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Das revidierte Europäische Patentübereinkommen (EPÜ 2000)
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Revision of the European Patent Convention (EPC 2000)
Edition spéciale 4 ı 2007
Convention sur le brevet européen révisée (CBE 2000)
Présentation synoptique CBE 1973/2000 – Partie I : Les articles

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By Decision dated 24.2.2000, the Administrative Council convened a Conference of the Contracting States to revise the EPC under Article 172(2) EPC.

The Conference was held from 20 to 29 November 2000. On the last day of the Conference, the Act revising the EPC ("Revision Act")1 was adopted: it comprises the text of

- the 72 Articles of the EPC amended by the Conference,
- the 7 new Articles inserted in the EPC (Articles 4a, 105a, 105b, 105c, 112a, 134a and 149a EPC)
- the 2 Protocols amended by the Conference (Protocol on the Interpretation of Article 69 EPC; Protocol on Centralisation)
- the new Protocol on Staff Complement added to the EPC.

Under Article 3(1) of the Revision Act, the Administrative Council was authorised to "draw up [...] a new text of the EPC", in particular with a view to align the wording of the Articles of the EPC in the three official languages. The new text of the EPC 2000 was adopted on 28 June 2001 by the Administrative Council. It is this text which will enter into force on 13.12.2007 at the latest.

The present publication compares the Articles of the EPC 1973 with the Articles of the EPC 2000. The aim is to be able to trace easily each and every change to the EPC, whether adopted by Conference of the Contracting States in November 2000 or by the Administrative Council in June 2001.

In addition, consolidated explanatory remarks have been included, as well as references to the Implementing Regulations to the EPC 2000 and to the transitional provisions. All the additional documents referred to as "Preparatory documents" are available on-line at http://www.epo.org/patents/law/legislative-initiatives/epc2000/travaux.html

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1 Act revising the EPC of 29 November 2000, see Special edition n° 1 of the OJ EPO 2001, pages 3-51.

The present publication is intended for study purposes only and does not form part of the travaux préparatoires to the EPC 2000
Guidance for the reader

In the synoptic comparison between the Articles of the EPC 1973 and the Articles of the EPC 2000, the following font features have been used in the right-hand column:

- **bold**: text new adopted by the Conference of the Contracting States (November 2000)
- [...] text deleted by the Conference (November 2000)
- **grey**: text new adopted by the Administrative Council (June 2001)
- strikethrough: text deleted by the Administrative Council (June 2001).

Example

<table>
<thead>
<tr>
<th>Article 123</th>
<th>Amendments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EPC 1973</strong></td>
<td><strong>EPC 2000</strong></td>
</tr>
<tr>
<td>(1) The conditions under which a European patent application or a European patent may be amended in proceedings before the European Patent Office are laid down in the Implementing Regulations. In any case, an applicant shall be allowed at least one opportunity of amending the description, claims and drawings of his own volition.</td>
<td>(1) [...] A European patent application or [...] European patent may be amended in proceedings before the European Patent Office, in accordance with the Implementing Regulations. In any case event, the applicant shall be given at least one opportunity of amending to amend the application of his own volition.</td>
</tr>
</tbody>
</table>

As compared to the EPC 1973, the font features in the right-hand column reflect the changes and deletions made to the text of the EPC 2000:
- **bold**: new text adopted by the Conference of the Contracting States (November 2000)
- [...] text deleted by the Conference (November 2000)
- **grey**: new text adopted by the Administrative Council (June 2001)
- strikethrough: text deleted by the Administrative Council (June 2001).

Abbreviations and references

EPC 1973 refers to the Articles of the EPC and the Implementing Regulations in force until the entry into force of the EPC 2000, that is
- the Implementing regulations to the European Patent Convention of 5 October 1973, as last amended by Decision of the Administrative Council of 9 December 2004

EPC 2000 refers to:
- the Articles of the EPC 2000 adopted by the Diplomatic Conference by the Revision Act of 29 November 2000*, in the text drawn up by the Administrative Council by Decision of 28 June 2001**
- the Implementing Regulations to the EPC 2000 as amended by Decision of the Administrative Council of 7 December 2006***

* see Special edition n° 4 of the OJ EPO 2001, pages 3-51.
** see Special edition n° 4 of the OJ EPO 2001, pages 54-133 and CA/26/01.
*** see Special edition n° 1 of the OJ EPO 2007, pages 103-195.

Transitional provisions were adopted by Decision of the Administrative Council of 28 June 2001*
* see Special edition n° 1 of the OJ EPO 2007, pages 196-198


Synoptic presentation
of the Articles of the EPC 1973 and the Articles of the EPC 2000,
including explanatory remarks
and references to the Implementing Regulations to the EPC 2000
and the transitional provisions

Contents

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PREAMBLE

The Preamble is unchanged.

PART I

CHAPTER I

ARTICLES 1 and 2 EPC

The wording of Articles 1 and 2 EPC has been amended under Article 3(1) of the Revision Act (alignment in the three official languages, editorial improvement or clarification).

ARTICLE 3 EPC is unchanged.

ARTICLE 4 EPC

Minor amendments have been made to the wording of Article 4 EPC under Article 3(1) of the Revision Act (editorial improvement).
CONVENTION ON THE GRANT OF EUROPEAN PATENTS
(EUROPEAN PATENT CONVENTION)

PREAMBLE

The Contracting States,

DESIRING to strengthen co-operation between the States of Europe in respect of the protection of inventions,

DESIRING that such protection may be obtained in those States by a single procedure for the grant of patents and by the establishment of certain standard rules governing patents so granted,

DESIRING, for this purpose, to conclude a Convention which establishes a European Patent Organisation and which constitutes a special agreement within the meaning of Article 19 of the Convention for the Protection of Industrial Property, signed in Paris on 20 March 1883 and last revised on 14 July 1967, and a regional patent treaty within the meaning of Article 45, paragraph 1, of the Patent Cooperation Treaty of 19 June 1970,

HAVE AGREED on the following provisions:

PART I GENERAL AND INSTITUTIONAL PROVISIONS

Chapter I General provisions

Article 1 European law for the grant of patents

A system of law, common to the Contracting States, for the grant of patents for invention is hereby established by this Convention.

Article 2 European patent

(1) Patents granted by virtue of this Convention shall be called European patents.

