

# **BR/GT II/7 e/70**

## **Travaux Préparatoires EPC 1973**

### **Comment:**

The collection represents purely an internal research tool for the purpose of Directorate Patent Law of the European Patent Office. No guarantee can be given for its completeness or correctness.

The documents produced before 1969 cannot be provided in English as this was not an official language in the period before that date. These documents therefore are provided in French and German.



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

Brussels 21 July 1970  
BR/GT II/7/70

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- Secretariat -

WORKING DOCUMENT

Draft Protocol  
on privileges and immunities of the  
European Patent Office and other bodies  
set up by the Convention establishing a  
European System for the Grant of Patents  
put forward by the Chairman of Working Party II (1)

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(1) An explanatory note on this draft Protocol is appended in  
Annex

BR/GT II/7/70 e/70 kel/RT/cm



PROTOCOL ON PRIVILEGES AND IMMUNITIES OF THE  
EUROPEAN PATENT OFFICE AND OTHER BODIES SET UP  
BY THE CONVENTION ESTABLISHING A EUROPEAN  
SYSTEM FOR THE GRANT OF PATENTS

The Contracting States to the Convention establishing a European System for the Grant of Patents, signed at .....  
....., on .....(hereinafter referred to as "the Convention");

Desirous of defining the privileges and immunities which the European Patent Office, its officials and certain categories of persons taking part in its work shall enjoy in the territory of those States, and the privileges and immunities which the representatives of the Member States on the Administrative Council and the members of subordinate bodies shall enjoy, in accordance with Article 35 of the Convention;

Have agreed as follows:-

Article 1

The buildings and premises of the European Patent Office shall be inviolable.

- 2 -

Article 2

The archives of the European Patent Office shall be inviolable.

Article 3

(1) Within the scope of its official activities, the European Patent Office shall have immunity from jurisdiction and execution except:

- (a) to the extent that the European Patent Office shall have expressly waived such immunity in a particular case, it being understood that in any case of a dispute covered by Article 23 (1) of this Protocol, and of which the value in litigation does not exceed 100,000 French francs, and which cannot be settled by agreement, the European Patent Office shall waive its immunity unless, in the opinion of the Administrative Council the case raises a question of principle of such importance that it cannot agree to waive that immunity;
- (b) in respect of a civil action by a third party for damages arising from an accident caused by a motor vehicle belonging to, or operated on behalf of the European Patent Office or in respect of a motor traffic offence involving such a vehicle;

(c) in respect of an enforcement of an arbitration award made either under Article 22 or Article 23.

(2) The European Patent Office's property and assets wherever situated shall be immune from any form of requisition, confiscation, expropriation and sequestration.

(3) With regard to the official activities of the European Patent Office, its property and assets shall also be immune from any form of administrative or provisional judicial constraint, except insofar as may be temporarily necessary in connection with the prevention of, and investigation into, accidents involving motor vehicles belonging to, or operated on behalf of the European Patent Office.

#### Article 4

(1) Within the scope of its official activities, the European Patent Office and its property and income shall be exempt from all direct taxes.

(2) When substantial purchases which are strictly necessary for the exercise of its official activities, and in the price of which taxes or duties are included, are made by or on behalf of the European Patent Office, appropriate measures shall, whenever possible, be taken by the Governments of Member States to reimburse to the European Patent Office or to remit the amount of such taxes or duties.

(3) No exemption shall be accorded in respect of duties and taxes which are no more than charges for public utility services.

#### Article 5

Goods imported or exported by or on behalf of the European Patent Office and strictly necessary for the exercise of its official activities shall, whenever possible, be exempt from all customs duties and other customs charges except mere payments for services rendered and from all prohibitions and restrictions on import or export.

#### Article 6

No exemption shall be granted under Articles 4 and 5 in respect of goods purchased or imported for the personal benefit of the staff members of the European Patent Office.

#### Article 7

(1) Goods belonging to the European Patent Office which have been acquired under Article 4 or imported under Article 5 shall not be sold or given away except in accordance with conditions laid down by the Governments of the States which have granted exemptions.



(2) The transfer of goods and services within the European Patent Office and strictly necessary for its official activities shall be exempt from charges or restrictions of any kind. Alternatively, the Governments of Member States shall take all appropriate measures to remit or reimburse the amount of such charges or to lift such restrictions.

