

CA/124/00

Orig.: English/German

Munich, 25.09.2000

SUBJECT: Summary of decisions taken at the 81st meeting of the
Administrative Council (Munich, 5 - 7 September 2000)

DRAWN UP BY: Council Secretariat

ADDRESSEES: Administrative Council (for information)

I. ADOPTION OF THE PROVISIONAL AGENDA (agenda item 1, CA/79/00 Rev. 1)

1. The Council adopted the provisional agenda set out in CA/79/00 Rev. 1 with the addition under agenda item 3(d) "Rules of procedure of the Diplomatic Conference" of CA/26/00 Rev.1 and under agenda item 5 "Any other Business - Production and productivity of examiners in DGs 1 and 2" of Info 2/AC 81.

II. APPROVAL OF THE DRAFT MINUTES OF THE COUNCIL'S 80TH MEETING
(agenda item 2, CA/78/00)

2. The Council approved the draft minutes of its 80th meeting with an amendment to paragraph 11 requested by the Finnish delegation and a grammatical correction to paragraph 9 of the French language version requested by the French delegation.

IIIa. PREPARATION OF THE DIPLOMATIC CONFERENCE - REPORT OF THE CHAIRMAN OF THE COMMITTEE ON PATENT LAW ON ITS 14TH MEETING
(agenda item 3(a))

3. The Council noted the oral report.

IIIb. PREPARATION OF THE DIPLOMATIC CONFERENCE - BASIC PROPOSAL; AMENDMENTS TO THE EPC (agenda item 3(b), CA/100/00 + Add. 1 + Add. 2 and CA/118/00)

4. The Council unanimously decided to follow the procedure for discussion set out in CA/118/00, noting the Chairman's explanation that at any time during the debate delegations could request items to be added to the list of Category B items (present 19; for 19).
5. Taking account of requests and proposals from delegations the consolidated list of Category B items within the meaning of CA/118/00, that is to say those of fundamental importance or, in view of the Committee on Patent Law's discussions, requiring finalisation by the Council, was as follows:
(Articles numbered according to the "revised wording" text of CA/100/00 + Add. 2)

EPC Articles 14;
 22 together with 112a;
 33 together with 35;
 37;
 52(2);
 54(4);

69 and new provisions supplementing the Protocol on the interpretation of Article 69;
80;
87;
94 to 96;
105a to 105c together with 21(3)(a) and 68;
134a(1)(d);
149a;
164;

Protocol on Centralisation;

Draft Revision Act Article 4.

6. **Article 14.** The Council approved by fifteen votes to none with four abstentions the inclusion in the basic proposal of an amendment to Article 14(2) proposed by the Austrian delegation and the President of the Office attached as Annex I to this summary (present 19; for Belgium, Cyprus, Denmark, Germany, France, Ireland, Italy, Liechtenstein, Luxembourg, Monaco, Netherlands, Austria, Switzerland, Sweden, United Kingdom; against none; abstentions Ellas, Spain, Finland, Portugal).
7. The Council rejected by fifteen votes to three with one abstention a proposal from the Spanish delegation to leave the text of Article 14 (2) of the current version of the EPC unamended (present 19; for Ellas, Spain, Portugal; against Belgium, Cyprus, Denmark, Germany, France, Ireland, Italy, Liechtenstein, Luxembourg, Monaco, Netherlands, Austria, Switzerland, Sweden, United Kingdom; abstention Finland).
8. **Article 21(3)(a).** The Council unanimously approved the inclusion in the basic proposal of the text of Article 21(3)(a) set out in CA/100/00 Add. 2 (present 19; for 19)
9. **Articles 22 and 112a.** The Council unanimously approved the inclusion in the basic proposal of the texts of Articles 22 and 112a set out in CA /100/00 (present 19; for 19).
10. **Articles 33 and 35.** The Council unanimously approved the inclusion in the basic proposal of the texts of Articles 33 and 35 as set out in CA/100/00 (present 19; for 19).