(2) The European patent shall, in each of the Contracting States for which it is granted, have the effect of and be subject to the same conditions as a national patent granted by that State, unless provided otherwise.

Article 3 Territorial effect

The grant of a European patent may be requested for one or more of the Contracting States.

Article 4 European Patent Organisation

(1) A European Patent Organisation, hereinafter referred to as the Organisation, is established by this Convention. It shall have administrative and financial autonomy.

(2) The organs of the Organisation shall be:

(a) the European Patent Office;

(b) the Administrative Council.

(3) The task of the Organisation shall be to grant European patents. This shall be carried out by the European Patent Office supervised by the Administrative Council.

bold [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)
grey strikethrough = changes and deletions adopted by the Administrative Council (June 2001)
NEW ARTICLE 4a EPC

(Preparatory documents: CA/83/00; CA/PL PV 14, points 236-245; CA/123/00; CA/124/00, points 34-35; CA/125/00, points 157-169; MR/2/00, pages 2-3; MR/PLD 2/00; MR/24/00, page 57)

1. The Intergovernmental Conferences of the member states of the European Patent Organisation on the reform of the patent system in Europe, convened by France in June 1999 and by the United Kingdom in October 2000, constitute the background for the proposal that a conference of the ministers of the EPC contracting states responsible for patents matters should be established as a permanent body within the framework of the EPC.

2. Setting up a legal basis for such ministerial conferences makes it clear that the European Patent Organisation operates in a political context and recognises that it does so. The inclusion of a suitable provision in the EPC itself is the simplest and most transparent way to achieve this. In order to provide for a politically effective and flexible solution, a new Article 4a EPC has been added, establishing a ministerial conference as a permanent institution under the EPC.

3. The conference of ministers is not an organ of the Organisation and does not affect the powers of the existing organs under Article 4(2) EPC (European Patent Office and Administrative Council). In particular, it cannot take decisions which have legally binding effects on the Organisation.

The functions and significance of the ministerial conference are rather of a purely political nature. Firstly, it could set the Organisation objectives, e.g. by issuing mandates or in other suitable ways, which the Organisation’s bodies would endeavour to meet by exercising their respective powers. Secondly, it could initiate co-operation between the contracting states in matters which extend beyond the scope of the EPC.

The model for this form of political agenda-setting are the intergovernmental conferences convened by France in 1999 and the United Kingdom in 2000, which in addition to formulating mandates addressed to the Organisation, laid the foundations for the conclusion of agreements between the contracting states on translation requirements and litigation.

4. The new Article 4a EPC is applicable as from the entry into force of the EPC 2000.
**Article 4a Conference of ministers of the Contracting States**

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>There is nothing equivalent to this provision in the EPC 1973.</em></td>
<td><em>A conference of ministers of the Contracting States responsible for patent matters shall meet at least every five years to discuss issues pertaining to the Organisation and to the European patent system.</em></td>
</tr>
</tbody>
</table>
CHAPTER II

ARTICLE 5 EPC is unchanged.

ARTICLES 6 to 9 EPC

The title and wording of Article 6 EPC as well as the wording of Articles 7, 8 and 9 EPC have been amended under Article 3(1) of the Revision Act (alignment in the three official languages, correction of obvious linguistic mistake, editorial improvement or clarification).
Chapter II The European Patent Organisation

Article 5 Legal status

(1) The Organisation shall have legal personality.

(2) In each of the Contracting States, the Organisation shall enjoy the most extensive legal capacity accorded to legal persons under the national law of that State; it may in particular acquire or dispose of movable and immovable property and may be a party to legal proceedings.

(3) The President of the European Patent Office shall represent the Organisation.

Article 6 Seat Headquarters

(1) The Organisation shall have its seat at headquarters in Munich.

(2) The European Patent Office shall be set up at located in Munich. It shall have a branch at The Hague.

Article 7 Sub-offices of the European Patent Office

By decision of the Administrative Council, sub-offices of the European Patent Office may be created, if need be, for the purpose of information and liaison, in the Contracting States and with inter-governmental organisations in the field of industrial property, subject to the approval of the Contracting State or organisation concerned.

Article 8 Privileges and immunities

The Protocol on Privileges and Immunities annexed to this Convention shall define the conditions under which the Organisation, the members of the Administrative Council, the employees of the European Patent Office, and such other persons specified in that Protocol as take part in the work of the Organisation, shall enjoy, in the territory of each Contracting State, the privileges and immunities necessary for the performance of their duties.

Article 9 Liability

(1) The contractual liability of the Organisation shall be governed by the law applicable to the relevant contract in question.

(2) The non-contractual liability of the Organisation in respect of any damage caused by it or by the employees of the European Patent Office in the performance of their duties shall be governed by the provisions of the law of the Federal Republic of Germany. Where the damage is caused by the branch at The Hague or a sub-office or employees attached thereto, the provisions of the law of the Contracting State in which such branch or sub-office is located shall apply.

(3) The personal liability of the employees of the European Patent Office towards the Organisation shall be laid down governed by their Service Regulations or conditions of employment.

(4) The courts with jurisdiction to settle disputes under paragraphs 1 and 2 shall be:

(a) for disputes under paragraph 1, the courts of competent jurisdiction in the Federal Republic of Germany, unless the contract concluded between the parties designates the courts of another State;

(b) for disputes under paragraph 2, either the courts of competent jurisdiction in the Federal Republic of Germany, or of the courts of competent jurisdiction in the State in which the branch or sub-office is located.
CHAPTER III

ARTICLE 10 EPC

The title and wording of Article 10 EPC have been amended under Article 3(1) of the Revision Act (alignment in the three official languages, editorial improvement or clarification).
Chapter III The European Patent Office

Article 10 Direction Management

(1) The European Patent Office shall be directed managed by the President, who shall be responsible for its activities to the Administrative Council.

