moved to Article 9a.*

## **ARTICLE 14 EPC**

### **Explanatory notes**

The provision is deleted. See the explanatory notes on the new Article 7a.

**Present wording**

**Article 14**

**Languages of the European Patent  
Office, European patent applications  
and other documents**

...

**Revised wording**

**Article 14**

*deleted - substance moved to Article 7a.*

## **ARTICLE 15 EPC**

### **Explanatory notes**

The deletion in **Article 15(f) and (g) EPC 2000** of the reference to the Boards of Appeal and the Enlarged Board of Appeal is a direct consequence of the creation of the European Court of Patent Appeals as a third organ of the Organisation, separate from the European Patent Office.

**Present wording****Article 15****Departments entrusted with the procedure**

To carry out the procedures laid down in this Convention, the following shall be set up within the European Patent Office:

- (a) a Receiving Section;
- (b) Search Divisions;
- (c) Examining Divisions;
- (d) Opposition Divisions;
- (e) a Legal Division;
- (f) Boards of Appeal;
- (g) an Enlarged Board of Appeal.

**Revised wording****Article 15****Departments entrusted with the procedure**

[...] The following shall be set up within the **Office**:

- (a) a Receiving Section;
- (b) Search Divisions;
- (c) Examining Divisions;
- (d) Opposition Divisions;
- (e) a Legal Division.
- (f) *deleted*
- (g) *deleted*

## **ARTICLE 16 EPC**

### **Explanatory notes**

The provision remains unchanged.



**Present wording**

**Revised wording**

**Article 16**  
**Receiving Section**

*Unchanged*

The Receiving Section shall be responsible for the examination on filing and the examination as to formal requirements of European patent applications.

## **ARTICLE 17 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording**

**Revised wording**

**Article 17**  
**Search Divisions**

*Unchanged*

The Search Divisions shall be responsible for drawing up European search reports.

## **ARTICLE 18 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 18**  
**Examining Divisions***Unchanged*

(1) The Examining Divisions shall be responsible for the examination of European patent applications.

(2) An Examining Division shall consist of three technically qualified examiners. However, before a decision is taken on a European patent application, its examination shall, as a general rule, be entrusted to one member of the Examining Division. Oral proceedings shall be before the Examining Division itself. If the Examining Division considers that the nature of the decision so requires, it shall be enlarged by the addition of a legally qualified examiner. In the event of parity of votes, the vote of the Chairman of the Examining Division shall be decisive.

## **ARTICLE 19 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 19**  
**Opposition Divisions***Unchanged*

(1) The Opposition Divisions shall be responsible for the examination of oppositions against any European patent.

(2) An Opposition Division shall consist of three technically qualified examiners, at least two of whom shall not have taken part in the proceedings for grant of the patent to which the opposition relates. An examiner who has taken part in the proceedings for the grant of the European patent may not be the Chairman. Before a decision is taken on the opposition, the Opposition Division may entrust the examination of the opposition to one of its members. Oral proceedings shall be before the Opposition Division itself. If the Opposition Division considers that the nature of the decision so requires, it shall be enlarged by the addition of a legally qualified examiner who shall not have taken part in the proceedings for grant of the patent. In the event of parity of votes, the vote of the Chairman of the Opposition Division shall be decisive.

## **ARTICLE 20 EPC**

### **Explanatory notes**

The provision remains unchanged.



**Present wording**

**Revised wording**

**Article 20**  
**Legal Division**

*Unchanged*

(1) The Legal Division shall be responsible for decisions in respect of entries in the Register of European Patents and in respect of registration on, and deletion from, the list of professional representatives.

(2) Decisions of the Legal Division shall be taken by one legally qualified member.

## **ARTICLE 20a EPC**

### **Explanatory notes**

1. The previous Article 25 EPC 2000, concerning technical opinions, logically belongs in Chapter III, which deals with the European Patent Office. The substance of the provision is therefore transferred to the **new Article 20a EPC** at the end of that Chapter.
2. The wording is amended to incorporate the definition in the new Article 4(2)(a) EPC.

**Present wording****Article 25****Technical opinion**

At the request of the competent national court hearing an infringement or revocation action, the European Patent Office shall be obliged, on payment of an appropriate fee, to give a technical opinion concerning the European patent which is the subject of the action. The Examining Division shall be responsible for issuing such opinions.

**Revised wording****Article 20a****Technical opinion**

At the request of the competent national court hearing an infringement or revocation action, the **Office** shall be obliged, on payment of an appropriate fee, to give a technical opinion concerning the European patent which is the subject of the action. The Examining Division shall be responsible for issuing such opinions.

## NEW CHAPTER IIIa

### Explanatory notes

With the advent of autonomy, the Appeal Chambers will become the third organ of the European Patent Organisation, on a par with the European Patent Office and the Administrative Council. A new **Chapter IIIa**, headed "**The European Court of Patent Appeals**", is therefore to be inserted between the Chapters in Part I of the EPC (General and institutional provisions) dealing with the two previously existing organs.

### ARTICLE 21 EPC - The Court of Appeals

1. The proposed **Article 21 EPC** identifies the departments of the European Court of Patent Appeals which are to be responsible for issuing decisions, ie the Appeal Chambers and the High Chamber. The provision also mentions the Presidium, defined in the proposed Article 21c(1) EPC as an "autonomous authority of the Court of Appeals", and the Registry, which has a key function in any court.
2. According to the proposed **Article 21(1)(a) and (b) EPC**, appeals under the EPC are to be heard by the Appeal Chambers and the High Chamber. Their duties and composition are laid down in the new Article 21a EPC (corresponds to Article 21 EPC 2000) and Article 21b EPC (corresponds to Article 22 EPC 2000). The legal position under the EPC 2000 remains unchanged.
3. The Presidium of the Court of Appeals under the proposed **Article 21(1)(c) EPC** is already mentioned in the Implementing Regulations to the EPC (Rule 10 EPC 2000). However, since the Court of Appeals requires a fully transparent structure, and in view of the Presidium's importance in judicial administration, there is every justification for anchoring this body at the level of the Convention. The core tasks of the Presidium are identified in the proposed Article 21c EPC.
4. The Registry of the Chambers is anchored at the level of the Convention in the proposed **Article 21(2) EPC**. The nature of its tasks is indicated in the new Article 21d EPC.

**Present wording**

**Revised wording**

**Chapter IIIa**

**The European Court of Patent Appeals**

**Article 21**

**The Court of Appeals**

**(1) The following shall be set up within the Court of Appeals:**

**(a) Appeal Chambers;**

**(b) a High Chamber;**

**(c) a Presidium.**

**(2) The Court of Appeals shall have a Registry.**

## **NEW ARTICLE 21a EPC**

### **Explanatory notes**

The proposed new Article 21a EPC contains definitions of terms used in the provisions concerning the Court of Appeals.

**Present wording****Revised wording****Article 21a  
Definitions of terms**

**For the purposes of this Convention,**

**(a) a "judge of the Court of Appeals" shall be a person appointed as such under Article 21g, paragraph 1, second sentence, or Article 21g, paragraph 2;**

**(b) a "presiding judge" shall be a judge of the Court of Appeals appointed as presiding judge of an Appeal Chamber under Article 21g, paragraph 2;**

**(c) references to "judges of the Court of Appeals" shall apply to all persons appointed under Article 21g, paragraph 2, except where an express distinction is drawn between presiding judges and judges of the Court of Appeals, and shall also apply to the President of the Court of Appeals;**

**(d) references to "members of the High Chamber" shall apply to the members appointed under Article 21g, paragraphs 2 and 4.**

## NEW ARTICLE 21b EPC

### Explanatory notes

1. The **new Article 21b EPC** incorporates the substance of the previous Article 21 EPC 2000, with a slight change of wording (English version only) to introduce the new term "Appeal Chamber". As befits their function, the members of the Boards of Appeal are now to be known as "judges".
2. The term "**judges of the Court of Appeals**" applies to the persons appointed under the proposed Article 21g(1) and (2) EPC. Judges of the Court of Appeals can be "**members of the High Chamber**" by appointment under the proposed Article 21g(3) EPC. "External" members of the High Chamber appointed under the proposed Article 21g(4) EPC are not judges of the Court of Appeals, but are covered by the term "**member of the High Chamber**".



**Present wording****Article 21****Boards of Appeal**

(1) The Boards of Appeal shall be responsible for the examination of appeals from the decisions of the Receiving Section, the Examining Divisions and Opposition Divisions, and the Legal Division.

(2) For appeals from a decision of the Receiving Section or the Legal Division, a Board of Appeal shall consist of three legally qualified members.

(3) For appeals from a decision of an Examining Division, a Board of Appeal shall consist of:

(a) two technically qualified members and one legally qualified member, when the decision concerns the refusal of a European patent application or the grant, limitation or revocation of a European patent and was taken by an Examining Division consisting of less than four members;

(b) three technically qualified members and two legally qualified members, when the decision was taken by an Examining Division consisting of four members or when the Board of Appeal considers that the nature of the appeal so requires;

(c) three legally qualified members in all other cases.

**Revised wording****Article 21b****Tasks and composition of the Appeal Chambers**

(1) **The Appeal Chambers** shall be responsible for the examination of appeals from the decisions of the Receiving Section, the Examining Divisions and Opposition Divisions, and the Legal Division.

(2) For appeals from a decision of the Receiving Section or the Legal Division, **an Appeal Chamber** shall consist of three legally qualified **judges of the Court of Appeals**.

(3) For appeals from a decision of an Examining Division, **an Appeal Chamber** shall consist of:

(a) two technically qualified **judges of the Court of Appeals** and one legally qualified **judge of the Court of Appeals**, when the decision concerns the refusal of a European patent application or the grant, limitation or revocation of a European patent and was taken by an Examining Division consisting of less than four members;

(b) three technically qualified **judges of the Court of Appeals** and two legally qualified **judges of the Court of Appeals**, when the decision was taken by an Examining Division consisting of four members or when **the Appeal Chamber** considers that the nature of the appeal so requires;

(c) three legally qualified **judges of the Court of Appeals** in all other cases.



**Present wording**

(4) For appeals from a decision of an Opposition Division, a Board of Appeal shall consist of:

(a) two technically qualified members and one legally qualified member, when the decision was taken by an Opposition Division consisting of three members;

(b) three technically qualified members and two legally qualified members, when the decision was taken by an Opposition Division consisting of four members or when the Board of Appeal considers that the nature of the appeal so requires.

**Revised wording**

(4) For appeals from a decision of an Opposition Division, an **Appeal Chamber** shall consist of:

(a) two technically qualified **judges of the Court of Appeals** and one legally qualified **judge of the Court of Appeals**, when the decision was taken by an Opposition Division consisting of three members;

(b) three technically qualified **judges of the Court of Appeals** and two legally qualified **judges of the Court of Appeals**, when the decision was taken by an Opposition Division consisting of four members or when the **Appeal Chamber** considers that the nature of the appeal so requires.

## **NEW ARTICLE 21c EPC**

### **Explanatory notes**

1. The **new Article 21c(1) EPC** deals with those responsibilities of the High Chamber with regard to appeal proceedings which correspond to the duties of the Enlarged Board of Appeal under Article 22(1) EPC 2000. The previous term "Enlarged Board of Appeal" is replaced by "High Chamber".
2. Apart from the change of terminology, the **new Article 21c(2) EPC** corresponds to Article 22(2) EPC 2000. It governs the composition of the High Chamber in the proceedings specified in paragraph 1.

**Present wording****Article 22****Enlarged Board of Appeal**

(1) The Enlarged Board of Appeal shall be responsible for:

(a) deciding points of law referred to it by Boards of Appeal;

(b) giving opinions on points of law referred to it by the President of the European Patent Office under Article 112;

(c) deciding on petitions for review of decisions of the Boards of Appeal under Article 112a.

(2) In proceedings under paragraph 1(a) and (b), the Enlarged Board of Appeal shall consist of five legally qualified and two technically qualified members. In proceedings under paragraph 1(c), the Enlarged Board of Appeal shall consist of three or five members as laid down in the Implementing Regulations. In all proceedings a legally qualified member shall be the Chairman.

**Revised wording****Article 21c****High Chamber**

(1) The **High Chamber** shall be responsible for:

(a) deciding on points of law referred to it by **an Appeal Chamber** under Article 112;

(b) giving opinions on points of law referred to it by the President of the **Office** under Article 112;

(c) deciding on petitions for review of decisions of the **Appeal Chambers** under Article 112a.

(2) In proceedings under paragraph 1(a) and (b), the **High Chamber** shall consist of five legally and two technically qualified members. In proceedings under paragraph 1(c), the **High Chamber** shall consist of three or five members as laid down in the Implementing Regulations. In all proceedings, a legally qualified member shall be the Chairman.

3. The **new Article 21c(3) EPC** identifies further responsibilities of the High Chamber, apart from its duties in connection with the appeals procedure, which at present – with the exception of removal from office, which is already covered by the EPC – are only specified in the Implementing Regulations to the EPC.
4. **Article 21c(3)(a) EPC:** The responsibility of the High Chamber for adopting its rules of procedure is currently laid down in Rule 11 EPC and is now to be incorporated in the Convention itself. As under Article 23(4) EPC, the rules of procedure require the approval of the Administrative Council.
5. **Article 21c(3)(b) EPC** anchors the responsibility for adopting the business distribution scheme for the High Chamber - currently governed by Rule 11 EPC - at the level of the Convention. The adoption of the business distribution scheme comprises the designation of the regular and alternate members of the High Chamber and the laying down of rules on the Chamber's composition, in particular on the participation of the alternate members and the members appointed under Article 21g(4) EPC.
6. **Article 21c(3)(c) EPC:** This provision concerns proposals for removing judges of the Court of Appeals from office if he is unfit to discharge his duties for reasons of behaviour or incapacity (proposed Article 23(4) EPC).
7. **Article 21c(4) EPC** governs the composition of the High Chamber in the matters referred to in paragraph 3. Under the proposed **Article 21c(4)(b), second sentence, EPC**, the Presidium is responsible for laying down rules governing the composition of the High Chamber for proceedings under the new Article 23(4) EPC to remove a judge of the Court of Appeals from office.

**Present wording**

**Revised wording**

**(3) The High Chamber shall be further responsible for**

**(a) the adoption of its Rules of Procedure, which shall be subject to the approval of the Administrative Council;**

**(b) the adoption of the business distribution scheme for proceedings under paragraph 1;**

**(c) proposals under Article 23, paragraph 4.**

**(4) The High Chamber shall be composed of**

**(a) its Chairman and the members appointed under Article 21g, paragraph 3, in the matters referred to in paragraph 3(a) and (b);**





**Present wording****Revised wording**

**(b) nine members, including members appointed under Article 21g, paragraph 4, in the matters referred to in paragraph 3(c). The members of the High Chamber in the matters referred to in paragraph 3(c) shall be designated by the Presidium of the Court of Appeals, in accordance with rules laid down by that body.**

## NEW ARTICLE 21d EPC

### Explanatory notes

1. The **new Article 21d(1) EPC** adopts, *mutatis mutandis*, the current definition under Rule 10(1) EPC of the Presidium as an "autonomous authority" of the Court of Appeals. As under the present Rule 10 EPC, the members of the Presidium will be elected by the judges of the Court of Appeals, in accordance with the Implementing Regulations. Given the key importance of the Presidium's task of adopting the business distribution scheme, it is essential to ensure that a fully functioning Presidium is actually in existence each year. This is to be done by providing in the Implementing Regulations that all judges of the Court who are entitled to vote must do so and that all judges eligible to serve on the Presidium must accept their appointment if they are elected.
2. The proposed **Article 21d(2)(a) to (c) EPC** identifies key tasks of the Presidium. The Rules of Procedure of the Appeal Chambers, adopted by the Presidium, remain subject – as under the current Article 23(4) EPC – to the approval of the Administrative Council.
3. The adoption of the business distribution scheme under the proposed Article 21d(2)(b) EPC comprises: distributing tasks by IPC class among the Chambers; determining the judges of the Court regularly assigned to the individual Chambers, and their alternates; laying down rules on composition.
4. The proposed **Article 21d(2)(d) EPC** refers to the further tasks assigned to the Presidium elsewhere in the EPC, ie
  - the responsibility under the proposed Article 21c(4)(b), second sentence, EPC, for determining the composition of the High Chamber in proceedings to remove a judge of the Court from office;
  - laying down the procedure and composition of the selection committee for judges and presiding judges of the Court of Appeals (proposed Article 21g(2), second sentence, EPC);
  - laying down the procedure for deputising for the President of the Court of Appeals (proposed Article 21f(3) EPC);
  - nominating the judges participating in the selection procedure for a new President of the Court of Appeals (proposed Article 21g(1), last sentence, EPC);
  - preparing proposals for appointments to the High Chamber and setting up a selection committee (proposed Article 21g(3) EPC), and laying down rules determining its composition and the procedure to be applied;
  - laying down rules for the composition of the disciplinary committee (proposed Article 21g(5) EPC).

**Present wording****Revised wording****Article 21d****The Presidium of the Court of Appeals**

**(1) The Presidium of the Court of Appeals shall function as an autonomous authority of the Court of Appeals. It shall be composed of the President of the Court of Appeals and at least three presiding judges and at least three judges of the Court of Appeals, who shall be elected by the judges of the Court of Appeals, in accordance with the Implementing Regulations.**

**(2) The Presidium of the Court of Appeals shall**

**(a) adopt the Rules of Procedure of the Appeal Chambers, which shall be subject to the approval of the Administrative Council;**

**(b) adopt the business distribution scheme of the Appeal Chambers; for this purpose, the Presidium shall include the other presiding judges as well as its members under paragraph 1, second sentence;**

**(c) advise the President of the Court of Appeals;**

**(d) carry out any other tasks assigned to it by this Convention or any provisions adopted in accordance with this Convention.**

5. The proposed Article 21d(2)(d) EPC also makes it possible to assign further tasks to the Presidium via secondary legislation.
6. Under the proposed **Article 21d(3) EPC**, the President of the Court of Appeals is obliged to consult the Presidium on the draft budget and with regard to matters concerning the functioning of the Court of Appeals **in general**. The latter item also covers legislative proposals concerning the Court of Appeals which come within the competence of the Administrative Council, but not decisions concerning individual cases.

**Present wording**

**Revised wording**

**(3) The President of the Court of Appeals shall consult the Presidium, *inter alia*,**

**(a) on the draft budget before submitting it to the Administrative Council, and**

**(b) with regard to any other matters concerning the functioning of the Court of Appeals in general.**

## **NEW ARTICLE 21e EPC**

### **Explanatory notes**

Because of its direct involvement in proceedings, the registry has an important position in all court organisations (providing administrative support to the court, preparing and carrying out procedural steps, and handling contacts with parties and representatives). Therefore, in the interests of transparency, the Registry is explicitly mentioned in the EPC.

**Present wording**

**Revised wording**

**Article 21e**

**The Registry**

**The Registry shall assist the Court of Appeals in carrying out its tasks and shall fulfil the functions assigned to it by the Implementing Regulations and the Rules of Procedure of the High Chamber and the Appeal Chambers.**

## NEW ARTICLE 21f EPC

### Explanatory notes

1. The **new Article 21f EPC** is a mirror image of the proposed Article 10 EPC, concerning the management of the European Patent Office. With the necessary modifications, it defines the tasks and responsibilities of the President of the Court of Appeals.
2. **Article 21f(1) EPC** corresponds to the proposed Article 10(1) EPC, but expressly states that "management" concerns administrative matters. This, with the qualifying reference to judicial independence, is designed to dispel any suggestion that the President of the Court of Appeals might interfere in the judicial activities of the Appeal Boards.

The President of the Court of Appeals, like the President of the Office, is responsible to the Administrative Council for the management of his department, and therefore also for the work of the Court of Appeals (except with regard to the substantive aspect of cases before the Chambers and those matters which he is not authorised to decide on his own).

3. **Article 21f(2)(a) EPC** corresponds to the proposed Article 10(2)(a) EPC.
4. Under Article 5(3) EPC 2000, the representation of the European Patent Organisation as a subject of international law is the responsibility of the President of the Office. This includes matters relating to the Court of Appeals - most importantly, the performance of its duties as a public institution, but also private legal transactions. Under the proposed **Article 21f(2)(b) EPC**, the President of the Court of Appeals will also have the power to conclude legal transactions concerning the Court: for example, purchasing office supplies or furniture. The limitation to transactions concerning the Court of Appeals follows from the proposed Article 21f(1) EPC, which confines the management responsibilities of the Court's President to the Court itself. Obviously, such transactions are also bound by the Court budget approved by the Administrative Council.



**Present wording**

**Revised wording**

**Article 21f**

**Management of the Court of Appeals**

**(1) Subject to judicial independence, the Court of Appeals shall be managed in all administrative matters by its President, who shall be responsible to the Administrative Council.**

**(2) To this end, the President of the Court of Appeals shall have in particular the following functions and powers:**

**(a) he shall take all necessary steps to ensure the functioning of the Court of Appeals, including the adoption of internal administrative instructions and information to the public;**

**(b) he shall have the power to conclude contracts concerning the Court of Appeals on behalf of the Organisation;**

5. **Article 21f(2)(c) EPC** corresponds to Article 10(2)(c) EPC 2000, concerning the similar powers of the President of the Office. The right of proposal conferred on the President of the Court of Appeals is limited to matters concerning the Court, but this can include proposals for amendment of the EPC in areas relevant to the Court's activities.
6. **Article 21f(2)(d) EPC**: The Court of Appeals will have its own budget as part of the overall budget for the European Patent Organisation. Budget preparation and implementation will be the responsibility of the President of the Court. For the corresponding provision relating to the Office budget, see the proposed Article 10(2)(e) EPC.
7. **Article 21f(2)(e) EPC** is a mirror image, with reference to the Court of Appeals, of the proposed Article 10(2)(e) EPC.
8. **Article 21f(2)(f) EPC**: This provision is analogous to the proposed Article 10(2)(f) EPC, concerning the supervisory authority of the President of the Office over the Office staff. Similarly, the President of the Court of Appeals exercises supervisory authority over the employees of the Court, although the reservation in Article 23 EPC makes it clear that this right does not extend to the Court's adjudicative activities as such.
9. **Article 21f(2)(g) EPC**: As a consequence of organisational autonomy, the employees of the Court of Appeals are to be appointed by its President. However, as indicated by the reference to the new Article 21g EPC, this does not apply to the judges and presiding judges of the Court of Appeals, who are to be appointed by the Administrative Council.
10. **Article 21f(2)(h) EPC**: Like the President of the Office, the President of the Court of Appeals is to exercise disciplinary authority over the employees appointed by him. This provision only concerns the Court's support staff, and not the judges, who are appointed by the Administrative Council and covered by different arrangements (see the explanatory notes on the proposed Article 21g(5) EPC). Despite the shift of administrative responsibility, the disciplinary procedure is to remain unchanged.
11. **Article 21f(2)(i) EPC**: The President of the Court of Appeals, like the President of the Office, may delegate his functions and powers.

