

SUBJECT: Preparations for the Revision Conference - draft Rules of Procedure of the Conference

DRAWN UP BY: Presidency of the Council of the European Union and President of the European Patent Office

ADDRESSEES: Administrative Council (for opinion)

SUMMARY

The draft Rules of Procedure for the Diplomatic Conference are largely based on those for the conference which revised Article 63 EPC. One difference is that they already specify the Chairman-in-Office and Deputy Chairman-in-Office of the Administrative Council as President and Vice-President of the Conference, which will meet without main committees.

This document replaces CA/26/00 of 29 June 2000 and its Corrigendum dated 21 August 2000. The amendments are indicated by grey hatching.

DRAFT RULES OF PROCEDURE OF THE CONFERENCE

CHAPTER I

Purpose and composition of the Conference

Article 1 Purpose of the Conference

The purpose of the Conference of the Contracting States to the European Patent Convention (hereinafter referred to as "the Conference") shall be, on the basis of the Basic Proposal submitted in Preparatory Document No. 2, to discuss an Act (hereinafter referred to as "the Revision Act") revising the European Patent Convention of 5 October 1973, as last revised on 17 December 1991 (hereinafter referred to as "the EPC"), and under Article 172(2) EPC to adopt said Revision Act.

Article 2 Composition of the Conference

- (1) The Conference shall consist of:
 - (a) the delegations of the Contracting States to the EPC (hereinafter referred to as "the Ordinary Member Delegations"),
 - (b) the delegation of the European Community (hereinafter referred to as "the Special Member Delegation")
- (2) The following may participate in the Conference negotiations and discussions as observers in accordance with these Rules of Procedure:
 - (a) States permitted to accede to the EPC under Article 166(1) EPC and states permitted to attend the meetings of the Administrative Council of the European Patent Organisation as observers (hereinafter referred to as "Third Countries");
 - (b) the World Intellectual Property Organization, [...] the Council of Europe, the European Free Trade Association, the Institute of Professional Representatives before the European Patent Office; and
 - (c) non-governmental organisations invited to attend the Conference by the Administrative Council of the European Patent Organisation.
- (3) References in these Rules of Procedure to Member Delegations shall be considered as references to the Ordinary and the Special Member Delegations.

CHAPTER II

Representation, credentials and letters of appointment

Article 3 Member Delegations

- (1) Each Member Delegation shall consist of one or more delegates and shall have a Head of Delegation. A maximum of two advisers may be attached to it.
- (2) Advisers may act as delegates if nominated to do so by the Head of Delegation.

Article 4 Observers

- (1) Third Countries and inter-governmental organisations shall be represented by one or more representatives.
- (2) Non-governmental organisations shall be represented by one or two representatives.

Article 5 Credentials

- (1) Ordinary Member Delegations shall present credentials.
- (2) Full powers shall be required for signing the Revision Act [...].
- (3) Credentials and full powers shall be signed by the Head of State, Head of Government or Minister responsible for external affairs.

Article 6 Letters of appointment

- (1) The Special Member Delegation and observers shall present a letter appointing the representative or representatives of the State, organisation or institution at the Conference (hereinafter referred to as "letter of appointment").
- (2) The letters of appointment of the representatives of Third Countries shall be signed in accordance with Article 5, paragraph 3, or by the head of a diplomatic mission of the State in question. Other letters of appointment shall be signed by the competent authority of the organisation or institution.

Article 7 Presentation of credentials and letters of appointment

When the Conference begins, credentials and letters of appointment shall be presented to the Secretariat, which shall transmit them to the Credentials Committee.

Article 8 Provisional participation

Pending a decision on the validity of credentials or a letter of appointment, delegates, advisers and representatives shall be entitled to participate provisionally in the Conference.

CHAPTER III

Organs of the Conference

Article 9 Plenary

- (1) The Conference shall meet in Plenary.
- (2) The Plenary shall consist of the Member Delegations.
- (3) Observers may attend the meetings of the Plenary and make oral submissions. Written submissions relating to the work of the Conference shall be distributed among the Conference participants by the Secretariat in the number and languages presented to it.
- (4) The Plenary shall decide on these Rules of Procedure and the agenda of the Conference. It shall adopt the Revision Act, other decisions and resolutions and the Final Act of the Conference and shall prepare them for signature by the representatives of the Governments of the Contracting States. It shall also carry out the other functions assigned to it in these Rules of Procedure.
- (5) The Plenary shall decide on the validity of the credentials and letters of appointment presented, on the basis of the Credentials Committee's report, before the decision on the draft Revision Act is taken.