#### Article 8

The circulation of publications and other information material sent by or to the European Patent Office shall not be restricted in any way.

#### Article 9

The European Patent Office may receive and hold any kind of funds, currency or securities; it may dispose of them freely for any purpose provided for in the Convention and hold accounts in any currency to the extent required to meet its obligations.

#### Article 10

(1) With regard to its official communications and the transfer of all its documents, the European Patent Office shall enjoy treatment not less favourable than that accorded by the Government of each Member State to other international organisations.

(2) No censorship shall be applied to official communications of the European Patent Office by whatever means of communication.

Article 11

Member States shall take all appropriate measures to facilitate the entry, stay and departure of all staff members of the European Patent Office.

Article 12

(1) Representatives of Member States attending meetings of the Administrative Council and of its subordinate bodies shall enjoy, while exercising their functions and in the course of their journeys to and from the place of meeting, the following privileges and immunities:

(a) immunity from arrest and detention, and from seizure of their personal luggage;

(b) immunity from jurisdiction, even after the termination of their mission, in respect of acts, including words spoken and written, done by them in the exercise of their functions;

(c) inviolability for all their official papers and documents;

(d) the right to use codes and to receive documents or correspondence by special courier or sealed bag;

(e) exemption for themselves and their spouses from all measures restricting entry and from aliens' registration formalities;

(f) the same facilities in the matter of currency and exchange control as are accorded to the representatives of foreign Governments on temporary official missions;

(g) the same customs facilities as regards their personal luggage as are accorded to diplomatic agents.

(2) Privileges and immunities are accorded to representatives of Member States, not for their personal advantage, but in order to ensure complete independence, in the exercise of their functions in connection with the European Patent Office. Consequently, a Member State has not only the right but also the duty to waive the immunity of its representative in all cases where in the opinion of that State, the immunity would impede the course of justice and where it can be waived without prejudicing the purposes for which it was accorded.

### Article 13

In addition to the privileges and immunities provided for in Article 14 below, the President of the European Patent Office shall enjoy the privileges and immunities to which diplomatic persons of comparable rank are entitled.

Article 14

The staff members of the European Patent Office:

(a) shall have, even after they have left the service of the European Patent Office, immunity from jurisdiction in respect of acts, including words written and spoken, done by them in the exercise of their functions; this immunity shall not apply, however, in the case of a motor traffic offence committed by a staff member of the European Patent Office, nor in the case of damage caused by a motor vehicle belonging to or driven by a staff member;

(b) shall be exempt from all obligations in respect of military service;

(c) shall enjoy inviolability for all their official papers and documents;

(d) shall enjoy the same facilities as regards exemption from all measures restricting immigration and governing aliens' registration as are normally accorded to staff members of international organisations, and members of their families forming part of their households shall enjoy the same facilities;

(e) shall enjoy the same privileges in respect of exchange regulations as are normally accorded to the staff members of international organisations,

(f) shall enjoy the same facilities as to repatriation as diplomatic agents in time of international crisis, and the members of their family forming part of their households shall enjoy the same facilities;

(g) shall have the right to import duty-free their furniture and personal effects at the time of first taking up their post in the State concerned and the right on the termination of their functions in that State to export free of duty their furniture and personal effects, subject, in both cases, to the conditions considered necessary by the Government of the State where the right is exercised.

#### Article 15

Persons other than those referred to in Article 14 of this Protocol shall, in the exercise of their functions in connection with the European Patent Office or in carrying out missions for the European Patent Office, in their capacity as experts, enjoy the following privileges and immunities, to the extent that they are necessary for the carrying out of their functions, including during journeys made in carrying out their functions and in the course of such missions:

(a) immunity from jurisdiction in respect of acts done by them in the exercise of their functions, including words written or spoken, except in the case of a motor traffic offence committed by an expert or in the case of damage caused by a motor vehicle belonging to or driven by him; experts shall continue to enjoy this immunity after they have ceased to be employed by the European Patent Office.

(b) inviolability for all their official papers and documents;

(c) the same facilities as regards monetary and exchange regulations and as regards their personal luggage as are accorded to the officials of foreign Governments on temporary official missions.

