



# BR/GT II/18 e/71

## Travaux Préparatoires EPC 1973

### Comment:

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

Brussels, 4th October 1971

BR/GT II/18/71

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- Secretariat -

COVER NOTE

The United Kingdom delegation, under cover of a letter dated 23 September 1971, sent a note to the Secretariat concerning the draft Protocol on privileges and immunities. This note which is annexed hereto, has been distributed for discussion at the next meeting of Working Party II, to be held from 29 November to 3 December 1971.

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NOTE FROM THE UNITED KINGDOM DELEGATION  
ON THE DRAFT PROTOCOL

The United Kingdom delegation welcomes the opportunity to participate in the work of Working Party II to bring the provisions of the draft Protocol more into line with the decision of the Conference in April that "the European Patent Office should have the same basic privileges and immunities as those generally accepted for international organisations" (para 150 of the minutes BR/125/71).

Article 35 of the draft Convention indicates that the Protocol is to define the immunities and privileges which are necessary for the European Patent Office and its staff to carry out their tasks. We believe that the States negotiating the present Convention accept the Explanatory Report of the Committee on Legal Co-operation annexed to Resolution (69)29, adopted by the Committee of Ministers of the Council of Europe on 26 September 1969. In our view, therefore, the intention must be to take into account the several considerations (particularly conclusions 2 and 3) set out in this Report when giving effect to the principle of necessity enunciated in Article 35. Accordingly, we interpret the decision of the Conference as meaning that the European Patent Office is to have only these privileges and immunities accorded to strictly comparable international organisations which are necessary to enable the Office and its staff to exercise their functions.

On this basis, the United Kingdom delegation wishes to make the following comments on the draft Protocol:



1. We doubt whether Article 1 is necessary. As we see it, there is nothing political or secret in the work of the European Patent Office which can be said to require the inviolability of its buildings and premises. It also appears difficult to justify excluding the police and other authorities, since the general public is to have access to the Office.
  
2. As noted by the Conference (para 153 of the minutes) there is at present a conflict between Article 3, 22 and 23 of the draft Protocol and Article 40 of the draft Convention which needs to be removed. In our opinion Article 3, paragraph 1, goes too far in that it grants legal immunity with only two real exceptions. As we see it, the European Patent Office should be subject to control by the Courts in respect of breaches in any contract it enters into or in respect of other wrongful acts which have no connection with its tasks (eg damage resulting to persons from negligent maintenance of the EPO building). Furthermore, we do not think that the withholding of immunity in such cases would in any case interfere with the normal functioning of the Office in carrying out the task defined in Article 4 of the Convention. On the other hand, we would think it is probably necessary for the Office to be immune in respect of acts done in the exercise of its function of granting patents. If Article 3, paragraph 1, of the Protocol were limited in this way, Article 22 could also be deleted and Article 40 of the Convention could then be so worded as to make it applicable to those cases in which the European Patent Office either has no immunity or has waived its immunity.

3. We think that the representatives of a State should not, in respect of immunity, be treated differently from the President of the Office, its staff and experts. Accordingly we suggest the addition to Article 12(1)(b) of the following:

"The immunity shall not apply, however, in the case of a motor traffic offence committed by a representative, nor in the case of damage caused by a motor vehicle belonging to or driven by him".

4. We continue to have doubts as to the justification for the fiscal and other financial privileges which are the subject of Articles 4-7, 9, 12(1)(g), 13, 14(e) and (g) and 15(c) of the draft Protocol and are apparently to be included in Article 16.

The European Patent Office will not be a body rendering services for Governments by exercising political or economic functions; on the contrary, it will be dealing with private persons and firms seeking monopolies and will be performing a purely licensing role. Moreover, once the steady state period has been reached, the Office will not be supported financially by Governments; its revenue will derive from fees paid by applicants and patentees and this may well exceed the operational costs. In these circumstances, we find it difficult to equate the Office with the traditional kind of intergovernmental organisation to which it is customary to grant financial privileges. As accepted by the European Committee on Legal Co-operation, the main reason for according such privileges is to avoid one State reaping a benefit from the contributions made to the organisation

by other States. However, this will not apply to the European Patent Office. The grant of financial privileges to the Office and its staff would have the effect of subsidising applicants and patentees - many of them from countries outside Europe - out of taxpayers money, and it is of importance that such a grant can properly be justified to public opinion.

These are the principal reasons for our doubts concerning the fiscal provisions mentioned above and we would welcome a discussion of these matters.

5. As regards Article 29, we have some doubt whether two States can be regarded as sufficient to bring the Protocol into force. In any event, we feel that one of the States should be the State where the Office is located.
6. Finally, we may mention that we have a few other points, mainly of a drafting nature. These will be presented orally to the Working-Party.

