

# **BR/GT IV/41 e/70**

**Travaux Préparatoires CBE 1973**



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

Brussels, 27 November 1970  
BR/GT IV/41/70

- Secretariat -

MINUTES

of the third meeting of Working Party IV  
(Luxembourg, 13-15 October 1970)

1. The third meeting of Working Party IV was held in Luxembourg, from 13 to 15 October 1970, with Mr. E. ARMITAGE, Comptroller General, Patent Office, London, in the Chair.

The representatives of the International Patent Institute at The Hague and of WIPO/BIRPI took part in the meeting as observers. The representative of the General Secretariat of the Council of Europe apologised for his absence. (1)

2. The Working Party began by examining, on the basis of various working documents (BR/GT IV/31/70 and BR/GT IV/36/70 with Addendum), the financial provisions of the First Preliminary Draft Convention establishing a European System for the Grant of Patents (Articles 42-53 and Article 187). It adopted these provisions as set out in BR/56/70.

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(1) The list of participants is given in the Annex.

The Working Party then re-examined the Report on the financing of the European Patent Office and the Annexes to it (BR/GT IV/37/70). The new text of this Report is given in BR/57/70.

3. The Drafting Committee, under the Chairmanship of DR. SINGER, drew up draft Articles for some of the financial provisions after they had been discussed by the Working Party and submitted these to the Working Party for adoption.
4. The main results of the discussion of the financial provisions are given below (under I) as are those of the discussion of the Report on the financing of the European Patent Office (under II).

I

DISCUSSION OF THE FINANCIAL PROVISIONS

(BR/GT IV/31/70 and BR/GT IV/36/70 with Addendum)

Article 42 - Cover for expenditure

5. The Working Party provisionally numbered the three sub-paragraphs of this Article (i), (ii) and (iii) to avoid any confusion with Articles 42a, 42b and 42c. When these three Articles are later re-numbered, however, the sub-paragraphs of Article 42 will again become (a), (b) and (c).

Article 42a - The European Patent Office's own resources

6. The Working Party adopted this Article - subject to a correction to the German text - with the same wording as in BR/GT IV/31/70. It did not feel it necessary to define the miscellaneous receipts of the European Patent Office in greater detail in paragraph 1.

Article 42b - Payments by the Contracting States in respect of renewal fees for European patents

7. Following a proposal by the United Kingdom delegation (BR/GT IV/36/70), the Working Party made it clear in paragraphs 1 and 2 that the Contracting States are to pay to the European Patent Office 75% of the national fee for each individual European patent and not 75% of their total income from renewal fees.
8. When paragraph 3 was discussed, the question was raised as to how the Administrative Council should determine, in the case of a group of Contracting States fixing a common scale of renewal fees applicable to that group, the minimum amount to be paid for each European patent. The general view was that the provision concerning the minimum amount would have no practical significance, at least for the EEC States, as the uniform fees for the planned unitary patent for the Common Market would in all probability be higher than the minimum amount fixed, whatever the level of this minimum amount might be.

The Working Party decided not to adopt the suggestion of one delegation that the Administrative Council should fix an individual minimum amount for each group of States; the Working Party felt that this would lead to the logical conclusion that the minimum amount would have to be fixed individually for each and every Contracting State and such a task would create too great difficulties for the Administrative Council.

The Working Party came to the conclusion that a uniform minimum amount for all Contracting States and groups of States would be the most expedient solution under these circumstances. It therefore decided to retain the last phrase of paragraph 3.

9. The Working Party also found it appropriate to delete the provision in paragraph 5 stating that the Administrative Council should determine the due date for payment in accordance with the liquid resources required by the European Patent Office; in its view, the Administrative Council's freedom of decision should not be limited in this respect.

Article 42c - Level of fees and payments

Article 42d - Special financial contributions

10. The Working Party combined these two provisions in a single Article (now Article 42c), in order to make it clear that the expenditure of the European Patent Office should basically be covered by the fees referred to in Article 42a and by the payments referred to in Article 42b. If this should prove impossible, the European Patent Office will be able to resort to financial contributions from the Contracting States. This will be particularly relevant during the first few years of operation of the European Patent Office.

