

CA/PL 3/00 Add. 2

Orig.: German

Munich, 03.04.2000

SUBJECT: Revision of the EPC: Articles 33 and 35

DRAWN UP BY: Swiss delegation

ADDRESSEES: Committee on Patent Law (for opinion)

I. PROPOSAL

Proposed wording
Article 33
Competence of the Administrative Council
in certain cases

- (1) The Administrative Council shall be competent to amend the following provisions of this Convention:
- (a) the time limits laid down in this Convention; this shall apply to the time limit laid down in Article 94 only in the conditions laid down in Article 95;
 - (b) the Implementing Regulations;
 - (c) the provisions of Parts II to VIII and Part X of this Convention when amendment is required to bring them into line with an international treaty or European Community legislation on patents. **Should a Contracting State not wish to be bound by the legislation of the international treaty in question, the associated Administrative Council decision shall not enter into force. For this purpose a written declaration from the government of that State must be submitted to the Administrative Council within twelve months from the date of adoption of said decision.**

(2) - (4) *Unchanged*

Alternative 1:

- (a)
- (b)
- (c) **Should a Contracting State not wish to be bound by the legislation of the international treaty in question, the associated Administrative Council decision shall be rescinded with retroactive effect. For this purpose**

(2) - (4)

Alternative 2:

(a)

(b)

(c) **Should a Contracting State not wish to be bound by the legislation of the international treaty in question, it may choose to exempt its territory from the effect of such legislation. For this purpose**

(2) - (4)

II. GROUNDS

Switzerland is aware of the need to introduce a mechanism which makes it easier to bring the EPC into line with international treaties, agreements and Community law. However, the problem with the EPO's proposal in CA/PL 3/00 Add. 1 is that states which do not belong to the EEA or the EU cannot accept EU Community law without the prior approval of their parliament. The parliaments this affects would be bypassed under the envisaged rules for simplified adaptation. Outside the specific context of EU Community law, this problem is likely to arise for all the EPC contracting states. No EPC member may be bound by an Administrative Council decision designed to bring the EPC or its Implementing Regulations into line with an international treaty which it has not signed or ratified.

It therefore seems appropriate to add an opt-out or contract-out clause to the EPO's proposal. The resultant procedure would represent a considerable simplification compared with the present rules for short-term EPC revision; but the opt-out clause would counter objections that the proposed provisions bypass national approval processes.
