

BR/GT IV/24 e/70

Travaux Préparatoires CBE 1973

Working document put forward by the Chairman of Working Party IV (Articles 42 to 53 and 186 to 187 A) for the financial provisions of the First Preliminary Draft Convention for a European System for the Grant of Patents compared synoptically with the financial provisions of the Draft convention relating to a European Patent Law, as drafted by the EED "Patents" Working Party

- Secretariat -

Working document

put forward by the Chairman of Working Party IV
(Articles 42 to 53 and 186 to 187A)

for the financial provisions of the First Preliminary Draft Convention
for a European System for the Grant of Patents

compared synoptically with

the financial provisions of the Draft Convention relating to a European
Patent Law, as drafted by the EEC "Patents" Working Party.

K E Y

1962 Draft

: indicates the Draft Convention relating to
a European Patent law drawn up by the EEC
"Patents" Working Party and published in 1962

+ on the right-hand page

: indicates that the text on the left-hand
page is adopted without amendment

— — — under the text on the left-hand page: indicates that the text thus underlined has
been deleted on the right-hand page.

_____ under the text on the right-hand page: indicates that the text thus underlined is
new, in relation to the 1962 Draft.

THE EUROPEAN PATENT OFFICE

CHAPTER II
FINANCIAL PROVISIONS

Article 42
Cover for expenditure

1962 Draft

(1) The expenditure of the European Patent Office shall be covered:

- (a) as a general rule, by the receipts of the European Patent Office, in particular by the fees prescribed under this Convention and its Implementing Regulations;
- (b) exceptionally, by the financial contributions of Contracting States, to the extent that the receipts may not be adequate.

(2) The fees referred to in the preceding paragraph shall be fixed in such manner that their yield, supplemented by other sources of revenue, shall generally cover all of the expenses of the European Patent Office and permit the establishment and maintenance of a reserve fund, the ceiling whereof shall be fixed by the Implementing Regulations. The fees shall be fixed by Rules relating to fees made pursuant to this Convention. These Rules shall be enacted by the Administrative Council.

(3) The financial contributions of the Contracting States as provided in paragraph 1 of this Article shall be fixed in accordance with the following scale:

1st Variant

Scale of the E E C Treaty (Article 200, paragraph 1)

Belgium	2.9
Germany	28
France	28
Italy	28
Luxembourg	0.2
Netherlands	7.8

CHAPTER II

FINANCIAL PROVISIONS

Article 42

Cover for expenditure

Chairman's proposal

(1) The expenditure of the European Patent Office shall be covered, as a general rule, by its receipts which shall include

- (a) the fees received by the EPO as prescribed under this Convention and its Implementing Regulations, and
- (b) contributions by Contracting States on account of renewals of European Patents in those States. Exceptionally, they may also be covered, by drawing, on the authorisation of the Administrative Council, from a reserve fund.

(2) The fees referred to in the preceding paragraph shall be fixed in such manner that their yield, supplemented by other sources of revenue, shall generally cover all of the expenses of the European Patent Office and permit the establishment and maintenance of a reserve fund and a working balance, the ceilings whereof shall be fixed by the Implementing Regulations. The fees shall be fixed by the Rules relating to fees adopted pursuant to this Convention. These Rules shall be enacted by the Administrative Council.

(3) The contributions referred to in paragraph (1)(b) shall be in accordance with a scale fixed by the Administrative Council; they shall be paid each month on account of European Patents renewed during the previous month.

Article 42 (contd.)

1962 Draft

2nd Variant

Scale of the revised Convention of The Hague concerning the creation of an International Patents Institute (Article 13, paragraph 3).

Notes

- (1) The two variants are given by way of example. Other scales can be envisaged in consequence of the provisions finally adopted in the Convention and, for example, of those referred to under Article 5.
- (2) The question of providing for an initial contribution, particularly by countries acceding [to the Convention] after it is signed will be examined at a later stage.

Article 42 (contd.)

Chairman's proposal

Article 43

Budget

1962 Draft

(1) Income and expenditure of the European Patent Office shall form the subject of estimates in respect of each financial year and shall be shown in the budget.

(2) The budget shall be balanced as between income and expenditure.

Article 43

Budget

Chairman's proposal

(1) +

(2) +

Article 44
Authorisation for expenditure

1962 Draft

(1) The expenditure entered in the budget shall be authorised for the duration of one financial year, unless any provisions to the contrary are contained in the Regulations adopted pursuant to Article 53.

(2) Subject to the conditions to be laid down pursuant to Article 53, any appropriations, other than those relating to staff costs, which are unexpended at the end of the financial year may be carried forward, but not beyond the end of the following financial year.

(3) Appropriations shall be set out under different headings according to type and purpose of the expenditure and subdivided, as far as necessary, in accordance with the Regulations adopted pursuant to Article 53.