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11. With regard to the scale of contributions, the Work-Party could not agree on a common solution. It decided to submit to the Conference the two proposed variants of the new paragraph 3 discussed below.
12. In the first variant of paragraph 3, the scale of contributions is to be determined in accordance with the number of domestic and foreign patent applications filed in the individual Contracting States during the last year but one prior to the date of entry into force of the Convention. This provision, which was contained in the former Article 42d, paragraph 2, was redrafted in an improved form at the instigation of the United Kingdom delegation : in particular, the possibility was included of applications being made via the PCP route. In addition, the new wording of Article 4 as adopted by Working Party I at its meeting in September was taken into consideration : this Article states that the European Patent Office will be established when the Convention comes into force (see BR/48/70).

The first variant of paragraph 3 was supported by the United Kingdom, German and Norwegian delegations, principally on the grounds that the scale of contributions could be calculated easily and rationally : on the other hand, the scale of contributions contained in the second variant would be too complicated and would also give unfair results when the rates of contribution of a number of small countries were compared with each other.

13. The second variant of paragraph 3 was introduced at the proposal of the French delegation, on the basis of an

earlier proposal by the Spanish delegation (BR/GT IV/28/70). According to this variant, one quarter of the scale of contributions is to be calculated in proportion to the number of patent applications, and three-quarters in proportion to the estimated number of applications for European patents in accordance with the "Three States" theory ; for both elements, the relevant figures would be those for the last year but one prior to the date of entry into force of the Convention. The contribution rates calculated in this way would, however, be re-allocated for States with more than 30,000 applications per year, in proportion to the number of applications filed in these States.

The second variant was supported by the French, Luxembourg and Spanish delegations. They felt that a scale of contributions calculated in this way would lead to generally more satisfactory and fairer results for the smaller States than would a scale of contributions based solely on the number of patent applications. A re-allocation of contribution rates for States with more than 30,000 applications seemed advisable, as these contributions would not otherwise be sufficiently balanced.

14. The Working Party also discussed a proposal by the Luxembourg delegation (BR/GT IV/38/70), whereby the EEC States would re-allocate amongst themselves, in a particular proportion, the contributions payable under the first variant of the scale of contributions (see 12 above). It was suggested in this connection that a general provision should be introduced to the effect that a group of Contracting States which availed itself of the option provided in Article 8 should be able to make their contributions jointly, determining their individual contributions to this internally according to their own



scale. The French delegation reserved its position on this point.

The Luxembourg delegation reserved the right to submit its proposal to the Conference in the event of the scale of contributions set out under 13 not being accepted.

15. The Working Party was also concerned to formulate Article 42c in such a way as not to rule out separate allocation of contributions within a group of States.

16. The question was also raised in the Working Party as to whether the scale of contributions could be amended once the Convention had come into force, and if so, by what means. No delegation denied that it might be expedient to make provision for some means of amendment. In this context, it was suggested that the Administrative Council should examine the contribution scales periodically. In the view of one delegation, the Administrative Council should be able to amend the scale of contributions by a unanimous decision.

The Working Party did not adopt any final decision on this point. It merely observed that the scale of contributions should not be valid only for the first few years of operation of the European Patent Office, during which the income from fees and payments would not reach a sufficient level to cover the expenditure of the European Patent Office.

17. The Working Party did not feel it necessary for the Convention to contain a special provision for the first few years of operation of the European Patent Office, as had previously been contained in Article 42g. In paragraph 5 of the new Article 42c, the Working Party laid down the obligation of the European Patent Office to pay interest on the special financial contributions of the Contracting States in such a way as to make it applicable in all cases in which special financial contributions are made.
18. With regard to the repayment of financial contributions, the Working Party felt it expedient to make a new provision, under which contributions made earlier must be repaid before contributions made later may be repaid (new paragraph 6).

Article 42e (now Article 42d) - Advances

19. In the view of the Working Party it is reasonable that the European Patent Office should be able to demand advances not only on the special financial contributions of the Contracting States, but also on the payments which they are to make under Article 42b. The European Patent Office needs, particularly later when there are no special financial contributions to be paid, may be subject to short-term financial needs especially in the case of the due dates for payment laid down by the Administrative Council not being observed. The Working Party agreed that the advances should not necessarily be requested in the same budgetary period as that in respect of which the appropriations had been made, but in the interest of smooth transition from one budgetary period to the next they might be requested and granted in the previous year.

The Working Party also confirmed that the Administrative Council should previously determine the limits within which the European Patent Office may request advances.

