

BR/GT II/2 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 Brussels, 6 February 1970
FOR THE SETTING UP OF A EUROPEAN BR/GT II/2/70
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

WORKING DOCUMENT

for the
draft Convention for a European system
for the Grant of Patents

submitted by the Chairman of Working Party II

Provisions relating to the Administrative Council
of the European Patent Office

Preliminary Observations

In 1959, the Member States of the European Economic Community decided to examine both a draft Convention setting up a European patent law and similar draft Conventions on trade marks, designs and models, as well as a fourth Convention, known as the "General Convention", containing common provisions for the implementation of the three special Conventions.

The preparation of the General Convention was entrusted to a special Working Party.

Studies in depth were carried out by a Sub-Committee which, in January 1963, drew up a preliminary draft of the General Convention containing, in particular, provisions relating to the Administrative Council.

However, in contrast to what had happened in the case of the 1962 draft, the result of the Sub-Committee's work was not sanctioned by the competent higher authorities.

Be that as it may, with the resumption of the preparation, upon new foundations, of a preliminary draft Convention for the setting up of a European system for the Grant of Patents, a very considerable number of provisions contained in the Sub-Committee's preliminary draft are no longer relevant.

For this reason, it is neither possible nor expedient to use the text of January 1963 in connection with the proposals put forward by the Chairman of Working Party II.

It should however be pointed out that the inspiration behind these proposals was drawn very largely from the results achieved by that Sub-Committee.

PART III bis

THE ADMINISTRATIVE COUNCIL
OF THE EUROPEAN PATENT OFFICE

CHAPTER I
COMPETENCIES

Article a

Powers of decision of the Council

(1) The Council shall be responsible for:

(a) amending as required the Implementing Regulations to this Convention;

(b) adopting, and amending as required:

- the Administrative and Financial Regulations of the European Patent Office;
- the Service Regulations for officials and the conditions of employment of other employees of the European Patent Office, the establishment plan, the numbers of officials and employees, their salary scales and also the nature of and rules for the grant of the additional benefits which they are to enjoy;

- the Rules relating to fees;
- any other rules which it may deem necessary for the implementation of this Convention;

(c) amending, if the case arises, the procedure for requests for examination either, by reducing or prolonging the period laid down in Article 88, paragraph 2, for making requests, or by prescribing the immediate introduction of such requests in the cases referred to in Article 89 (former Article 88a), paragraphs 2 and 3.

(2) In addition, the Council shall:

- (a) take any necessary measures for the purpose of ensuring the smooth functioning of the European Patent Office,
- (b) adopt each year the budget of the European Patent Office and such amending or additional budgets as may be submitted to it by the President of the European Patent Office, and supervise the implementation thereof;
- (c) audit and approve each year the accounts and inventories and the balance sheet;
- (d) approve the annual management reports of the President of the European Patent Office;
- (e) appoint the senior officials referred to in Article 37 subject to the conditions laid down in that Article and may, on the proposal of the President of the European Patent Office, take disciplinary action in regard to those officials referred to in paragraph 3 of the said Article;

(f) give to the President of the European Patent Office the authorisation, certified by the signature of its President, to exercise the legal capacity of the European Patent Office for the purposes of:

- actions at law with the exception of those of a conservatory nature;
- acts relating to the acquisition or disposal of immovable property, acts affecting the ownership of such property, and acts relating to the construction of immovable property;
- all other acts involving transactions in which the sum involved exceeds the exchange value of 20 kilograms of fine gold.

Note:

Adoption of the provision contained in (f) would necessitate an amendment of Article 32 (3).

(3) Furthermore, the Council shall:

- (a) give its decision on requests for accession to this Convention formulated by third countries;
- (b) conclude and, if necessary, amend the agreement with the International Patent Institute laying down the procedures for its collaboration with the European Patent Office;
- (c) conclude with the International Bureau provided for in the Patent Co-operation Treaty such agreement as it may deem necessary for the purposes of applying Articles 117 (former Article 113a) to 123 (former Article 113g) of this Convention;

- (d) conclude, where the case arises, with the Contracting States to the Co-operation Treaty which are not Contracting States to this Convention, the agreements referred to in Article 119 (former Article 113(c)), paragraph 2;
- (e) decide as to the possibility of the European Patent Office acting as a receiving Office within the meaning of Chapter I of the Co-operation Treaty in the case provided for in Article 119. (former Article 113(c), paragraph 3;
- (f) where required, conclude and amend any agreement with any other inter-governmental organisation exercising an activity in which the European Patent Office has an interest;
- (g) decide upon the setting up of branches for information and liaison purposes in the Contracting States or with the International Patent Institute or other inter-governmental organisations in the field of industrial property, subject to the approval of the Contracting State or organisation concerned.