**Present wording****Revised wording**

(c) he may submit to the Administrative Council any proposal concerning the Court of Appeals for amending the Convention, for general regulations, or for decisions concerning the Court of Appeals which come within the competence of the Administrative Council;

(d) he shall prepare and implement the budget, including any amending or supplementary budget, of the Court of Appeals;

(e) he shall submit a management report to the Administrative Council each year;

(f) subject to Article 23, he shall exercise supervisory authority over the staff in the service of the Court of Appeals;

(g) subject to Article 21g, he shall appoint the employees in the service of the Court of Appeals and decide on their promotion;

(h) he shall exercise disciplinary authority over the employees appointed by him;

(i) he may delegate his functions and powers.

(3) If the President of the Court of Appeals is absent or indisposed, one of the judges of the Court of Appeals shall take his place, in accordance with the procedure laid down by the Presidium of the Court of Appeals.

12. In view of the size of the Court of Appeals (with a current staff of less than 200), there is no need to provide for its President, like the President of the Office, to be assisted by Vice-Presidents. However, the Presidium will be expected to devise an arrangement to deputise for the President of the Court of Appeals if he is absent or indisposed. This could be done by a presiding judge or possibly by the Chairman of the High Chamber, but the Presidium could also provide for another judge to act as deputy.

**Present wording**

**Revised wording**

## NEW ARTICLE 21g EPC – ALTERNATIVE A

### Explanatory notes

1. The appointment of the President of the Court of Appeals (previously, the Vice-President responsible for the Boards of Appeal), and of the judges and presiding judges of the Court is governed by the **new Article 21g EPC** in the Chapter dealing with the European Court of Patent Appeals. Since the Appeal Chambers are to be autonomous, the previous position of this provision in the Convention (Article 11(3) EPC 2000 in the Chapter on the European Patent Office) is no longer appropriate.
2. The proposed **Article 21g(1) EPC** governs the appointment of the President of the Court of Appeals. Like the Vice-President responsible for the Boards of Appeal under the current system, he is to be appointed by the Administrative Council for a renewable term of five years. He is also to be appointed a judge of the Court of Appeals; this appointment will be an appointment for life (see the explanatory notes on the proposed Article 23 EPC). Obviously, this is unnecessary if he is already a judge of the Court of Appeals. Membership of an Appeal Chamber will integrate the President into the Court of Appeals and bolster his authority, internally as well as externally, and provide an institutional guarantee of his personal independence. If he is not re-appointed as President, he will remain a judge of the Court of Appeals, the latter appointment being permanent. His dual status will oblige him to remain mindful of the requirements of the Chambers as judicial bodies while exercising his administrative functions.
3. Where the President of the Court of Appeals is also to be appointed a judge of the Court, the procedure under the proposed Article 21g(2) EPC would normally be applied (appointment of judges on a proposal presented by the President of the Court of Appeals but prepared by an internal selection committee). However, in the case of the President's appointment, it seems inappropriate for the Administrative Council to be bound by a proposal prepared internally by the Court. On the other hand, it is necessary to ensure that the President of the Court possesses the qualifications required by the Court to exercise judicial functions, as well as being properly qualified to manage a court authority. The EPC should therefore provide for judges of the Court of Appeals, nominated by the Presidium, to participate in the selection of the Court's President.

**Present wording**

**Revised wording**

**Article 21g**  
*(alternative A)*  
**Appointments**

**(1) The President of the Court of Appeals shall be appointed by the Administrative Council for a term of five years. He may be re-appointed. The Administrative Council shall, when appointing the President of the Court of Appeals, also appoint him as a judge of the Court of Appeals within the meaning of paragraph 2, second sentence, unless he is already appointed. Judges of the Court of Appeals, nominated by the Presidium of the Court of Appeals, shall participate in the selection procedure.**

4. According to the proposed **Article 21g(2) EPC** the judges and presiding judges of the Court of Appeals are to be appointed by the Administrative Council (as is the case with the members and chairmen of the existing Boards of Appeal). If the Appeal Chambers are separated from the Office and established as a third organ of the European Patent Organisation, the right of proposal for appointments has to be transferred from the President of the Office to the President of the Court of Appeals. His proposal will be drawn up by a committee, chaired by him and consisting of judges and presiding judges of the Court. The majority opinion of the committee will be binding on the President, who will nevertheless have the casting vote in the event of a tie. The Presidium of the Court of Appeals is to decide on the composition of the selection committee. It would be unwise to appoint the committee members too far in advance, eg on an annual basis, since the composition of the selection body should depend on the nature of the posts to be filled, and it is not always possible to anticipate which appointments need to be made over the course of a year. For example, a selection committee for a post in a chemistry Chamber should not be composed entirely of engineers, and it would be equally undesirable for the presiding judge of the relevant Chamber to be left out of the committee. Basing the composition of the committee on the requirements of a specific case would avoid such situations but involve more administrative effort. The best solution would probably be for the Presidium to lay down objective criteria for the composition of the committee in various cases.
5. Deviating from the present legal position, it is proposed that the judges of the Court of Appeals be appointed "for life". This means that their term of office would end if one of the conditions listed in the proposed Article 23(3) and (4) EPC were fulfilled. In all normal cases, that would happen under the proposed Article 23(3) EPC on reaching the age of retirement laid down in the Service Regulations, when they would also cease to be employees of the Organisation on active service. Before reaching this age limit, judges could resign at any time if they wished to take up other duties within the European Patent Organisation or to leave the service of the Organisation altogether.
6. Under the proposed **Article 21g(3) EPC** the Chairman of the High Chamber is to be appointed, as at present, by the Administrative Council, and must have a legal qualification (see the proposed Article 21c(2) EPC). If, in accordance with current practice, the President of the Court of Appeals is also to be appointed Chairman of the High Chamber, the appointment will not depend on a proposal from the judiciary. This will ensure that the Administrative Council remains free to appoint its preferred candidate for President of the Court of Appeals as Chairman of the High Chamber. However, if the Council wishes to appoint a person other than the President as Chairman of the High Chamber, it can only do so on a proposal from the Presidium.



**Present wording****Revised wording**

**(2) The judges of the Court of Appeals, including the presiding judges, shall be appointed for life, subject to Article 23, paragraphs 3 and 4. Such appointments shall be made by the Administrative Council, on a proposal from the President of the Court of Appeals. Any proposal for appointment shall be drawn up by a selection committee consisting of judges of the Court of Appeals and the President of the Court of Appeals, who shall chair the committee. The procedure and the composition of the committee shall be laid down by the Presidium of the Court of Appeals.**

**(3) The Chairman of the High Chamber, who shall be a legally qualified judge of the Court of Appeals, and the members of the High Chamber shall be appointed by the Administrative Council for a term of five years; they may be re-appointed. Unless the President of the Court of Appeals is also appointed as Chairman of the High Chamber, the latter shall be appointed on a proposal from the Presidium of the Court of Appeals. The members of the High Chamber shall be appointed, on a proposal from the President of the Court of Appeals, from among the judges of the Court of Appeals. Any such proposal shall be drawn up by a selection committee composed of judges of the Court of Appeals and chaired by the President of the Court of Appeals. Paragraph 2, fourth sentence, shall apply *mutatis mutandis*.**

In this case, the tasks involved are of a purely judicial nature, so that the application of the procedure for other such appointments appears justified.

7. As at present, the members of the High Chamber are to be appointed by the Administrative Council from among the judges and presiding judges of the Court of Appeals. However, instead of emanating from the President of the Office, proposals for appointment are to be made by the President of the Court of Appeals. The proposal is to be prepared by a selection committee.

Whereas the judges of the Court of Appeals are to be appointed for life, the members of the High Chamber, and its Chairman, will be appointed for a term of five years, which will be renewable. This is designed to ensure a degree of flexibility. The reasons for appointing judges on a lifetime basis (subject to Article 23(3) and (4) EPC) do not apply here to the same extent, since a member of the High Chamber whose appointment is not renewed remains a member of the Appeal Chambers and therefore does not forfeit his status as a judge.

8. The proposed **Article 21g(4) EPC** corresponds to Article 11(5) EPC 2000, with the difference that the Chairman of the High Chamber is to be consulted instead of the President.
9. Under the proposed **Article 21g(5) EPC**, disciplinary authority over the President of the Court of Appeals is to be exercised by the Administrative Council. This reflects the current legal position in respect of the Vice-President responsible for the Boards of Appeal. The same applies to judges and presiding judges of the Appeal Chambers and to the Chairman and members of the High Chamber (except for its "external" members under the proposed Article 21g(4) EPC). Because of the separation of the Court of Appeals from the Office, the latter's President no longer has the right of proposal provided under the existing Article 10(2)(h) EPC.
10. Under the proposed Article 21g(5) EPC, disciplinary measures against a judge or presiding judge of the Court of Appeals may only be taken on a proposal from a disciplinary committee consisting of judges – this can also include "external" members of the High Chamber appointed under the proposed Article 21g(4). Rules determining the composition of the disciplinary committee are to be laid down by the Presidium.

**Present wording**

**Revised wording**

**(4) The Administrative Council, after consulting the Chairman of the High Chamber, may also appoint as members of the High Chamber legally qualified members of the national courts or quasi-judicial authorities of the Contracting States, who may continue their judicial activities at the national level. They shall be appointed for a term of three years and may be re-appointed.**

**(5) The Administrative Council shall exercise disciplinary authority over the persons referred to in paragraphs 1 to 3, on a proposal from a disciplinary committee, composed of judges of the Court of Appeals and members of the High Chamber appointed under Article 21g, paragraph 4; the members of the disciplinary committee shall be designated by the Presidium of the Court of Appeals in accordance with rules laid down by that body. Proposals of the disciplinary committee shall require a three-quarters majority. The Administrative Council may not increase the proposed sanction. The Administrative Council shall lay down the rules governing the procedure in disciplinary matters.**

11. The proceedings before the disciplinary committee must have a proper judicial form. The details are to be settled by secondary legislation to be enacted by the Administrative Council. The proceedings shall be based on a proposal from the disciplinary committee as to whether disciplinary action is necessary, and if so, what form it should take. The President or the Presidium of the Court of Appeals would be authorised to initiate disciplinary proceedings. A proposal from the committee to take disciplinary action shall require a qualified majority within the committee. In cases where the Administrative Council rejects the committee's proposal, it shall only be allowed to impose a lesser penalty or waive the penalty, but not to increase it. Also the decision of the Administrative Council shall require a three-quarters majority (cf. proposed amendment to Article 35(2) EPC 2000).
12. There is no need to make a separate arrangement for the members of the High Chamber, since the "internal" members will all be judges or presiding judges of the Court of Appeals and therefore already covered by the relevant disciplinary rules, and the "external" members will not be subject to the disciplinary authority of the Administrative Council.
13. Since the President of the Court of Appeals can hardly be expected to take disciplinary action against himself, it would be up to the Chairman of the Administrative Council to initiate such proceedings if necessary. A further consideration is that the President will also be a judge of the Court of Appeals and could in addition be Chairman of the High Chamber. It will therefore be necessary to determine whether his alleged misconduct is connected with the exercise of his judicial functions. If so, the Administrative Council can only take disciplinary action on a proposal from the above-mentioned disciplinary committee. If not, a different situation arises, for which the Administrative Council should establish a special procedure.

**Present wording**

**Revised wording**

## **NEW ARTICLE 21g - ALTERNATIVE B**

### **Explanatory notes**

1. **Alternative version B of the proposed new Article 21g EPC** provides for a system of re-appointment after five years.
2. The rule in **sentence 2 of the proposed alternative B for Article 21g(1) EPC** ensures that the President remains a judge of the Court of Appeals throughout his term as President, so that the connection between the two terms of office cannot be severed. Under Article 23(3), in conjunction with the provision of Article 21a that references to judges of the Court of Appeals also apply to the President of the Court, both terms of office will expire when the person concerned reaches the age of retirement.
3. Under **alternative version B of the proposed Article 21g(3), first sentence, EPC**, judges of the Court of Appeals would normally be re-appointed. The withholding of re-appointment would require a proposal to this effect by a committee of the Court of Appeals. Under **Article 21g(3), second sentence, EPC in the proposed alternative version B**, the Administrative Council may still re-appoint a judge of the Court of Appeals, notwithstanding the proposal from the committee of the Court. It is proposed that the three-quarters majority under Article 35(2) be required for such a decision (see also explanatory note 2 on the proposed Article 35 EPC).

**Present wording**

**Revised wording**

**Article 21g**  
*(alternative B)*  
**Appointments**

**(1) The President of the Court of Appeals shall be appointed by the Administrative Council for a term of five years. The Administrative Council shall at the same time appoint him as a judge of the Court of Appeals; if he is already appointed, his term of office as judge of the Court of Appeals shall be extended until the expiry of his term of office as President of the Court of Appeals. He may be re-appointed. Judges of the Court of Appeals, nominated by the Presidium of the Court of Appeals, shall participate in the selection procedure for the President of the Court of Appeals.**

**(2) The judges of the Court of Appeals, including the presiding judges, shall be appointed by the Administrative Council, on a proposal from the President of the Court of Appeals, for a term of five years. Any proposal for appointment shall be drawn up by a selection committee consisting of judges of the Court of Appeals and the President of the Court of Appeals, who shall chair the committee. The procedure and the composition of the committee shall be laid down by the Presidium of the Court of Appeals.**

**(3) A judge of the Court of Appeals or a presiding judge shall be re-appointed by the Administrative Council, unless a committee of the Court of Appeals proposes by a three-quarters majority that the re-appointment of a judge of the Court of Appeals be refused. The**





**Present wording**

**Revised wording**

**Administrative Council may grant re-appointment notwithstanding the committee's proposal. The committee referred to in sentence 1 shall consist of the President of the Court of Appeals and of judges of the Court of Appeals; the procedure and the composition of the committee shall be laid down by the Presidium of the Court of Appeals.**

*(4) - (6) see paragraphs 3 to 5 of alternative A.*

## **NEW ARTICLE 21h EPC**

### **Explanatory notes**

Organisational autonomy of the Boards of Appeal must not lead to a duplication of administrative structures (IT arrangements, salary administration, cash and accounts, etc), which would involve unnecessary costs and not make economic sense. Instead, the intention is to rely, as in the past, on the logistical resources of the European Patent Office. Such assistance would mainly be granted under administrative agreements between the Office and the Court administration. The proposed **Article 21h EPC** provides the basis for this.

**Present wording**

**Revised wording**

**Article 21h  
Co-operation between the Office and the  
Court of Appeals**

**The Office shall co-operate with the  
Court of Appeals in administrative  
matters and shall grant it technical  
support.**

## **ARTICLE 22 EPC**

### **Explanatory notes**

The provision is deleted. See the explanatory notes on the proposed Article 21b EPC.

**Present wording**

**Revised wording**

**Article 22**

**Enlarged Board of Appeal**

...

**Article 22**

*deleted - substance moved to Article 21b,  
paragraphs 1 and 2*

## ARTICLE 23 EPC

### Explanatory notes

1. The proposed Article 23(1) EPC is identical to Article 23(3) EPC 2000, except for the introduction of the phrase "judges of the Court of Appeals". The principle of adjudicative independence must of course also apply to the "external" members of the High Chamber appointed under the proposed Article 21g(4) EPC, who are not judges of the Court of Appeals.
2. A further requirement of independence is that the judges of the Court of Appeals do not belong to the departments whose decisions they are reviewing. The proposed **Article 23(2) EPC** endorses this principle, which is already enshrined in Article 23(2) EPC 2000. For technical reasons, a reference to the proposed Article 15 EPC is inserted, instead of enumerating the departments of first instance as in Article 23(2) EPC 2000. The new text also makes it clear that any function incompatible with the judge's status as such is ruled out.
3. To strengthen their personal independence, the judges of the Court of Appeals are no longer to be appointed for a renewable term of five years, but on a permanent basis (see the explanatory notes on the proposed Article 21g(2) EPC). The proposed **Article 23(3) and (4) EPC** specifies the circumstances under which a judge's term of office may end (Article 23(3) EPC) or which may justify a judge's removal from office by a decision of the Administrative Council (Article 23(4) EPC). The end of the judge's term of office, or his removal from office, will not involve dismissal and the loss of his status as a permanent employee. The conditions for dismissal are governed entirely by the Service Regulations, to which reference is made in the proposed Article 23(5) EPC.

The proposed Article 23(3) EPC corresponds to Article 23(1) EPC 2000.

**Present wording****Article 23****Independence of the members of the Boards**

(1) The members of the Enlarged Board of Appeal and of the Boards of Appeal shall be appointed for a term of five years and may not be removed from office during this term, except if there are serious grounds for such removal and if the Administrative Council, on a proposal from the Enlarged Board of Appeal, takes a decision to this effect. Notwithstanding sentence 1, the term of office of members of the Boards shall end if they resign or are retired in accordance with the Service Regulations for permanent employees of the European Patent Office.

(2) The members of the Boards may not be members of the Receiving Section, Examining Divisions, Opposition Divisions or Legal Division.

(3) In their decisions the members of the Boards shall not be bound by any instructions and shall comply only with the provisions of this Convention.

**Revised wording****Article 23****Independence of the judges of the Court of Appeals and the members of the High Chamber**

(1) In their decisions the **judges of the Court of Appeals and the members of the High Chamber** shall not be bound by any instructions and shall comply only with the provisions of this Convention.

**(2) A judge of the Court of Appeals may not exercise any function in a department of the Office referred in Article 15, or any other function incompatible with his status as a judge.**

**(3) The term of office of the judges of the Court of Appeals shall end only if they resign or are retired in accordance with the Service Regulations for permanent employees of the Organisation.**

4. The procedure for removal from office under the proposed **Article 23(4) EPC** must have a proper judicial form. The details are to be settled by secondary legislation to be enacted by the Administrative Council. Any proposal from the High Chamber to the Administrative Council recommending the removal of a judge from office shall require a qualified majority. Also the decision of the Administrative Council shall require a three-quarters majority (cf. proposed amendments to Article 35(2) EPC 2000). The formulation "for reasons of behaviour or incapacity he is unfit to discharge his duties" has its model in the "Basic Principles on the Independence of the Judiciary" adopted by the United Nations (No. 18).
5. A judge may only cease to exercise his appointed function for one of the reasons set out in the Convention. The prescribed procedures also have to be followed. These reasons and the corresponding procedures are governed by the proposed Article 23(3) and (4) EPC.

The ending of the judge's term of office has no impact on his status in terms of employment law, as he remains an employee of the Organisation. This idea is expressed in the proposed **Article 23(5) EPC**, making it plain that the status of a judge whose term of office has ended, or who has been removed from office, is governed by the Service Regulations.



**Present wording**

(4) The Rules of Procedure of the Boards of Appeal and the Enlarged Board of Appeal shall be adopted in accordance with the Implementing Regulations. They shall be subject to the approval of the Administrative Council.

**Revised wording**

**(4) The Administrative Council may, in accordance with a procedure laid down by the Administrative Council and on a proposal from a three-quarters majority of the High Chamber, remove a judge of the Court of Appeals from office only if for reasons of behaviour or incapacity he is unfit to discharge his duties.**

**(5) A judge of the Court of Appeals whose term of office has ended under paragraph 3, or who is removed from office under paragraph 4, shall remain an employee of the Organisation, subject to the Service Regulations.**

## **ARTICLE 24 EPC**

### **Explanatory notes**

**The proposed Article 24 EPC** is substantively unchanged vis-à-vis the EPC 2000; only minor editorial changes have been made to introduce the new terms "High Chamber" and "Appeal Chambers" (English version only) and the official title of "judge".

**Present wording****Article 24****Exclusion and objection**

(1) Members of the Boards of Appeal or of the Enlarged Board of Appeal may not take part in a case in which they have any personal interest, or if they have previously been involved as representatives of one of the parties, or if they participated in the decision under appeal.

(2) If, for one of the reasons mentioned in paragraph 1, or for any other reason, a member of a Board of Appeal or of the Enlarged Board of Appeal considers that he should not take part in any appeal, he shall inform the Board accordingly.

(3) Members of a Board of Appeal or of the Enlarged Board of Appeal may be objected to by any party for one of the reasons mentioned in paragraph 1, or if suspected of partiality. An objection shall not be admissible if, while being aware of a reason for objection, the party has taken a procedural step. An objection may not be based upon the nationality of members.

(4) The Boards of Appeal and the Enlarged Board of Appeal shall decide as to the action to be taken in the cases specified in paragraphs 2 and 3, without the participation of the member concerned. For the purposes of taking this decision the member objected to shall be replaced by his alternate.

**Revised wording****Article 24****Exclusion and objection**

(1) **Judges of the Court of Appeals** or members of the **High Chamber** may not take part in a case in which they have any personal interest, or if they have previously been involved as representatives of one of the parties, or if they participated in the decision under appeal.

(2) If, for one of the reasons mentioned in paragraph 1, or for any other reason, a **judge of the Court of Appeals** or a member of the **High Chamber** considers that he should not take part in any appeal, he shall inform the **Chamber** accordingly.

(3) **Judges of the Court of Appeals** or members of the **High Chamber** may be objected to by any party for one of the reasons mentioned in paragraph 1, or if suspected of partiality. An objection shall not be admissible if, while being aware of a reason for objection, the party has taken a procedural step. An objection may not be based upon the nationality of members.

(4) The **Appeal Chambers** and the **High Chamber** shall decide as to the action to be taken in the cases specified in paragraphs 2 and 3, without the participation of the **judge or** member concerned. For the purposes of taking this decision the **judge or** member objected to shall be replaced by his alternate.

## **ARTICLE 25 EPC**

### **Explanatory notes**

Provision deleted, substance moved to the new Article 20a EPC.

**Present wording**

**Revised wording**

**Article 25**

**Article 25**

**Technical opinion**

*deleted - substance moved to Article 20a*

...

## **ARTICLE 26 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Chapter IV***Unchanged***The Administrative Council****Article 26  
Membership**

(1) The Administrative Council shall be composed of the Representatives and the alternate Representatives of the Contracting States. Each Contracting State shall be entitled to appoint one Representative and one alternate Representative to the Administrative Council.

(2) The members of the Administrative Council may, in accordance with the Rules of Procedure of the Administrative Council, be assisted by advisers or experts.

Article 27

## **ARTICLE 27 EPC**

### **Explanatory notes**

The provision remains unchanged.



**Present wording****Revised wording****Article 27  
Chairmanship***Unchanged*

(1) The Administrative Council shall elect a Chairman and a Deputy Chairman from among the Representatives and alternate Representatives of the Contracting States. The Deputy Chairman shall ex officio replace the Chairman if he is prevented from carrying out his duties.