Article 16

(1) Subject to the conditions and following the procedure laid down by the Administrative Council, within a period of one year from the date of the entry into force of the Convention, the President and the staff members of the European Patent Office shall be subject to a tax, for the benefit of the European Patent Office on salaries and emoluments paid by the latter. From the date on which this tax is applied such salaries and emoluments shall be exempt from national income tax; but the Member States shall retain the right to take these salaries and emoluments into account for the purpose of assessing the amount of taxation to be applied to income from other sources.

(2) The provisions of paragraph (1) of this Article shall not apply to pensions and annuities paid by the European Patent Office to its former Presidents and staff members.

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Article 17

The Administrative Council shall decide the categories of staff members to whom the provisions of Article 14, in whole or in part, and Article 16 shall apply and the categories of experts to whom the provisions of Article 15 shall apply. The names, titles and addresses of the staff members and experts included in such categories shall be communicated from time to time to the Governments of Contracting States to the Convention.

Article 18

The European Patent Office, its President and its staff members shall be exempt from all compulsory contributions to national social security schemes, subject to the agreements made with the Member States in accordance with the provisions of Article 26.

Article 19

(1) The privileges and immunities provided for in this Protocol shall not be designed to give to the President, staff members and experts of the European Patent Office personal advantage. They shall be provided solely to ensure, in all circumstances, the unimpeded functioning of the European Patent Office and the complete independence of the persons to whom they are accorded.

(2) The President of the European Patent Office shall have the right and the duty to waive such immunity where he considers that such immunity prevents the normal course of justice and that it is possible to dispense with such immunity without prejudicing the interests of the European Patent Office. As regards the President, the Administrative Council shall be empowered to waive such immunity.

#### Article 20

(1) The European Patent Office shall co-operate at all times with the competent authorities of Member States in order to facilitate the proper administration of justice, to ensure the observance of police regulations and regulations concerning public health, labour inspection or other similar national legislation, and to prevent any abuse of the privileges, immunities and facilities provided for in this Protocol.

(2) The procedure of co-operation mentioned in the foregoing paragraph may be laid down in the complementary agreements referred to in Article 26.

#### Article 21

No Member State is obliged to accord the privileges and immunities referred to in Articles 12, 13, 14 (b), (e) and (g) and 15 (c) to its own nationals.

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Article 22

(1) The European Patent Office shall be required in all written contracts into which it enters other than those concluded in accordance with staff regulations to insert an arbitration clause or to conclude a special agreement in writing whereby any disputes arising out of the interpretation or execution of the contract may at the request of either party be submitted to private arbitration. Such arbitration clause or agreement shall specify the law applicable and the country where the arbitrators shall sit. The procedure of the arbitration shall be that of that country.

(2) The enforcement of the award of such arbitration shall be governed by the rules in force in the State in which it is to be executed.

Article 23

(1) Any Member State may submit to an international Arbitration Tribunal any dispute:

(a) arising out of damage caused by the European Patent Office;

(b) involving any other non-contractual responsibility of the European Patent Office;

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(c) involving the President, a staff member or expert of the European Patent Office and in which the person concerned can claim immunity from jurisdiction under Articles 13, 14 (a) or 15 (a), if this immunity is not waived in accordance with the provisions of Article 19. In such disputes where the claim for immunity from jurisdiction arises under Article 14 (a) or 15 (a), the responsibility of the European Patent Office shall, in such arbitration, be substituted for that of the individuals concerned.

(2) If a Member State intends to submit a dispute to arbitration it shall notify the Chairman of the Administrative Council who shall forthwith inform each Member State of such notification.

(3) The procedure laid down in paragraph (1) of this Article shall not apply to disputes between the European Patent Office and the President, its staff members or experts in respect of their conditions of service.

(4) No appeal shall lie against the award of the Arbitration Tribunal, which shall be final; it shall be binding on the parties. In case of dispute concerning the import or scope of the award, it shall be incumbent upon the Arbitration Tribunal to interpret it on request by either party.

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Article 24

(1) The Arbitration Tribunal referred to in Article 23 shall consist of three members, one arbitrator nominated by the State, or States, party to the arbitration, one arbitrator nominated by the Administrative Council and a third arbitrator who shall be the chairman, nominated by the said two arbitrators.

(2) The arbitrators shall be nominated from a panel comprising no more than six arbitrators appointed by each Member State and six arbitrators appointed by the Administration Council.