20. In the view of the Working Party the European Patent Office should be able, for the purpose of covering short-term financial needs, not only to request advances from the Contracting States, but also to obtain bank loans, with the approval of the Administrative Council. However, the Working Party decided not to lay down this option, which, in its view, went without saying in view of the legal personality of the European Patent Office, in a particular Article, in order to avoid unnecessarily limiting the powers of action of the European Patent Office in this respect by a restrictive text.

21. The Working Party decided not to include in the Convention a provision to the effect that belated payment of advances was to be subject to interest. In its view it would be a mistake to attach too great importance to this problem. Paragraph 2 was therefore deleted.

Article 42f (now Article 42e) - Appropriations for unforeseeable expenditure

22. The Working Party retained this provision, whereby appropriations for unforeseeable expenditure may be contained in the budget, in the same form as in BR/GT IV/31/70. As observed by the Working Party, this Article together with other provisions makes the setting up of an operational fund and a reserve fund superfluous.

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Article 21g - Transitional period

23. This Article was incorporated in the new Article 42c (see 17 above) by the Working Party and is therefore deleted here.

Article 43 - Budget

24. No comments

Article 44 - Authorisation for expenditure

25. In this Article, as in other Articles in which the Financial Regulations are mentioned, the Working Party decided to delete the reference to Article 53 as superfluous.

26. Paragraph 2 was amended to the effect that the carrying forward of unexpended appropriations is to be done in accordance with the Financial Regulations.

Article 45 - Financial year

27. No comments.

Article 46 - Draft Budget

28. The Working Party adopted the text contained in BR/GT IV/31/70, subject to a correction to the English text.

Article 47 - Adoption of the budget

29. No comments

30. Article 48 - Provisional Budget

As regards paragraph 2, the Working Party agreed, on the matter of the provisional budget, to use the formula contained in Article 204 (2) of the EEC Treaty (1).

31. Following a proposal by the United Kingdom delegation, (see BR/GT IV/36/70), the Working Party thought it advisable to lay down, in a new paragraph 3, that for the purposes of applying Article 48, payments by the Contracting States should continue to be made under the conditions laid down for the preceding financial year. It also specified, in a new paragraph 4, the Contracting States' obligation to pay a proportion of their special financial contributions, on a provisional basis.

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(1) Article 204 of the EEC Treaty, dealing with the provisional figure of one-twelfth, has been applied within the EEC on several occasions (1963, 1966 and 1968). The ceiling authorised for monthly expenditure, in the event of the budget not yet having been voted, is one-twelfth of the budget credits for a given chapter, for the previous financial year. This ceiling may however be lowered where the pending draft budget makes provision, in respect of the same chapter, for appropriations lower than those appearing in the budget for the previous financial year. In that event, the ceiling would no longer be one-twelfth of the total credits for the previous financial year, but one-twelfth of the amount provided for in the draft budget to be adopted. The Council may still, under the terms of Article 204, authorise expenditure in excess of one-twelfth of the appropriation.

33. Article 49 - Budget implementation

No comments.

34. Article 50 - Auditing of accounts

In accordance with a suggestion by the United Kingdom delegation (see BR/GT IV/36/70), the Working Party amended this Article so that the balance sheet showing the assets and liabilities of the European Patent Office should also be examined by the Audit Board and submitted to the Administrative Council, together with the Board's report.

35. Article 51 - Accounting and contributing currencies

The Working Party extended the scope of paragraph 2 to cover the payments provided in Article 42b (new) and the advances provided for in Article 42d (new).

36. As regards paragraphs 3 and 4 of the 1962 Draft, a further examination was made of whether, as requested by certain delegations at the previous meeting of the Working Party, the funds deposited by the Contracting States should retain their par value at the value in force at the date of deposit. . . . The real problem was whether this principle should be explicitly stated. The majority of the delegations

decided in favour of introducing this principle into the Financial Regulations: The United Kingdom delegation, without in any way wishing to call into question a rule also provided for in the Treaty of Rome, reserved its position on this matter, with a view to carrying out more detailed studies.

The German delegation preferred that the maintenance of parity in respect of payments by the Contracting States should be expressly provided for in the Convention. It reserved the right to return to this question at the Conference.