(2) The terms of office of the Chairman and the Deputy Chairman shall be three years. They may be re-elected.

## **ARTICLE 28 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 28***Unchanged***Board**

- (1) When there are at least eight Contracting States, the Administrative Council may set up a Board composed of five of its members.
- (2) The Chairman and the Deputy Chairman of the Administrative Council shall be members of the Board ex officio; the other three members shall be elected by the Administrative Council.
- (3) The term of office of the members elected by the Administrative Council shall be three years. They may not be re-elected.
- (4) The Board shall perform the duties assigned to it by the Administrative Council in accordance with the Rules of Procedure.

## **ARTICLE 29 EPC**

### **Explanatory notes**

The amendment to **Article 29(2) EPC 2000** is necessitated by the new structure of the Organisation and incorporates the definition in the new Article 4(2)(a) EPC.

**Present wording****Article 29****Meetings**

- (1) Meetings of the Administrative Council shall be convened by its Chairman.
- (2) The President of the European Patent Office shall take part in the deliberations of the Administrative Council.
- (3) The Administrative Council shall hold an ordinary meeting once each year. In addition, it shall meet on the initiative of its Chairman or at the request of one-third of the Contracting States.
- (4) The deliberations of the Administrative Council shall be based on an agenda, and shall be held in accordance with its Rules of Procedure.
- (5) The provisional agenda shall contain any question whose inclusion is requested by any Contracting State in accordance with the Rules of Procedure.

**Revised wording****Article 29****Meetings**

- (1) Meetings of the Administrative Council shall be convened by its Chairman.
- (2) The President of the **Office and the President of the Court of Appeals** shall take part in the deliberations of the Administrative Council.
- (3) The Administrative Council shall hold an ordinary meeting once each year. In addition, it shall meet on the initiative of its Chairman or at the request of one-third of the Contracting States.
- (4) The deliberations of the Administrative Council shall be based on an agenda, and shall be held in accordance with its Rules of Procedure.
- (5) The provisional agenda shall contain any question whose inclusion is requested by any Contracting State in accordance with the Rules of Procedure.

## **ARTICLE 30 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 30**  
**Attendance of observers***Unchanged*

(1) The World Intellectual Property Organization shall be represented at the meetings of the Administrative Council, in accordance with an agreement between the Organisation and the World Intellectual Property Organization.

(2) Other intergovernmental organisations entrusted with carrying out international procedures in the field of patents, with which the Organisation has concluded an agreement, shall be represented at the meetings of the Administrative Council, in accordance with such agreement.

(3) Any other intergovernmental and international non-governmental organisations carrying out an activity of interest to the Organisation may be invited by the Administrative Council to be represented at its meetings during any discussion of matters of mutual interest.

## **ARTICLE 31 EPC**

### **Explanatory notes**

The Article is deleted. The proposed Article 7a(1a) EPC renders Article 31(1) EPC 2000 redundant.



**Present wording**

**Revised wording**

**Article 31**

**Article 31**

**Languages of the Administrative  
Council**

**Languages of the Administrative  
Council**

(1) The languages used in the deliberations of the Administrative Council shall be English, French and German.

*deleted - see Article 7a(1a)*

(2) Documents submitted to the Administrative Council, and the minutes of its deliberations, shall be drawn up in the three languages specified in paragraph 1.

## **ARTICLE 32 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the new Article 4(2)(a) EPC.

**Present wording****Article 32**  
**Staff, premises and equipment**

The European Patent Office shall place at the disposal of the Administrative Council, and of any committee established by it, such staff, premises and equipment as may be necessary for the performance of their duties.

**Revised wording****Article 32**  
**Staff, premises and equipment**

The **Office** shall place at the disposal of the Administrative Council, and of any committee established by it, such staff, premises and equipment as may be necessary

## **ARTICLE 33 EPC**

### **Explanatory notes**

The amendment to **Article 33(2)(b) EPC 2000** is necessitated by the new structure of the Organisation.

**Present wording****Article 33****Competence of the Administrative Council in certain cases**

(1) The Administrative Council shall be competent to amend:

(a) the time limits laid down in this Convention;

(b) Parts II to VIII and Part X of this Convention, to bring them into line with an international treaty relating to patents or European Community legislation relating to patents;

(c) the Implementing Regulations.

**Revised wording****Article 33****Competence of the Administrative Council in certain cases**

(1) The Administrative Council shall be competent to amend:

(a) the time limits laid down in this Convention;

(b) Parts II to VIII and Part X of this Convention, to bring them into line with an international treaty relating to patents or European Community legislation relating to patents;

(c) the Implementing Regulations.



**Present wording**

(2) The Administrative Council shall be competent, in conformity with this Convention, to adopt or amend:

(a) the Financial Regulations;

(b) the Service Regulations for permanent employees and the conditions of employment of other employees of the European Patent Office, the salary scales of the said permanent and other employees, and also the nature of any supplementary benefits and the rules for granting them;

(c) the Pension Scheme Regulations and any appropriate increases in existing pensions to correspond to increases in salaries;

(d) the Rules relating to Fees;

(e) its Rules of Procedure.

(3) Notwithstanding Article 18, paragraph 2, the Administrative Council shall be competent to decide, in the light of experience, that in certain categories of cases Examining Divisions shall consist of one technically qualified examiner only. Such decision may be rescinded.

**Revised wording**

(2) The Administrative Council shall be competent, in conformity with this Convention, to adopt or amend:

(a) the Financial Regulations;

(b) the Service Regulations for permanent employees and the conditions of employment of other employees of the **Organisation**, the salary scales of the said permanent and other employees, and also the nature of any supplementary benefits and the rules for granting them;

(c) the Pension Scheme Regulations and any appropriate increases in existing pensions to correspond to increases in salaries;

(d) the Rules relating to Fees;

(e) its Rules of Procedure.

(3) Notwithstanding Article 18, paragraph 2, the Administrative Council shall be competent to decide, in the light of experience, that in certain categories of cases Examining Divisions shall consist of one technically qualified examiner only. Such decision may be rescinded.

## **Explanatory notes**

**Article 33(4) EPC:** The amendment incorporates the definition in the new Article 4(2)(a) EPC.



**Present wording**

(4) The Administrative Council shall be competent to authorise the President of the European Patent Office to negotiate and, subject to its approval, to conclude agreements on behalf of the European Patent Organisation with States, with intergovernmental organisations and with documentation centres set up on the basis of agreements with such organisations.

(5) The Administrative Council may not take a decision under paragraph 1(b):

- concerning an international treaty, before its entry into force;
- concerning European Community legislation, before its entry into force or, where that legislation lays down a period for its implementation, before the expiry of that period.

**Revised wording**

(4) The Administrative Council shall be competent to authorise the President of the **Office** to negotiate and, subject to its approval, to conclude agreements on behalf of the **Organisation** with States, with intergovernmental organisations and with documentation centres set up on the basis of agreements with such organisations.

(5) The Administrative Council may not take a decision under paragraph 1(b):

- concerning an international treaty, before its entry into force;
- concerning European Community legislation, before its entry into force or, where that legislation lays down a period for its implementation, before the expiry of that period.

## **ARTICLE 34 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording**

**Revised wording**

**Article 34  
Voting rights**

*Unchanged*

(1) The right to vote in the Administrative Council shall be restricted to the Contracting States.

(2) Each Contracting State shall have one vote, except where Article 36 applies.

## ARTICLE 35 EPC

### Explanatory notes

1. Under the proposed **Article 35(2) EPC** the following decisions of the Administrative Council will also require a qualified majority:
  - disciplinary measures against the President of the Court of Appeals or a judge of the Court of Appeals taken under the proposed Article 21f(5) EPC (as worded in alternative A); and
  - decisions on removal from office of a judge of the Court of Appeals under the proposed Article 23(4) EPC.
2. If **alternative B** is adopted for the **proposed Article 21g EPC**, Article 35(2) EPC would be worded as follows:

"(2) A majority of three-quarters of the votes of the Contracting States represented and voting shall be required for the decisions which the Administrative Council is empowered to take under Article 7, Article 11, paragraph 1, **Article 21g, paragraph 3, second sentence, and paragraph 6, Article 23, paragraph 4,** Article 33, paragraphs 1(a) and (c), and 2 to 4, Article 39, paragraph 1, Article 40, paragraphs 2 and 4, Article 46, Article 134a, Article 149a, paragraph 2, Article 152, Article 153, paragraph 7, Article 166 and Article 172."

**Present wording****Article 35**  
**Voting rules**

(1) The Administrative Council shall take its decisions, other than those referred to in paragraphs 2 and 3, by a simple majority of the Contracting States represented and voting.

(2) A majority of three-quarters of the votes of the Contracting States represented and voting shall be required for the decisions which the Administrative Council is empowered to take under Article 7, Article 11, paragraph 1, Article 33, paragraphs 1(a) and (c), and 2 to 4, Article 39, paragraph 1, Article 40, paragraphs 2 and 4, Article 46, Article 134a, Article 149a, paragraph 2, Article 152, Article 153, paragraph 7, Article 166 and Article 172.

(3) Unanimity of the Contracting States voting shall be required for the decisions which the Administrative Council is empowered to take under Article 33, paragraph 1(b). The Administrative Council shall take such decisions only if all the Contracting States are represented. A decision taken on the basis of Article 33, paragraph 1(b), shall not take effect if a Contracting State declares, within twelve months of the date of the decision, that it does not wish to be bound by that decision.

(4) Abstentions **shall** not be considered as votes.

**Revised wording****Article 35**  
**Voting rules**

(1) *Unchanged*

(2) A majority of three-quarters of the votes of the Contracting States represented and voting shall be required for the decisions which the Administrative Council is empowered to take under Article 7, Article 11, paragraph 1, **Article 21f, paragraph 5, Article 23, paragraph 4**, Article 33, paragraphs 1(a) and (c), and 2 to 4, Article 39, paragraph 1, Article 40, paragraphs 2 and 4, Article 46, Article 134a, Article 149a, paragraph 2, Article 152, Article 153, paragraph 7, Article 166 and Article 172.

(3) *Unchanged*

(4) *Unchanged*

## **ARTICLE 36 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 36  
Weighting of votes***Unchanged*

(1) In respect of the adoption or amendment of the Rules relating to Fees and, if the financial contribution to be made by the Contracting States would thereby be increased, the adoption of the budget of the Organisation and of any amending or supplementary budget, any Contracting State may require, following a first ballot in which each Contracting State shall have one vote, and whatever the result of this ballot, that a second ballot be taken immediately, in which votes shall be given to the States in accordance with paragraph 2. The decision shall be determined by the result of this second ballot.

(2) The number of votes that each Contracting State shall have in the second ballot shall be calculated as follows:

(a) the percentage obtained for each Contracting State in respect of the scale for the special financial contributions, pursuant to Article 40, paragraphs 3 and 4, shall be multiplied by the number of Contracting States and divided by five;

(b) the number of votes thus given shall be rounded upwards to the next whole number;

(c) five additional votes shall be added to this number;

(d) nevertheless, no Contracting State shall have more than 30 votes.

## **INTRODUCTORY NOTE ON THE FINANCIAL PROVISIONS**

1. The Court of Appeals and the Office are to co-operate in administrative matters (see the proposed new Article 21h EPC). This will not undermine the Appeal Chambers' independence, and will make it possible to use the Office's efficient infrastructure and minimise the cost of implementing autonomy. Areas such as automation, salary administration, Language Service, meeting rooms and treasury matters can be covered by agreements between the two bodies.
2. This approach will minimise the additional expenditure required to implement organisational autonomy. The overall cost for DG 3 will be around EUR 40m in 2003 and EUR 43m in 2004, with staff costs accounting for about EUR 28m in 2003 and EUR 30m in 2004 and the rest going proportionally on infrastructure costs and overheads. No more than five new posts are likely to be required, for preparation of the Court's budget, for bookkeeping and for IT support (one or two A-category posts, the remainder in category B), at a cost of EUR 600 000 to 700 000, including office infrastructure and overheads.
3. Once the date of the proposed EPC revision's entry into force is known, in the preparatory phase leading to autonomy (ie in five to ten years' time) costs will be incurred for adapting IT systems, setting up the new financial structures and preparing the requisite amendments to secondary legislation. Here too the costs should be fairly low, as some of this work can be integrated into the regular updating of tools and processes, or into the normal duties of Office lawyers. More costs – between EUR 200 000 and 300 000 – will arise from the adaptation of the bookkeeping system, including FIPS modification. Forms, headed notepaper and business cards can be replaced as a matter of course; the extra cost of this, and of other items such as official stamps and nameplates, is unlikely to exceed EUR 20 000.
4. Since the infrastructure costs and overheads of an independent DG 3 will be largely unchanged, the cost of implementing organisational autonomy of the boards of appeal will be less than one-thousandth of the European Patent Organisation's total budget.

## **ARTICLE 37 EPC**

### **Explanatory notes**

The provision remains unchanged.



**Present wording****Revised wording****Chapter V****Chapter V****Financial provisions****Financial provisions****Article 37  
Budgetary funding***Unchanged*

The budget of the Organisation shall be financed:

- (a) by the Organisation's own resources;
- (b) by payments made by the Contracting States in respect of renewal fees for European patents levied in these States;
- (c) where necessary, by special financial contributions made by the Contracting States;
- (d) where appropriate, by the revenue provided for in Article 146;
- (e) where appropriate, and for tangible assets only, by third-party borrowings secured on land or buildings;
- (f) where appropriate, by third-party funding for specific projects.

## **ARTICLE 38 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 38**  
**The Organisation's own resources***Unchanged*

The Organisation's own resources shall comprise:

(a) all income from fees and other sources and also the reserves of the Organisation;

(b) the resources of the Pension Reserve Fund, which shall be treated as a special class of asset of the Organisation, designed to support the Organisation's pension scheme by providing the appropriate reserves.

## **ARTICLE 39 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording**

**Article 39**  
**Payments by the Contracting States**  
**in respect of renewal fees for European**  
**patents**

*Unchanged*

(1) Each Contracting State shall pay to the Organisation in respect of each renewal fee received for a European patent in that State an amount equal to a proportion of that fee, to be fixed by the Administrative Council; the proportion shall not exceed 75% and shall be the same for all Contracting States. However, if the said proportion corresponds to an amount which is less than a uniform minimum amount fixed by the Administrative Council, the Contracting State shall pay that minimum to the Organisation.

(2) Each Contracting State shall communicate to the Organisation such information as the Administrative Council considers to be necessary to determine the amount of these payments.

(3) The due dates for these payments shall be determined by the Administrative Council.

(4) If a payment is not remitted fully by the due date, the Contracting State shall pay interest from the due date on the amount remaining unpaid.

Article 40

## **ARTICLE 40 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 40**  
**Level of fees and payments - Special**  
**financial contributions***Unchanged*

(1) The amounts of the fees referred to in Article 38 and the proportion referred to in Article 39 shall be fixed at such a level as to ensure that the revenue in respect thereof is sufficient for the budget of the Organisation to be balanced.

(2) However, if the Organisation is unable to balance its budget under the conditions laid down in paragraph 1, the Contracting States shall remit to the Organisation special financial contributions, the amount of which shall be determined by the Administrative Council for the accounting period in question.

(3) These special financial contributions shall be determined in respect of any Contracting State on the basis of the number of patent applications filed in the last year but one prior to that of entry into force of this Convention, and calculated in the following manner:

(a) one half in proportion to the number of patent applications filed in that Contracting State;

(b) one half in proportion to the second highest number of patent applications filed in the other Contracting States by natural or legal persons having their residence or principal place of business in that Contracting State.





**Present wording****Revised wording**

However, the amounts to be contributed by States in which the number of patent applications filed exceeds 25 000 shall then be taken as a whole and a new scale drawn up in proportion to the total number of patent applications filed in these States.

(4) Where the scale position of any Contracting State cannot be established in accordance with paragraph 3, the Administrative Council shall, with the consent of that State, decide its scale position.

(5) Article 39, paragraphs 3 and 4, shall apply mutatis mutandis to the special financial contributions.

(6) The special financial contributions shall be repaid with interest at a rate which shall be the same for all Contracting States. Repayments shall be made in so far as it is possible to provide for this purpose in the budget; the amount thus provided shall be distributed among the Contracting States in accordance with the scale referred to in paragraphs 3 and 4.

(7) The special financial contributions remitted in any accounting period shall be repaid in full before any such contributions or parts thereof remitted in any subsequent accounting period are repaid.

## **ARTICLE 41 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the new Article 4(2)(a) EPC.

**Present wording****Article 41  
Advances**

(1) At the request of the President of the European Patent Office, the Contracting States shall grant advances to the Organisation, on account of their payments and contributions, within the limit of the amount fixed by the Administrative Council. The amount of such advances shall be determined in proportion to the amounts due from the Contracting States for the accounting period in question.

(2) Article 39, paragraphs 3 and 4, shall apply mutatis mutandis to the advances.

**Revised wording****Article 41  
Advances**

(1) At the request of the President of the **Office**, the Contracting States shall grant advances to the Organisation, on account of their payments and contributions, within the limit of the amount fixed by the Administrative Council. The amount of such advances shall be determined in proportion to the amounts due from the Contracting States for the accounting period in question.

(2) *Unchanged*

## ARTICLE 42 EPC

### Explanatory notes

1. The proposed **Article 42(1) EPC** provides that the future budget of the European Patent Organisation will result in the consolidation of the respective budgets of the European Patent Office and that of the Court of Appeals.
2. Currently, the budget of the European Patent Organisation corresponds *de facto* to the budget of the European Patent Office, including the Boards of Appeal. According to the proposal, the future budget of the European Patent Organisation will be the consolidated sum of two separate parts: the budget of the European Patent Office and that of the Court (see the proposed Article 42 EPC).
3. Under the current system the Boards of Appeal (in line with most national jurisdictions) do not cover their costs, appeal fees being insufficient to meet expenditure. This will remain the case under the proposed arrangements for the Court. Thus, the financing of the budget of the Organisation will continue to be based on
  - all receipts from fees and other sources, including the reserves of the Organisation (Article 38(a) EPC 2000);
  - the resources of the Pension Reserve Fund (Article 38(b) EPC 2000);
  - payments made by the Contracting States under Article 39 EPC 2000 in respect of renewal fees;
  - if necessary, special financial contributions under Article 40(2) and (3) EPC 2000.

**Present wording****Article 42****Budget**

(1) The budget of the Organisation shall be balanced. It shall be drawn up in accordance with the generally accepted accounting principles laid down in the Financial Regulations. If necessary, there may be amending or supplementary budgets.

(2) The budget shall be drawn up in the unit of account fixed in the Financial Regulations.

**Revised wording****Article 42****Budget**

(1) **The budget of the Organisation consists of the budget of the Office and the budget of the Court of Appeals. It shall be balanced and drawn up in accordance** with the generally accepted accounting principles laid down in the Financial Regulations. If necessary, there may be amending or supplementary budgets.

(2) The budgets shall be drawn up in the unit of account fixed in the Financial Regulations.

## **ARTICLE 43 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 43**  
**Authorisation for expenditure***Unchanged*

(1) The expenditure entered in the budget shall be authorised for the duration of one accounting period, unless the Financial Regulations provide otherwise.

(2) In accordance with the Financial Regulations, any appropriations, other than those relating to staff costs, which are unexpended at the end of the accounting period may be carried forward, but not beyond the end of the following accounting period.

(3) Appropriations shall be set out under different headings according to type and purpose of the expenditure and subdivided, as far as necessary, in accordance with the Financial Regulations.

## **ARTICLE 44 EPC**

### **Explanatory notes**

The provision remains unchanged.



**Present wording**

**Revised wording**

**Article 44**  
**Appropriations for unforeseeable  
expenditure**

*Unchanged*

(1) The budget of the Organisation may contain appropriations for unforeseeable expenditure.

(2) The employment of these appropriations by the Organisation shall be subject to the prior approval of the Administrative Council.

## **ARTICLE 45 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording**

**Revised wording**

**Article 45**  
**Accounting period**

*Unchanged*

The accounting period shall commence on 1 January and end on 31 December.

## **ARTICLE 46 EPC**

### **Explanatory notes**

The proposed **Article 46(1) EPC** distinguishes the respective competences of the President of the European Patent Office and the President of the Court of Appeals. This Article, referring to the respective duties of both Presidents in budgetary matters, is in line with the proposed Articles 10(2)(d) and 21f(2)(d) EPC.

**Present wording****Article 46****Preparation and adoption of the budget**

(1) The President of the European Patent Office shall submit the draft budget to the Administrative Council no later than the date prescribed in the Financial Regulations.

(2) The budget and any amending or supplementary budget shall be adopted by the Administrative Council.

**Revised wording****Article 46****Preparation and adoption of the budgets**

(1) The President of the **Office and the President of the Court of Appeals** shall submit **respective** draft budgets to the Administrative Council **in accordance with** the Financial Regulations.

(2) The **budgets** and any amending or supplementary **budgets** shall be adopted by the Administrative Council.

## **ARTICLE 47 EPC**

### **Explanatory notes**

From the proposed **Article 47(1) EPC** it follows that the budgets of the Office and the Court of Appeals are adopted separately. If one of the budgets is not adopted, the rule concerning provisional budgets applies only to that budget.

**Present wording****Article 47****Provisional budgets**

(1) If, at the beginning of the accounting period, the budget has not been adopted by the Administrative Council, expenditures may be effected on a monthly basis per heading or other division of the budget, in accordance with the Financial Regulations, up to one-twelfth of the budget appropriations for the preceding accounting period, provided that the appropriations thus made available to the President of the European Patent Office shall not exceed one-twelfth of those provided for in the draft budget.

(2) The Administrative Council may, subject to the observance of the other provisions laid down in paragraph 1, authorise expenditure in excess of one-twelfth of the appropriations.

(3) The payments referred to in Article 37(b), shall continue to be made, on a provisional basis, under the conditions determined under Article 39 for the year preceding that to which the draft budget relates.

(4) The Contracting States shall pay each month, on a provisional basis and in accordance with the scale referred to in Article 40, paragraphs 3 and 4, any special financial contributions necessary to ensure implementation of paragraphs 1 and 2. Article 39, paragraph 4, shall apply *mutatis mutandis* to these contributions.

**Revised wording****Article 47****Provisional budgets**

(1) If, at the beginning of the accounting period, **one of the budgets** has not been adopted by the Administrative Council, expenditures **concerning this budget** may be effected on a monthly basis per heading or other division of the budget, in accordance with the Financial Regulations, up to one-twelfth of the budget appropriations for the preceding accounting period; **however**, the appropriations thus made available to the President of the **Office or to the President of the Court of Appeals** shall not exceed one-twelfth of those **allocated in the draft budget to the Office or to the Court of Appeals respectively**.