11. **Article 37.** The Council unanimously approved the inclusion in the basic proposal of the text of Article 37 as set out in CA/100/00, noting a statement made by the German delegation on Article 37 (e) opposing borrowings (present 19; for 19).
12. **Article 52.** The Council rejected by fifteen votes to four the option foreseen in CA/100/00 of deleting entirely paragraphs (2) and (3) of Article 52 in the basic proposal (present 19; for Italy, Netherlands, Switzerland, Liechtenstein; against Belgium, Cyprus, Denmark, Germany, Ellas, Spain, Finland, France, Ireland, Luxembourg, Monaco, Austria, Portugal, Sweden, United Kingdom).
13. The Council rejected by ten votes to eight with one abstention the option foreseen in CA/100/00 of deleting paragraphs (2) and (3) of Article 52 in the basic proposal and including equivalent provisions in the Implementing Regulations (present 19; for Belgium, Cyprus, Ellas, Italy, Liechtenstein, Netherlands, Austria, Switzerland; against Denmark, Germany, Spain, Finland, France, Ireland, Luxembourg, Monaco, Sweden, United Kingdom; abstention Portugal).
14. No delegation voting in favour, the Council rejected a further option, namely, the omission of any reference to computer programs in paragraph (2)(c) of Article 52 and the inclusion of such a reference in the Implementing Regulations (present 19; for none).
15. The Council approved by ten votes to eight with one abstention the option foreseen in CA/100/00 of deleting in the basic proposal the reference to computer programs in paragraph (2)(c) of Article 52 and keeping the remaining text of Article 52(2) and (3) unchanged (present 19; for Belgium, Cyprus, Ellas, Ireland, Italy, Liechtenstein, Monaco, Netherlands, Austria, Switzerland; against Denmark, Germany, Spain, France, Luxembourg, Portugal, Sweden, United Kingdom; abstention Finland).
16. The effect of the votes was thus to delete the square brackets spanning paragraphs (2) and (3) from the text of the revised wording of Article 52 set out in CA/100/00.
17. **Article 54.** The Council approved by nine votes to two with eight abstentions the inclusion in the basic proposal of an amendment to Article 54 proposed by the Swiss delegation attached as Annex II to this summary (present 19; for Denmark, Germany, France, Italy, Liechtenstein, Netherlands, Switzerland, Sweden, United Kingdom; against Cyprus, Ellas; abstentions Belgium, Spain, Finland, Ireland, Luxembourg, Monaco, Austria, Portugal).

18. **Article 68.** The Council approved with one dissenting vote the inclusion in the basic proposal of the revised wording of Article 68 set out in CA/100/00 (present 19; for 18; against Denmark).
19. **Article 69 and new provisions supplementing the Protocol on the interpretation of Article 69.** The Council unanimously approved the inclusion in the basic proposal of the new provisions set out in CA/100/00 (present 19; for 19).
20. **Article 80.** The Council approved the inclusion in the basic proposal of the revised wording set out in CA/100/00, the German and Netherlands delegations expressing a reserve, the Hellenic delegation formally abstaining.
21. **Article 87.** The Council approved the inclusion in the basic proposal of the revised wording set out in CA/100/00, the Irish delegation expressing a reserve.
22. **Articles 94-96.** The Council approved by eighteen votes to one the inclusion in the basic proposal of the revised wording set out in CA/100/00 (present 19; for 18; against Denmark).
23. **Articles 105a to c.** The Council approved by sixteen votes to three the inclusion in the basic proposal of Articles 105a to c set out in CA/100/00 (present 19; for 16; against Denmark, Ireland, Sweden).
24. **Article 134a(1)(d).** The Council unanimously approved the inclusion in the basic proposal of the revised wording set out in CA/100/00 (present 19; for 19).
25. **Article 149a.** The Council approved by seventeen votes to one with one abstention the inclusion in the basic proposal of the text set out in CA/100/00 (present 19; for 17, against Italy; abstention Finland).
26. **Article 164.** The Council rejected by ten votes to seven with two abstentions an amendment to Article 164(1)(c) attached as Annex III to this summary proposed by the German delegation (present 19; for Belgium, Denmark, Germany, Finland, France, Ireland, Netherlands; against Cyprus, Ellas, Italy, Liechtenstein, Luxembourg, Monaco, Austria, Switzerland, Sweden, United Kingdom; abstentions Spain, Portugal).