Article b

Preparatory duties of the Council

The Council shall be empowered:

- (a) to prepare Conferences for the revision of this Convention;
- (b) to prepare such adaptations to this Convention as may be rendered necessary by the accession of third countries.

CHAPTER II

THE CONSTITUTION OF THE COUNCIL

Article c

Representation of States

- (1) Each Contracting State shall appoint two Representatives to the Council.
- (2) The Representatives of the Contracting States may be assisted by advisers or experts.

Article d

Representation of inter-governmental organisations

- (1) The International Patent Institute shall be represented on the Council in accordance with the provisions of the agreement laying down the procedures for its collaboration with the European Patent Office.
- (2) Likewise, any other inter-governmental organisation charged with the implementation of international procedures in the field of patents, with which the Administrative Council has concluded an agreement, shall be represented on the Council in accordance with the provisions to that effect contained in the said agreement.
- (3) Any other inter-governmental organisations exercising an activity of interest to the European Patent Office may be invited by the Council, at its discretion, to arrange to be represented by observers during the discussion of matters of mutual interest.

Article e

Attendance of the President of the European Patent Office

The President of the European Patent Office shall, save in exceptional cases, be present at the deliberations of the Administrative Council.

CHAPTER III

THE FUNCTIONING OF THE COUNCIL

Article f

The President

- (1) The Council shall elect from among its members a President and a First Vice-President.

Other Vice-Presidents may be elected. The First Vice-President shall automatically replace the President in the event of his being prevented from attending.

- (2) The duration of the President's term of office shall be three years; it shall be renewable.

Article g

Meetings of the Council

Meetings of the Council shall be convened by its President.

The Council shall hold an ordinary meeting once each year. In addition, it shall meet on the initiative of its President or at the request of one third of the Contracting States.

Article h

Rules of Procedure

The Council shall lay down its own Rules of Procedure.

Article i

Languages

- (1) The English, French and German languages shall be used in the deliberations of the Council. Any other language may be used, however, provided that a representative of a State who avails himself of this option makes provision for interpretation into one of the three above-mentioned languages.
- (2) Documents submitted to the Council, and the minutes of its decisions, shall be drawn up in the three languages provided for in paragraph 1.

Article j

Voting rights

- (1) The right to vote in the Council shall be restricted to the Contracting States.
- (2) Each State represented on the Council shall have one vote, subject to the application of the provisions of Article 1.

Article k

Select Committees of the Council

- (1) Select Committees of the Administrative Council may be set up for the purpose of supervising the activities of the special organs set up within the European Patent Office in order to carry out such additional tasks as may be given them by special agreements within the meaning of Article 8 (former Article 8a).
- (2) The provisions relating to the competencies, composition and functioning of such Select Committees shall be the subject of separate Protocols signed by the States parties to the special agreements referred to in Article 8 (former Article 8a).

Note:

It will be advisable, in liaison with Working Party IV where appropriate, to study the question of the relations to be established between the Administrative Council and the Select Committees, especially as regards the fixing of the contribution by the Contracting States to the Convention and that of the States bound by a special agreement, to the common expenditure of the European Patent Office.

Article 1

Voting rules

- (1) Two thirds of the Contracting States to this Convention shall constitute a quorum.
- (2) The following shall require the unanimous vote of the States:
 - (a) the decisions referred to in Article a, paragraph 3, of this Convention;
 - (b) amendment of the Implementing Regulations to this Convention referred to in Article a, paragraph 1 (a), as well as the drawing up and amendment of the Rules relating to fees. However, if an amendment to these Rules relates exclusively to a flat-rate increase in the fees provided for in the said Rules, it may be decided upon by a simple majority, to the extent that this increase is necessary to balance the budget of the European Patent Office.
- (3) The following shall require a two-thirds majority of the States' votes:
 - (a) the adoption and amendment of the other rules and regulations referred to in Article a, paragraph 1 (b);
 - (b) the appointment of the President of the European Patent Office.

- (4) Other decisions of the Council shall be taken by a simple majority of the votes cast.

