

BR/GT IV/31 e/70

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

Brussels, 14 July 1970

BR/GT IV/31/70

- Secretariat -

PRELIMINARY DRAFT CONVENTION
FOR A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

Articles 42 to 42 g, 43 to 53 and 187

Texts either approved in principle by Working Party IV

or drawn up by its Drafting Committee

(meeting 6 to 9 July 1970)

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

INTRODUCTORY NOTE

1. Articles 43 to 53 and 187 were approved in principle by Working Party IV at its meeting of 6 to 9 July 1970 - subject to such redrafting as might be required, especially in the light of the final version of Articles 42 to 42g.

As regards the first-mentioned Articles, Working Party IV has not yet dealt with Article 48(3) and Article 53d.

2. Articles 42 to 42g have been drawn up by the drafting Committee of Working Party IV, but have not yet been re-examined by the Working Party itself.

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.

The underlining (----)

of certain passages in the "1962 Draft" column results from the fact that the lefthand pages in the present document have, for technical reasons, been reproduced unchanged from an earlier working document. This underlining has no significance in the present document.

PART III
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)
- (3)

PART III
THE EUROPEAN PATENT OFFICE
CHAPTER II
FINANCIAL PROVISIONS
Article 42
Cover for expenditure

Text drawn up by the Drafting Committee of Working Party IV

The expenditure of the European Patent Office shall be covered :

- (a) by the European Patent Office's own resources,
- (b) by payments by the Contracting States in respect of renewal fees for European patents levied in these States,
- (c) and, where necessary, by special financial contributions by the Contracting States.



Article 42a

The European Patent Office's own resources

Text drawn up by the Drafting Committee of Working Party IV

(1) The European Patent Office's own resources shall be the yield from the fees laid down in this Convention and its Implementing Regulations, and also miscellaneous receipts.

(2) The amounts of the fees and the procedure for levying them shall be prescribed by the Rules relating to fees adopted pursuant to this Convention.



Article 42b

Payments by the Contracting States
in respect of renewal fees for European patents

Text drawn up by the Drafting Committee of Working Party IV

(1) The payments by the Contracting States in respect of renewals of European patents in those States shall, as a general rule, equal a proportion, which shall be the same for all the Contracting States, of their income from fees for the renewal of European patents. This proportion shall be fixed by the Administrative Council, but may not exceed 75%.

(2) Provided that, if the proportion of the renewal fee for European patents to be paid by any Contracting State corresponds to an amount which is below a minimum fixed by the Administrative Council, the payment to be made by the State in question may not be less than this minimum amount.

(3) If a group of Contracting States has availed itself of the authorisation given in Article 8 and has fixed a common scale of renewal fees applicable to that group, the proportion referred to in paragraph 1 shall be calculated on the basis of the common scale; the minimum amount referred to in paragraph 2 shall relate to the unitary patent.

(4) Each Contracting State shall communicate to the European Patent Office such information as the Administrative Council considers to be necessary to determine the amount of its payment.

(5) The due dates for these payments shall be determined by the Administrative Council in accordance with the liquid resources required by the European Patent Office.

(6) If the payments are not made by the due date the sums outstanding shall carry interest as from that date. The rate of interest shall be laid down in the Financial Regulations.

1962 Draft

Article 42

(1)

(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)

Article 42c
Level of fees and payments

Text drawn up by the Drafting Committee of Working Party IV

The amounts of the fees referred to under Article 42a and of the payments referred to under Article 42b shall be fixed at such a level as to ensure that the budget of the European Patent Office is balanced.

Article 42

(1)

(2)

(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 EEC Treaty (Article 200, paragraph 1)

Belgium	7.9
Germany	28
France	28
Italy	28
Luxembourg	0.2
Netherlands	7.9

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 42d
Special financial contributions

Text drawn up by the Drafting Committee of Working Party IV

However, the →

(paragraph 1)

(1) If the European Patent Office is unable to balance its budget under the conditions laid down in ~~Article 42c~~, the Contracting States shall remit to the European Patent Office special financial contributions, the amount of which shall be determined by the Administrative Council for the financial year in question.