Article 44
Authorisation for expenditure

Chairman's proposal

(1) +

(2) +

(3) +

Article 45
Financial year

1962 Draft

The financial year shall commence on 1st January and end on 31st December.

Article 45
Financial year

Chairman's proposal

+

Article 46
Draft budget

1962 Draft

The President of the European Patent Office shall lay the draft budget before the [Administrative Council] not later than 30th September of the year preceding that of its implementation.

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Article 46
Draft budget

Chairman's proposal

+

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Article 47
Adoption of the budget

1962 Draft

The budget shall be voted by the [Administrative Council].

Article 47
Adoption of the budget

Chairman's proposal

+

Article 48
Provisional budget

1962 Draft

(1) If, at the beginning of the financial year, the budget has not been voted by the [Administrative Council], expenditures may be effected on a monthly basis per heading or other division of the budget, according to the provisions of the Regulations adopted pursuant to Article 53, up to one-twelfth of the budget appropriations for the preceding financial year, provided that the appropriations thus made available to the President of the European Patent Office shall not exceed one-twelfth of those provided for in [the draft budget]

(2) The [Administrative Council] may, subject to the observance of the other provisions laid down in the first paragraph, authorise expenditure in excess of one-twelfth of the appropriations.

(3) Contracting States shall pay each month, on a provisional basis and in accordance with the scale adopted for the previous financial year, the amounts necessary to ensure implementation of this Article.

Article 48
Provisional budget

Chairman's proposal

(1) +

(2) +

(3) - deleted -

Article 49
Budget implementation

1962 Draft

(1) The President of the European Patent Office shall implement the budget on his own responsibility and within the limits of the allocated appropriations.

(2) Within the budget, the President of the European Patent Office may, subject to the limits and conditions laid down in the Regulations adopted pursuant to Article 53, transfer funds as between the various headings or sub-headings.

Article 49
Budget implementation

Chairman's proposal

(1) +

(2) +

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Article 50
Auditing of accounts

1962 Draft

(1) The income and expenditure account of the European Patent Office shall be examined by an Audit Board composed of independent auditors of whom one shall be the chairman. The Administrative Council shall fix the number of auditors. The members and the chairman of the Audit Board shall be appointed by the Administrative Council for a period of five years. Their remuneration shall be determined by the Administrative Council.

(2) The audit, which shall be based on vouchers and shall take place if necessary, in situ, shall ascertain that all income has been received and all expenditure effected in a lawful and proper manner and that the financial management is sound. The Audit Board shall draw up a report at the end of each financial year, the adoption of this report requiring a majority vote of its members.

(3) The President of the European Patent Office shall annually submit to the Administrative Council the accounts of the preceding financial year in respect of the budget, together with the report of the Audit Board. The President shall also communicate to the Administrative Council a balance sheet showing the assets and liabilities of the European Patent Office.

(4) The Administrative Council shall give the President of the European Patent Office a discharge in respect of the implementation of the budget.

Remark

The question of deciding, whether in addition to the retrospective audit provided for in this Article, there should be prior approval of those decisions of the President which are of a financial nature, by an authority independent of him, must be examined on a later occasion.

Article 50
Auditing of accounts

Chairman's proposal

(1) +

(2) +

(3) +

(4) +

Remark (to be deleted?)

Article 51
Accounting and contributing currencies

1962 Draft

(1) The budget shall be drawn up in the unit of account fixed in accordance with the provisions of the Regulations adopted pursuant to Article 53.

(2) The financial contributions provided for in Article 42, paragraph 1, shall be made available to the European Patent Office by the Contracting States in their respective domestic currencies.

(3) The available balances of these contributions shall be deposited with the Treasuries of Contracting States or with bodies designated by them. The funds, while so deposited, shall retain their par value, in relation to the unit of account mentioned in paragraph 1, at the value in force at the date of deposit.

(4) These balances may be invested under conditions to be fixed by the ☐ Administrative Council ☒.

Article 51
Accounting and contributing currencies

Chairman's proposal

(1) +

(2) The financial contributions provided for in Article 42, paragraph 1, shall be made available to the European Patent Office by the Contracting States in the currency of the unit of account referred to in paragraph 1 .

(3) - deleted -

(4) - deleted -

Article 52

Transfer of currency holdings

1962 Draft

(1) The President of the European Patent Office may, provided he notifies the competent authorities of the Contracting States concerned, transfer the assets held by him in the currency of one Contracting State into the currency of another Contracting State, in so far as this may be necessary to enable them to be used. The President of the European Patent Office shall, as far as possible, refrain from making such transfers, if the European Patent Office possesses liquid or realisable assets in the currencies which it needs.