(2) The Administrative Council may, subject to the observance of the other provisions laid down in paragraph 1, authorise expenditure in excess of one-twelfth of the appropriations.

(3) The payments referred to in Article 37(b), shall continue to be made, on a provisional basis, under the conditions determined under Article 39 for the year preceding that to which the draft budget relates.

(4) The Contracting States shall pay each month, on a provisional basis and in accordance with the scale referred to in Article 40, paragraphs 3 and 4, any special financial contributions necessary to ensure implementation of paragraphs 1 and 2. Article 39, paragraph 4, shall apply *mutatis mutandis* to these contributions.

## **ARTICLE 48 EPC**

### **Explanatory notes**

The amendment of **Article 48(1) and (2) EPC 2000** is necessitated by the new structure of the Organisation.



**Present wording****Article 48****Budget implementation**

(1) The President of the European Patent Office shall implement the budget and any amending or supplementary budget on his own responsibility and within the limits of the allocated appropriations.

(2) Within the budget, the President of the European Patent Office may, in accordance with the Financial Regulations, transfer funds between the various headings or sub-headings.

**Revised wording****Article 48****Budget implementation**

(1) The President of the **Office and the President of the Court of Appeals** shall implement **their respective budgets, including** any amending or supplementary **budgets**, on **their** own responsibility and within the limits of the allocated appropriations.

(2) The President of the **Office and the President of the Court of Appeals** may, in accordance with the Financial Regulations, transfer funds between the various headings or sub-headings **of their respective budgets**.

## **ARTICLE 49 EPC**

### **Explanatory notes**

The amendment of **Article 49(3) and (4) EPC 2000** is necessitated by the new structure of the Organisation.

**Present wording****Article 49****Auditing of accounts**

(1) The income and expenditure account and a balance sheet of the Organisation shall be examined by auditors whose independence is beyond doubt, appointed by the Administrative Council for a period of five years, which shall be renewable or extensible.

(2) The audit shall be based on vouchers and shall take place, if necessary, in situ. The audit shall ascertain whether all income has been received and all expenditure effected in a lawful and proper manner and whether the financial management is sound. The auditors shall draw up a report containing a signed audit opinion after the end of each accounting period.

(3) The President of the European Patent Office shall annually submit to the Administrative Council the accounts of the preceding accounting period in respect of the budget and the balance sheet showing the assets and liabilities of the Organisation together with the report of the auditors.

(4) The Administrative Council shall approve the annual accounts together with the report of the auditors and shall discharge the President of the European Patent Office in respect of the implementation of the budget.

**Revised wording****Article 49****Auditing of accounts**

(1) The income and expenditure accounts and [...] balance sheets of the Organisation shall be examined by auditors whose independence is beyond doubt, appointed by the Administrative Council for a period of five years, which shall be renewable or extensible.

(2) The audit shall be based on vouchers and shall take place, if necessary, in situ. The audit shall ascertain whether all income has been received and all expenditure effected in a lawful and proper manner and whether the financial management is sound. The auditors shall draw up a report containing a signed audit opinion after the end of each accounting period.

(3) The President of the **Office and the President of the Court of Appeals** shall annually submit to the Administrative Council the accounts of the preceding accounting period in respect of **their** budgets and the balance sheet showing the assets and liabilities of the Organisation together with the report of the auditors.

(4) The Administrative Council shall approve the annual accounts together with the report of the auditors and shall discharge the President of the **Office and the President of the Court of Appeals** in respect of the implementation of **their** budgets.

## **ARTICLE 50 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 50  
Financial Regulations***Unchanged*

The Financial Regulations shall lay down in particular:

(a) the arrangements relating to the establishment and implementation of the budget and for the rendering and auditing of accounts;

(b) the method and procedure whereby the payments and contributions provided for in Article 37 and the advances provided for in Article 41 are to be made available to the Organisation by the Contracting States;

(c) the rules concerning the responsibilities of authorising and accounting officers and the arrangements for their supervision;

(d) the rates of interest provided for in Articles 39, 40 and 47;

(e) the method of calculating the contributions payable by virtue of Article 146;

(f) the composition of and duties to be assigned to a Budget and Finance Committee which should be set up by the Administrative Council;

(g) the generally accepted accounting principles on which the budget and the annual financial statements shall be based.

## **ARTICLE 51 EPC**

### **Explanatory notes**

The legal basis for levying fees in **Article 51(1) EPC 2000** is editorially amended to take account of the new structure of the Organisation.

**Present wording****Article 51**  
**Fees**

(1) The European Patent Office may levy fees for any official task or procedure carried out under this Convention.

(2) Time limits for the payment of fees other than those fixed by this Convention shall be laid down in the Implementing Regulations.

(3) Where the Implementing Regulations provide that a fee shall be paid, they shall also lay down the consequences of failure to pay such fee in due time.

(4) The Rules relating to Fees shall determine in particular the amounts of the fees and the ways in which they are to be paid.

**Revised wording****Article 51**  
**Fees**

(1) **Fees may be charged** for any official task or procedure carried out under this Convention.

(2) Time limits for the payment of fees other than those fixed by this Convention shall be laid down in the Implementing Regulations.

(3) Where the Implementing Regulations provide that a fee shall be paid, they shall also lay down the consequences of failure to pay such fee in due time.

(4) The Rules relating to Fees shall determine in particular the amounts of the fees and the ways in which they are to be paid.

**ARTICLE 52 EPC**

**Explanatory notes**

The provision remains unchanged.



**Present wording****PART II****SUBSTANTIVE PATENT LAW****Chapter I****Patentability****Article 52  
Patentable inventions**

(1) European patents shall be granted for any inventions, in all fields of technology, provided that they are new, involve an inventive step and are susceptible of industrial application.

(2) The following in particular shall not be regarded as inventions within the meaning of paragraph 1:

(a) discoveries, scientific theories and mathematical methods;

(b) aesthetic creations;

(c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;

(d) presentations of information.

(3) Paragraph 2 shall exclude the patentability of the subject-matter or activities referred to therein only to the extent to which a European patent application or European patent relates to such subject-matter or activities as such.

**Revised wording****PART II****SUBSTANTIVE PATENT LAW****Chapter I****Patentability**

*Unchanged*

**ARTICLE 53 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 53**  
**Exceptions to patentability***Unchanged*

European patents shall not be granted in respect of:

(a) inventions the commercial exploitation of which would be contrary to ordre public or morality; such exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation in some or all of the Contracting States;

(b) plant or animal varieties or essentially biological processes for the production of plants or animals; this provision shall not apply to microbiological processes or the products thereof;

(c) methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body; this provision shall not apply to products, in particular substances or compositions, for use in any of these methods.

**ARTICLE 54 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 54  
Novelty***Unchanged*

(1) An invention shall be considered to be new if it does not form part of the state of the art.

(2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the European patent application.

(3) Additionally, the content of European patent applications as filed, the dates of filing of which are prior to the date referred to in paragraph 2 and which were published on or after that date, shall be considered as comprised in the state of the art.

(4) Paragraphs 2 and 3 shall not exclude the patentability of any substance or composition, comprised in the state of the art, for use in a method referred to in Article 53(c), provided that its use for any such method is not comprised in the state of the art.

(5) Paragraphs 2 and 3 shall also not exclude the patentability of any substance or composition referred to in paragraph 4 for any specific use in a method referred to in Article 53(c), provided that such use is not comprised in the state of the art.

**ARTICLE 55 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 55**  
**Non-prejudicial disclosures***Unchanged*

(1) For the application of Article 54, a disclosure of the invention shall not be taken into consideration if it occurred no earlier than six months preceding the filing of the European patent application and if it was due to, or in consequence of:

(a) an evident abuse in relation to the applicant or his legal predecessor, or

(b) the fact that the applicant or his legal predecessor has displayed the invention at an official, or officially recognised, international exhibition falling within the terms of the Convention on international exhibitions signed at Paris on 22 November 1928 and last revised on 30 November 1972.

(2) In the case of paragraph 1(b), paragraph 1 shall apply only if the applicant states, when filing the European patent application, that the invention has been so displayed and files a supporting certificate within the time limit and under the conditions laid down in the Implementing Regulations.

**ARTICLE 56 EPC**

**Explanatory notes**

The provision remains unchanged.



**Present wording****Revised wording****Article 56  
Inventive step***Unchanged*

An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art. If the state of the art also includes documents within the meaning of Article 54, paragraph 3, these documents shall not be considered in deciding whether there has been an inventive step.

**ARTICLE 57 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording**

**Revised wording**

**Article 57**  
**Industrial application**

*Unchanged*

An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.

**ARTICLE 58 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording**

**Chapter II**

**Persons entitled to apply for and obtain  
a European patent -  
Mention of the inventor**

**Article 58**

**Entitlement to file a European patent  
application**

A European patent application may be filed by any natural or legal person, or any body equivalent to a legal person by virtue of the law governing it.

**Revised wording**

**Chapter II**

**Persons entitled to apply for and obtain  
a European patent -  
Mention of the inventor**

*Unchanged*

**ARTICLE 59 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording**

**Revised wording**

**Article 59**  
**Multiple applicants**

*Unchanged*

A European patent application may also be filed either by joint applicants or by two or more applicants designating different Contracting States.

## **ARTICLE 60 EPC**

### **Explanatory notes**

The expression "Any proceedings under this Convention" in the proposed **Article 60(3) EPC** replaces previous references to "Proceedings before the European Patent Office", so as to extend the application of the provision to proceedings before the European Court of Patent Appeals as well as the European Patent Office. Corresponding replacements have been made wherever appropriate throughout the present draft for an EPC revision.

The replacement is necessary in Articles 60, 65, 70, 113(1), 114, 115, 117, 118, 119, 120, 121, 122, 123, 125, 133, 134, 134a, 137 and 175 EPC 2000.



**Present wording****Article 60****Right to a European patent**

(1) The right to a European patent shall belong to the inventor or his successor in title. If the inventor is an employee the right to a European patent shall be determined in accordance with the law of the State in which the employee is mainly employed; if the State in which the employee is mainly employed cannot be determined, the law to be applied shall be that of the State in which the employer has the place of business to which the employee is attached.

(2) If two or more persons have made an invention independently of each other, the right to a European patent therefor shall belong to the person whose European patent application has the earliest date of filing, provided that this first application has been published.

(3) In proceedings before the European Patent Office, the applicant shall be deemed to be entitled to exercise the right to a European patent.

**Revised wording****Article 60****Right to a European patent**

(1) The right to a European patent shall belong to the inventor or his successor in title. If the inventor is an employee the right to a European patent shall be determined in accordance with the law of the State in which the employee is mainly employed; if the State in which the employee is mainly employed cannot be determined, the law to be applied shall be that of the State in which the employer has the place of business to which the employee is attached.

(2) If two or more persons have made an invention independently of each other, the right to a European patent therefor shall belong to the person whose European patent application has the earliest date of filing, provided that this first application has been published.

(3) In **any** proceedings **under this Convention**, the applicant shall be deemed to be entitled to exercise the right to a European patent.

**ARTICLE 61 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 61  
European patent applications filed by  
non-entitled persons***Unchanged*

(1) If by a final decision it is adjudged that a person other than the applicant is entitled to the grant of the European patent, that person may, in accordance with the Implementing Regulations:

(a) prosecute the European patent application as his own application in place of the applicant;

(b) file a new European patent application in respect of the same invention; or

(c) request that the European patent application be refused.

(2) Article 76, paragraph 1, shall apply *mutatis mutandis* to a new European patent application filed under paragraph 1(b).

## **ARTICLE 62 EPC**

### **Explanatory notes**

The amendment to **Article 62 EPC 2000** is necessitated by the new structure of the Organisation.

**Present wording**

**Article 62**

**Right of the inventor to be mentioned**

The inventor shall have the right, vis-à-vis the applicant for or proprietor of a European patent, to be mentioned as such before the European Patent Office.

**Revised wording**

**Article 62**

**Right of the inventor to be mentioned**

The inventor shall have the right, vis-à-vis the applicant for or proprietor of a European patent, to be mentioned as such **in accordance with the Implementing Regulations.**

## **ARTICLE 63 EPC**

### **Explanatory notes**

**Article 63(4) EPC:** The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.

**Present wording****Chapter III****Effects of the European patent and the European patent application****Article 63****Term of the European patent**

(1) The term of the European patent shall be 20 years from the date of filing of the application.

(2) Nothing in the preceding paragraph shall limit the right of a Contracting State to extend the term of a European patent, or to grant corresponding protection which follows immediately on expiry of the term of the patent, under the same conditions as those applying to national patents:

(a) in order to take account of a state of war or similar emergency conditions affecting that State;

(b) if the subject-matter of the European patent is a product or a process for manufacturing a product or a use of a product which has to undergo an administrative authorisation procedure required by law before it can be put on the market in that State.

(3) Paragraph 2 shall apply *mutatis mutandis* to European patents granted jointly for a group of Contracting States in accordance with Article 142.

**Revised wording****Chapter III****Effects of the European patent and the European patent application****Article 63****Term of the European patent**

(1) *Unchanged*

(2) *Unchanged*

(3) *Unchanged*





**Present wording**

(4) A Contracting State which makes provision for extension of the term or corresponding protection under paragraph 2(b) may, in accordance with an agreement concluded with the Organisation, entrust to the European Patent Office tasks associated with implementation of the relevant provisions.

**Revised wording**

(4) A Contracting State which makes provision for extension of the term or corresponding protection under paragraph 2(b) may, in accordance with an agreement concluded with the Organisation, entrust to the **Office** tasks associated with implementation of the relevant provisions.

**ARTICLE 64 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 64**

Rights conferred by a European patent

(1) A European patent shall, subject to the provisions of paragraph 2, confer on its proprietor from the date on which the mention of its grant is published in the European Patent Bulletin, in each Contracting State in respect of which it is granted, the same rights as would be conferred by a national patent granted in that State.

(2) If the subject-matter of the European patent is a process, the protection conferred by the patent shall extend to the products directly obtained by such process.

(3) Any infringement of a European patent shall be dealt with by national law.

*Unchanged*

## **ARTICLE 65 EPC**

### **Explanatory notes**

Re **Article 65(1) EPC**: See comments on Article 60(3) EPC.

**Present wording****Article 65****Translation of the European patent**

(1) Any Contracting State may, if the European patent as granted, amended or limited by the European Patent Office is not drawn up in one of its official languages, prescribe that the proprietor of the patent shall supply to its central industrial property office a translation of the patent as granted, amended or limited in one of its official languages at his option or, where that State has prescribed the use of one specific official language, in that language. The period for supplying the translation shall end three months after the date on which the mention of the grant, maintenance in amended form or limitation of the European patent is published in the European Patent Bulletin, unless the State concerned prescribes a longer period.

(2) Any Contracting State which has adopted provisions pursuant to paragraph 1 may prescribe that the proprietor of the patent must pay all or part of the costs of publication of such translation within a period laid down by that State.

(3) Any Contracting State may prescribe that in the event of failure to observe the provisions adopted in accordance with paragraphs 1 and 2, the European patent shall be deemed to be void *ab initio* in that State.

**Revised wording****Article 65****Translation of the European patent**

(1) Any Contracting State may, if the European patent as granted, amended or limited **in any proceedings under this Convention** is not drawn up in one of its official languages, prescribe that the proprietor of the patent shall supply to its central industrial property office a translation of the patent as granted, amended or limited in one of its official languages at his option or, where that State has prescribed the use of one specific official language, in that language. The period for supplying the translation shall end three months after the date on which the mention of the grant, maintenance in amended form or limitation of the European patent is published in the European Patent Bulletin, unless the State concerned prescribes a longer period.

(2) Any Contracting State which has adopted provisions pursuant to paragraph 1 may prescribe that the proprietor of the patent must pay all or part of the costs of publication of such translation within a period laid down by that State.

(3) Any Contracting State may prescribe that in the event of failure to observe the provisions adopted in accordance with paragraphs 1 and 2, the European patent shall be deemed to be void *ab initio* in that State.

**ARTICLE 66 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 66**  
**Equivalence of European filing with**  
**national filing***Unchanged*

A European patent application which has been accorded a date of filing shall, in the designated Contracting States, be equivalent to a regular national filing, where appropriate with the priority claimed for the European patent application.

**ARTICLE 67 EPC**

**Explanatory notes**

The provision remains unchanged.



**Present wording****Revised wording****Article 67****Rights conferred by a European patent application after publication***Unchanged*

(1) A European patent application shall, from the date of its publication, provisionally confer upon the applicant the protection provided for by Article 64, in the Contracting States designated in the application.

(2) Any Contracting State may prescribe that a European patent application shall not confer such protection as is conferred by Article 64. However, the protection attached to the publication of the European patent application may not be less than that which the laws of the State concerned attach to the compulsory publication of unexamined national patent applications. In any event, each State shall ensure at least that, from the date of publication of a European patent application, the applicant can claim compensation reasonable in the circumstances from any person who has used the invention in that State in circumstances where that person would be liable under national law for infringement of a national patent.

(3) Any Contracting State which does not have as an official language the language of the proceedings may prescribe that provisional protection in accordance with paragraphs 1 and 2 above shall not be effective until such time as a translation of the claims in one of its official languages at the option of the applicant or, where that State has prescribed the use of one specific official language, in that language:



**Present wording**

(a) has been made available to the public in the manner prescribed by national law, or

(b) has been communicated to the person using the invention in the said State.

(4) The European patent application shall be deemed never to have had the effects set out in paragraphs 1 and 2 when it has been withdrawn, deemed to be withdrawn or finally refused. The same shall apply in respect of the effects of the European patent application in a Contracting State the designation of which is withdrawn or deemed to be withdrawn.

**Revised wording**

**ARTICLE 68 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 68**  
**Effect of revocation or limitation of the**  
**European patent***Unchanged*

The European patent application and the resulting European patent shall be deemed not to have had, from the outset, the effects specified in Articles 64 and 67, to the extent that the patent has been revoked or limited in opposition, limitation or revocation proceedings.

**ARTICLE 69 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 69**  
**Extent of protection***Unchanged*

(1) The extent of the protection conferred by a European patent or a European patent application shall be determined by the claims. Nevertheless, the description and drawings shall be used to interpret the claims.

(2) For the period up to grant of the European patent, the extent of the protection conferred by the European patent application shall be determined by the claims contained in the application as published. However, the European patent as granted or as amended in opposition, limitation or revocation proceedings shall determine retroactively the protection conferred by the application, in so far as such protection is not thereby extended.

## **ARTICLE 70 EPC**

### **Explanatory notes**

Re **Article 70(1) EPC**: See comments on Article 60(3) EPC.

Re **Article 70(2) EPC**: See comments on new Article 7a EPC.



**Present wording****Article 70****Authentic text of a European patent application or European patent**

(1) The text of a European patent application or a European patent in the language of the proceedings shall be the authentic text in any proceedings before the European Patent Office and in any Contracting State.

(2) If, however, the European patent application has been filed in a language which is not an official language of the European Patent Office, that text shall be the application as filed within the meaning of this Convention.

(3) Any Contracting State may prescribe that a translation, as provided for in this Convention, in an official language of that State, shall in that State be regarded as authentic, except for revocation proceedings, in the event of the European patent application or European patent in the language of the translation conferring protection which is narrower than that conferred by it in the language of the proceedings.

(4) Any Contracting State which adopts a provision under paragraph 3:

**Revised wording****Article 70****Authentic text of a European patent application or European patent**

(1) The text of a European patent application or a European patent in the language of the proceedings shall be the authentic text in any proceedings **under this Convention** and in any Contracting State.

(2) If, however, the European patent application has been filed in a language which is not an official language of the **Organisation**, that text shall be the application as filed within the meaning of this Convention.

(3) Any Contracting State may prescribe that a translation, as provided for in this Convention, in an official language of that State, shall in that State be regarded as authentic, except for revocation proceedings, in the event of the European patent application or European patent in the language of the translation conferring protection which is narrower than that conferred by it in the language of the proceedings.

(4) Any Contracting State which adopts a provision under paragraph 3:



**Present wording**

(a) must allow the applicant for or proprietor of the patent to file a corrected translation of the European patent application or European patent. Such corrected translation shall not have any legal effect until any conditions established by the Contracting State under Article 65, paragraph 2, and Article 67, paragraph 3, have been complied with *mutatis mutandis*;

(b) may prescribe that any person who, in that State, in good faith is using or has made effective and serious preparations for using an invention the use of which would not constitute infringement of the application or patent in the original translation may, after the corrected translation takes effect, continue such use in the course of his business or for the needs thereof without payment.

**Revised wording**

(a) must allow the applicant for or proprietor of the patent to file a corrected translation of the European patent application or European patent. Such corrected translation shall not have any legal effect until any conditions established by the Contracting State under Article 65, paragraph 2, and Article 67, paragraph 3, have been complied with *mutatis mutandis*;

(b) may prescribe that any person who, in that State, in good faith is using or has made effective and serious preparations for using an invention the use of which would not constitute infringement of the application or patent in the original translation may, after the corrected translation takes effect, continue such use in the course of his business or for the needs thereof without payment.

**ARTICLE 71 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording**

**Chapter IV**

**The European patent application as an  
object of property**

**Article 71**

**Transfer and constitution of rights**

A European patent application may be transferred or give rise to rights for one or more of the designated Contracting States.

**Revised wording**

**Chapter IV**

**The European patent application as an  
object of property**

**Article 71**

**Transfer and constitution of rights**

*Unchanged*

**ARTICLE 72 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording**

**Article 72  
Assignment**

An assignment of a European patent application shall be made in writing and shall require the signature of the parties to the contract.

**Revised wording**

*Unchanged*

**ARTICLE 73 EPC**

**Explanatory notes**

The provision remains unchanged.



**Present wording**

**Revised wording**

**Article 73**  
**Contractual licensing**

*Unchanged*

A European patent application may be licensed in whole or in part for the whole or part of the territories of the designated Contracting States.

**ARTICLE 74 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Article 74**  
**Law applicable**

Unless this Convention provides otherwise, the European patent application as an object of property shall, in each designated Contracting State and with effect for such State, be subject to the law applicable in that State to national patent applications.

**Revised wording**

*Unchanged*

## **ARTICLE 75 EPC**

### **Explanatory notes**

**Article 75(1)(a) EPC:** The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.

**Present wording****PART III****THE EUROPEAN PATENT  
APPLICATION****Chapter I****Filing and requirements of the  
European patent application****Article 75****Filing of a European patent application**

(1) A European patent application may be filed:

(a) with the European Patent Office, or

(b) if the law of a Contracting State so permits, and subject to Article 76, paragraph 1, with the central industrial property office or other competent authority of that State. Any application filed in this way shall have the same effect as if it had been filed on the same date with the European Patent Office.