37. Having regard to the above, the Working Party decided to amend point 24 of the Minutes of its second meeting (BR/GT IV/32/70, page 10) as follows:

"It is the opinion of the Working Party that the obligation on the Contracting States to maintain the value of funds which they have deposited at the rate of exchange in force on the day of their deposit should be retained and affirmed in the Financial Regulations. The United Kingdom delegation reserved its position on this matter. The delegations nevertheless agreed that this is a difficult problem and that the procedures should be studied more thoroughly."

The Working Party noted that the amendment to the above mentioned report submitted by the United Kingdom delegation (BR/GT IV/32/70, Amend), is thus superceded.

38. Article 53 - Financial Regulations

The Working Party extended the scope of paragraph (b) to cover the payments provided for in Article 42b (new) and the advances provided for in Article 42d (new).

39. The Working Party also inserted a new paragraph (d) covering the provisions on the fixing of interest rates, previously spread out over a number of Articles.

40. The Working Party considered that the scale of contributions should, in view of its importance, be laid down in the Convention itself and not in the Financial Regulation as previously envisaged.

41. Article 187 - First accounting period of the European Patent Office

In drafting paragraphs 1 and 2, the Working Party took account of the new version of Article 4 whereby the European Patent Office will be established with effect from the entry into force of the Convention (see BR/48/70).

42. Paragraph 3 was amended in such manner that the Administrative Council will be entrusted under the Convention with the task of laying down, should it deem it necessary, general principles governing recruitment made during the transitional period. It was decided to communicate the new version of Article 187 to Working Parties I and III,



so that they could take note of the wording finally chosen, since this provision also fell within their terms of reference.

II.

EXAMINATION OF THE REPORT BY WORKING PARTY IV  
ON THE FINANCING OF THE EUROPEAN PATENT OFFICE  
(BR/GT IV/37/70)

43. The Working Party examined the new version of the Report on the financing of the European Patent Office drawn up in the light of the comments made by the delegations of the previous meeting.

Introduction - General (pages 1 to 3 of the Report)

44. The first paragraph of page 3 of the Report was amended so as to bring it into line with the new text of Article 42c which does not rule out the possibility of the European Patent Office calling for special financial contributions at any given moment, even after the end of the period during which contributions should normally be used to cover the deficit of the European Patent Office.

45. The Working Party made a number of other amendments to this chapter. The purpose of these was to specify the financial advantages accruing to certain Contracting States as a result of the setting up of the European Patent Office and to make it clear that the studies which had been carried out related to the two separate assumptions under discussion (deferred examination with a 2-year or a 7-year request period).

46. Chapter IV - Estimated expenditure of the European Patent Office (pages 9 to 12)

With regard to Annexes 5 and 5a, the Report is to specify that the distribution of posts within the various classes was drawn up, in part, having regard to the recommendations of Working Party III.

47. As regards Annex 7, the Working Party agreed to base the evaluation of gross national product (calculation made in Annex 26) upon the exchange rates in force on 30 June 1968.

48. The Working Party decided to replace former Annex 8, listing the salaries of EEC officials, with a new Annex showing the basic salaries of officials of the European Patent Office, as recommended by Working Party III.

49. As regards the calculation of family and expatriation allowances for EPO officials, account will no longer be taken of the possibility of a branch office being opened, in view of the new position adopted on the matter by the United Kingdom Delegation (see BR/49/70, point 129).

50. Chapter V - Estimated direct revenue of the European Patent Office (pages 12 to 24)

Since the calculation of revenue is based upon the assumption that 50% of patent applications will be filed directly with the European Patent Office, the remainder being channelled via the PCT route, the Working Party took care to clarify this point on page 14 of the Report.

51. Chapter VII - Outline of expenditure and revenue of the European Patent Office (pages 26 to 30)

When examining Annexes 19 and 19a, the Working Party noted that the estimates in question did not cover unforeseen expenditure.

Aware of the fact that it is difficult to make allowance for such expenditure on a year-by-year basis, the Working Party agreed not to give figures for such expenditure in Annexes 19 and 19a. However, rather than give the impression that these Annexes were budgets in the proper sense of the term, the Working Party agreed that they should be considered merely as outlines of the expenditure and revenue of the European Patent Office. Page 26 of the Report and the titles of these Annexes are to be amended accordingly.