(2) To this end, the President shall have in particular the following functions and powers:

(a) he shall take all necessary steps to ensure the functioning of the European Patent Office, including the adoption of internal administrative instructions and the publication of guidance for information to the public, to ensure the functioning of the European Patent Office;

(b) in so far as this Convention contains no provisions in this respect provides otherwise, he shall prescribe which transactions acts are to be carried out performed at the European Patent Office at in Munich and its branch at The Hague respectively;

(c) he may place before submit to the Administrative Council any proposal for amending this Convention, and any proposal for general regulations, or for decisions which come within the competence of the Administrative Council;

(d) he shall prepare and implement the budget and any amending or supplementary budget;

(e) he shall submit a management report to the Administrative Council each year;

(f) he shall exercise supervisory authority over the personnel staff;

(g) subject to the provisions of Article 11, he shall appoint and promote the employees and decide on their promotion;

(h) he shall exercise disciplinary authority over the employees other than those referred to in Article 11, and may propose disciplinary action to the Administrative Council with regard to employees referred to in Article 11, paragraphs 2 and 3;

(i) he may delegate his functions and powers.

(3) The President shall be assisted by a number of Vice-Presidents. If the President is absent or indisposed, one of the Vice-Presidents shall take his place in accordance with the procedure laid down by the Administrative Council.

bold […] = changes and deletions adopted by the Diplomatic Conference (November 2000)
grey strikethrough = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 11 EPC
(Preparatory documents: CA/106/99 + Add. 1, CA/PL PV 12, points 3-10; CA/PL PV 14, point 6; CA/100/00, pages 1-2; MR/2/00, pages 3-4; MR/24/00, pages 57-58)

1. The participation of external legally qualified members from the EPC contracting states in proceedings before the Enlarged Board of Appeal has proved to be a success. It is expected that the involvement of national judges in important cases before the Enlarged Board will continue in future to provide valuable input, to help bring about international recognition of these decisions and, in so doing, to further the harmonisation of patent case law in Europe. The appointment of national judges from the contracting states as members of the Enlarged Board of Appeal will thus continue to be highly desirable.

2. In the EPC 1973, the legal basis for the appointment of external members of the Boards of Appeal and the Enlarged Board of Appeal was a transitional provision: Article 160(2) EPC, which has been deleted in the course of the revision of the EPC (see explanatory remarks to Article 160 EPC). New Article 11(5) EPC creates a permanent legal basis for appointing external legally qualified members of the Enlarged Board of Appeal. In accordance with current practice, they shall be appointed for three-year terms, with the possibility of re-appointment.

3. The appointment of external technically qualified members of the Technical Boards or the Enlarged Board of Appeal and of external legally qualified members of the Legal and Technical Boards, which was possible under Article 160(2) EPC 1973 is discontinued for the future. One reason why provision was made for appointing external Board members was concern that the EPO, particularly in the early days, might not have the necessary wide range of specialist know-how available in-house. Today, this is no longer the case; experts are in place in all technical fields. So there is no longer any need to appoint external technically qualified members of the Technical Boards or of the Enlarged Board of Appeal. The participation of external members has in any case proved organisationally complicated and increasingly inefficient. Recently, therefore, there have been very few cases of external members sitting on Technical Boards. And only in the EPO's very early years was there a need to appoint external legally qualified members to work on the Legal or Technical Boards.

4. The revised Article 11 EPC is applicable as from the entry into force of the EPC 2000.

ARTICLES 12 and 13 EPC

Minor amendments have been made to the wording of Articles 12 and 13 EPC under Article 3(1) of the Revision Act (alignment in the three official languages, editorial improvement or clarification).
Article 11  Appointment of senior employees

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The President of the European Patent Office shall be appointed by decision of the Administrative Council.</td>
<td>(1) The President of the European Patent Office shall be appointed by [...] the Administrative Council.</td>
</tr>
<tr>
<td>(2) The Vice-Presidents shall be appointed by decision of the Administrative Council after the President has been consulted.</td>
<td>(2) The Vice-Presidents shall be appointed by [...] the Administrative Council after the President of the European Patent Office has been consulted.</td>
</tr>
<tr>
<td>(3) The members, including the Chairmen, of the Boards of Appeal and of the Enlarged Board of Appeal shall be appointed by decision of the Administrative Council, taken on a proposal from the President of the European Patent Office. They may be re-appointed by decision of the Administrative Council after the President of the European Patent Office has been consulted.</td>
<td>(3) The members, including the Chairmen, of the Boards of Appeal and of the Enlarged Board of Appeal shall be appointed by [...] the Administrative Council after the President of the European Patent Office has been consulted.</td>
</tr>
<tr>
<td>(4) The Administrative Council shall exercise disciplinary authority over the employees referred to in paragraphs 1 to 3.</td>
<td>(4) Unchanged</td>
</tr>
</tbody>
</table>

[See Article 160(2) EPC 1973: (2) ... the Administrative Council, after consulting the President of the European Patent Office, may appoint as members of the Enlarged Board of Appeal or of the Boards of Appeal technically or legally qualified members of national courts and authorities of Contracting States who may continue their activities in their national courts or authorities. They may be appointed for a term of less than five years, though this shall not be less than one year, and may be re-appointed.] |

(5) The Administrative Council, after consulting the President of the European Patent Office, may also appoint as members of the Enlarged Board of Appeal legally qualified members of the national courts or quasi-judicial authorities of the Contracting States, who may continue their judicial activities at the national level. They shall be appointed for a term of three years and may be re-appointed.

Article 12  Duties of office

The Employees of the European Patent Office shall be bound, even after the termination of their employment, neither to disclose nor to make use of information which by its nature is a professional secret.

Article 13  Disputes between the Organisation and the employees of the European Patent Office

(1) Employees and former employees of the European Patent Office or their successors in title may apply to the Administrative Tribunal of the International Labour Organization in the case of disputes with the European Patent Organisation, in accordance with the Statute of the Tribunal and within the limits and subject to the conditions laid down in the Service Regulations for permanent employees or the Pension Scheme Regulations or arising from the conditions of employment of other employees.

(2) An appeal shall only be admissible if the person concerned has exhausted such other means of appeal as are available to him under the Service Regulations, the Pension Scheme Regulations or the conditions of employment, as the case may be.
ARTICLE 14 EPC
(Preparatory documents: CA/PL 25/00; CA/PL PV 14, points 7-10; CA/100/00, pages 3-8; CA/124/00, points 6-7; CA/125/00, points 12-22; MR/2/00, pages 5-10; MR/8/00; MR/24/00, pages 5-10)

1. In the light of the provision of the Patent Law Treaty 2000 (PLT) relating to the minimum requirements for the accordance of a filing date, it has proven necessary to amend Article 14 EPC, including the title.