(2) Paragraph 1 shall not preclude the application of legislative or regulatory provisions which, in any Contracting State:

(a) govern inventions which, owing to the nature of their subject-matter, may not be communicated abroad without the prior authorisation of the competent authorities of that State, or

**Revised wording****PART III****THE EUROPEAN PATENT  
APPLICATION****Chapter I****Filing and requirements of the  
European patent application****Article 75****Filing of a European patent application**

(1) A European patent application may be filed:

(a) with the **Office**, or

(b) if the law of a Contracting State so permits, and subject to Article 76, paragraph 1, with the central industrial property office or other competent authority of that State. Any application filed in this way shall have the same effect as if it had been filed on the same date with the European Patent Office.

(2) *Unchanged*



**Present wording**

(b) prescribe that any application is to be filed initially with a national authority, or make direct filing with another authority subject to prior authorisation.

**Revised wording**

## **ARTICLE 76 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.



**Present wording****Article 76**  
**European divisional applications**

(1) A European divisional application shall be filed directly with the European Patent Office in accordance with the Implementing Regulations. It may be filed only in respect of subject-matter which does not extend beyond the content of the earlier application as filed; in so far as this requirement is complied with, the divisional application shall be deemed to have been filed on the date of filing of the earlier application and shall enjoy any right of priority.

(2) All the Contracting States designated in the earlier application at the time of filing of a European divisional application shall be deemed to be designated in the divisional application.

**Revised wording****Article 76**  
**European divisional applications**

(1) A European divisional application shall be filed directly with the **Office** in accordance with the Implementing Regulations. It may be filed only in respect of subject-matter which does not extend beyond the content of the earlier application as filed; in so far as this requirement is complied with, the divisional application shall be deemed to have been filed on the date of filing of the earlier application and shall enjoy any right of priority.

(2) *Unchanged*

**ARTICLE 77 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 77**  
**Forwarding of European patent applications***Unchanged*

(1) The central industrial property office of a Contracting State shall forward to the European Patent Office any European patent application filed with it or any other competent authority in that State, in accordance with the Implementing Regulations.

(2) A European patent application the subject of which has been made secret shall not be forwarded to the European Patent Office.

(3) A European patent application not forwarded to the European Patent Office in due time shall be deemed to be withdrawn.

**ARTICLE 78 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 78  
Requirements of a European  
patent application***Unchanged*

(1) A European patent application shall contain:

(a) a request for the grant of a European patent;

(b) a description of the invention;

(c) one or more claims;

(d) any drawings referred to in the description or the claims;

(e) an abstract,

and satisfy the requirements laid down in the Implementing Regulations.

(2) A European patent application shall be subject to the payment of the filing fee and the search fee. If the filing fee or the search fee is not paid in due time, the application shall be deemed to be withdrawn.

## **ARTICLE 79 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 79****Designation of Contracting States***Unchanged*

(1) All the Contracting States party to this Convention at the time of filing of the European patent application shall be deemed to be designated in the request for grant of a European patent.

(2) The designation of a Contracting State may be subject to the payment of a designation fee.

(3) The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent.

**ARTICLE 80 EPC**

**Explanatory notes**

The provision remains unchanged.



**Present wording**

**Revised wording**

**Article 80**  
**Date of filing**

*Unchanged*

The date of filing of a European patent application shall be the date on which the requirements laid down in the Implementing Regulations are fulfilled.

**ARTICLE 81 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 81  
Designation of the inventor***Unchanged*

The European patent application shall designate the inventor. If the applicant is not the inventor or is not the sole inventor, the designation shall contain a statement indicating the origin of the right to the European patent.

**ARTICLE 82 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording**

**Revised wording**

**Article 82**  
**Unity of invention**

*Unchanged*

The European patent application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

**ARTICLE 83 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording**

**Revised wording**

**Article 83**  
**Disclosure of the invention**

*Unchanged*

The European patent application shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

**ARTICLE 84 EPC**

**Explanatory notes**

The provision remains unchanged.



**Present wording**

**Revised wording**

**Article 84  
Claims**

*Unchanged*

The claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description.

**ARTICLE 85 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording**

**Revised wording**

**Article 85  
Abstract**

*Unchanged*

The abstract shall serve the purpose of technical information only; it may not be taken into account for any other purpose, in particular for interpreting the scope of the protection sought or applying Article 54, paragraph 3.

## **ARTICLE 86 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.

**Present wording****Article 86**  
**Renewal fees for the European  
patent application**

(1) Renewal fees for the European patent application shall be paid to the European Patent Office in accordance with the Implementing Regulations. These fees shall be due in respect of the third year and each subsequent year, calculated from the date of filing of the application. If a renewal fee is not paid in due time, the application shall be deemed to be withdrawn.

(2) The obligation to pay renewal fees shall terminate with the payment of the renewal fee due in respect of the year in which the mention of the grant of the European patent is published in the European Patent Bulletin.

**Revised wording****Article 86**  
**Renewal fees for the European  
patent application**

(1) Renewal fees for the European patent application shall be paid to the **Office** in accordance with the Implementing Regulations. These fees shall be due in respect of the third year and each subsequent year, calculated from the date of filing of the application. If a renewal fee is not paid in due time, the application shall be deemed to be withdrawn.

(2) *Unchanged*

## **ARTICLE 87 EPC**

### **Explanatory notes**

**Article 87(5) EPC:** The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.

**Present wording****Chapter II****Priority****Article 87  
Priority right**

(1) Any person who has duly filed, in or for

(a) any State party to the Paris Convention for the Protection of Industrial Property or

(b) any Member of the World Trade Organization,

an application for a patent, a utility model or a utility certificate, or his successor in title, shall enjoy, for the purpose of filing a European patent application in respect of the same invention, a right of priority during a period of twelve months from the date of filing of the first application.

(2) Every filing that is equivalent to a regular national filing under the national law of the State where it was made or under bilateral or multilateral agreements, including this Convention, shall be recognised as giving rise to a right of priority.

(3) A regular national filing shall mean any filing that is sufficient to establish the date on which the application was filed, whatever the outcome of the application may be.

**Revised wording****Chapter II****Priority****Article 87  
Priority right**

(1) *Unchanged*

(2) *Unchanged*

(3) *Unchanged*





**Present wording****Revised wording**

(4) A subsequent application in respect of the same subject-matter as a previous first application and filed in or for the same State shall be considered as the first application for the purposes of determining priority, provided that, at the date of filing the subsequent application, the previous application has been withdrawn, abandoned or refused, without being open to public inspection and without leaving any rights outstanding, and has not served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.

(5) If the first filing has been made with an industrial property authority which is not subject to the Paris Convention for the Protection of Industrial Property or the Agreement Establishing the World Trade Organization, paragraphs 1 to 4 shall apply if that authority, according to a communication issued by the President of the European Patent Office, recognises that a first filing made with the European Patent Office gives rise to a right of priority under conditions and with effects equivalent to those laid down in the Paris Convention.

(4) *Unchanged*

(5) If the first filing has been made with an industrial property authority which is not subject to the Paris Convention for the Protection of Industrial Property or the Agreement Establishing the World Trade Organization, paragraphs 1 to 4 shall apply if that authority, according to a communication issued by the President of the **Office**, recognises that a first filing made with the **Office** gives rise to a right of priority under conditions and with effects equivalent to those laid down in the Paris Convention.

**ARTICLE 88 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 88**  
**Claiming priority***Unchanged*

(1) An applicant desiring to take advantage of the priority of a previous application shall file a declaration of priority and any other document required, in accordance with the Implementing Regulations.

(2) Multiple priorities may be claimed in respect of a European patent application, notwithstanding the fact that they originated in different countries. Where appropriate, multiple priorities may be claimed for any one claim. Where multiple priorities are claimed, time limits which run from the date of priority shall run from the earliest date of priority.

(3) If one or more priorities are claimed in respect of a European patent application, the right of priority shall cover only those elements of the European patent application which are included in the application or applications whose priority is claimed.

(4) If certain elements of the invention for which priority is claimed do not appear among the claims formulated in the previous application, priority may nonetheless be granted, provided that the documents of the previous application as a whole specifically disclose such elements.

**ARTICLE 89 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording**

**Revised wording**

**Article 89**  
**Effect of priority right**

*Unchanged*

The right of priority shall have the effect that the date of priority shall count as the date of filing of the European patent application for the purposes of Article 54, paragraphs 2 and 3, and Article 60, paragraph 2.

## **ARTICLE 90 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.

**Present wording****PART IV****PROCEDURE UP TO GRANT****Article 90****Examination on filing and examination as to formal requirements**

(1) The European Patent Office shall examine, in accordance with the Implementing Regulations, whether the application satisfies the requirements for the accordance of a date of filing.

(2) If a date of filing cannot be accorded following the examination under paragraph 1, the application shall not be dealt with as a European patent application.

(3) If the European patent application has been accorded a date of filing, the European Patent Office shall examine, in accordance with the Implementing Regulations, whether the requirements in Articles 14, 78 and 81, and, where applicable, Article 88, paragraph 1, and Article 133, paragraph 2, as well as any other requirement laid down in the Implementing Regulations, have been satisfied.

(4) Where the European Patent Office in carrying out the examination under paragraphs 1 or 3 notes that there are deficiencies which may be corrected, it shall give the applicant an opportunity to correct them.

(5) If any deficiency noted in the examination under paragraph 3 is not corrected, the European patent application shall be refused unless a different legal consequence is provided for by this Convention. Where the deficiency concerns the right of priority, this right shall be lost for the application.

**Revised wording****PART IV****PROCEDURE UP TO GRANT****Article 90****Examination on filing and examination as to formal requirements**

(1) The **Office** shall examine, in accordance with the Implementing Regulations, whether the application satisfies the requirements for the accordance of a date of filing.

(2) *Unchanged*

(3) If the European patent application has been accorded a date of filing, the **Office** shall examine, in accordance with the Implementing Regulations, whether the requirements in Articles 14, 78 and 81, and, where applicable, Article 88, paragraph 1, and Article 133, paragraph 2, as well as any other requirement laid down in the Implementing Regulations, have been satisfied.

(4) Where the **Office** in carrying out the examination under paragraphs 1 or 3 notes that there are deficiencies which may be corrected, it shall give the applicant an opportunity to correct them.

(5) *Unchanged*

## **ARTICLE 91 EPC**

### **Explanatory notes**

See the EPC Revision Act of 29 November 2000.



**Present wording**

**Revised wording**

**Article 91**  
**Examination as to formal requirements**  
*(deleted)*

## **ARTICLE 92 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.

**Present wording**

**Article 92**  
**Drawing up of the European search report**

The European Patent Office shall, in accordance with the Implementing Regulations, draw up and publish a European search report in respect of the European patent application on the basis of the claims, with due regard to the description and any drawings.

**Revised wording**

**Article 92**  
**Drawing up of the European search report**

The **Office** shall, in accordance with the Implementing Regulations, draw up and publish a European search report in respect of the European patent application on the basis of the claims, with due regard to the description and any drawings.

## **ARTICLE 93 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.

**Present wording****Article 93  
Publication of the European patent  
application**

(1) The European Patent Office shall publish the European patent application as soon as possible

(a) after the expiry of a period of eighteen months from the date of filing or, if priority has been claimed, from the date of priority, or

(b) at the request of the applicant, before the expiry of that period.

(2) The European patent application shall be published at the same time as the specification of the European patent when the decision to grant the patent becomes effective before the expiry of the period referred to in paragraph 1(a).

**Revised wording****Article 93  
Publication of the European patent  
application**

(1) The **Office** shall publish the European patent application as soon as possible

(a) after the expiry of a period of eighteen months from the date of filing or, if priority has been claimed, from the date of priority, or

(b) at the request of the applicant, before the expiry of that period.

(2) *Unchanged*

## **ARTICLE 94 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.

**Present wording****Article 94**  
**Examination of the European patent application**

(1) The European Patent Office shall, in accordance with the Implementing Regulations, examine on request whether the European patent application and the invention to which it relates meet the requirements of this Convention. The request shall not be deemed to be filed until the examination fee has been paid.

(2) If no request for examination has been made in due time, the application shall be deemed to be withdrawn.

(3) If the examination reveals that the application or the invention to which it relates does not meet the requirements of this Convention, the Examining Division shall invite the applicant, as often as necessary, to file his observations and, subject to Article 123, paragraph 1, to amend the application.

(4) If the applicant fails to reply in due time to any communication from the Examining Division, the application shall be deemed to be withdrawn.

**Revised wording****Article 94**  
**Examination of the European patent application**

(1) The **Office** shall, in accordance with the Implementing Regulations, examine on request whether the European patent application and the invention to which it relates meet the requirements of this Convention. The request shall not be deemed to be filed until the examination fee has been paid.

(2) *Unchanged*

(3) *Unchanged*

(4) *Unchanged*

## **ARTICLE 95 EPC**

### **Explanatory notes**

See the EPC Revision Act of 29 November 2000.



**Present wording**

**Article 95**  
**Extension of the period within which**  
**requests for examination may be filed**  
*(deleted)*

**Revised wording**

**ARTICLE 96 EPC**

**Explanatory notes**

See the EPC Revision Act of 29 November 2000.

**Present wording**

**Article 96**  
**Examination of the European patent**  
**application**  
*(deleted)*

**Revised wording**

**ARTICLE 97 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 97  
Grant or refusal***Unchanged*

(1) If the Examining Division is of the opinion that the European patent application and the invention to which it relates meet the requirements of this Convention, it shall decide to grant a European patent, provided that the conditions laid down in the Implementing Regulations are fulfilled.

(2) If the Examining Division is of the opinion that the European patent application or the invention to which it relates does not meet the requirements of this Convention, it shall refuse the application unless this Convention provides for a different legal consequence.

(3) The decision to grant a European patent shall take effect on the date on which the mention of the grant is published in the European Patent Bulletin.

## **ARTICLE 98 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.

**Present wording**

**Article 98**  
**Publication of the specification of the**  
**European patent**

The European Patent Office shall publish the specification of the European patent as soon as possible after the mention of the grant of the European patent has been published in the European Patent Bulletin.

**Revised wording**

**Article 98**  
**Publication of the specification of the**  
**European patent**

The **Office** shall publish the specification of the European patent as soon as possible after the mention of the grant of the European patent has been published in the European Patent Bulletin.

## **ARTICLE 99 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.



**Present wording****PART V****OPPOSITION AND LIMITATION  
PROCEDURE****Article 99  
Opposition**

(1) Within nine months of the publication of the mention of the grant of the European patent in the European Patent Bulletin, any person may give notice to the European Patent Office of opposition to that patent, in accordance with the Implementing Regulations. Notice of opposition shall not be deemed to have been filed until the opposition fee has been paid.

(2) The opposition shall apply to the European patent in all the Contracting States in which that patent has effect.

(3) Opponents shall be parties to the opposition proceedings as well as the proprietor of the patent.

(4) Where a person provides evidence that in a Contracting State, following a final decision, he has been entered in the patent register of such State instead of the previous proprietor, such person shall, at his request, replace the previous proprietor in respect of such State. Notwithstanding Article 118, the previous proprietor and the person making the request shall not be regarded as joint proprietors unless both so request.

**Revised wording****PART V****OPPOSITION AND LIMITATION  
PROCEDURE****Article 99  
Opposition**

(1) Within nine months of the publication of the mention of the grant of the European patent in the European Patent Bulletin, any person may give notice to the **Office** of opposition to that patent, in accordance with the Implementing Regulations. Notice of opposition shall not be deemed to have been filed until the opposition fee has been paid.

(2) *Unchanged*

(3) *Unchanged*

(4) *Unchanged*

Article 100

## **ARTICLE 100 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 100  
Grounds for opposition***Unchanged*

Opposition may only be filed on the grounds that:

(a) the subject-matter of the European patent is not patentable under Articles 52 to 57;

(b) the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;

(c) the subject-matter of the European patent extends beyond the content of the application as filed, or, if the patent was granted on a divisional application or on a new application filed under Article 61, beyond the content of the earlier application as filed.

**ARTICLE 101 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording**

**Article 101**  
**Examination of the opposition -**  
**Revocation or maintenance of the**  
**European patent**

*Unchanged*

(1) If the opposition is admissible, the Opposition Division shall examine, in accordance with the Implementing Regulations, whether at least one ground for opposition under Article 100 prejudices the maintenance of the European patent. During this examination, the Opposition Division shall invite the parties, as often as necessary, to file observations on communications from another party or issued by itself.

(2) If the Opposition Division is of the opinion that at least one ground for opposition prejudices the maintenance of the European patent, it shall revoke the patent. Otherwise, it shall reject the opposition.

(3) If the Opposition Division is of the opinion that, taking into consideration the amendments made by the proprietor of the European patent during the opposition proceedings, the patent and the invention to which it relates

(a) meet the requirements of this Convention, it shall decide to maintain the patent as amended, provided that the conditions laid down in the Implementing Regulations are fulfilled;

(b) do not meet the requirements of this Convention, it shall revoke the patent.

**ARTICLE 102 EPC**

**Explanatory notes**

See the EPC Revision Act of 29 November 2000.

**Present wording**

**Article 102**  
**Revocation or maintenance of the**  
**European patent**  
*(deleted)*

**Revised wording**

## **ARTICLE 103 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.



**Present wording****Article 103**  
**Publication of a new specification of the**  
**European patent**

If the European patent is maintained as amended under Article 101, paragraph 3(a), the European Patent Office shall publish a new specification of the European patent as soon as possible after the mention of the opposition decision has been published in the European Patent Bulletin.

**Revised wording****Article 103**  
**Publication of a new specification of the**  
**European patent**

If the European patent is maintained as amended under Article 101, paragraph 3(a), the **Office** shall publish a new specification of the European patent as soon as possible after the mention of the opposition decision has been published in the European Patent Bulletin.

## **ARTICLE 104 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.

**Present wording****Article 104  
Costs**

(1) Each party to the opposition proceedings shall bear the costs it has incurred, unless the Opposition Division, for reasons of equity, orders, in accordance with the Implementing Regulations, a different apportionment of costs.

(2) The procedure for fixing costs shall be laid down in the Implementing Regulations.

(3) Any final decision of the European Patent Office fixing the amount of costs shall be dealt with, for the purpose of enforcement in the Contracting States, in the same way as a final decision given by a civil court of the State in which enforcement is to take place. Verification of such decision shall be limited to its authenticity.

**Revised wording****Article 104  
Costs**

(1) *Unchanged*

(2) *Unchanged*

(3) Any final decision of the **Office** fixing the amount of costs shall be dealt with, for the purpose of enforcement in the Contracting States, in the same way as a final decision given by a civil court of the State in which enforcement is to take place. Verification of such decision shall be limited to its authenticity.

**ARTICLE 105 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 105****Intervention of the assumed infringer***Unchanged*

(1) Any third party may, in accordance with the Implementing Regulations, intervene in opposition proceedings after the opposition period has expired, if the third party proves that

(a) proceedings for infringement of the same patent have been instituted against him, or

(b) following a request of the proprietor of the patent to cease alleged infringement, the third party has instituted proceedings for a ruling that he is not infringing the patent.

(2) An admissible intervention shall be treated as an opposition.

## **ARTICLE 105a EPC**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.

**Present wording****Article 105a**  
**Request for limitation or revocation**

(1) At the request of the proprietor, the European patent may be revoked or be limited by an amendment of the claims. The request shall be filed with the European Patent Office in accordance with the Implementing Regulations. It shall not be deemed to have been filed until the limitation or revocation fee has been paid.

(2) The request may not be filed while opposition proceedings in respect of the European patent are pending.

**Revised wording****Article 105a**  
**Request for limitation or revocation**

(1) At the request of the proprietor, the European patent may be revoked or be limited by an amendment of the claims. The request shall be filed with the **Office** in accordance with the Implementing Regulations. It shall not be deemed to have been filed until the limitation or revocation fee has been paid.

(2) *Unchanged*

**ARTICLE 105b EPC**

**Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.



**Present wording****Article 105b****Limitation or revocation of the European patent**

(1) The European Patent Office shall examine whether the requirements laid down in the Implementing Regulations for limiting or revoking the European patent have been met.

(2) If the European Patent Office considers that the request for limitation or revocation of the European patent meets these requirements, it shall decide to limit or revoke the European patent in accordance with the Implementing Regulations. Otherwise, it shall reject the request.

(3) The decision to limit or revoke the European patent shall apply to the European patent in all the Contracting States in respect of which it has been granted. It shall take effect on the date on which the mention of the decision is published in the European Patent Bulletin.

**Revised wording****Article 105b****Limitation or revocation of the European patent**

(1) The **Office** shall examine whether the requirements laid down in the Implementing Regulations for limiting or revoking the European patent have been met.

(2) If the **Office** considers that the request for limitation or revocation of the European patent meets these requirements, it shall decide to limit or revoke the European patent in accordance with the Implementing Regulations. Otherwise, it shall reject the request.

(3) *Unchanged*

**ARTICLE 105c EPC**

**Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.

**Present wording**

**Article 105c**

**Publication of the amended specification  
of the European patent**

If the European patent is limited under Article 105b, paragraph 2, the European Patent Office shall publish the amended specification of the European patent as soon as possible after the mention of the limitation has been published in the European Patent Bulletin.

**Revised wording**

**Article 105c**

**Publication of the amended specification  
of the European patent**

If the European patent is limited under Article 105b, paragraph 2, the **Office** shall publish the amended specification of the European patent as soon as possible after the mention of the limitation has been published in the European Patent Bulletin.

**ARTICLE 106 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording**

**Revised wording**

**PART VI**

**PART VI**

**APPEALS PROCEDURE**

**APPEALS PROCEDURE**

**Article 106**

*Unchanged*

**Decisions subject to appeal**

(1) An appeal shall lie from decisions of the Receiving Section, Examining Divisions, Opposition Divisions and the Legal Division. It shall have suspensive effect.

(2) A decision which does not terminate proceedings as regards one of the parties can only be appealed together with the final decision, unless the decision allows a separate appeal.

(3) The right to file an appeal against decisions relating to the apportionment or fixing of costs in opposition proceedings may be restricted in the Implementing Regulations.

**ARTICLE 107 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording**

**Revised wording**

**Article 107**  
**Persons entitled to appeal and to be parties to appeal proceedings**

*Unchanged*

Any party to proceedings adversely affected by a decision may appeal. Any other parties to the proceedings shall be parties to the appeal proceedings as of right.

## ARTICLE 108 EPC

### Explanatory notes

1. Article 108(1) EPC 2000 does not require amendment. Even after the separation of the Appeal Chambers from the Office, the appeal and statement of grounds should continue to be filed with the department which took the contested decision. There are several reasons for preferring this solution. Apart from the cost and risk of setting up a separate system for filing, the existing requirement complies with generally accepted procedural principles (*iudex a quo*); moreover, appeals in *ex parte* proceedings must in any case be forwarded for reassessment and, where appropriate, rectification, to the department whose decision is contested (Article 109 EPC).
2. The proposed **Article 108(2) EPC** supplements and reinforces Article 109(2) EPC by imposing a general obligation on the Office to remit appeals filed under Article 108(1) EPC to the Court of Appeals, as this is no longer a purely internal administrative act.