(2) The President of the European Patent Office shall communicate with each Contracting State through the authority designated by the latter. For the carrying out of financial operations, the President of the European Patent Office shall have recourse to the services of the bank of issue of the Contracting State concerned or of any other financial institution approved by that country.

Article 52
Transfer of currency holdings

Chairman's proposal

(1) - deleted -

(2) - deleted -

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Article 53

Functions of the [Administrative Council] in financial matters

1962 Draft

The [Administrative Council] shall :

- (a) lay down the financial Regulations specifying, in particular, the procedure relating to the establishment and implementation of the budget and for the rendering and auditing of accounts;
- (b) determine the method and procedure whereby the contributions of Contracting States shall be made available to the European Patent Office;
- (c) establish rules concerning the responsibility of cashiers and accountants and make arrangements for their supervision.

Article 53

Functions of the Administrative Council in financial matters

Chairman's proposal

(a) +

(b) +

(c) +

(d) Fix the scale referred to in Article 42, paragraph 5 .

TRANSITIONAL PROVISIONS

CHAPTER I

TRANSITIONAL AND GENERAL PROVISIONS

Article 186

Progressive expansion of the field of activity of the European Patent Office

1962 Draft

(1) Applications for European patents shall not be accepted before the day on which the European Patent Office opens. To begin with, the acceptance of applications shall be restricted to certain technical fields subsequently to be progressively extended to other fields.

(2) The date of the opening of the European Patent Office and the technical fields for which applications for European patents will be accepted shall be fixed by the Administrative Council on the recommendation of the President of the Office.

(3) The technical fields for which applications for European patents will be accepted shall be fixed with reference to the International Classification referred to in Article 62.

CHAPTER I

TRANSITIONAL AND GENERAL PROVISIONS

Article 186

Progressive expansion of the field of activity of the European Patent Office

Chairman's proposal

(1) Applications for European Patents shall not be accepted before a date to be fixed by the Administrative Council. However, the European Patent Office may become established, for purposes of planning, organisation, recruiting and training at an earlier date to be fixed by the Administrative Council. To begin with, the acceptance of applications shall, if the Administrative Council so decide, be restricted to certain technical fields subsequently to be progressively extended to other fields.

(2) The date of opening of the European Patent Office for the receipt of applications, and the technical fields for which applications for European patents will be accepted, shall be fixed on the recommendation of the President of the Office.

(3) +

Article 187

First accounting period of the European Patent Office

1962 Draft

(1) The first accounting period of the European Patent Office shall extend from the date of opening of the Office to 31st December of the same year. If the day of opening falls within the second half of the year, the accounting period shall extend until 31st December of the year following the opening of the Office.

(2) Until the budget relating to the first accounting period has been drawn up, the Contracting States shall make interest-free loans which shall be deducted from their financial contributions pertaining to the carrying out of this budget.

(3) Until such time as the conditions of service for officials and other employees of the European Patent Office provided for under Article 38 have been drawn up, the [Administrative Council] and the President of the Office, each within their respective powers, shall recruit the necessary staff and shall conclude short-term contracts to that effect.

Note:

For the period between the entry into force of this Convention and the opening of the European Patent Office, the general convention or an additional protocol, should include financial provisions allowing for the operation of the [Administrative Council], the salaries of the President of the European Office and of its officials who have begun their duties before the opening of the Office, and to cover the costs of its initial equipment.

Article 187

First accounting period of the European Patent Office

Chairman's proposal

(1) The first accounting period of the European Patent Office shall extend from the date of establishment of the Office to 31 December of the same year. If that date falls within the second half of the year, the accounting period shall extend until 31st December of the year following that date.

(2) The budget for the first accounting period shall be drawn up as soon as possible after the date of establishment. To enable the European Patent Office to meet its expenses prior to the receipt of contributions from Contracting States pertaining to the carrying out of the first budget, the Contracting States shall, on or before the operational date, make interest-free loans which shall be deducted from their contributions in respect of that budget.

(3) Prior to the date of establishment, the expenses of the Administrative Council shall be met as follows. The travel and subsistence expenses of each Council member shall be met by the government of the Contracting State he represents. The secretariat facilities shall be provided by the EEC countries.

Article 187A

Chairman's proposal

(1) For a period of years following the first accounting period, while contributions under Article 42(1)(b) are relatively low, additional contributions from Contracting States shall be made each year as necessary to balance the budget.

(2) Contributions under this Article shall be in accordance with a scale proportional to the number of patent applications filed in each Contracting State in the year but one preceding the establishment of the European Patent Office, and shall constitute loans at an annual rate of interest to be determined by the Administrative Council.

(3) The fees and contributions referred to in Article 42 (1) shall be so fixed that the amounts owed to Contracting States can be repaid during a period immediately following that referred to in paragraph 1 .