(2) These contributions shall be determined in accordance with a scale based on the number of patent applications filed in the respective Contracting States during the last year but one prior to the establishment of the European Patent Office.

(3) Article 42b, paragraphs 5 and 6, shall apply mutatis mutandis to the contributions referred to in this Article.

Note to paragraph 2

This paragraph will be reconsidered at the next meeting.



Article 42e
Advances

Text drawn up by the Drafting Committee of Working Party IV

(1) At the request of the European Patent Office, the Contracting States shall make advances in respect of the payments under Article 42(b) and contributions under Article 42(c). These advances shall be divided among the Contracting States under the same conditions as their payments and contributions for the year in question.

(2) Article 42b, paragraphs 5 and 6, shall apply mutatis mutandis to the advances referred to in this Article.

Article 42f

Appropriations for unforeseeable expenditure

Text drawn up by the Drafting Committee of Working Party IV

(1) The budget of the European Patent Office may contain appropriations for unforeseeable expenditure.

(2) The employment of these appropriations by the European Patent Office is subject to a prior decision by the Administrative Council.



Article 42g
Transitional period

Text drawn up by the Drafting Committee of Working Party IV

(1) Throughout the period during which the amount of the payments made by the Contracting States in respect of renewals of European patents is insufficient to ensure a balanced budget, the European Patent Office shall have recourse to the methods of financing laid down in Article 42d.

(2) The contributions thus made available by Contracting States to the European Patent Office, together with the corresponding interest, the rate of which shall be laid down in the Financial Regulations, shall be repaid to the Contracting States in as far as the revenue referred to in Article 42(a) and 42(b) is sufficient to provide the necessary budget surplus.

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

Text approved in principle by Working Party IV

(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 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

Text approved in principle by Working Party IV

(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 Financial Regulations referred to in 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 Financial Regulations referred to in Article 53.

Article 45
Financial year

1962 Draft

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

Article 45
Financial year

Text approved in principle by Working Party IV

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

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.

Article 46
Draft Budget

Text approved in principle by Working Party IV

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

Article 47
Adoption of the budget

1962 Draft

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

Article 47

Adoption of the budget

Text approved in principle by Working Party IV

The budget shall be adopted by the Administrative Council.

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

Text approved in principle by Working Party IV

(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 Financial 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.⁷⁽¹⁾

(1) Paragraph 3 has not yet been dealt with by Working Party IV

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

Text approved in principle by Working Party IV

(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 Financial Regulations adopted pursuant to Article 53, transfer funds as between the various headings or sub-headings.

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

Text approved in principle by Working Party IV

(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 after 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.

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

Text approved in principle by Working Party IV

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

(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

Text approved in principle by Working Party IV

(1) - deleted -

(2) - deleted -

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

Financial Regulations

Text approved in principle by Working Party IV

The Financial Regulations shall in particular establish :

- (a) the procedure relating to the establishment and implementation of the budget and for the rendering and auditing of accounts ;
- (b) the method and procedure whereby the contributions of the Contracting States are to be made available to the European Patent Office ;
- (c) the rules concerning the responsibilities of cashiers and accountants and the arrangements for their supervision.
- /(d) the scale referred to in Article 42d, paragraph 2.7 (1)

(1) The text of sub-section d) has not yet been dealt with by Working Party IV

PART XI
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) 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.

Re: PART XI
TRANSITIONAL PROVISIONS
Re: CHAPTER I
TRANSITIONAL AND GENERAL PROVISIONS
Article 187

First accounting period of the European Patent Office

Text approved in principle by Working Party IV

(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 31 December of the following year.

(2) The budget for the first accounting period shall be drawn up as soon as possible after the establishment of the European Patent Office. Until contributions due in accordance with the first budget are received by the European Patent Office, the Contracting States shall, when requested by the Administrative Council, make interest-free advances which shall be deducted from their contributions in respect of that budget. The advances shall be determined in accordance with the scale referred to in Article 42d, paragraph 2.

(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:

The term "establishment of the European Patent Office" should be defined in Article 186.