**Present wording****Article 108****Time limit and form**

Notice of appeal shall be filed, in accordance with the Implementing Regulations, at the European Patent Office within two months of notification of the decision. Notice of appeal shall not be deemed to have been filed until the fee for appeal has been paid. Within four months of notification of the decision, a statement setting out the grounds of appeal shall be filed in accordance with the Implementing Regulations.

**Revised wording****Article 108****Time limit and form**

(1) Notice of appeal shall be filed, in accordance with the Implementing Regulations, at the **Office** within two months of notification of the decision. Notice of appeal shall not be deemed to have been filed until the fee for appeal has been paid. Within four months of notification of the decision, a statement setting out the grounds of appeal shall be filed in accordance with the Implementing Regulations.

**(2) Notwithstanding Article 109, the Office shall remit the appeal to the Court of Appeals without delay.**

## **ARTICLE 109 EPC**

### **Explanatory notes**

The proposed amendment to **Article 109(2) EPC 2000** is purely editorial.

**Present wording****Article 109****Interlocutory revision**

(1) If the department whose decision is contested considers the appeal to be admissible and well founded, it shall rectify its decision. This shall not apply where the appellant is opposed by another party to the proceedings.

(2) If the appeal is not allowed within three months of receipt of the statement of grounds, it shall be remitted to the Board of Appeal without delay, and without comment as to its merit.

**Revised wording****Article 109****Interlocutory revision**

(1) If the department whose decision is contested considers the appeal to be admissible and well founded, it shall rectify its decision. This shall not apply where the appellant is opposed by another party to the proceedings.

(2) If the appeal is not allowed within three months of receipt of the statement of grounds, it shall be remitted to the **Court of Appeals** without delay, and without comment as to its merit.

## **ARTICLE 110 EPC**

### **Explanatory notes**

The proposed amendment to **Article 110 EPC 2000** is purely editorial.

**Present wording**

**Article 110**

**Examination of appeals**

If the appeal is admissible, the Board of Appeal shall examine whether the appeal is allowable. The examination of the appeal shall be conducted in accordance with the Implementing Regulations.

**Revised wording**

**Article 110**

**Examination of appeals**

If the appeal is admissible, the **Appeal Chamber** shall examine whether the appeal is allowable. The examination of the appeal shall be conducted in accordance with the Implementing Regulations.

## **ARTICLE 111 EPC**

### **Explanatory notes**

The proposed amendment to **Article 111(1) and (2) EPC 2000** is purely editorial.

**Present wording****Article 111****Decision in respect of appeals**

(1) Following the examination as to the allowability of the appeal, the Board of Appeal shall decide on the appeal. The Board of Appeal may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution.

(2) If the Board of Appeal remits the case for further prosecution to the department whose decision was appealed, that department shall be bound by the *ratio decidendi* of the Board of Appeal, in so far as the facts are the same. If the decision under appeal was taken by the Receiving Section, the Examining Division shall also be bound by the *ratio decidendi* of the Board of Appeal.

**Revised wording****Article 111****Decision in respect of appeals**

(1) Following the examination as to the allowability of the appeal, the **Appeal Chamber** shall decide on the appeal. The **Appeal Chamber** may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution.

(2) If the **Appeal Chamber** remits the case for further prosecution to the department whose decision was appealed, that department shall be bound by the *ratio decidendi* of the **Appeal Chamber**, in so far as the facts are the same. If the decision under appeal was taken by the Receiving Section, the Examining Division shall also be bound by the *ratio decidendi* of the **Appeal Chamber**.

## ARTICLE 111a EPC

### Explanatory notes

1. The **new Article 111a EPC** transfers the responsibility for apportioning costs under Article 104 EPC to the Appeal Chambers. In accordance with the existing arrangements, the Appeal Chamber may award a fixed amount of costs to a party or order that a party shall bear a portion of the costs, the exact amount of which is to be fixed - by a separate procedure - after a decision has been issued.
2. The proposed **Article 111a(1) EPC** is only applicable in *inter partes* proceedings, as an apportionment of costs is only possible between parties, and the EPO is not a party within the meaning of this provision.
3. Rule 64a(1) EPC 2000 (corresponds to existing Rule 66(1) EPC) does not render the provision superfluous, as a corresponding application of Article 104 EPC 2000 in proceedings before the Appeal Chambers would lead to a situation whereby the Chamber deciding on the case would also be responsible for the procedure for fixing costs.

The proposed **Article 111a(2) EPC** makes it clear that the European Patent Office is responsible for fixing costs at first instance, but that decisions on the fixing of costs are appealable, provided the further requirements for admissibility are met (Article 106(3) in conjunction with Rule 63i EPC 2000)).



**Present wording**

**Revised wording**

**Article 111a**

**Costs**

**(1) Each party to the appeal proceedings shall bear the costs it has incurred, unless the Appeal Chamber, for reasons of equity, orders, in accordance with the Implementing Regulations, a different apportionment of costs.**

**(2) The procedure for fixing costs shall be carried out by the Office in accordance with the Implementing Regulations.**

**(3) Article 104, paragraph 3, shall apply to any final decision of the Court of Appeals.**

## **ARTICLE 112 EPC**

### **Explanatory notes**

The proposed amendments to **Article 112 EPC 2000** are purely editorial.

**Present wording****Article 112****Decision or opinion of the Enlarged Board of Appeal**

(1) In order to ensure uniform application of the law, or if a point of law of fundamental importance arises:

(a) the Board of Appeal shall, during proceedings on a case and either of its own motion or following a request from a party to the appeal, refer any question to the Enlarged Board of Appeal if it considers that a decision is required for the above purposes. If the Board of Appeal rejects the request, it shall give the reasons in its final decision;

(b) the President of the European Patent Office may refer a point of law to the Enlarged Board of Appeal where two Boards of Appeal have given different decisions on that question.

(2) In the cases referred to in paragraph 1(a) the parties to the appeal proceedings shall be parties to the proceedings before the Enlarged Board of Appeal.

(3) The decision of the Enlarged Board of Appeal referred to in paragraph 1(a) shall be binding on the Board of Appeal in respect of the appeal in question.

**Revised wording****Article 112****Decision or opinion of the High Chamber**

(1) In order to ensure uniform application of the law, or if a point of law of fundamental importance arises:

(a) the **Appeal Chamber** shall, during proceedings on a case and either of its own motion or following a request from a party to the appeal, refer any question to the **High Chamber** if it considers that a decision is required for the above purposes. If the **Appeal Chamber** rejects the request, it shall give the reasons in its final decision;

(b) the President of the **Office** may refer a point of law to the **High Chamber** where two **Appeal Chambers** have given different decisions on that question.

(2) In the cases referred to in paragraph 1(a) the parties to the appeal proceedings shall be parties to the proceedings before the **High Chamber**.

(3) The decision of the **High Chamber** referred to in paragraph 1(a) shall be binding on the **Appeal Chamber** in respect of the appeal in question.

## **ARTICLE 112a EPC**

### **Explanatory notes**

The proposed amendments to **Article 112a EPC 2000** (title, paragraphs 1, 2(a) and (b), 4, 5 and 6) are purely editorial.

**Present wording****Article 112a****Petition for review by the Enlarged Board of Appeal**

(1) Any party to appeal proceedings adversely affected by the decision of the Board of Appeal may file a petition for review of the decision by the Enlarged Board of Appeal.

(2) The petition may only be filed on the grounds that:

(a) a member of the Board of Appeal took part in the decision in breach of Article 24, paragraph 1, or despite being excluded pursuant to a decision under Article 24, paragraph 4;

(b) the Board of Appeal included a person not appointed as a member of the Boards of Appeal;

(c) a fundamental violation of Article 113 occurred;

(d) any other fundamental procedural defect defined in the Implementing Regulations occurred in the appeal proceedings; or

(e) a criminal act established under the conditions laid down in the Implementing Regulations may have had an impact on the decision.

(3) The petition for review shall not have suspensive effect.

**Revised wording****Article 112a****Petition for review by the High Chamber**

(1) Any party to appeal proceedings adversely affected by the decision of the **Appeal Chamber** may file a petition for review of the decision by the **High Chamber**.

(2) The petition may only be filed on the grounds that:

(a) a **judge of the Court of Appeals** took part in the decision in breach of Article 24, paragraph 1, or despite being excluded pursuant to a decision under Article 24, paragraph 4;

(b) the **Appeal Chamber** included a person not appointed as a **judge of the Court of Appeals**;

(c) a fundamental violation of Article 113 occurred;

(d) any other fundamental procedural defect defined in the Implementing Regulations occurred in the appeal proceedings; or

(e) a criminal act established under the conditions laid down in the Implementing Regulations may have had an impact on the decision.

(3) The petition for review shall not have suspensive effect.



**Present wording**

(4) The petition for review shall be filed in a reasoned statement, in accordance with the Implementing Regulations. If based on paragraph 2(a) to (d), the petition shall be filed within two months of notification of the decision of the Board of Appeal. If based on paragraph 2(e), the petition shall be filed within two months of the date on which the criminal act has been established and in any event no later than five years from notification of the decision of the Board of Appeal. The petition shall not be deemed to have been filed until after the prescribed fee has been paid.

(5) The Enlarged Board of Appeal shall examine the petition for review in accordance with the Implementing Regulations. If the petition is allowable, the Enlarged Board of Appeal shall set aside the decision and shall re-open proceedings before the Boards of Appeal in accordance with the Implementing Regulations.

(6) Any person who, in a designated Contracting State, has in good faith used or made effective and serious preparations for using an invention which is the subject of a published European patent application or a European patent in the period between the decision of the Board of Appeal and publication in the European Patent Bulletin of the mention of the decision of the Enlarged Board of Appeal on the petition, may without payment continue such use in the course of his business or for the needs thereof.

**Revised wording**

(4) The petition for review shall be filed in a reasoned statement, in accordance with the Implementing Regulations. If based on paragraph 2(a) to (d), the petition shall be filed within two months of notification of the decision of the **Appeal Chamber**. If based on paragraph 2(e), the petition shall be filed within two months of the date on which the criminal act has been established and in any event no later than five years from notification of the decision of the **Appeal Chamber**. The petition shall not be deemed to have been filed until after the prescribed fee has been paid.

(5) The **High Chamber** shall examine the petition for review in accordance with the Implementing Regulations. If the petition is allowable, the **High Chamber** shall set aside the decision and shall re-open proceedings before the **Appeal Chambers** in accordance with the Implementing Regulations.

(6) Any person who, in a designated Contracting State, has in good faith used or made effective and serious preparations for using an invention which is the subject of a published European patent application or a European patent in the period between the decision of the **Appeal Chamber** and publication in the European Patent Bulletin of the mention of the decision of the **High Chamber** on the petition, may without payment continue such use in the course of his business or for the needs thereof.

## **Part VII - COMMON PROVISIONS GOVERNING PROCEDURE BEFORE THE EUROPEAN PATENT OFFICE AND THE COURT OF APPEALS**

### **Chapter I - General provisions**

#### **Explanatory notes**

The provisions in this Part, particularly those of Chapter III - Representation, concern procedures before both the Office and the Court of Appeals. The title has been changed for the sake of clarity.

#### **ARTICLE 113 EPC - Right to be heard and basis of decisions**

1. Re **Article 113(1) EPC**: See comments on Article 60(3) EPC.
2. Re **Article 113(2) EPC**: Editorial amendment.



**Present wording****PART VII  
COMMON PROVISIONS****Chapter I  
Common provisions governing  
procedure****Article 113  
Right to be heard and basis of  
decisions**

(1) The decisions of the European Patent Office may only be based on grounds or evidence on which the parties concerned have had an opportunity to present their comments.

(2) The European Patent Office shall examine, and decide upon, the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.

**Revised wording****PART VII  
COMMON PROVISIONS GOVERNING  
THE PROCEDURE BEFORE THE  
OFFICE AND THE COURT OF APPEALS****Chapter I  
General provisions [...]****Article 113  
Right to be heard and basis of  
decisions**

(1) **In any proceedings under this Convention, decisions** may only be based on grounds or evidence on which the parties concerned have had an opportunity to present their comments.

(2) **The Office and the Appeal Chambers** shall examine, and decide upon, the European patent application or the European patent only in the text submitted to **them**, or agreed, by the applicant or the proprietor of the patent.

## **ARTICLE 114 EPC**

### **Explanatory notes**

The amendments to the title of **Article 114 EPC 2000** and the text of Article 114(1)(2) EPC 2000 are purely editorial. See also the comments on Article 60(3) EPC.

**Present wording****Article 114****Examination by the European Patent Office of its own motion**

(1) In proceedings before it, the European Patent Office shall examine the facts of its own motion; it shall not be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought.

(2) The European Patent Office may disregard facts or evidence which are not submitted in due time by the parties concerned.

**Revised wording****Article 114****Examination ex officio**

(1) In **any** proceedings **under this Convention**, the facts **shall be examined ex officio**. **Such examination** shall not be restricted to the facts, evidence and arguments provided by the parties and the relief sought.

(2) **Facts** or evidence which are not submitted in due time by the parties concerned **may be disregarded**.

**ARTICLE 115 EPC**

**Explanatory notes**

Re **Article 115 EPC**: See comments on Article 60(3) EPC.

**Present wording****Article 115****Observations by third parties**

In proceedings before the European Patent Office, following the publication of the European patent application, any third party may, in accordance with the Implementing Regulations, present observations concerning the patentability of the invention to which the application or patent relates. That person shall not be a party to the proceedings.

**Revised wording****Article 115****Observations by third parties**

In **any** proceedings **under this Convention**, following the publication of the European patent application, any third party may, in accordance with the Implementing Regulations, present observations concerning the patentability of the invention to which the application or patent relates. That person shall not be a party to the proceedings.

## **ARTICLE 116 EPC**

### **Explanatory notes**

The amendments of **Article 116(1) and (4) EPC 2000** are necessitated by the new structure of the Organisation. An editorial amendment is needed in Article 116(1) EPC 2000.

**Present wording****Article 116****Oral proceedings**

(1) Oral proceedings shall take place either at the instance of the European Patent Office if it considers this to be expedient or at the request of any party to the proceedings. However, the European Patent Office may reject a request for further oral proceedings before the same department where the parties and the subject of the proceedings are the same.

(2) Nevertheless, oral proceedings shall take place before the Receiving Section at the request of the applicant only where the Receiving Section considers this to be expedient or where it intends to refuse the European patent application.

(3) Oral proceedings before the Receiving Section, the Examining Divisions and the Legal Division shall not be public.

(4) Oral proceedings, including delivery of the decision, shall be public, as regards the Boards of Appeal and the Enlarged Board of Appeal, after publication of the European patent application, and also before the Opposition Divisions, in so far as the department before which the proceedings are taking place does not decide otherwise in cases where admission of the public could have serious and unjustified disadvantages, in particular for a party to the proceedings.

**Revised wording****Article 116****Oral proceedings**

(1) Oral proceedings shall take place either at the instance of the **Office, the Appeal Chambers or the High Chamber** if **they consider** this to be expedient, or at the request of any party to the proceedings. However, a request for further oral proceedings before the same department, **the same Appeal Chamber or the High Chamber may be rejected** where the parties and the subject of the proceedings are the same.

(2) Nevertheless, oral proceedings shall take place before the Receiving Section at the request of the applicant only where the Receiving Section considers this to be expedient or where it intends to refuse the European patent application.

(3) Oral proceedings before the Receiving Section, the Examining Divisions and the Legal Division shall not be public.

(4) Oral proceedings, including delivery of the decision, shall be public, as regards the **Appeal Chamber** and the **High Chamber**, after publication of the European patent application, and also before the Opposition Division, in so far as the department before which the proceedings are taking place does not decide otherwise in cases where admission of the public could have serious and unjustified disadvantages, in particular for a party to the proceedings.

**ARTICLE 117 EPC**

**Explanatory notes**

Re **Article 117 EPC**: See comments on Article 60(3) EPC.



**Present wording****Article 117****Means and taking of evidence**

(1) In proceedings before the European Patent Office the means of giving or obtaining evidence shall include the following:

- (a) hearing the parties;
- (b) requests for information;
- (c) production of documents;
- (d) hearing witnesses;
- (e) opinions by experts;
- (f) inspection;
- (g) sworn statements in writing.

(2) The procedure for taking such evidence shall be laid down in the Implementing Regulations.

**Revised wording****Article 117****Means and taking of evidence**

(1) In **any** proceedings **under this Convention** the means of giving or obtaining evidence shall include the following:

- (a) hearing the parties;
- (b) requests for information;
- (c) production of documents;
- (d) hearing witnesses;
- (e) opinions by experts;
- (f) inspection;
- (g) sworn statements in writing.

(2) The procedure for taking such evidence shall be laid down in the Implementing Regulations.

## **ARTICLE 118 EPC**

### **Explanatory notes**

Re **Article 118 EPC**: See comments on Article 60(3) EPC.

**Present wording****Article 118****Unity of the European patent application or European patent**

Where the applicants for or proprietors of a European patent are not the same in respect of different designated Contracting States, they shall be regarded as joint applicants or proprietors for the purposes of proceedings before the European Patent Office. The unity of the application or patent in these proceedings shall not be affected; in particular the text of the application or patent shall be uniform for all designated Contracting States, unless this Convention provides otherwise.

**Revised wording****Article 118****Unity of the European patent application or European patent**

Where the applicants for or proprietors of a European patent are not the same in respect of different designated Contracting States, they shall be regarded as joint applicants or proprietors for the purposes of **any proceedings under this Convention**. The unity of the application or patent in these proceedings shall not be affected; in particular the text of the application or patent shall be uniform for all designated Contracting States, unless this Convention provides otherwise.

## **ARTICLE 119 EPC**

### **Explanatory notes**

Re **Article 119 EPC**: See comments on Article 60(3) EPC. The introduction of the phrase "ex officio" is an editorial amendment.

**Present wording****Article 119**  
**Notification**

Decisions, summonses, notices and communications shall be notified by the European Patent Office of its own motion in accordance with the Implementing Regulations. Notification may, where exceptional circumstances so require, be effected through the intermediary of the central industrial property offices of the Contracting States.

**Revised wording****Article 119**  
**Notification**

Decisions, summonses, notices and communications **in any proceedings under this Convention** shall be notified **ex officio** in accordance with the Implementing Regulations. Notification may, where exceptional circumstances so require, be effected through the intermediary of the central industrial property offices of the Contracting States.

## **ARTICLE 120 EPC**

### **Explanatory notes**

The proposed amendments to **Article 120 EPC 2000** are purely editorial.

**Present wording****Article 120**  
**Time limits**

The Implementing Regulations shall specify:

- (a) the time limits which are to be observed in proceedings before the European Patent Office and are not fixed by this Convention;
- (b) the manner of computation of time limits and the conditions under which time limits may be extended;
- (c) the minima and maxima for time limits to be determined by the European Patent Office.

**Revised wording****Article 120**  
**Time limits**

The Implementing Regulations shall specify:

- (a) **periods** which are not fixed by this Convention;
- (b) the manner of computation of **periods** and the conditions under which **periods** may be extended;
- (c) the minima and maxima for **periods specified** by the **Office, the Appeal Chambers or the High Chamber**.

## ARTICLE 121 EPC

### Explanatory notes

1. Re **Article 121(2) EPC**: See comments on Article 60(3) EPC.
2. The amendment to **Article 121(2) EPC 2000** is necessitated by the new structure of the Organisation. An editorial change is also needed.
3. The amendments to **Article 121(4) EPC 2000** concern the English version only and are purely editorial.



**Present wording****Article 121****Further processing of the European patent application**

- (1) If an applicant fails to observe a time limit vis-à-vis the European Patent Office, he may request further processing of the European patent application.
- (2) The European Patent Office shall grant the request, provided that the requirements laid down in the Implementing Regulations are met. Otherwise, it shall reject the request.
- (3) If the request is granted, the legal consequences of the failure to observe the time limit shall be deemed not to have ensued.
- (4) Further processing shall be ruled out in respect of the time limits in Article 87, paragraph 1, Article 108 and Article 112a, paragraph 4, as well as the time limits for requesting further processing or re-establishment of rights. The Implementing Regulations may rule out further processing for other time limits.

**Revised wording****Article 121****Further processing of the European patent application**

- (1) If an applicant fails to observe a time limit **in any proceedings under this Convention**, he may request further processing of the European patent application.
- 2) **The request shall be granted**, provided that the requirements laid down in the Implementing Regulations are met. Otherwise, [...] the request **shall be rejected**.
- (3) If the request is granted, the legal consequences of the failure to observe the time limit shall be deemed not to have ensued.
- (4) Further processing shall be ruled out in respect of the **periods** in Article 87, paragraph 1, Article 108 and Article 112a, paragraph 4, as well as the **periods** for requesting further processing or re-establishment of rights. The Implementing Regulations may rule out further processing for other **periods**.

## ARTICLE 122 EPC

### Explanatory notes

1. Re **Article 122(1) EPC 2000**: See comments on Article 60(3) EPC.
2. The amendment to **Article 122(2) EPC 2000** is necessitated by the new structure of the Organisation.
3. The amendments to **Article 122(4) and (6) EPC 2000** concern the English version only and are purely editorial.

**Present wording****Article 122****Re-establishment of rights**

(1) An applicant for or proprietor of a European patent who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-à-vis the European Patent Office shall have his rights re-established upon request if the non-observance of this time limit has the direct consequence of causing the refusal of the European patent application or of a request, or the deeming of the application to have been withdrawn, or the revocation of the European patent, or the loss of any other right or means of redress.

(2) The European Patent Office shall grant the request, provided that the conditions of paragraph 1 and any other requirements laid down in the Implementing Regulations are met. Otherwise, it shall reject the request.

(3) If the request is granted, the legal consequences of the failure to observe the time limit shall be deemed not to have ensued.

(4) Re-establishment of rights shall be ruled out in respect of the time limit for requesting re-establishment of rights. The Implementing Regulations may rule out re-establishment for other time limits.

**Revised wording****Article 122****Re-establishment of rights**

(1) An applicant for or proprietor of a European patent who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit **in any proceedings under this Convention** shall have his rights re-established upon request if the non-observance of this time limit has the direct consequence of causing the refusal of the European patent application or of a request, or the deeming of the application to have been withdrawn, or the revocation of the European patent, or the loss of any other right or means of redress.

(2) **The request shall be granted**, provided that the conditions of paragraph 1 and any other requirements laid down in the Implementing Regulations are met. Otherwise, **the request shall be rejected**.

