

CA/6/00

Orig.: German

Dublin, 24.02.2000

SUBJECT: Protocol on the Staff Complement of the European Patent Office at The Hague (Protocol on Staff Complement)

DRAWN UP BY: President of the European Patent Office

ADDRESSEES:

1. Administrative Council (for decision)
2. Committee on Patent Law (for opinion)

SUMMARY

In agreement with the German and Netherlands delegations, the Office has drawn up a draft Protocol on the Staff Complement of the European Patent Office at The Hague. The aim of this Protocol is to ensure that the proportion of the staff complement at The Hague to the total staff complement of the Office remains unaffected by the revision of Articles 16 and 17 EPC and Section I(1) and (3) of the Protocol on Centralisation and the associated Office-wide introduction of BEST.

I. REASONS

1. According to the current version of Articles 16 and 17 EPC, the Receiving Section and the Search Divisions of the European Patent Office belong to the branch at The Hague. As far as the Search Divisions are concerned, this geographical division is subject to Section I(3) of the Protocol on Centralisation, according to which the Berlin sub-office, which operates under the direction of the branch at The Hague, carries out such search work as is laid down by the EPO's Administrative Council.
2. The above provisions are the result of a political agreement reached by the contracting states when the Convention was drawn up in order to deal with the issue of the integration of the International Patent Institute (IIB) into the EPO and the matter of the headquarters of the Organisation. They in effect ensure that the staff complement of the Hague branch, including the Berlin sub-office, is sufficient at least to carry out the Office's work in the fields of searching, documentation, and examination on filing and as to formal requirements. In practice, this minimum complement is supplemented by some staff from Finance, Personnel and Building Administration, as well as Principal Directorate Information Systems, who are based in The Hague for reasons of practicality. With the integration of INPADOC into the EPO, a fourth duty station was set up in Vienna.

The 2000 budget provides for a total of 5 038 posts, divided between the four duty stations as follows:

Munich	2 622	(52.0%)
The Hague	2 150	(42.7%)
Berlin	176	(3.5%)
Vienna	90	(1.8%).

3. The Office-wide introduction of the BEST procedure, which has already been approved in principle by the Administrative Council, means that the stipulated geographical division for searching and examination on filing and as to formal requirements must be removed from the Convention and the Protocol on Centralisation. As part of the preparatory work on revision of the EPC, the Office has already submitted relevant proposals in CA/PL 10/98, which the Committee on Patent Law has examined and endorsed.
4. In discussions at heads of delegation and Administrative Council level there has always been agreement that the Office-wide introduction of the BEST procedure should not lead to any change in the ratio of the staff complement in The Hague to the total staff complement and that a suitable replacement should be found for the legal guarantees in respect of the staff complement in The Hague which will be removed by the amendments to Articles 16 and 17 EPC and Section I(1) and (3) of the Protocol on Centralisation.

In agreement with the German and Netherlands delegations, the President of the Office therefore proposes that this guarantee should take the form of a Protocol, which will fix the ratio of the staff complement in The Hague to the total staff complement of the Office as it exists in the 2000 table of posts, subject to a certain amount of flexibility as required for the smooth running of the Office.

II. DRAFT PROTOCOL ON THE STAFF COMPLEMENT OF THE EUROPEAN PATENT OFFICE AT THE HAGUE (PROTOCOL ON STAFF COMPLEMENT)

Sole article

The European Patent Organisation shall ensure that the proportion of posts at the European Patent Office allotted to the duty station at The Hague under the 2000 establishment plan and table of posts remains substantially unchanged. Any temporary increase or decrease in this proportion which proves necessary for the purposes of the smooth running of the European Patent Office may not exceed 10%.

III. EXPLANATION

1. According to its title and wording, the guarantee created by the Protocol does not refer to the total staff complement of the Hague branch, but specifically to the staff employed at the Hague duty station. Since, according to Section I(3)(a) of the Protocol on Centralisation, the Berlin sub-office "operates under the direction of" the branch at The Hague, and can therefore be seen as an integral part of it, this very precise wording is necessary if any substantial increase in the staff complement at the Berlin sub-office at the expense of the staff complement in The Hague is to be prevented. Nevertheless, consideration should be given to removing from the Protocol on Centralisation the provision that the Berlin sub-office operates under the direction of the branch at The Hague because it unnecessarily prejudices organisational decisions which, following the Office-wide introduction of the BEST procedure, could one day be expedient.
2. According to the Protocol, the proportion of the Office's posts allocated in the 2000 table of posts to The Hague duty station is to remain "substantially unchanged". Minor deviations caused by fluctuations in staff or by the formation of directorates or other administrative units will be permissible. More sizable fluctuations of up to 10% either side of the authorised complement at The Hague may be allowed on a temporary basis only and must be necessary from the point of view of the smooth running of the Office.

3. It is proposed that the Protocol on Staff Complement be included by way of an appropriate amendment to Article 164(1) EPC in the list of protocols which, according to that provision, are an integral part of the Convention.
4. It is planned to make provision in the Act revising the Convention for the amended version of Articles 16 and 17 EPC and Section I of the Protocol on Centralisation and the Protocol on Staff Complement to be provisionally applicable until they come into force.

IV. CONCLUSION

The Administrative Council is requested to give its opinion on the above proposals and to refer them to the Committee on Patent Law for further examination.