Article 10 Credentials Committee

- (1) The Conference shall have a Credentials Committee.
- (2) The Credentials Committee shall consist of three members elected by the Plenary from among the delegates of the Ordinary Member Delegations at the opening session of the Conference. The Plenary shall elect one of the members of the Committee as chairman and shall appoint his deputy.
- (3) The Credentials Committee shall examine the credentials and letters of appointment presented and shall report to the Plenary.

Article 11 Drafting Committee

- (1) The Conference shall have a Drafting Committee.

- (2) The Drafting Committee shall consist of seven members elected by the Plenary from among the delegates of the Ordinary Member Delegations at the opening session of the Conference. The Plenary shall elect one of the members of the Committee as chairman and shall appoint his deputy.
- (3) The Drafting Committee shall deal with the texts referred to it and shall report to the Plenary.

Article 12 Secretariat

- (1) The Conference shall have its own Secretariat.
- (2) The functions of the Secretariat shall be assumed by the President of the European Patent Office. He shall take part in the deliberations of the Conference and its organs and may make written or oral declarations and submissions, or present proposals, relating to matters under discussion.
- (3) The Secretariat shall be responsible for the receipt, translation, reproduction and distribution of the Conference documents, the interpreting of oral submissions and all other work connected with the conduct of the meetings.
- (4) The Secretariat shall also be responsible for publishing the Revision Act adopted by the Conference, and for drawing up and publishing the Conference proceedings.

CHAPTER IV Presidency, chair and elections

Article 13 President and Vice-President

- (1) The Conference shall have a President and a Vice-President.
- (2) The President of the Conference shall be the Chairman-in-Office of the Administrative Council of the European Patent Organisation. The Vice-President shall be the Deputy Chairman-in-Office of the Administrative Council of the European Patent Organisation.

Article 14 Chair

- (1) The term "chairman" as used in these Rules of Procedure shall refer to the President of the Conference and the chairmen of the other organs of the Conference. The term "deputy chairman" as used in these Rules of Procedure shall refer to the Vice-President of the Conference and the deputy chairmen of the other organs of the Conference.

- (2) If a chairman is unable to attend, his deputy shall take over the chair of the organ concerned.
- (3) If neither the chairman nor his deputy is present at a meeting of a Conference organ, that organ shall elect an acting chairman from among its members.

Article 15 Elections

- (1) The President of the Conference shall propose a list of candidates for all positions to be filled by election by the Plenary. The candidate elected is the one who obtains the majority of votes cast.
- (2) Article 34 shall apply *mutatis mutandis* to voting in elections. However, at the request of a **Ordinary Member Delegation** the Plenary may decide that the election is to be held by secret ballot.
- (3) Article 36 shall apply with the proviso that, in the event of a tie, the election shall be repeated until one of the candidates receives more votes than any of the others.

Article 16 Chairman's entitlement to vote

- (1) The chairman, deputy chairman or acting chairman shall not be entitled to vote. Another member of their delegation shall vote on behalf of their State.
- (2) If the chairman, deputy chairman or acting chairman is the only member of his delegation, he may vote on behalf of his State after all other delegations have voted.

CHAPTER V Conduct of business

Article 17 Quorum

- (1) A quorum constituted by three quarters of the **Ordinary Member Delegations** shall be required for meetings of the Plenary.
- (2) A quorum constituted by a majority of the members shall be required for meetings of the other organs of the Conference.

Article 18 General powers of the chairmen

In addition to the powers conferred upon them by these Rules of Procedure, the chairmen shall be empowered to open and close the sessions, direct the discussions, give speakers the floor, put questions to the vote and announce the outcome of votes. They shall rule on points of order and shall be responsible for maintaining order during the proceedings.

They may propose a limit on the time allowed to speakers, a limit on the number of submissions each delegation may make on any matter, the closing of the list of speakers or the closure of the debate. They may also move that a particular matter not be admitted for debate or that the debate be adjourned.

Article 19 Entitlement to speak

- (1) No person may speak without having previously obtained the chairman's permission. Subject to Articles 20 and 21, the chairman shall call upon speakers in the order of their indicating their wish to have the floor.
- (2) The chairman may call a speaker to order if his remarks are not relevant to the subject under discussion.

Article 20 Precedence in the order of speaking

The chairman may give delegates of the Member Delegations precedence in the order of speaking over other Conference participants.

Article 21 Points of order

A Member Delegation may raise a point of order during a discussion. The delegation shall be allowed to speak out of turn on the point of order. The chairman shall rule on points of order. Any Member Delegation may request that the chairman's ruling be put to the vote immediately.

Article 22 Time limit on speeches

On a proposal from the chairman, the Plenary and committees may limit the speaking time allowed to each delegation on any matter. If a speaker overruns his allotted time, the chairman may call on him to yield the floor.