2. The revised Article 14(1) EPC now only states what the official languages of the EPO are. The former second sentence is transferred to paragraph 2.

3. The revised Article 14(2) EPC provides that an application must be filed in one of the EPO official languages, or be translated into one of these languages (if the application has been filed in another language). The words "any other language" imply that an application may be filed in any language, in accordance with Article 5 PLT which states that, for the purpose of obtaining a filing date, a description of the invention in a language of the applicant's choice must be accepted.

   If the application is filed in a language other than an EPO official language, the applicant must file a translation into an EPO official language within 2 months of filing the European patent application, so that the application can be processed (see Rule 6(1) EPC 2000). If the translation is not filed in due time, the EPO invites the applicant to submit it within a 2 month period (Rule 58 EPC 2000). The legal effect of the non-timely filing of the translation, previously laid down in Article 90(3) EPC 1973, is now included in Article 14(2) EPC.

4. Article 14(3) EPC has been shortened to improve readability without any change in substance. In addition, a minor editorial change has been made under Article 3(1) of the Revision Act.

5. Article 14(4) EPC has been redrafted and combined with current Article 14(5) EPC. In view of the fact that applications may be filed in any language, the special provisions for applicants from contracting states with a language other than English, French or German as an official language are no longer applicable to the filing of the application itself, but only to subsequently filed documents. The translation may be filed in any official language (see Rule 3(1) EPC 2000).

6. Finally, minor amendments have been made to Article 14(6) and (7) EPC under Article 3(1) of the Revision Act (alignment in the three official languages, editorial improvement or clarification).

7. The revised Article 14(1) and (2) EPC is applicable to
   EP applications filed on or after the time of EPC 2000 entry into force

8. The revised Article 14(3) to (6) EPC is applicable to
   EPs already granted at the time of EPC 2000 entry into force
   EP applications pending at the time of EPC 2000 entry into force
   EP applications filed on or after the time of EPC 2000 entry into force
## Article 14 Languages of the European Patent Office, European patent applications and other documents

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>(1)</strong> The official languages of the European Patent Office shall be English, French and German. European patent applications must be filed in one of these languages.</td>
<td><strong>(1)</strong> The official languages of the European Patent Office shall be English, French and German. [..]</td>
</tr>
<tr>
<td><strong>(2)</strong> However, natural or legal persons having their residence or principal place of business within the territory of a Contracting State having a language other than English, French or German as an official language, and nationals of that State who are resident abroad, may file European patent applications in an official language of that State. Nevertheless, a translation in one of the official languages of the European Patent Office must be filed within the time limit prescribed in the Implementing Regulations; throughout the proceedings before the European Patent Office, such translation may be brought into conformity with the original text of the application.</td>
<td><strong>(2)</strong> A European patent application shall 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. Throughout the proceedings before the European Patent Office, such translation may be brought into conformity with the application as filed. <strong>If a required translation is not filed in due time, the application shall be deemed to be withdrawn.</strong></td>
</tr>
<tr>
<td><strong>(3)</strong> The official language of the European Patent Office in which the European patent application is filed or, in the case referred to in paragraph 2, that of the translation, shall be used as the language of the proceedings in all proceedings before the European Patent Office concerning the application or the resulting patent, unless otherwise provided in the Implementing Regulations.</td>
<td><strong>(3)</strong> The official language of the European Patent Office in which the European patent application is filed or [..] into which it is translated shall be used as the language of the proceedings in all proceedings before the European Patent Office, [..] unless otherwise provided in the Implementing Regulations provide otherwise.</td>
</tr>
<tr>
<td><strong>(4)</strong> The persons referred to in paragraph 2 may also file documents which have to be filed within a time limit in an official language of the Contracting State concerned. They must however file a translation in the language of the proceedings within the time limit prescribed in the Implementing Regulations; in the cases provided for in the Implementing Regulations, they may file a translation in a different official language of the European Patent Office.</td>
<td><strong>(4)</strong> Natural or legal persons having their residence or principal place of business within a Contracting State having a language other than English, French or German as an official language, and nationals of that State who are resident abroad, may file documents which have to be filed within a time limit in an official language of that State. They shall however file a translation in [..] an official language of the European Patent Office in accordance with the Implementing Regulations. If any document, other than those making up the European patent application, is not filed in the prescribed language, or if any required translation is not filed in due time, the document shall be deemed not to have been filed.</td>
</tr>
</tbody>
</table>

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey strikethrough** = changes and deletions adopted by the Administrative Council (June 2001)
<table>
<thead>
<tr>
<th>Article 14</th>
<th>Languages of the European Patent Office, European patent applications and other documents</th>
</tr>
</thead>
</table>

EPC 1973

(5) If any document, other than those making up the European patent application, is not filed in the language prescribed by this Convention, or if any translation required by virtue of this Convention is not filed in due time, the document shall be deemed not to have been received.

(6) European patent applications shall be published in the language of the proceedings.

(7) The specifications of European patents shall be published in the language of the proceedings; they shall include a translation of the claims in the two other official languages of the European Patent Office.

(8) There shall be published in the three official languages of the European Patent Office:

(a) the European Patent Bulletin;

(b) the Official Journal of the European Patent Office.

(9) Entries in the Register of European Patents shall be made in the three official languages of the European Patent Office. In cases of doubt, the entry in the language of the proceedings shall be authentic.

EPC 2000

(5) **Deleted** – incorporated in paragraph 4

(6) Becomes (5) – wording unchanged

(6) Specifications of European patents shall be published in the language of the proceedings and shall include a translation of the claims in the two other official languages of the European Patent Office.

(7) The following shall be published in the three official languages of the European Patent Office:

(a) the European Patent Bulletin;

(b) the Official Journal of the European Patent Office.

(9) Becomes (8) – wording unchanged

**bold** [... ] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey** strikethrough = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 15 EPC

The title and the wording of Article 15 EPC have been amended under Article 3(1) of the Revision Act (alignment in the three official languages, minor and consequential amendments).