27. The Council approved by thirteen votes to four with two abstentions the inclusion in the basic proposal of an amended text of Article 164 proposed by the Portuguese delegation attached as Annex IV to this summary (present 19; for Cyprus, Germany, Ellas, Spain, Finland, France, Ireland, Italy, Liechtenstein, Monaco, Austria, Portugal, Switzerland; against Luxembourg, Belgium, Sweden, United Kingdom; abstentions Denmark, Netherlands).
28. **Protocol on Centralisation.** The German delegation made a statement on this point, attached as Annex V to this summary.
29. **Draft Revision Act Article 4.** The Council approved by nine votes to six with four abstentions an amendment to Article 4 of the draft revision act proposed by the President of the Office and attached as Annex VI to this summary (present 19; for Cyprus, Denmark, Ellas, Ireland, Italy, Luxembourg, Netherlands, Austria, Sweden; against Germany, Spain, Finland, Liechtenstein, Switzerland, United Kingdom; abstentions Belgium, France, Monaco, Portugal).
30. **Draft Revision Act Articles 1, 5, 7, and 8.** The Council unanimously approved the deletion of the passages within square brackets in the texts of Articles 1, 7 and 8, second and third set of square brackets and the deletion of the square brackets from the texts of Articles 5 and Article 8, first set of brackets (present 19; for 19).
31. **Draft Final Act.** The Council unanimously approved the deletion from CA/100/00 of the square brackets from the text of the draft final act (present 19; for 19).
32. **Draft Council Decision.** Taking account of all the above as well as the discussion of item IIIc "Conference of ministers of the contracting states" (CA/83/00 and CA/123/00) and item III d "Rules of procedure" (CA/26/00 + Corr. 1 + Rev. 1) set out below the Council, unanimously approved the draft decision in Part IV of CA/100/00 and thus decided to submit to the revision conference the documents as set out in CA/100/00 + Add. 2 with the following amendments (present 18; for 18):

Part I: Basic Proposal (= MR/2/00)

- a. Art 4(4) as per CA/123/00
- b. Art 14(2) as per Annex I to this summary
- c. Art 21(3)(a) as per CA/100/00 Add. 2
- d. Art 52 delete the square brackets spanning paragraphs (2) and (3) from the text of the revised wording of Article 52 set out in CA/100/00.

- e. Art 54(4) as per Annex II to this summary
- f. Article 69 inclusion of the new provisions supplementing the Protocol on the interpretation of Article 69 by retaining the current Protocol as "Article 1" with the title "General principles", the proposed new rules being included as "Article 2" with the title "Equivalents" and "Article 3" with the title "Prior statements"
- g. Art 164 as per Annex IV of this summary

Part II: Draft Revision Act (= MR/3/00)

- h. Art 1 removal of text within square brackets
- i. Art 4 as per Annex VI to this summary
- j. Art 5 removal of square brackets
- k. Art 7 removal of text within square brackets
- l. Art 8 removal of first set of square brackets and removal of text within the second and third sets of square brackets

Part III: Draft Final Act (= MR/4/00)

- m. Final Act removal of square brackets

IIIc. CONFERENCE OF MINISTERS OF THE CONTRACTING STATES (agenda item 3(c), CA/83/00 and CA/123/00)

- 33. The Council rejected by eight votes to five with six abstentions a proposal from the Belgian delegation which foresaw the passing of a resolution on holding ministerial conferences rather than amendment of Article 4 EPC (for Belgium, Ellas, Finland, Liechtenstein, Luxembourg; against Denmark, Germany, Ireland, Italy, Netherlands, Switzerland, Sweden, United Kingdom; abstentions Cyprus, Spain, France, Monaco, Austria, Portugal).
- 34. The Council approved by eleven votes to two with six abstentions the inclusion in the basic proposal of an amendment to Art 4 EPC as set out in CA/123/00 (for Denmark, Germany, Spain, Ireland, Italy, Netherlands, Austria, Portugal, Switzerland, Sweden, United Kingdom; against Cyprus, Ellas; abstentions Belgium, Finland, France, Liechtenstein, Luxembourg, Monaco). The Council also noted CA/83/00.