Article 23 Closing the list of speakers

While a matter is being discussed, the chairman may announce the closing of the list of speakers and, with the consent of the organ concerned, declare the list closed. After the list has been closed he may give a delegation the floor if he considers this to be appropriate.

Article 24 Adjournment and closure of debate

While a matter is being discussed, any Member Delegation may move the adjournment or closure of the debate on that particular question. As well as the proposer delegation, one other Member Delegation may speak in favour of the motion. Two Member Delegations may speak against the motion. The motion shall thereafter be put to the vote without delay.

Article 25 Adjournment of the meeting

While a matter is being discussed, any Member Delegation may move the adjournment of the meeting. Such motions shall not be debated, but shall be put to the vote without delay.

Article 26 Order of procedural motions

Subject to Article 21, the following motions shall have precedence over all other proposals or motions in the following order:

1. to adjourn the meeting;
2. to adjourn the debate on a particular matter;
3. to close the debate on a particular matter.

Article 27 Basic Proposal and Revision Act

The Basic Proposal submitted in Preparatory Document No. 2 shall form the basis of the discussions of the Conference. It shall contain proposals for revising the European Patent Convention, for amending the Protocol on Centralisation and for including a Protocol on the Staff Complement, and the draft Revision Act.

Article 28 Proposed amendments

Any Member Delegation may submit proposals for amending the draft Revision Act. The proposals shall be submitted in writing to the Secretariat, which shall transmit them to the Plenary for consideration. The chairman of the Plenary may prescribe a time limit for submitting proposed amendments.

Article 29 Withdrawal of motions and proposals

A motion or proposal may be withdrawn by the Member Delegation submitting it at any time before voting has commenced. This shall not, however, apply where another Member Delegation has tabled, in respect of a proposed amendment, a supplementary amendment which is still before the meeting. A motion or proposal thus withdrawn may be reintroduced by any other Member Delegation.

Article 30 Re-opening of the discussion, rejection of proposals

- (1) Once a proposal has been adopted or rejected, a majority of two thirds of the Ordinary Member Delegations present and voting shall be required for the discussion to be re-opened.
- (2) Article 24 shall apply *mutatis mutandis* to the procedure governing motions for the re-opening of discussions.
- (3) If a Member Delegation moves that the Conference not deal with a proposal because it does not concern the Basic Proposal, the proposal may not be discussed until the Plenary has voted on whether to consider it.

CHAPTER VI Voting

Article 31 Voting rights

Each Ordinary Member Delegation shall have one vote on each organ on which it is represented. It may represent and vote on behalf of its own Government only.

Article 32 Majorities required

- (1) At the final session of the Plenary, the draft Revision Act as a whole shall be put to the vote. A majority of three quarters of the votes cast by the Ordinary Member Delegations present shall be required for adoption of the Revision Act.
- (2) Proposed amendments to the draft Revision Act shall require for their adoption a majority of two thirds of the votes cast by the Ordinary Member Delegations present.
- (3) Other decisions of the organs of the Conference shall be taken by a simple majority of the votes cast by the Ordinary Member Delegations present.

Article 33 Abstentions

An abstention shall not count as a vote.

Article 34 Method of voting

- (1) Voting shall be by a show of hands, unless any Ordinary Member Delegation requests a roll-call before voting has commenced.
- (2) In the event of a vote by roll-call, the chairman shall call the roll of the Ordinary Member Delegations in the alphabetical order of the names of the States in their respective language, beginning with the delegation of the State whose name he has drawn by lot.

Article 35 Voting on proposed amendments

- (1) A proposed amendment to the draft Revision Act may be put to the vote only if it is seconded by at least one other Member Delegation.
- (2) A proposed amendment shall be put to the vote before the vote on the draft Revision Act is taken. If, however, the adoption of one proposed amendment entails the rejection of another, the other proposed amendment shall not be put to a vote. If one or more proposed amendments are adopted, the draft Revision Act shall be put to the vote as amended.
- (3) If several proposed amendments relate to the same question, they shall be voted on in the order in which they were submitted, unless the organ conducting the vote decides on a different order.
- (4) Once the beginning of voting has been announced, the voting procedure may only be interrupted on a point of order in connection with the conduct of the vote.

Article 36 Position in the event of a tie

In the event of a tie, a motion, proposal or proposed amendment shall be regarded as rejected.

CHAPTER VII Languages of the Conference

Article 37 Deliberations and documents

- (1) The languages used by the Conference in its deliberations shall be English, French and German.

- (2) The documents submitted to the Conference, the proposed amendments to the draft Revision Act and the Conference proceedings shall be drawn up in those languages.

CHAPTER VIII

Amendments to the Rules of Procedure

Article 38 Amendments to the Rules of Procedure

The Rules of Procedure, other than the present Article, may be amended.