ARTICLES 16 AND 17 EPC, SECTION I PROTOCOL ON CENTRALISATION

(Preparatory documents: CA/PL 2/98; CA/PL 10/98; CA/PL PV 6, points 9-41; CA/PL PV 7, points 85-90; CA/PL PV 14, point 6, CA/100/00, pages 9-14; MR/2/00, pages 11-16; MR/24/00, pages 58-59)

1. The EPC 1973 implied an organisational and geographical division between search and examination. Under Articles 16 and 17 EPC 1973, the Receiving Section and Search Divisions were located in the branch at The Hague, and Section I(1)(b) of the Protocol on Centralisation referred to the taking over of the tasks of the former IIB by the branch at The Hague. There is no such geographical allocation of the other EPO departments referred to in Article 15 EPC.

2. When the EPO was set up, it was agreed that searching should be carried out by the examiners in DG 1 at The Hague, and substantive examination by the DG 2 examiners in Munich. This geographical and material division of search and substantive examination was determined by political and historical factors, since the paper search documentation was located in the former IIB in The Hague.

3. Since electronic search tools have made it possible to carry out searches in Munich too, the EPO has set up a pilot project known as BEST (Bringing Examination and Search Together), with the aim of improving quality and efficiency. Under BEST, both search and examination are performed by the same examiner, who may be located in The Hague, Berlin or Munich. When the request for examination is received, the search examiner is appointed a member of the Examining Division and entrusted with the substantive examination of the application.

4. In order to enable the Office-wide implementation of the BEST procedure in Munich, The Hague and Berlin, Articles 16 and 17 EPC and Section I Protocol on Centralisation have been amended by removing the geographical allocation of the Receiving Section and Search Divisions to the branch at The Hague.

ARTICLE 16 EPC

1. The allocation of the Receiving Section to the branch at The Hague in Article 16 EPC has been deleted, so that duties of that department – which carries out the examination on filing and as to formal requirements – can be run in The Hague, Berlin or Munich under the aegis of DG 2.

2. Quite in line with these considerations and to ensure greater flexibility in determining when competence passes within the EPO from one department to another, the limitation in time of the Receiving Section's responsibility contained in the second sentence of Article 16 EPC 1973 has been deleted (see also Article 18 EPC and Rule 10 EPC 2000).

3. As under Articles 92 and 93 EPC as amended the responsibility for the publication of the application and search report lies with the EPO, the last sentence of Article 16 EPC 1973 has been deleted as well in order to ensure greater flexibility in allocating specific tasks of the EPO.

4. The revised Article 16 EPC applies provisionally as from 29.11.2000.
Article 15  The Departments charged entrusted with the procedure

For implementing To carry out the procedures laid down in this Convention, there shall be set up within the European Patent Office:

(a) a Receiving Section;
(b) Search Divisions;
(c) Examining Divisions;
(d) Opposition Divisions;
(e) a Legal Division;
(f) Boards of Appeal;
(g) an Enlarged Board of Appeal.

Article 16  Receiving Section

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Receiving Section shall be in the branch at The Hague. It shall be responsible for the examination on filing and the examination as to formal requirements of each European patent application up to the time when a request for examination has been made or the applicant has indicated under Article 96, paragraph 1, that he desires to proceed further with his application. It shall also be responsible for the publication of the European patent application and of the European search report.</td>
<td>The Receiving Section [...] shall be responsible for the examination on filing and the examination as to formal requirements of [...] European patent applications [...].</td>
</tr>
</tbody>
</table>
ARTICLE 17 EPC

1. The allocation of the Search Divisions to the branch at The Hague in Article 17 EPC has been deleted, so that Search Divisions can also be set up at the EPO’s headquarters in Munich, allowing the Office-wide implementation – in Munich, The Hague and Berlin – of the BEST procedure (see explanatory remarks to Article 16 EPC).

2. See also the Protocol on Staff Complement under Article 164 EPC which is to ensure that the ratio of staff at The Hague to the total EPO staff complement remains substantially unchanged after the Office-wide introduction of BEST.

3. The revised Article 17 EPC applies provisionally as from 29.11.2000.

ARTICLE 18 EPC

(Preparatory documents: CA/PL 2/98; CA/PL PV 6, points 28-34; CA/PL PV 14, point 6; CA/100/00, pages 15-16; MR/2/00, pages 17-18; MR/24/00, page 59)

1. To ensure greater flexibility in determining when competence passes within the EPO from one department to another, the last part of Article 18(1) EPC 1973 has been deleted. This is consequential to the amendment of Article 16 EPC (see also Rule 10 EPC 2000).

2. In addition, the wording of Article 18 EPC has been amended under Article 3(1) of the Revision Act (alignment in the three official languages, minor and consequential amendments).

3. The revised Article 18 EPC applies provisionally as from 29.11.2000.

ARTICLE 19 EPC

The wording of Article 19 EPC has been amended under Article 3(1) of the Revision Act (alignment in the three official languages, minor and consequential amendments).

ARTICLE 20 EPC is unchanged.
Article 17  Search Divisions

EPC 1973
The Search Divisions shall be in the Branch at The Hague. They shall be responsible for drawing up European search reports.

EPC 2000
The Search Divisions shall be [...] responsible for drawing up European search reports.

Article 18  Examining Divisions

EPC 1973
(1) An Examining Division shall be responsible for the examination of each European patent application from the time when the Receiving Section ceases to be responsible.

(2) An Examining Division shall consist of three technical examiners. Nevertheless, the examination prior to a final decision shall, as a general rule, be entrusted to one member of the Division itself. Oral proceedings shall be before the Examining Division itself. If the Examining Division considers that the nature of the decision so requires, it shall be enlarged by the addition of a legally qualified examiner. In the event of parity of votes, the vote of the Chairman of the Division shall be decisive.

EPC 2000
(1) The Examining Divisions shall be responsible for the examination of [...] European patent applications. [...] [...]

(2) An Examining Division shall consist of three technically qualified examiners. However, the examination of a European patent application, prior to a decision on it, shall, as a general rule, be entrusted to one member of the Examining Division itself. Oral proceedings shall be before the Examining Division itself. If the Examining Division considers that the nature of the decision so requires, it shall be enlarged by the addition of a legally qualified examiner. In the event of parity of votes, the vote of the Chairman of the Examining Division shall be decisive.

Article 19  Opposition Divisions

(1) The Opposition Divisions shall be responsible for the examination of oppositions against any European patent.