IIId. RULES OF PROCEDURE OF THE DIPLOMATIC CONFERENCE (agenda item 3(d), CA/26/00 + Corr. 1 + Rev. 1)

35. The Council unanimously approved the draft rules of procedure set out in CA/26/00 Rev. 1 with linguistic corrections to Art 2(1)(b) of the French text and Art 2(2)(b) of the German text (present 19; for 19).

IIIe. PROGRESS OF ORGANISATIONAL ARRANGEMENTS FOR THE DIPLOMATIC CONFERENCE (agenda item 3(e), CA/108/00)

36. The Council noted CA/108/00.

IV. INTERGOVERNMENTAL CONFERENCE (LONDON 16/17 OCTOBER 2000) - PROGRESS REPORT (agenda item 4)

37. The Council noted an oral report given by the United Kingdom delegation.

V. ANY OTHER BUSINESS - PRODUCTION AND PRODUCTIVITY OF EXAMINERS IN DGS 1 AND 2 (agenda item 5, Info 2/AC 81)

38. The Council noted Info 2/AC 81.

Vorschlag der österreichischen
Delegation und des Präsidenten des
EPA:

Artikel 14

"(2) Eine europäische
Patentanmeldung ist in einer
Amtssprache einzureichen oder, wenn
sie in einer anderen Sprache eingereicht
wurde, nach Maßgabe der
Ausführungsordnung in eine
Amtssprache zu übersetzen."

Proposal by the Austrian delegation and
the President of the EPO:

Article 14

"(2) A European patent application
must be filed in one of the official
languages or, if filed in any other
language, translated into one of the
official languages, in accordance with
the Implementing Regulations."

Proposition de la délégation
autrichienne et du Président de l'OEB:

Article 14

"(2) Toute demande de brevet européen
doit être déposée dans une des langues
officielles ou, si elle est déposée dans
toute autre langue, traduite dans une
des langues officielles, conformément au
règlement d'exécution."

VORSCHLAG DER SCHWEIZERISCHEN DELEGATION

ARTIKEL 54

- (1) Unverändert
- (2) Unverändert
- (3) Unverändert
- (4) Gestrichen

(4) Entsprechend wie der derzeitige Absatz 5:
Gehören Stoffe oder Stoffgemische zum Stand der Technik, so wird ihre Patentfähigkeit durch die Absätze 1 bis 3 nicht ausgeschlossen, sofern sie zur Anwendung in einem der in Artikel **53 Buchstabe c** genannten Verfahren bestimmt sind und ihre Anwendung zu einem dieser Verfahren nicht zum Stand der Technik gehört.

(5) Unbeschadet der Absätze 2 und 3 wird die Patentfähigkeit der in Absatz 4 genannten Stoffe oder Stoffgemische zur spezifischen Anwendung in einem der in Artikel 53 Buchstabe c genannten Verfahren durch diesen Artikel nicht ausgeschlossen, wenn diese Anwendung nicht zum Stand der Technik gehört.

PROPOSAL OF THE SWISS DELEGATION

ARTICLE 54

- 1) unchanged
- 2) unchanged
- 3) unchanged
- 4) deleted

(4) same as current par(5), *mutatis mutandis* :
The provisions of paragraphs 1 to 3 shall not exclude the patentability of any substance or composition, comprised in the state of the art, for use in a method referred to in Article **53(c)** provided that its use for any method referred to in that paragraph is not comprised in the state of the art.

5) Without prejudice to paragraphs 2 and 3, the provisions of this article shall not exclude the patentability of any substance or composition referred to in paragraph (4) for any specific use in any method referred to in Article 53 (c), provided that such use is not comprised in the state of the art.

PROPOSITION DE LA DELEGATION SUISSE

ARTICLE 54

(1) Inchangé

(2) Inchangé

(3) Inchangé

(4) Supprimé

(4) Identique à l'actuel paragraphe (5), mutatis mutandis:

(4) Les dispositions des paragraphes (1) à (3) n'excluent pas la brevetabilité, pour la mise en oeuvre d'une des méthodes visées à l'article **53 c)**, d'une substance ou composition exposée dans l'état de la technique, à condition que son utilisation pour toute méthode visée audit paragraphe ne soit pas contenue dans l'état de la technique.