(3) If the request is granted, the legal consequences of the failure to observe the time limit shall be deemed not to have ensued.

(4) Re-establishment of rights shall be ruled out in respect of the **period** for requesting re-establishment of rights. The Implementing Regulations may rule out re-establishment for other **periods**.



**Present wording**

(5) Any person who, in a designated Contracting State, has in good faith used or made effective and serious preparations for using an invention which is the subject of a published European patent application or a European patent in the period between the loss of rights referred to in paragraph 1 and publication in the European Patent Bulletin of the mention of re-establishment of those rights, may without payment continue such use in the course of his business or for the needs thereof.

(6) Nothing in this Article shall limit the right of a Contracting State to grant re-establishment of rights in respect of time limits provided for in this Convention and to be observed vis-à-vis the authorities of such State.

**Revised wording**

(5) Any person who, in a designated Contracting State, has in good faith used or made effective and serious preparations for using an invention which is the subject of a published European patent application or a European patent in the period between the loss of rights referred to in paragraph 1 and publication in the European Patent Bulletin of the mention of re-establishment of those rights, may without payment continue such use in the course of his business or for the needs thereof.

(6) Nothing in this Article shall limit the right of a Contracting State to grant re-establishment of rights in respect of **periods** provided for in this Convention and to be observed vis-à-vis the authorities of such State.

## **ARTICLE 123 EPC**

### **Explanatory notes**

Re **Article 123(1) EPC**: See comments on Article 60(3) EPC.

**Present wording****Article 123  
Amendments**

(1) The European patent application or European patent may be amended in proceedings before the European Patent Office, in accordance with the Implementing Regulations. In any event, the applicant shall be given at least one opportunity to amend the application of his own volition.

(2) The European patent application or European patent may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed.

(3) The European patent may not be amended in such a way as to extend the protection it confers.

**Revised wording****Article 123  
Amendments**

(1) The European patent application or European patent may be amended **in any proceedings under this Convention**, in accordance with the Implementing Regulations. In any event, the applicant shall be given at least one opportunity to amend the application of his own volition.

(2) The European patent application or European patent may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed.

(3) The European patent may not be amended in such a way as to extend the protection it confers.

## **ARTICLE 124 EPC**

### **Explanatory notes**

The amendment to **Article 124(1) EPC 2000** is necessitated by the new structure of the Organisation and incorporates the definition in the proposed Article 4(2)(a) EPC.



**Present wording****Article 124****Information on prior art**

(1) The European Patent Office may, in accordance with the Implementing Regulations, invite the applicant to provide information on prior art taken into consideration in national or regional patent proceedings and concerning an invention to which the European patent application relates.

(2) If the applicant fails to reply in due time to an invitation under paragraph 1, the European patent application shall be deemed to be withdrawn.

**Revised wording****Article 124****Information on prior art**

(1) The **Office or the Appeal Chamber** may, in accordance with the Implementing Regulations, invite the applicant to provide information on prior art taken into consideration in national or regional patent proceedings and concerning an invention to which the European patent application relates.

(2) If the applicant fails to reply in due time to an invitation under paragraph 1, the European patent application shall be deemed to be withdrawn.

## **ARTICLE 125 EPC**

### **Explanatory notes**

The amendment to **Article 125 EPC 2000** is purely editorial.

**Present wording**

**Article 125**

**Reference to general principles**

In the absence of procedural provisions in this Convention, the European Patent Office shall take into account the principles of procedural law generally recognised in the Contracting States.

**Revised wording**

**Article 125**

**Reference to general principles**

In the absence of procedural provisions in this Convention, **account shall be taken of** the principles of procedural law generally recognised in the Contracting States.

## **ARTICLE 126 EPC**

### **Explanatory notes**

See the EPC Revision Act of 29 November 2000.

**Present wording**

**Revised wording**

**Article 126**  
**Termination of financial obligations**  
*(deleted)*

## **ARTICLE 127 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.

**Present wording****Chapter II****Information to the public or to official authorities****Article 127  
European Patent Register**

The European Patent Office shall keep a European Patent Register, in which the particulars specified in the Implementing Regulations shall be recorded. No entry shall be made in the European Patent Register before the publication of the European patent application. The European Patent Register shall be open to public inspection.

**Revised wording****Chapter II****Information to the public or to official authorities****Article 127  
European Patent Register**

The **Office** shall keep a European Patent Register, in which the particulars specified in the Implementing Regulations shall be recorded. No entry shall be made in the European Patent Register before the publication of the European patent application. The European Patent Register shall be open to public inspection.

## **ARTICLE 128 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.



**Present wording****Article 128  
Inspection of files**

(1) Files relating to European patent applications which have not yet been published shall not be made available for inspection without the consent of the applicant.

(2) Any person who can prove that the applicant has invoked the rights under the European patent application against him may obtain inspection of the files before the publication of that application and without the consent of the applicant.

(3) Where a European divisional application or a new European patent application filed under Article 61, paragraph 1, is published, any person may obtain inspection of the files of the earlier application before the publication of that application and without the consent of the applicant.

(4) After the publication of the European patent application, the files relating to the application and the resulting European patent may be inspected on request, subject to the restrictions laid down in the Implementing Regulations.

(5) Even before the publication of the European patent application, the European Patent Office may communicate to third parties or publish the particulars specified in the Implementing Regulations.

**Revised wording****Article 128  
Inspection of files**

(1) *Unchanged*

(2) *Unchanged*

(3) *Unchanged*

(4) *Unchanged*

(5) Even before the publication of the European patent application, the **Office** may communicate to third parties or publish the particulars specified in the Implementing Regulations.

## **ARTICLE 129 EPC**

### **Explanatory notes**

The amendment of **Article 129(b) EPC 2000** is necessitated by the new structure of the Organisation. From time to time the President of the Court of Appeals may need to issue important information concerning the appeals procedure via the official publications on his own initiative.

**Present wording****Article 129****Periodical publications**

The European Patent Office shall periodically publish:

- (a) a European Patent Bulletin containing the particulars the publication of which is prescribed by this Convention, the Implementing Regulations or the President of the European Patent Office;
- (b) an Official Journal containing notices and information of a general character issued by the President of the European Patent Office, as well as any other information relevant to this Convention or its implementation.

**Revised wording****Article 129****Periodical publications**

The **Office** shall periodically publish:

- (a) a European Patent Bulletin containing the particulars the publication of which is prescribed by this Convention, the Implementing Regulations or the President of the **Office**;
- (b) an Official Journal containing notices and information of a general character issued by the President of the **Office or the President of the Court of Appeals**, as well as any other information relevant to this Convention or its implementation.

## **ARTICLE 130 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.

**Present wording****Article 130**  
**Exchange of information**

(1) Unless this Convention or national laws provide otherwise, the European Patent Office and the central industrial property office of any Contracting State shall, on request, communicate to each other any useful information regarding European or national patent applications and patents and any proceedings concerning them.

(2) Paragraph 1 shall apply to the communication of information by virtue of working agreements between the European Patent Office and

(a) the central industrial property offices of other States;

(b) any intergovernmental organisation entrusted with the task of granting patents;

(c) any other organisation.

(3) Communications under paragraphs 1 and 2(a) and (b) shall not be subject to the restrictions laid down in Article 128. The Administrative Council may decide that communications under paragraph 2(c) shall not be subject to such restrictions, provided that the organisation concerned treats the information communicated as confidential until the European patent application has been published.

**Revised wording****Article 130**  
**Exchange of information**

(1) Unless this Convention or national laws provide otherwise, the **Office** and the central industrial property office of any Contracting State shall, on request, communicate to each other any useful information regarding European or national patent applications and patents and any proceedings concerning them.

(2) *Unchanged*

(3) *Unchanged*

## **ARTICLE 131 EPC**

### **Explanatory notes**

The proposed amendments will enable the Court of Appeals, as well as the Office, to seek assistance from – or give assistance to – national authorities, especially in taking evidence or taking other legal measures under paragraph 2. The amendments also incorporate the definition in the proposed Article 4(2)(a) EPC.

**Present wording****Article 131****Administrative and legal co-operation**

(1) Unless this Convention or national laws provide otherwise, the European Patent Office and the courts or authorities of Contracting States shall on request give assistance to each other by communicating information or opening files for inspection. Where the European Patent Office makes files available for inspection by courts, Public Prosecutors' Offices or central industrial property offices, the inspection shall not be subject to the restrictions laid down in Article 128.

(2) At the request of the European Patent Office, the courts or other competent authorities of Contracting States shall undertake, on behalf of the Office and within the limits of their jurisdiction, any necessary enquiries or other legal measures.

**Revised wording****Article 131****Administrative and legal co-operation**

(1) Unless this Convention or national laws provide otherwise, the **Office or the Court of Appeals** and the courts or authorities of Contracting States shall on request give assistance to each other by communicating information or opening files for inspection. Where the **Office or the Court of Appeals** makes files available for inspection by courts, Public Prosecutors' Offices or central industrial property offices, the inspection shall not be subject to the restrictions laid down in Article 128.

(2) At the request of the **Office or the Court of Appeals**, the courts or other competent authorities of Contracting States shall undertake, on behalf of the **Office or the Court of Appeals** and within the limits of their jurisdiction, any necessary enquiries or other legal measures.

## **ARTICLE 132 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.



**Present wording****Article 132**  
**Exchange of publications**

(1) The European Patent Office and the central industrial property offices of the Contracting States shall despatch to each other on request and for their own use one or more copies of their respective publications free of charge.

(2) The European Patent Office may conclude agreements relating to the exchange or supply of publications.

**Revised wording****Article 132**  
**Exchange of publications**

(1) The **Office** and the central industrial property offices of the Contracting States shall despatch to each other on request and for their own use one or more copies of their respective publications free of charge.

(2) The **Office** may conclude agreements relating to the exchange or supply of publications.

## **ARTICLE 133 EPC**

### **Explanatory notes**

Re **Article 133 EPC**: See comments on Article 60(3) EPC.

**Present wording****Chapter III  
Representation****Article 133****General principles of representation**

(1) Subject to paragraph 2, no person shall be compelled to be represented by a professional representative in proceedings established by this Convention.

(2) Natural or legal persons not having their residence or principal place of business in a Contracting State shall be represented by a professional representative and act through him in all proceedings established by this Convention, other than in filing a European patent application; the Implementing Regulations may permit other exceptions.

(3) Natural or legal persons having their residence or principal place of business in a Contracting State may be represented in proceedings established by this Convention by an employee, who need not be a professional representative but who shall be authorised in accordance with the Implementing Regulations. The Implementing Regulations may provide whether and under what conditions an employee of a legal person may also represent other legal persons which have their principal place of business in a Contracting State and which have economic connections with the first legal person.

**Revised wording****Chapter III  
Representation****Article 133****General principles of representation**

(1) Subject to paragraph 2, no person shall be compelled to be represented by a professional representative in **any** proceedings **under** this Convention.

(2) Natural or legal persons not having their residence or principal place of business in a Contracting State shall be represented by a professional representative and act through him in **any** proceedings **under** this Convention, other than in filing a European patent application; the Implementing Regulations may permit other exceptions.

(3) Natural or legal persons having their residence or principal place of business in a Contracting State may be represented in **any** proceedings **under** this Convention by an employee, who need not be a professional representative but who shall be authorised in accordance with the Implementing Regulations. The Implementing Regulations may provide whether and under what conditions an employee of a legal person may also represent other legal persons which have their principal place of business in a Contracting State and which have economic connections with the first legal person.



**Present wording**

(4) The Implementing Regulations may lay down special provisions concerning the common representation of parties acting in common.

**Revised wording**

(4) The Implementing Regulations may lay down special provisions concerning the common representation of parties acting in common.

## ARTICLE 134 EPC

### Explanatory notes

1. Re **Article 134 EPC**: See comments on Article 60(3) EPC.
2. **Article 134(1), (6) and (7)**: The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.

**Present wording****Article 134****Representation before the European Patent Office**

(1) Representation of natural or legal persons in proceedings established by this Convention may only be undertaken by professional representatives whose names appear on a list maintained for this purpose by the European Patent Office.

(2) Any natural person who

(a) is a national of a Contracting State,

(b) has his place of business or employment in a Contracting State and

(c) has passed the European qualifying examination

may be entered on the list of professional representatives.

(3) During a period of one year from the date on which the accession of a State to this Convention takes effect, entry on that list may also be requested by any natural person who

(a) is a national of a Contracting State,

(b) has his place of business or employment in the State having acceded to the Convention and

**Revised wording****Article 134****Representation in proceedings under this Convention**

(1) Representation of natural or legal persons in **any** proceedings **under** this Convention may only be undertaken by professional representatives whose names appear on a list maintained for this purpose by the **Office**.

(2) Any natural person who

(a) is a national of a Contracting State,

(b) has his place of business or employment in a Contracting State and

(c) has passed the European qualifying examination

may be entered on the list of professional representatives.

(3) During a period of one year from the date on which the accession of a State to this Convention takes effect, entry on that list may also be requested by any natural person who

(a) is a national of a Contracting State,

(b) has his place of business or employment in the State having acceded to the Convention and





**Present wording**

(c) is entitled to represent natural or legal persons in patent matters before the central industrial property office of that State. Where such entitlement is not conditional upon the requirement of special professional qualifications, the person shall have regularly so acted in that State for at least five years.

(4) Entry shall be effected upon request, accompanied by certificates indicating that the conditions laid down in paragraph 2 or 3 are fulfilled.

(5) Persons whose names appear on the list of professional representatives shall be entitled to act in all proceedings established by this Convention.

(6) For the purpose of acting as a professional representative, any person whose name appears on the list of professional representatives shall be entitled to establish a place of business in any Contracting State in which proceedings established by this Convention may be conducted, having regard to the Protocol on Centralisation annexed to this Convention. The authorities of such State may remove that entitlement in individual cases only in application of legal provisions adopted for the purpose of protecting public security and law and order. Before such action is taken, the President of the European Patent Office shall be consulted.

**Revised wording**

(c) is entitled to represent natural or legal persons in patent matters before the central industrial property office of that State. Where such entitlement is not conditional upon the requirement of special professional qualifications, the person shall have regularly so acted in that State for at least five years.

(4) Entry shall be effected upon request, accompanied by certificates indicating that the conditions laid down in paragraph 2 or 3 are fulfilled.

(5) Persons whose names appear on the list of professional representatives shall be entitled to act in **any** proceedings **under** this Convention.

(6) For the purpose of acting as a professional representative, any person whose name appears on the list of professional representatives shall be entitled to establish a place of business in any Contracting State in which proceedings **under** this Convention may be conducted, having regard to the Protocol on Centralisation annexed to this Convention. The authorities of such State may remove that entitlement in individual cases only in application of legal provisions adopted for the purpose of protecting public security and law and order. Before such action is taken, the President of the **Office** shall be consulted.



**Present wording**

(7) The President of the European Patent Office may grant exemption from:

(a) the requirement of paragraphs 2(a) or 3(a) in special circumstances;

(b) the requirement of paragraph 3(c), second sentence, if the applicant furnishes proof that he has acquired the requisite qualification in another way.

(8) Representation in proceedings established by this Convention may also be undertaken, in the same way as by a professional representative, by any legal practitioner qualified in a Contracting State and having his place of business in that State, to the extent that he is entitled in that State to act as a professional representative in patent matters. Paragraph 6 shall apply *mutatis mutandis*.

**Revised wording**

(7) The President of the **Office** may grant exemption from:

(a) the requirement of paragraphs 2(a) or 3(a) in special circumstances;

(b) the requirement of paragraph 3(c), second sentence, if the applicant furnishes proof that he has acquired the requisite qualification in another way.

(8) Representation in **any** proceedings **under** this Convention may also be undertaken, in the same way as by a professional representative, by any legal practitioner qualified in a Contracting State and having his place of business in that State, to the extent that he is entitled in that State to act as a professional representative in patent matters. Paragraph 6 shall apply *mutatis mutandis*.

## **ARTICLE 134a EPC**

### **Explanatory notes**

1. Re **Article 134a(1)(d) EPC**: See comments on Article 60(3) EPC.
2. Owing to the new structure of the Organisation, the name of the Institute may be subject to change.

**Present wording****Article 134a****Institute of Professional  
Representatives before the European  
Patent Office**

(1) The Administrative Council shall be competent to adopt and amend provisions governing:

(a) the Institute of Professional Representatives before the European Patent Office, hereinafter referred to as the Institute;

(b) the qualifications and training required of a person for admission to the European qualifying examination and the conduct of such examination;

(c) the disciplinary power exercised by the Institute or the European Patent Office in respect of professional representatives;

(d) the obligation of confidentiality on the professional representative and the privilege from disclosure in proceedings before the European Patent Office in respect of communications between a professional representative and his client or any other person.

(2) Any person entered on the list of professional representatives referred to in Article 134, paragraph 1, shall be a member of the Institute.

**Revised wording****Article 134a****Institute of Professional  
Representatives before the European  
Patent Office**

(1) The Administrative Council shall be competent to adopt and amend provisions governing:

(a) the Institute of Professional Representatives before the European Patent Office, hereinafter referred to as the Institute;

(b) the qualifications and training required of a person for admission to the European qualifying examination and the conduct of such examination;

(c) the disciplinary power exercised by the Institute or the **Office** in respect of professional representatives;

(d) the obligation of confidentiality on the professional representative and the privilege from disclosure in **any** proceedings **under this Convention** in respect of communications between a professional representative and his client or any other person.

(2) Any person entered on the list of professional representatives referred to in Article 134, paragraph 1, shall be a member of the Institute.

## ARTICLE 135 EPC

### Explanatory notes

1. **Article 135(3) EPC:** The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.
2. The amendment to **Article 135(4) EPC** concerns the English text only and harmonises the wording with the French and German versions.

**Present wording****PART VIII****IMPACT ON NATIONAL LAW****Chapter I****Conversion into a national patent application****Article 135****Request for conversion**

(1) The central industrial property office of a designated Contracting State shall, at the request of the applicant for or proprietor of a European patent, apply the procedure for the grant of a national patent in the following circumstances:

(a) where the European patent application is deemed to be withdrawn under Article 77, paragraph 3;

(b) in such other cases as are provided for by the national law, in which the European patent application is refused or withdrawn or deemed to be withdrawn, or the European patent is revoked under this Convention.

(2) In the case referred to in paragraph 1(a), the request for conversion shall be filed with the central industrial property office with which the European patent application has been filed. That office shall, subject to the provisions governing national security, transmit the request directly to the central industrial property offices of the Contracting States specified therein.

**Revised wording****PART VIII****IMPACT ON NATIONAL LAW****Chapter I****Conversion into a national patent application****Article 135****Request for conversion**

(1) *Unchanged*

(2) *Unchanged*





**Present wording**

(3) In the cases referred to in paragraph 1(b), the request for conversion shall be submitted to the European Patent Office in accordance with the Implementing Regulations. It shall not be deemed to be filed until the conversion fee has been paid. The European Patent Office shall transmit the request to the central industrial property offices of the Contracting States specified therein.

(4) The effect of the European patent application referred to in Article 66 shall lapse if the request for conversion is not submitted in due time.

**Revised wording**

(3) In the cases referred to in paragraph 1(b), the request for conversion shall be submitted to the **Office** in accordance with the Implementing Regulations. It shall not be deemed to be filed until the conversion fee has been paid. The **Office** shall transmit the request to the central industrial property offices of the Contracting States specified therein.

(4) The effect of the European patent application referred to in Article 66 shall lapse if the request for conversion is not **transmitted** in due time.

## **ARTICLE 136**

### **Explanatory notes**

See the EPC Revision Act of 29 November 2000.

**Present wording**

**Article 136**  
**Submission and transmission of the**  
**request**  
*(deleted)*

**Revised wording**

## **ARTICLE 137**

### **Explanatory notes**

Re **Article 137(2)(b) EPC**: See comments on Article 60(3) EPC.

**Present wording****Article 137****Formal requirements for conversion**

(1) A European patent application transmitted in accordance with Article 135, paragraph 2 or 3, shall not be subjected to formal requirements of national law which are different from or additional to those provided for in this Convention.

(2) Any central industrial property office to which the European patent application is transmitted may require that the applicant shall, within a period of not less than two months:

(a) pay the national application fee; and

(b) file a translation of the original text of the European patent application in an official language of the State in question and, where appropriate, of the text as amended during proceedings before the European Patent Office which the applicant wishes to use as the basis for the national procedure.

**Revised wording****Article 137****Formal requirements for conversion**

(1) A European patent application transmitted in accordance with Article 135, paragraph 2 or 3, shall not be subjected to formal requirements of national law which are different from or additional to those provided for in this Convention.

(2) Any central industrial property office to which the European patent application is transmitted may require that the applicant shall, within a period of not less than two months:

(a) pay the national application fee; and

(b) file a translation of the original text of the European patent application in an official language of the State in question and, where appropriate, of the text as amended during **any** proceedings **under this Convention** which the applicant wishes to use as the basis for the national procedure.

**ARTICLE 138 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Chapter II****Revocation and prior rights****Article 138****Revocation of European patents**

(1) Subject to Article 139, a European patent may be revoked with effect for a Contracting State only on the grounds that:

(a) the subject-matter of the European patent is not patentable under Articles 52 to 57;

(b) the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;

(c) the subject-matter of the European patent extends beyond the content of the application as filed or, if the patent was granted on a divisional application or on a new application filed under Article 61, beyond the content of the earlier application as filed;

(d) the protection conferred by the European patent has been extended; or

(e) the proprietor of the European patent is not entitled under Article 60, paragraph 1.

(2) If the grounds for revocation affect the European patent only in part, the patent shall be limited by a corresponding amendment of the claims and revoked in part.

**Revised wording****Chapter II****Revocation and prior rights****Article 138****Revocation of European patents**

*Unchanged*





**Present wording**

(3) In proceedings before the competent court or authority relating to the validity of the European patent, the proprietor of the patent shall have the right to limit the patent by amending the claims. The patent as thus limited shall form the basis for the proceedings.

**Revised wording**

**ARTICLE 139 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 139****Prior rights and rights arising on the same date***Unchanged*

(1) In any designated Contracting State a European patent application and a European patent shall have with regard to a national patent application and a national patent the same prior right effect as a national patent application and a national patent.

(2) A national patent application and a national patent in a Contracting State shall have with regard to a European patent designating that Contracting State the same prior right effect as if the European patent were a national patent.

(3) Any Contracting State may prescribe whether and on what terms an invention disclosed in both a European patent application or patent and a national application or patent having the same date of filing or, where priority is claimed, the same date of priority, may be protected simultaneously by both applications or patents.

## **ARTICLE 140 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording**

**Chapter III**

**Miscellaneous effects**

**Article 140**

**National utility models and utility certificates**

Articles 66, 124, 135, 137 and 139 shall apply to utility models and utility certificates and to applications for utility models and utility certificates registered or deposited in the Contracting States whose laws make provision for such models or certificates.