(2) An Opposition Division shall consist of three technically qualified examiners, at least two of whom shall not have taken part in the proceedings for grant of the patent to which the opposition relates. An examiner who has taken part in the proceedings for the grant of the European patent shall not be the Chairman. Prior to the taking of a final decision, the Opposition Division may entrust the examination of the opposition to one of its members. Oral proceedings shall be before the Opposition Division itself. If the Opposition Division considers that the nature of the decision so requires, it shall be enlarged by the addition of a legally qualified examiner who shall not have taken part in the proceedings for grant of the patent. In the event of parity of votes, the vote of the Chairman of the Opposition Division shall be decisive.

Article 20  Legal Division

(1) The Legal Division shall be responsible for decisions in respect of entries in the Register of European Patents and in respect of registration on, and deletion from, the list of professional representatives.

(2) Decisions of the Legal Division shall be taken by one legally qualified member.

bold [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)
grey strikethrough = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 21 EPC
(Preparatory documents: CA/100/00 Add. 2; CA/124/00, point 8; CA/125/00, points 23-24; MR/2/00, pages 19-22; MR/10/00; MR/24/00, page 59)

1. Requests for limitation or revocation of European patents under new Articles 105a, 105b and 105c EPC entail ex parte proceedings requiring a decision by an Examining Division.

2. Under Article 21(3)(a) EPC 1973, a Board of Appeal consists of two technically qualified members and one legally qualified member (Technical Board) "when the decision concerns ... the grant of a European patent and was taken by an Examining Division consisting of less than four members". It is thus not absolutely clear whether appeals against decisions by Examining Divisions on requests for limitation or revocation should go to a Technical Board of Appeal or to the Legal Board of Appeal (consisting of three legally qualified members), under Article 21(3)(c) EPC.

3. Since limitation proceedings will focus in particular on compliance with Articles 84 (clarity of the claims) and 123(2) and (3) EPC (added subject-matter, extended scope), appeals against the resulting decisions should be heard by the Technical Boards of Appeal, and Article 21(3)(a) EPC has been supplemented to make this clear.

4. It is already clear, from Article 21(3)(b) EPC as it stands, that appeals against decisions in limitation or revocation proceedings taken by a four-person Examining Division will be heard by a (five-member) Technical Board of Appeal.

5. Finally, a few minor amendments have been made to Article 21 EPC under Article 3(1) of the Revision Act.

6. The revised Article 21 EPC is applicable as from the entry into force of the EPC 2000.
**Article 21  Boards of Appeal**

**EPC 1973**

(1) The Boards of Appeal shall be responsible for the examination of appeals from the decisions of the Receiving Section, Examining Divisions, Opposition Divisions and of the Legal Division.

(2) For appeals from a decision of the Receiving Section or the Legal Division, a Board of Appeal shall consist of three legally qualified members.

(3) For appeals from a decision of an Examining Division, a Board of Appeal shall consist of:

(a) two technically qualified members and one legally qualified member, when the decision concerns the refusal of a European patent application or the grant of a European patent and was taken by an Examining Division consisting of less than four members;

(b) three technically qualified members and two legally qualified members, when the decision was taken by an Examining Division consisting of four members or when the Board of Appeal considers that the nature of the appeal so requires;

(c) three legally qualified members in all other cases.

(4) For appeals from a decision of an Opposition Division, a Board of Appeal shall consist of:

(a) two technically qualified members and one legally qualified member, when the decision was taken by an Opposition Division consisting of three members;

(b) three technically qualified members and two legally qualified members, when the decision was taken by an Opposition Division consisting of four members or when the Board of Appeal considers that the nature of the appeal so requires.

**EPC 2000**

(1) The Boards of Appeal shall be responsible for the examination of appeals from the decisions of the Receiving Section, the Examining Divisions, and Opposition Divisions, and of the Legal Division.

(2) For appeals from a decision of the Receiving Section or the Legal Division, a Board of Appeal shall consist of three legally qualified members.

(3) For appeals from a decision of an Examining Division, a Board of Appeal shall consist of:

(a) two technically qualified members and one legally qualified member, when the decision concerns the refusal of a European patent application or the grant, limitation or revocation of a European patent, and was taken by an Examining Division consisting of less than four members;

(b) three technically qualified members and two legally qualified members, when the decision was taken by an Examining Division consisting of four members, or when the Board of Appeal considers that the nature of the appeal so requires;

(c) unchanged

(4) For appeals from a decision of an Opposition Division, a Board of Appeal shall consist of:

(a) two technically qualified members and one legally qualified member, when the decision was taken by an Opposition Division consisting of three members;

(b) three technically qualified members and two legally qualified members, when the decision was taken by an Opposition Division consisting of four members, or when the Board of Appeal considers that the nature of the appeal so requires.
ARTICLE 22 EPC
(Preparatory documents CA/PL 17/00; CA/PL PV 13, points 65-70; CA/PL PV 14, points 112-117; CA/100/00, pages 17-18; CA/124/00, point 9; CA/125/00, points 25-32; MR/2/00, pages 23-24; MR/10/00; MR/24/00, pages 59-60)

1. The Enlarged Board of Appeal is empowered to decide on petitions for review under the conditions laid down in Article 112a EPC 2000. New Article 22(1)(c) EPC extends the jurisdiction of the Enlarged Board accordingly.

2. Article 22(2) EPC relates to the composition of the Enlarged Board of Appeal. With regard to referrals of a point of law by a Board of Appeal or the President nothing has been changed. However, measures are necessary in order to avoid the work of the Enlarged Board as a seven-member body being blocked by petitions for review.

3. First, a filter shall be set up to sort out at the outset clearly inadmissible or clearly ill-founded petitions for review: three-member panels have the power by unanimous vote not to entertain inadmissible – in particular insufficiently substantiated or ill-founded – petitions for review.

Second, if the petition is admitted by the three-member panel, the body responsible for the decision is the Enlarged Board composed of four lawyers and one technically qualified member. It does not seem necessary for the Enlarged Board to sit with seven members since the object of such a petition is the correction of defects in individual cases rather than setting the course for EPO practice as in the case of a referral of a point of law by a Board of Appeal or the President under Article 112(1)(a) and (b) EPC.

