

BR/GT I/21 e/72

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INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 8 February 1972

BR/GT II/21/72

- Secretariat -

NOTE

Subject: Proposal on the Protocol on Privileges and Immunities

Drawn up by: Austrian delegation

BR/GT II/21 e/72 ley/KM/prk

Proposal from the Austrian delegation
on the Protocol on Privileges and Immunities

The Austrian delegation bases its position regarding the question of the necessity of privileges and immunities for the European Patent Office on the Report from the European Committee on Legal Co-operation (CCJ) Sub-Committee on Privileges and Immunities for International Organisations (Council of Europe Addendum to CM (69) of 9 July 1969), which the Ministerial Committee of the Council of Europe, in its Resolution (69) 29 of 26 September 1969, recommended to the Governments of the Member States for consideration in connection with future deliberations on privileges and immunities for international organisations. The Austrian delegation considers that the European Patent Office will be an international organisation whose task will be predominantly technical, and which will therefore not require the same privileges and immunities as an organisation which undertakes work of decidedly political significance, such as the United Nations, the Council of Europe, ELDO or ESRO (cf. point 44 of the report mentioned above).

The Austrian delegation is in agreement with the United Kingdom delegation (cf. BR/111/71, point D), in that it would like to see, in preference to a separate protocol, a special chapter dealing with the legal status of the European Patent Office inserted into the Convention. Such a chapter would deal exhaustively with all relevant questions. The authorisation to adopt certain decisions, which is vested in the Administrative Council under the present Article 17 of the Draft Protocol should be dispensed with for reasons of simplification and legal clarity.

For the reasons quoted above, the Austrian delegation supports the proposals made by the United Kingdom delegation in connection with Article 1, Article 3, Article 12, paragraph 1(b) and (g), Article 14(e), Article 15(c) and Articles 16, 22 and 23. It would also make the following points:

Article 4, paragraph 2:

Apart from the very vague terms "substantial purchases" and "whenever possible", which should be defined, the term "Governments of the States parties to the Convention" should be replaced by "States parties to the Convention", because such a measure exempting the European Patent Office from taxes would require legislation not only in Austria but in most other States as well. (Cf. in this connection the drafting of Article 11 and Article 12, paragraph 1, of the Draft Protocol, where the expression "States parties to the Convention" is used).

Article 5:

The expression "whenever possible" is again too vague.

Article 7:

In both paragraph 1 and paragraph 2 of this provision the expressions "Governments of the States" and "Governments of the States parties to the Convention" should be replaced by "States parties to the Convention", because the measures set out in this provision will come within the competence of the legislator. A typographical error in the German text of paragraph 2 should be rectified ("Ausgabe" should read "Abgabe").

Article 10:

In paragraph 1 the phrase "the Government of each State party to the Convention" should be replaced by the term "the States parties to the Convention".

Article 14(a) should read:

"The staff members of the European Patent Office shall have, both during their service and after leaving the service of the European Patent Office,"

Article 14(g):

Here too, "the Government of the State" should be replaced by "the State party to the Convention".