(3) If, within three months from the date of the notification referred to in Article 23 (2), either party fails to make the nomination referred to in paragraph (1) of this Article, the choice of the arbitrator shall, on request of the other party, be made by the President of the International Court of Justice from the persons included in the said panel. This shall also apply, when so requested by either party, if within one month from the date of appointment of the second arbitrator, the first two arbitrators are unable to agree on the nomination of the third arbitrator. However, a national of the State applying for arbitration may not be chosen to fill the post of the arbitrator whose appointment devolves on the Administrative Council nor may a person included in the panel and appointed by the Administrative Council be chosen to fill the post of an arbitrator whose appointment devolves on the State which is the claimant. Nor may a person of either of these categories be chosen as Chairman of the Tribunal.

(4) The Administrative Council shall establish the procedure to be followed in the Arbitration Tribunal.

Article 25

Within one year from the date of entry into force of the Convention, the Administrative Council shall make suitable provision for the satisfactory settlement of disputes arising between the European Patent Office and its President, staff members or experts in respect of their conditions of service.

Article 26

The European Patent Office may, on a decision of the Administrative Council, conclude with one or more Member States complementary agreements to give effect to the provisions of this Protocol as regards such State or States and other arrangements to ensure the efficient functioning of the European Patent Office and the safeguarding of its interests.

Article 27

(1) The Administrative Council may recommend amendments to this protocol to Member States. Any Member State which wishes to propose an amendment shall notify the Chairman of the Administrative Council thereof. The Chairman of the Administrative Council shall inform all Member States of any amendment so notified at least three months before such amendment is to be discussed by the Administrative Council.

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(2) Any amendment recommended by the Administrative Council shall require acceptance in writing. Such amendment shall come into force thirty days after the Government of ..... shall have received notification of acceptance from all Member States. The Government of ..... shall inform all Member States of the date of entry into force of any such amendment.

#### Article 28

Any dispute between two or more Contracting States, or formerly Contracting States, to the Convention, or between one or more of them and the European Patent Office concerning the interpretation or the application of this Protocol shall be settled in accordance with the provisions of Article (1) of the Convention.

#### Article 29

(1) This Protocol shall be open for signature until (the date to be inserted should allow for signature during a period of six months following the conclusion of the Convention) by the States which have signed the Convention or acceded to it.

(2) This Protocol shall be subject to ratification or approval. The instruments of ratification or approval shall be deposited with the Government of .....

Article 30

(1) As from [the date to be inserted should be the day immediately following the end of the period provided for in Article 29 (1)] any Member State not signatory to this Protocol may accede to it.

(2) Instruments of accession shall be deposited in the archives of the Government of .....

Article 31

(1) This Protocol shall enter into force when instruments of ratification, approval or accession have been deposited on behalf of six Member States, in whose territory the number of patent applications filed in 1968 amounted to a total of 115,000 for all these six States.

(2) For any State which deposits its instrument of ratification, approval or accession after the entry into force of this Protocol in accordance with paragraph (1) of this Article, this Protocol shall enter into force on the date of the deposit of such instrument.

Article 32

The Government of ..... shall notify all States which have signed this Protocol or which have acceded to it, and also the Chairman of the Administrative Council, of signatures made in accordance with Article 29 (1), of the deposit of each instrument of ratification, approval or accession and of the entry into force of this Protocol.

Article 33

(1) This Protocol shall remain in force until the expiry of the Convention.

(2) Denunciation of the Convention by any Member State in accordance with the provisions of Article h (2) of the Convention, shall imply denunciation by that State of this Protocol.

In witness whereof, the Plenipotentiaries designated to this end after presentation of their full powers, found in good and due form, have appended their signatures to this Protocol.

Done at .....on .....





ANNEX

EXPLANATORY NOTE ON THE PROTOCOL ON  
PRIVILEGES AND IMMUNITIES OF THE EUROPEAN PATENT OFFICE  
AND OTHER BODIES SET UP BY THE CONVENTION ESTABLISHING  
A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

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The Protocol on privileges and immunities put forward by the Chairman of Working Party II is based, save for a few essential amendments, on the Protocol on privileges and immunities of the European Launcher Development Organisation, signed at London on 29 June 1964.

The replies made by the governments of various Member States of the Council of Europe prior to the work of the sub-Committee of the European Committee on Legal Co-operation of the Council of Europe showed that the relevant protocols of ELDO and ESRO should be taken as models on which to base further protocols of a similar nature, with the necessary amendments for each case.

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