4. The second sentence of the revised Article 22(2) EPC provides the basis for the Implementing Regulations to set up smaller bodies acting as the Enlarged Board in proceedings relating to petitions for review:
   - under Rule 109(2)(a) EPC 2000, a panel of the Enlarged Board of Appeal composed of two legally and one technically qualified members rejects by unanimous vote petitions for review which are clearly inadmissible or unallowable;
   - under Rule 109(2)(b) EPC 2000, the Enlarged Board composed of four legally and one technically qualified members examines the petition for review if the latter is not rejected by the panel mentioned above.

5. In order to be able to react to future experience with the new legal remedy, flexibility needs to be preserved. It is therefore appropriate to lay down the composition of these smaller bodies of the Enlarged Board in the Implementing Regulations. To provide for their composition in an Article of the EPC would imply also laying down in an Article the tasks of these smaller bodies of the Enlarged Board, i.e. their function within the procedure relating to petition for review. Such a regulation would anticipate and pre-establish the procedure to an extent which is not desirable.

6. Finally, a few minor amendments have been made to Article 22 EPC under Article 3(1) of the Revision Act.

7. The revised Article 22 EPC is applicable as from the entry into force of the EPC 2000.
Article 22  Enlarged Board of Appeal

**EPC 1973**

(1) The Enlarged Board of Appeal shall be responsible for:

(a) deciding points of law referred to it by Boards of Appeal;

(b) giving opinions on points of law referred to it by the President of the European Patent Office under the conditions laid down in Article 112.

(2) For giving decisions or opinions, the Enlarged Board of Appeal shall consist of five legally qualified members and two technically qualified members. One of the legally qualified members shall be the Chairman.

**EPC 2000**

(1) The Enlarged Board of Appeal shall be responsible for:

(a) deciding on points of law referred to it by Boards of Appeal under Article 112;

(b) giving opinions on points of law referred to it by the President of the European Patent Office under [...] Article 112;

(c) deciding on petitions for review of decisions of the Boards of Appeal under Article 112a.

(2) In proceedings under paragraph 1(a) and (b), the Enlarged Board of Appeal shall consist of five legally qualified [...] and two technically qualified members. In proceedings under paragraph 1(c), the Enlarged Board of Appeal shall consist of three or five members as laid down in the Implementing Regulations. In all proceedings, a legally qualified member shall be the Chairman.

**bold [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)**

**grey strikethrough = changes and deletions adopted by the Administrative Council (June 2001)**
ARTICLE 23 EPC
(Preparatory documents: CA/PL 11/98; CA/PL PV 7, points 91-92; CA/PL PV 14, point 6; CA/100/00, pages 19-20; MR/2/00, pages 25-26; MR/24/00, page 60)

1. Article 23(1) EPC provides that members of the Enlarged Board of Appeal and the Boards of Appeal shall be appointed for a term of five years and may not be removed from office during that term. In the past, the President and the Administrative Council have been asked to make exceptions in individual cases, so that Board members who had reached the age limit of 65 could nevertheless remain in office until the expiry of their five-year term. The Administrative Council has repeatedly emphasised that Article 54(1) of the Service Regulations for permanent employees of the European Patent Office (ServRegs), which provides that a permanent employee shall be retired on the last day of the month in which he reaches the age of 65, also applies to the members of the Boards of Appeal and the Enlarged Board.

The purpose of the new provision in Article 23(1), second sentence, EPC is to make clear when the service of Board members is terminated prior to the expiry of their five-year term (see Article 50(a) and (c) ServRegs).

2. A minor amendment has been made to the wording of Article 23(2) EPC under Article 3(1) of the Revision Act.

3. The revised Article 23 EPC is applicable as from the entry into force of the EPC 2000.

ARTICLE 24 EPC

The wording of Article 24 EPC has been amended under Article 3(1) of the Revision Act (alignment in the three official languages, minor and consequential amendments).

ARTICLE 25 EPC

The wording of Article 25 EPC has been amended under Article 3(1) of the Revision Act (alignment in the three official languages, minor and consequential amendments).
Article 23  Independence of the members of the Boards

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The members of the Enlarged Board of Appeal and of the Boards of Appeal shall be appointed for a term of five years and may not be removed from office during this term, except if there are serious grounds for such removal and if the Administrative Council, on a proposal from the Enlarged Board of Appeal, takes a decision to this effect.</td>
<td>(1) The members of the Enlarged Board of Appeal and of the Boards of Appeal shall be appointed for a term of five years and may not be removed from office during this term, except if there are serious grounds for such removal and if the Administrative Council, on a proposal from the Enlarged Board of Appeal, takes a decision to this effect. <strong>Notwithstanding sentence 1, the term of office of members of the Boards shall end if they resign or are retired in accordance with the Service Regulations for permanent employees of the European Patent Office.</strong></td>
</tr>
<tr>
<td>(2) The members of the Boards may not be members of the Receiving Section, Examining Divisions, Opposition Divisions or of the Legal Division.</td>
<td>(2) The members of the Boards may not be members of the Receiving Section, Examining Divisions, Opposition Divisions or of the Legal Division.</td>
</tr>
<tr>
<td>(3) In their decisions the members of the Boards shall not be bound by any instructions and shall comply only with the provisions of this Convention.</td>
<td>(3) <strong>Unchanged</strong></td>
</tr>
<tr>
<td>(4) The Rules of Procedure of the Boards of Appeal and the Enlarged Board of Appeal shall be adopted in accordance with the provisions of the Implementing Regulations. They shall be subject to the approval of the Administrative Council.</td>
<td>(4) The Rules of Procedure of the Boards of Appeal and the Enlarged Board of Appeal shall be adopted in accordance with [...] the Implementing Regulations. They shall be subject to the approval of the Administrative Council.</td>
</tr>
</tbody>
</table>

Article 24  Exclusion and objection

(1) Members of the Boards of Appeal or of the Enlarged Board of Appeal may not take part in any appeal if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties, or if they participated in the decision under appeal.

(2) If, for one of the reasons mentioned in paragraph 1, or for any other reason, a member of a Board of Appeal or of the Enlarged Board of Appeal considers that he should not take part in any appeal, he shall inform the Board accordingly.