(5) Sans préjudice des paragraphes 2 et 3, les dispositions du présent article n'excluent pas la brevetabilité d'une substance ou composition visée au paragraphe (4) pour toute utilisation spécifique dans toute méthode visée au paragraphe 53 c), à condition que cette utilisation ne soit pas contenue dans l'état de la technique.

VORSCHLAG DER DEUTSCHEN DELEGATION
PROPOSAL OF THE GERMAN DELEGATION
PROPOSITION DE LA DELEGATION ALLEMANDE

Artikel 164 (1) c):

"Einzelheiten [...] zur Durchführung der Vorschriften dieses Übereinkommens [...]."

Article 164 (1) (c) :

"details [...] for the implementation of the provisions of this Convention."

Article 164 (1) c):

"aux précisions [...] pour l'application des dispositions de la présente convention."

Vorschlag der portugiesischen
Delegation:

Artikel 164

Ausführungsordnung und Protokolle

(1) Die Ausführungsordnung, das Anerkennungsprotokoll, das Protokoll über Vorrechte und Immunitäten, das Zentralisierungsprotokoll, [...] das Protokoll über die Auslegung des Artikels 69 **sowie das Personalstandsprotokoll** sind Bestandteile des Übereinkommens.

(2) **Bei** mangelnder Übereinstimmung zwischen Vorschriften des Übereinkommens und Vorschriften der Ausführungsordnung gehen die Vorschriften des Übereinkommens vor.

Proposal by the Portuguese delegation:

Article 164

Implementing Regulations and Protocols

(1) The Implementing Regulations, the Protocol on Recognition, the Protocol on Privileges and Immunities, the Protocol on Centralisation, [...] the Protocol on the Interpretation of Article 69 **and the Protocol on Staff Complement** shall be integral parts of this Convention.

(2) In the case of conflict between the provisions of this Convention and those of the Implementing Regulations, the provisions of this Convention shall prevail.

Proposition de la délégation portugaise:

Article 164

Règlement d'exécution et protocoles

(1) Le règlement d'exécution, le protocole sur la reconnaissance, le protocole sur les privilèges et immunités, le protocole sur la centralisation, [...] le protocole interprétatif de l'article 69 et **le protocole sur les effectifs** font partie intégrante de la présente convention.

(2) En cas de divergence entre **les dispositions** de la présente convention et **celles** du règlement d'exécution, **les dispositions de la convention prévalent.**

Statement on the Protocol on Centralisation by the German delegation:

"Regarding the proposed amendments to Section I(3) of the Protocol on Centralisation, the German delegation refers to the statement it made during the discussions on the Protocol on Staff Complement, concerning the financial obligations of the Federal Republic of Germany.

Although the connection between the Berlin sub-office and the branch at The Hague is to be retained, the removal of the provision allotting a specific range of tasks to the branch at The Hague - and therefore also to the Berlin sub-office - eliminates the existing point of reference for the calculation of costs that forms the basis for the Berlin Agreement and its complementary agreements. With this in mind, it is vital to ensure that the proposed amendment of the Protocol on Centralisation does not lead to a situation in which an extension of the tasks of the Berlin sub-office might entail a rise in the share of costs to be borne by Germany.

For these reasons, the German delegation intends to seek clarification of the principles underlying this issue in the proposed "second revision round", with the aim, in view of the new situation, of ending the above-mentioned financial obligations."

Draft Revision Act - Proposal of the President of the Office

Article 4

New version of the Convention

- (1) The Administrative Council of the European Patent Organisation is authorised to prepare a new version of the European Patent Convention at the suggestion of the President of the European Patent Office. In the new version, the provisions of the Convention are to be renumbered consecutively and the references to other provisions amended accordingly; where necessary, editorial changes are to be made to ensure agreement between the versions in all three official languages.
 - (2) The Chairman of the Administrative Council shall forward the draft of the new version of the Convention to the governments of the contracting states for approval.
 - (3) With the approval of three quarters of the governments of the contracting states, the new version of the Convention shall become part of this Revision Act.
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