In the event of parity of votes, a second vote shall take place; any further parity of votes shall be deemed equivalent to rejection of the proposed decision.

Article m

Weighting of votes

- (1) In respect of decisions having financial consequences and of those referred to in Article 1, paragraph 3(a), any State may require, following a first ballot in which each State shall have one vote, and whatever the result of this ballot, that a second ballot be taken without delay, in which votes shall be given to the States in accordance with the provisions of paragraph 2 below. The decision shall be determined by the result of this further ballot.
- (2) In this further ballot, each State shall have 5 votes, to which shall be added a number of votes equal to the quotient resulting from the division of the number retained as the coefficient allocated to that State in the scale for the financial contributions, by the weighting defined in the second sub-paragraph of this paragraph. The number of votes thus given shall be rounded upwards to the higher whole number.

The weighting shall be equal to the quotient resulting from the division of the sum of the coefficients allocated to the States in the scale for the financial contributions, by the number obtained by multiplying the number of States by twenty.

Note:

The principle underlying paragraph 1 of Article m derives from the idea that, in the field of industrial property - with its almost century-old tradition of international co-operation which has grown yet stronger over the past decade - decisions by international bodies are, in the great majority of cases, the outcome of a general consensus, without there being any need for recourse to voting.

Consequently it would no doubt be useless and inopportune to lay down that States will never take part on an equal footing in decisions by the Council. In practice, it is enough to provide for the weighting of votes, to act as a safeguard clause for those States bearing the heaviest responsibilities, in decisions with financial implications or of particular importance.

Paragraph 1 of Article m sets forth a system of weighting which may be considered as an exception to the general voting rule that each State holds one vote. For this exceptional system to be used, it is necessary, on the one hand, that the vote should relate to a matter having financial implications or to the adoption or amendment of the rules or regulations of the European organisation and, on the other hand, that one of the States should request this after an initial ballot.

The weighting of votes, which is the subject of paragraph 2 of Article m, comprises two aspects:

- the first of these is designed, by guaranteeing each State a minimum number of votes, to keep the weighting of votes within reasonable limits,
- the second has the effect of granting each State a number of votes directly proportional to the financial commitments which it has undertaken.

The proposed text refers to the scale for the financial contributions; it is quite clear that, in the absence of a scale of contributions, the system would function in the same way on the basis of the financial contributions themselves.

In any case, if the Working Party were to endorse the principle of the weighting of votes, Article m would be subject to a further examination when the results of the work of Working Party IV were known.

Article n

The Secretariat of the Council

- (1) The Administrative Council shall have such staff of its own as may be necessary for the performance of its duties, placed under the authority of the official whom it shall appoint to direct the Secretariat.
- (2) Premises, equipment and furnishings shall be supplied to it by the European Patent Office.

Article o

Privileges and immunities

The members of the Administrative Council shall enjoy in the territory of the Contracting States the privileges and immunities necessary for the performance of their duties, under the conditions defined in a separate Protocol.

Article p

The first meeting of the Council

The Government of (the State which is to be the depositary of the Convention) shall convene the Council within one month following the entry into force of this Convention.

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

Luxembourg, 4 March 1970

- Secretariat -

CORRIGENDUM

to BR/GT II/2/70

CHAPTER I

Article a

(1) Letter (a) should be replaced by letter A

Letter (b) should be replaced by letter B

The four dashes at the head of the paragraphs under (b) should be replaced by the letters (a), (b), (c), (d).

Letter (c) should be replaced by letter C.

(2) Under (f), the first three lines of the text should be replaced by the following text :

"(f) give to the President of the European Patent Office, to whom the President of the Council shall to this end address written communications, the authorization to exercise the legal capacity of the European Patent Office for the purposes of :"

(remaining text unchanged)

The note should be completed as follows :

Adoption of the provision contained in (f) would necessitate an amendment of Article 32 (3), within the limits laid down in Article a, paragraph 2 (f).

(3) Letter (a) should be replaced by letter A.

Insert letter B, worded as follows :

"authorize the President to conclude :"

under (b) delete "conclude" and "amend"

under (c) delete "conclude"

under (d) delete "conclude"

under (f) delete "conclude"

Letter (f) should be placed before letter (e)

Letter (g) should be replaced by letter C.

CHAPTER II

Article c

(1) The text of paragraph (1) should be replaced by the following :

"Each Contracting State shall appoint one Representative and one alternate Representative to the Council.