52. An exchange of views followed on the amount of unforeseen expenditure for which allowance should be made in the European Patent Office. The Working Party agreed on the need to allocate credits in the budgets of the European Patent Office for unforeseen expenditure, above all during the initial years of the EPO. The amount of the credits to be provided for under this heading might, however, fall off subsequently. A token amount of 5% of annual expenditure was chosen.

53. Having regard to the means provided for the financing of the European Patent Office, the Working Party agreed to abandon once and for all the idea of a working balance and of a reserve fund. The United Kingdom delegation, however, let it be known that it accepted this new formula with regret, since it differed from that adopted by other international organisations and was, in its opinion, likely to give rise to difficulties in its practical application. The United Kingdom delegation would have preferred to adopt the working balance and reserve fund solution. The Norwegian delegation supported this point of view.

Page 28 of the Report is to be altered in view of the abolition of the working balance and reserve fund, as decided by the Working Party.

54. Chapter VIII - Revenue and expenditure until normal budget is attained (pages 30 to 32)

Corrections will be made to page 32 of the Report to take account of the abolition of the working balance and of the reserve fund for which separate calculations had been carried out in Annex E.

55. Chapter X - Financing of the European Patent Office in its build-up and running in period by contributions from the Contracting States (pages 44 to 47)

Following a suggestion by the German delegation, the Working Party decided to adopt the statistics for 1968, which are now available, as a basis for calculating gross national product. Annex 26 and 28 are to be amended accordingly (see also point 47 above).

56. Faced with two proposals on the allocation of the expenditure of the European Patent Office (see points 12 and 13 above), the Working Party decided to delete the last sentence of paragraph 1 of page 46 and to replace it by a new text.

The Working Party considered that, in view of the nature of the problem, it would not be expedient for it to make any evaluation of either form, since the final choice was a matter for the Conference.

57. Annexes 29, 29a, 29b and 29c are to be amended to enable each Contracting State to estimate its contributions to the European Patent Office, according to the different assumptions envisaged. The text of page 47 on the report is to be amended accordingly.

58. A new paragraph is to be inserted on the same page, specifying that the possibility of requesting special financial contributions will not be limited only to the initial years of the working of the European Patent Office.

59. Chapter XII - Provision for contingencies (page 47)

A new Chapter XII, dealing with provision for contingencies, (see point 52 above), is to be inserted on page 47 of the report.

60. Chapter XIII - Summary of conclusions (pages 47 to 50)

The amounts of the fees shown on page 48 were corrected, in accordance with the results obtained by the Working Party, assuming deferred examination procedure with a two-year request period, in Chapter V, point 4 (a).

61. Point 5, summarising the conclusions of the report on the reserve fund and the working balance, is now superseded and will therefore not be repeated in the final text of the Report (see point 53 above).

62. The United Kingdom delegation undertook broad responsibility for making such calculations as might prove necessary following the deletion, in Annex E, of the expenditure allocated for the working balance and the reserve fund (see points 53 and 54 above). The Secretariat is to complete the report on financing and its Annexes, in the light of the results of the calculations to be provided by the United Kingdom delegation.

### III

#### FURTHER PROCEEDINGS

63. The Working Party decided to submit to the Conference both the financial provisions which it had adopted (BR/56/70) and the new version of the report on the financing of the European Patent Office, together with Annexes (BR/57/70).
64. The Working Party agreed, in addition, that the Minutes of its third meeting should be distributed only to its members as had been done in the case of the Minutes of previous meetings. The Minutes were however to be made available to Working Party I which was to meet in the near future in its capacity as Co-ordinating Committee. The Minutes were also to be made available to the Conference at its next meeting.
65. Finally, the Working Party instructed the Secretariat to send to the Chairman of the Working Party I Sub-Committee on "Rules relating to Fees", all the Working Party IV documents necessary for the preparation of the Draft Rules relating to Fees.





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<u>ANLAGE</u>
zu Dok. BR/GT IV/41/70
<u>ANNEX</u>
to doc. BR/GT IV/41/70
<u>ANNEXE</u>
au doc. BR/GT IV/41/70

ARBEITSGRUPPE IV  
(Luxemburg, 13. bis 15. Oktober 1970)

VERZEICHNIS DER TEILNEHMER

WORKING PARTY IV  
(Luxembourg, 13 to 15 October 1970)

LIST OF PARTICIPANTS

GROUPE DE TRAVAIL IV  
(Luxembourg, 13 au 15 octobre 1970)

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