**Revised wording**

**Chapter III**

**Miscellaneous effects**

*Unchanged*

**ARTICLE 141 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 141****Renewal fees for European patents***Unchanged*

(1) Renewal fees for a European patent may only be imposed for the years which follow that referred to in Article 86, paragraph 2.

(2) Any renewal fees falling due within two months of the publication in the European Patent Bulletin of the mention of the grant of the European patent shall be deemed to have been validly paid if they are paid within that period. Any additional fee provided for under national law shall not be charged.

**ARTICLE 142 EPC**

**Explanatory notes**

The provision remains unchanged.



**Present wording****PART IX****SPECIAL AGREEMENTS****Article 142  
Unitary patents**

(1) Any group of Contracting States, which has provided by a special agreement that a European patent granted for those States has a unitary character throughout their territories, may provide that a European patent may only be granted jointly in respect of all those States.

(2) Where any group of Contracting States has availed itself of the authorisation given in paragraph 1, the provisions of this Part shall apply.

**Revised wording****PART IX****SPECIAL AGREEMENTS**

*Unchanged*

## **ARTICLE 143 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.

**Present wording****Article 143**  
**Special departments of the European Patent Office**

(1) The group of Contracting States may give additional tasks to the European Patent Office.

(2) Special departments common to the Contracting States in the group may be set up within the European Patent Office in order to carry out the additional tasks. The President of the European Patent Office shall direct such special departments; Article 10, paragraphs 2 and 3, shall apply *mutatis mutandis*.

**Revised wording****Article 143**  
**Special departments of the Office**

(1) The group of Contracting States may give additional tasks to the **Office**.

(2) Special departments common to the Contracting States in the group may be set up within the **Office** in order to carry out the additional tasks. The President of the **Office** shall direct such special departments; Article 10, paragraphs 2 and 3, shall apply *mutatis mutandis*.

**ARTICLE 144 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording**

**Revised wording**

**Article 144**  
**Representation before special**  
**departments**

*Unchanged*

The group of Contracting States may lay down special provisions to govern representation of parties before the departments referred to in Article 143, paragraph 2.

## **ARTICLE 145 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.

**Present wording****Article 145****Select committee of the Administrative Council**

(1) The group of Contracting States may set up a select committee of the Administrative Council for the purpose of supervising the activities of the special departments set up under Article 143, paragraph 2; the European Patent Office shall place at its disposal such staff, premises and equipment as may be necessary for the performance of its duties. The President of the European Patent Office shall be responsible for the activities of the special departments to the select committee of the Administrative Council.

(2) The composition, powers and functions of the select committee shall be determined by the group of Contracting States.

**Revised wording****Article 145****Select committee of the Administrative Council**

(1) The group of Contracting States may set up a select committee of the Administrative Council for the purpose of supervising the activities of the special departments set up under Article 143, paragraph 2; the **Office** shall place at its disposal such staff, premises and equipment as may be necessary for the performance of its duties. The President of the **Office** shall be responsible for the activities of the special departments to the select committee of the Administrative Council.

(2) *Unchanged*

## **ARTICLE 146 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.



**Present wording****Article 146**  
**Cover for expenditure for carrying out special tasks**

Where additional tasks have been given to the European Patent Office under Article 143, the group of Contracting States shall bear the expenses incurred by the Organisation in carrying out these tasks. Where special departments have been set up in the European Patent Office to carry out these additional tasks, the group shall bear the expenditure on staff, premises and equipment chargeable in respect of these departments. Article 39, paragraphs 3 and 4, Article 41 and Article 47 shall apply *mutatis mutandis*.

**Revised wording****Article 146**  
**Cover for expenditure for carrying out special tasks**

Where additional tasks have been given to the **Office** under Article 143, the group of Contracting States shall bear the expenses incurred by the Organisation in carrying out these tasks. Where special departments have been set up in the **Office** to carry out these additional tasks, the group shall bear the expenditure on staff, premises and equipment chargeable in respect of these departments. Article 39, paragraphs 3 and 4, Article 41 and Article 47 shall apply *mutatis mutandis*.

## **ARTICLE 147 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 147****Payments in respect of renewal fees for unitary patents***Unchanged*

If the group of Contracting States has fixed a common scale of renewal fees in respect of European patents the proportion referred to in Article 39, paragraph 1, shall be calculated on the basis of the common scale; the minimum amount referred to in Article 39, paragraph 1, shall apply to the unitary patent. Article 39, paragraphs 3 and 4, shall apply *mutatis mutandis*.

**ARTICLE 148 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 148****The European patent application as an object of property***Unchanged*

(1) Article 74 shall apply unless the group of Contracting States has specified otherwise.

(2) The group of Contracting States may provide that a European patent application for which these Contracting States are designated may only be transferred, mortgaged or subjected to any legal means of execution in respect of all the Contracting States of the group and in accordance with the provisions of the special agreement.

## **ARTICLE 149 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.

**Present wording****Article 149  
Joint designation**

(1) The group of Contracting States may provide that these States may only be designated jointly, and that the designation of one or some only of such States shall be deemed to constitute the designation of all the States of the group.

(2) Where the European Patent Office acts as a designated Office under Article 153, paragraph 1, paragraph 1 shall apply if the applicant has indicated in the international application that he wishes to obtain a European patent for one or more of the designated States of the group. The same shall apply if the applicant designates in the international application one of the Contracting States in the group, whose national law provides that the designation of that State shall have the effect of the application being for a European patent.

**Revised wording****Article 149  
Joint designation**

(1) *Unchanged*

(2) Where the **Office** acts as a designated Office under Article 153, paragraph 1, paragraph 1 shall apply if the applicant has indicated in the international application that he wishes to obtain a European patent for one or more of the designated States of the group. The same shall apply if the applicant designates in the international application one of the Contracting States in the group, whose national law provides that the designation of that State shall have the effect of the application being for a European patent.

## ARTICLE 149a EPC

### Explanatory notes

1. The amendment to **Article 149a(2)(a) EPC 2000** is purely editorial.
2. **Article 149a(1)(d) and 2(b)**: The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.



**Present wording****Article 149a****Other agreements between the Contracting States**

(1) Nothing in this Convention shall be construed as limiting the right of some or all of the Contracting States to conclude special agreements on any matters concerning European patent applications or European patents which under this Convention are subject to and governed by national law, such as, in particular

(a) an agreement establishing a European patent court common to the Contracting States party to it;

(b) an agreement establishing an entity common to the Contracting States party to it to deliver, at the request of national courts or quasi-judicial authorities, opinions on issues of European or harmonised national patent law;

(c) an agreement under which the Contracting States party to it dispense fully or in part with translations of European patents under Article 65;

(d) an agreement under which the Contracting States party to it provide that translations of European patents as required under Article 65 may be filed with, and published by, the European Patent Office.

**Revised wording****Article 149a****Other agreements between the Contracting States**

(1) Nothing in this Convention shall be construed as limiting the right of some or all of the Contracting States to conclude special agreements on any matters concerning European patent applications or European patents which under this Convention are subject to and governed by national law, such as, in particular

(a) an agreement establishing a European patent court common to the Contracting States party to it;

(b) an agreement establishing an entity common to the Contracting States party to it to deliver, at the request of national courts or quasi-judicial authorities, opinions on issues of European or harmonised national patent law;

(c) an agreement under which the Contracting States party to it dispense fully or in part with translations of European patents under Article 65;

(d) an agreement under which the Contracting States party to it provide that translations of European patents as required under Article 65 may be filed with, and published by, the **Office**.



**Present wording**

(2) The Administrative Council shall be competent to decide that:

(a) the members of the Boards of Appeal or the Enlarged Board of Appeal may serve on a European patent court or a common entity and take part in proceedings before that court or entity in accordance with any such agreement;

(b) the European Patent Office shall provide a common entity with such support staff, premises and equipment as may be necessary for the performance of its duties, and the expenses incurred by that entity shall be borne fully or in part by the Organisation.

**Revised wording**

(2) The Administrative Council shall be competent to decide that:

(a) the **judges of the Court of Appeals** or the members of the **High Chamber** may serve on a European patent court or a common entity and take part in proceedings before that court or entity in accordance with any such agreement;

(b) the **Office** shall provide a common entity with such support staff, premises and equipment as may be necessary for the performance of its duties, and the expenses incurred by that entity shall be borne fully or in part by the Organisation.

## **ARTICLE 150**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC.

**Present wording****PART X****INTERNATIONAL APPLICATIONS  
UNDER THE PATENT COOPERATION  
TREATY - EURO-PCT APPLICATIONS****Article 150****Application of the Patent Cooperation  
Treaty**

(1) The Patent Cooperation Treaty of 19 June 1970, hereinafter referred to as the PCT, shall be applied in accordance with the provisions of this Part.

(2) International applications filed under the PCT may be the subject of proceedings before the European Patent Office. In such proceedings, the provisions of the PCT and its Regulations shall be applied, supplemented by the provisions of this Convention. In case of conflict, the provisions of the PCT or its Regulations shall prevail.

**Revised wording****PART X****INTERNATIONAL APPLICATIONS  
UNDER THE PATENT COOPERATION  
TREATY - EURO-PCT APPLICATIONS****Article 150****Application of the Patent Cooperation  
Treaty**

(1) *Unchanged*

(2) International applications filed under the PCT may be the subject of proceedings before the **Office**. In such proceedings, the provisions of the PCT and its Regulations shall be applied, supplemented by the provisions of this Convention. In case of conflict, the provisions of the PCT or its Regulations shall prevail.

## **ARTICLE 151 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the proposed Article 4(2)(a) EPC. \$

**Present wording**

**Article 151**  
**The European Patent Office as a  
receiving Office**

The European Patent Office shall act as a receiving Office within the meaning of the PCT, in accordance with the Implementing Regulations. Article 75, paragraph 2, shall apply.

**Revised wording**

**Article 151**  
**The Office as a receiving Office**

The **Office** shall act as a receiving Office within the meaning of the PCT, in accordance with the Implementing Regulations. Article 75, paragraph 2, shall apply.

## **ARTICLE 152 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the new Article 4(2)(a) EPC.



**Present wording**

**Article 152**  
**The European Patent Office as an  
International Searching Authority  
or International Preliminary Examining  
Authority**

The European Patent Office shall act as an International Searching Authority and International Preliminary Examining Authority within the meaning of the PCT, in accordance with an agreement between the Organisation and the International Bureau of the World Intellectual Property Organization, for applicants who are residents or nationals of a State party to this Convention. This agreement may provide that the European Patent Office shall also act for other applicants.

**Revised wording**

**Article 152**  
**The Office as an International Searching  
Authority or International Preliminary  
Examining Authority**

The **Office** shall act as an International Searching Authority and International Preliminary Examining Authority within the meaning of the PCT, in accordance with an agreement between the Organisation and the International Bureau of the World Intellectual Property Organization, for applicants who are residents or nationals of a State party to this Convention. This agreement may provide that the **Office** shall also act for other applicants.

## **ARTICLE 153 EPC**

### **Explanatory notes**

The amendment incorporates the definition in the new Article 4(2)(a) EPC and aligns the provision with the new Article 7a EPC.

**Present wording**

**Article 153**  
**The European Patent Office as**  
**designated Office or elected Office**

- (1) The European Patent Office shall be
- (a) a designated Office for any State party to this Convention in respect of which the PCT is in force, which is designated in the international application and for which the applicant wishes to obtain a European patent, and
- (b) an elected Office, if the applicant has elected a State designated pursuant to letter (a).
- (2) An international application for which the European Patent Office is a designated or elected Office, and which has been accorded an international date of filing, shall be equivalent to a regular European application (Euro-PCT application).
- (3) The international publication of a Euro-PCT application in an official language of the European Patent Office shall take the place of the publication of the European patent application and shall be mentioned in the European Patent Bulletin.
- (4) If the Euro-PCT application is published in another language, a translation into one of the official languages shall be filed with the European Patent Office, which shall publish it. Subject to Article 67, paragraph 3, the provisional protection under Article 67, paragraphs 1 and 2, shall be effective from the date of that publication.

**Revised wording**

**Article 153**  
**The Office as designated Office or**  
**elected Office**

- (1) The **Office** shall be
- (a) a designated Office for any State party to this Convention in respect of which the PCT is in force, which is designated in the international application and for which the applicant wishes to obtain a European patent, and
- (b) an elected Office, if the applicant has elected a State designated pursuant to letter (a).
- (2) An international application for which the **Office** is a designated or elected Office, and which has been accorded an international date of filing, shall be equivalent to a regular European application (Euro-PCT application).
- (3) The international publication of a Euro-PCT application in an official language of the **Organisation** shall take the place of the publication of the European patent application and shall be mentioned in the European Patent Bulletin.
- (4) If the Euro-PCT application is published in another language, a translation into one of the official languages **of the Organisation** shall be filed with the **Office**, which shall publish it. Subject to Article 67, paragraph 3, the provisional protection under Article 67, paragraphs 1 and 2, shall be effective from the date of that publication.



**Present wording****Revised wording**

(5) The Euro-PCT application shall be treated as a European patent application and shall be considered as comprised in the state of the art under Article 54, paragraph 3, if the conditions laid down in paragraph 3 or 4 and in the Implementing Regulations are fulfilled.

(5) *Unchanged*

(6) The international search report drawn up in respect of a Euro-PCT application or the declaration replacing it, and their international publication, shall take the place of the European search report and the mention of its publication in the European Patent Bulletin.

(6) *Unchanged*

(7) A supplementary European search report shall be drawn up in respect of any Euro-PCT application under paragraph 5. The Administrative Council may decide that the supplementary search report is to be dispensed with or that the search fee is to be reduced.

(7) *Unchanged*

## **ARTICLE 154 - 163 EPC**

### **Explanatory notes**

See the EPC Revision Act of 29 November 2000.

**Present wording**

**Revised wording**

**Articles 154 - 163**  
*(deleted)*

**ARTICLE 164 EPC**

**Explanatory notes**

The provision remains unchanged.



**Present wording**

**Revised wording**

**PART XII**

**PART XII**

**FINAL PROVISIONS**

**FINAL PROVISIONS**

**Article 164**

*Unchanged*

**Implementing Regulations and Protocols**

(1) The Implementing Regulations, the Protocol on Recognition, the Protocol on Privileges and Immunities, the Protocol on Centralisation, the Protocol on the Interpretation of Article 69 and the Protocol on Staff Complement shall be integral parts of this Convention.

(2) In case of conflict between the provisions of this Convention and those of the Implementing Regulations, the provisions of this Convention shall prevail.

## **ARTICLE 165 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 165**  
**Signature - Ratification***Unchanged*

(1) This Convention shall be open for signature until 5 April 1974 by the States which took part in the Inter-Governmental Conference for the setting up of a European System for the Grant of Patents or were informed of the holding of that conference and offered the option of taking part therein.

(2) This Convention shall be subject to ratification; instruments of ratification shall be deposited with the Government of the Federal Republic of Germany.

**ARTICLE 166 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 166  
Accession***Unchanged*

(1) This Convention shall be open to accession by:

(a) the States referred to in Article 165, paragraph 1;

(b) any other European State at the invitation of the Administrative Council.

(2) Any State which has been a party to the Convention and has ceased to be so as a result of the application of Article 172, paragraph 4, may again become a party to the Convention by acceding to it.

(3) Instruments of accession shall be deposited with the Government of the Federal Republic of Germany.

## **ARTICLE 167 EPC**

### **Explanatory notes**

See the EPC Revision Act of 29 November 2000.

**Present wording**

**Article 167**  
**Reservations**  
*(deleted)*

**Revised wording**

## **ARTICLE 168 EPC**

### **Explanatory notes**

The provision remains unchanged.



**Present wording****Revised wording****Article 168**  
**Territorial field of application***Unchanged*

(1) Any Contracting State may declare in its instrument of ratification or accession, or may inform the Government of the Federal Republic of Germany by written notification at any time thereafter, that this Convention shall be applicable to one or more of the territories for the external relations of which it is responsible. European patents granted for that Contracting State shall also have effect in the territories for which such a declaration has taken effect.

(2) If the declaration referred to in paragraph 1 is contained in the instrument of ratification or accession, it shall take effect on the same date as the ratification or accession; if the declaration is notified after the deposit of the instrument of ratification or accession, such notification shall take effect six months after the date of its receipt by the Government of the Federal Republic of Germany.

(3) Any Contracting State may at any time declare that the Convention shall cease to apply to some or to all of the territories in respect of which it has given notification pursuant to paragraph 1. Such declaration shall take effect one year after the date on which the Government of the Federal Republic of Germany received notification thereof.

## **ARTICLE 169 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 169  
Entry into force***Unchanged*

(1) This Convention shall enter into force three months after the deposit of the last instrument of ratification or accession by six States on whose territory the total number of patent applications filed in 1970 amounted to at least 180 000 for all the said States.

(2) Any ratification or accession after the entry into force of this Convention shall take effect on the first day of the third month after the deposit of the instrument of ratification or accession.

**ARTICLE 170 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 170**  
**Initial contribution***Unchanged*

(1) Any State which ratifies or accedes to this Convention after its entry into force shall pay to the Organisation an initial contribution, which shall not be refunded.

(2) The initial contribution shall be 5% of an amount calculated by applying the percentage obtained for the State in question, on the date on which ratification or accession takes effect, in accordance with the scale provided for in Article 40, paragraphs 3 and 4, to the sum of the special financial contributions due from the other Contracting States in respect of the accounting periods preceding the date referred to above.

(3) In the event that special financial contributions were not required in respect of the accounting period immediately preceding the date referred to in paragraph 2, the scale of contributions referred to in that paragraph shall be the scale that would have been applicable to the State concerned in respect of the last year for which financial contributions were required.

**ARTICLE 171 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording**

**Revised wording**

**Article 171**  
**Duration of the Convention**

The present Convention shall be of unlimited duration.

*Unchanged*

## **ARTICLE 172 EPC**

### **Explanatory notes**

The provision remains unchanged.



**Present wording****Revised wording****Article 172  
Revision***Unchanged*

- (1) This Convention may be revised by a Conference of the Contracting States.
- (2) The Conference shall be prepared and convened by the Administrative Council. The Conference shall not be validly constituted unless at least three-quarters of the Contracting States are represented at it. Adoption of the revised text shall require a majority of three-quarters of the Contracting States represented and voting at the Conference. Abstentions shall not be considered as votes.
- (3) The revised text shall enter into force when it has been ratified or acceded to by the number of Contracting States specified by the Conference, and at the time specified by that Conference.
- (4) Such States as have not ratified or acceded to the revised text of the Convention at the time of its entry into force shall cease to be parties to this Convention as from that time.

**ARTICLE 173 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 173**  
**Disputes between Contracting States***Unchanged*

(1) Any dispute between Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiation shall be submitted, at the request of one of the States concerned, to the Administrative Council, which shall endeavour to bring about agreement between the States concerned.

(2) If such agreement is not reached within six months from the date when the dispute was referred to the Administrative Council, any one of the States concerned may submit the dispute to the International Court of Justice for a binding decision.

**ARTICLE 174 EPC**

**Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 174  
Denunciation***Unchanged*

Any Contracting State may at any time denounce this Convention. Denunciation shall be notified to the Government of the Federal Republic of Germany. It shall take effect one year after the date of receipt of such notification.

## **ARTICLE 175 EPC**

### **Explanatory notes**

Re **Article 175(2) EPC**: See comments on Article 60(3) EPC.

**Present wording****Article 175  
Preservation of acquired rights**

(1) In the event of a State ceasing to be party to this Convention in accordance with Article 172, paragraph 4, or Article 174, rights already acquired pursuant to this Convention shall not be impaired.

(2) A European patent application which is pending when a designated State ceases to be party to the Convention shall be processed by the European Patent Office, as far as that State is concerned, as if the Convention in force thereafter were applicable to that State.

(3) Paragraph 2 shall apply to European patents in respect of which, on the date mentioned in that paragraph, an opposition is pending or the opposition period has not expired.

(4) Nothing in this Article shall affect the right of any State that has ceased to be a party to this Convention to treat any European patent in accordance with the text to which it was a party.

**Revised wording****Article 175  
Preservation of acquired rights**

(1) In the event of a State ceasing to be party to this Convention in accordance with Article 172, paragraph 4, or Article 174, rights already acquired pursuant to this Convention shall not be impaired.

(2) A European patent application which is pending when a designated State ceases to be party to the Convention shall be processed **in any proceedings under this Convention**, as far as that State is concerned, as if the Convention in force thereafter were applicable to that State.

(3) Paragraph 2 shall apply to European patents in respect of which, on the date mentioned in that paragraph, an opposition is pending or the opposition period has not expired.

(4) Nothing in this Article shall affect the right of any State that has ceased to be a party to this Convention to treat any European patent in accordance with the text to which it was a party.

**ARTICLE 176 EPC**

**Explanatory notes**

The provision remains unchanged.



**Present wording****Revised wording****Article 176**  
**Financial rights and obligations of**  
**former Contracting States***Unchanged*

(1) Any State which has ceased to be a party to this Convention in accordance with Article 172, paragraph 4, or Article 174, shall have the special financial contributions which it has paid pursuant to Article 40, paragraph 2, refunded to it by the Organisation only at the time when and under the conditions whereby the Organisation refunds special financial contributions paid by other States during the same accounting period.

(2) The State referred to in paragraph 1 shall, even after ceasing to be a party to this Convention, continue to pay the proportion pursuant to Article 39 of renewal fees in respect of European patents remaining in force in that State, at the rate current on the date on which it ceased to be a party.

## **ARTICLE 177 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 177  
Languages of the Convention***Unchanged*

(1) This Convention, drawn up in a single original, in the English, French and German languages, shall be deposited in the archives of the Government of the Federal Republic of Germany, the three texts being equally authentic.

(2) The texts of this Convention drawn up in official languages of Contracting States other than those specified in paragraph 1 shall, if they have been approved by the Administrative Council, be considered as official texts. In the event of disagreement on the interpretation of the various texts, the texts referred to in paragraph 1 shall be authentic.

## **ARTICLE 178 EPC**

### **Explanatory notes**

The provision remains unchanged.

**Present wording****Revised wording****Article 178**  
**Transmission and notifications***Unchanged*

(1) The Government of the Federal Republic of Germany shall draw up certified true copies of this Convention and shall transmit them to the Governments of all signatory or acceding States.

(2) The Government of the Federal Republic of Germany shall notify to the Governments of the States referred to in paragraph 1:

(a) the deposit of any instrument of ratification or accession;

(b) any declaration or notification received pursuant to Article 168;

(c) any denunciation received pursuant to Article 174 and the date on which such denunciation comes into force.

(3) The Government of the Federal Republic of Germany shall register this Convention with the Secretariat of the United Nations.