Article e

Delete "save in exceptional cases".

CHAPTER III

Article f

(1) First sub-paragraph

For "First Vice-President" read "Vice-President".

Second sub-paragraph

Delete first sentence. For "First Vice-President" read "Vice-President".

After Article f insert Article f bis (new), as follows :

Article f bis (new)

Board of the Council

- (1) The Council shall have a Board composed of five members.
 - (2) The President and the Vice-President of the Council shall be members of the Board as of right; the other three members shall be elected by the Council.
 - (3) The term of office of the members of the Board shall be three years; this term shall not be renewable for members other than those who are members as of right.
 - (4) The Board shall assist the President in carrying out the duties devolving upon him during the interval between the meetings of the Council.
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Article 1

Delete paragraph (1)

Note :

In the light of fresh examination, it would seem that the provisions relating to the constitution of a quorum conflict with paragraphs (2) and (3).

Paragraphs (2), (3) and (4) become paragraphs (1), (2) and (3).

New wording for paragraph (3) (former paragraph (4)) :

"All other decisions of the Council shall require a simple majority of the States' votes".

...../.....

Article m

The note should be completed as follows :

...

A concrete example will serve to clarify the effect of weighting votes on the scale of contributions. The example chosen is taken from the Treaty establishing the European Economic Community; the present scale of contributions is as follows :

Belgium	7.9
Germany	28
France	28
Italy	28
Luxembourg	0.2
The Netherlands	7.9
	<hr/>
	100

In the example given, the factors adopted for calculating the weighting of votes in accordance with the provisions of paragraph 2, second sub-paragraph, are the following :

Sum of the coefficients	100
Number of States	6
Multiplying factor applied to the number of States	20
Dividing factor (6 x 20)	120

Weighting factor is therefore :

$$\frac{100}{120} \quad \text{or} \quad \frac{5}{6}$$

...../.....

The number of votes allocated to each State under the provisions of paragraph 1, first sub-paragraph, is given below in the form of a table for the sake of convenience.

<u>State</u>	<u>Column 1</u> Fixed number of votes, equal for all States	<u>Column 2</u> Variable number of votes, arrived at by applying the co- efficient allocated to the State in the scale of contribu- tions x the weighting given in the example adopted ($\frac{5}{5}$)	<u>Column 3</u> Total number of votes allocated to each State (total of columns 1 and 2)
<u>BELGIUM</u>	5	$\frac{7.9 \times 6}{5} = 9.48$ rounded up to 10	15
<u>NETHERLANDS</u>	5	$\frac{7.9 \times 6}{5} = 9.48$ rounded up to 10	15
<u>GERMANY</u>	5	$\frac{28 \times 6}{5} = 33.6$ rounded up to 34	39
<u>FRANCE</u>	5	$\frac{28 \times 6}{5} = 33.6$ rounded up to 34	39
<u>ITALY</u>	5	$\frac{28 \times 6}{5} = 33.6$ rounded up to 34	39
<u>LUXEMBOURG</u>	5	$\frac{0.2 \times 6}{5} = 0.24$ rounded up to 1	6

Assuming, on the one hand; that the six States in question are the only Contracting States to the Convention for a European System for the Grant of Patents and, on the other hand, that the scale of contributions of the Treaty of Rome is used for calculating the contributions of each State to the European Patent Office - the strict application of which scale might in some cases lead to results which could be deemed unacceptable by several Contracting States to the Convention - the number of votes which each State would have allows the effect of the corrective factors which may be applied to the scale to be measured.

However, when drawing up a scale for the contributions of the various States, the number of patent applications at present filed in each of these States both by nationals and similar persons and by non-nationals cannot be ignored, as this criterium is often adopted to assess their importance in patent matters. It is not certain that the scale of contributions adopted in the Treaty of Rome could be applied without corrective factors in the example chosen. The possibility of varying the two parameters proposed for calculating the weighting of votes allows of obtaining a number of solutions, according to the result desired.

Flexibility is the major advantage of this system, which has been proposed as an example, and the apparent complexity of which is mainly due to the need to make use of mathematical terms in order to define it.

Finally, it should be pointed out that it would be somewhat premature for the Working Party to adopt a final opinion in the matter before knowing what Working Party IV, responsible for drawing up the financial provisions of the Convention, will propose as the scale of contributions.