(3) Members of a Board of Appeal or of the Enlarged Board of Appeal may be objected to by any party for one of the reasons mentioned in paragraph 1, or if suspected of partiality. An objection shall not be admissible if, while being aware of a reason for objection, the party has taken a procedural step. No objection may not be based upon the nationality of members.

(4) The Boards of Appeal and the Enlarged Board of Appeal shall decide as to the action to be taken in the cases specified in paragraphs 2 and 3, without the participation of the member concerned. For the purposes of taking this decision the member objected to shall be replaced by his alternate.

Article 25  Technical opinion

At the request of the competent national court trying hearing an infringement or revocation action, the European Patent Office shall be obliged, against on payment of an appropriate fee, to give a technical opinion concerning the European patent which is the subject of the action. The Examining Division shall be responsible for the issue of issuing such opinions.

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey strikethrough** = changes and deletions adopted by the Administrative Council (June 2001)
CHAPTER IV

ARTICLES 26 to 28 EPC

The wording of Articles 26(2), 27 and 28(3) and (4) EPC has been amended under Article 3(1) of the Revision Act (alignment in the three official languages, minor and consequential amendments).

ARTICLE 29 EPC is unchanged.
Chapter IV  The Administrative Council

Article 26  Membership

(1) The Administrative Council shall be composed of the Representatives and the alternate Representatives of the Contracting States. Each Contracting State shall be entitled to appoint one Representative and one alternate Representative to the Administrative Council.

(2) The members of the Administrative Council may, subject to the provisions of its Rules of Procedure, be assisted by advisers or experts.

Article 27  Chairmanship

(1) The Administrative Council shall elect a Chairman and a Deputy Chairman from among the Representatives and alternate Representatives of the Contracting States. The Deputy Chairman shall replace the Chairman in the event of his being prevented from attending to carry out his duties.

(2) The duration of the terms of office of the Chairman and the Deputy Chairman shall be three years. They may be re-elected.

Article 28  Board

(1) When there are at least eight Contracting States, the Administrative Council may set up a Board composed of five of its members.

(2) The Chairman and the Deputy Chairman of the Administrative Council shall be members of the Board ex officio; the other three members shall be elected by the Administrative Council.

(3) The term of office of the members elected by the Administrative Council shall be three years. They may not be re-elected.

(4) The Board shall perform the duties assigned to it by the Administrative Council in accordance with the Rules of Procedure.

Article 29  Meetings

(1) Meetings of the Administrative Council shall be convened by its Chairman.

(2) The President of the European Patent Office shall take part in the deliberations of the Administrative Council.

(3) The Administrative Council shall hold an ordinary meeting once each year. In addition, it shall meet on the initiative of its Chairman or at the request of one-third of the Contracting States.

(4) The deliberations of the Administrative Council shall be based on an agenda, and shall be held in accordance with its Rules of Procedure.

(5) The provisional agenda shall contain any question whose inclusion is requested by any Contracting State in accordance with the Rules of Procedure.

bold [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)
grey strikethrough = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLES 30 to 32 EPC

The wording of Articles 30 to 32 EPC has been amended under Article 3(1) of the Revision Act (alignment in the three official languages, minor and consequential amendments).
Article 30  Attendance of observers

(1) The World Intellectual Property Organization shall be represented at the meetings of the Administrative Council, in accordance with the provisions of an agreement to be concluded between the European Patent Organisation and the World Intellectual Property Organization.

(2) Any Other intergovernmental organisations charged entrusted with the implementation of carrying out international procedures in the field of patents, with which the Organisation has concluded an agreement, shall be represented at the meetings of the Administrative Council, in accordance with any provisions contained in such agreement.

(3) Any other intergovernmental and international non-governmental organisations exercising carrying out an activity of interest to the Organisation may be invited by the Administrative Council to arrange to be represented at its meetings during any discussion of matters of mutual interest.

Article 31  Languages of the Administrative Council

(1) The languages in use used in the deliberations of the Administrative Council shall be English, French and German.

(2) Documents submitted to the Administrative Council, and the minutes of its deliberations, shall be drawn up in the three languages mentioned specified in paragraph 1.

Article 32  Staff, premises and equipment

The European Patent Office shall place at the disposal of the Administrative Council, and of any body committee established by it, such staff, premises and equipment as may be necessary for the performance of their duties.
ARTICLE 33 EPC
(Preparatory documents: CA/PL 3/00 + Add. 1 and 2; CA/PL PV 12, points 11-22; CA/PL PV 13, points 10-19; CA/PL PV 14, points 118-142; CA/100/00, pages 21-26; CA/124/00, point 10; CA/125/00, points 33-42; MR/2/00, pages 27-28; MR/7/00; MR/10/00; MR/PLD 4/00; MR/24/00, pages 60-67)

1. A new paragraph 1(b) has been added to Article 33(1) EPC empowering the Administrative Council to amend the Articles of the EPC concerning patent law and procedural law in order to ensure that the EPC is in line with international treaties and Community legislation relating to patents. It is understood that the Administrative Council can exercise this competence in the case of any treaty, convention or Community law containing provisions relating to patents (for example, the provisions of Part II, Section 5 of the TRIPS Agreement).

2. This new competence allows any consensus already achieved at EU, WIPO or WTO level to be directly echoed in the EPC and thus avoids having to hold revision conferences for the sole purpose of adapting the EPC to texts already adopted by all or a majority of contracting states. Furthermore, national ratification procedures, which are always of uncertain duration and outcome and the failure of which means the end of a state's participation in the EPC, will no longer be indispensable for the amended wording of an EPC Article to enter into force. In this way a significant risk is eliminated and time savings of the order of several years can be achieved.

3. It is noteworthy that Article 16(1) of the Patent Law Treaty 2000 (PLT) contains a provision of the very same nature, whereby the PLT Assembly may decide that any revision, amendment or modification of the PCT will apply for the purposes of the PLT. Article 16(1) PLT reads as follows:

"Subject to paragraph (2), any revision, amendment or modification of the Patent Cooperation Treaty made after June 2, 2000, which is consistent with the Articles of this Treaty, shall apply for the purposes of this Treaty and the Regulations if the Assembly so decides, in the particular case, by three-fourths of the votes cast."{fc \l5 "Subject to paragraph (2), any revision, amendment or modification of the Patent Cooperation Treaty made after June 2, 2000, which is consistent with the Articles of this Treaty, shall apply for the purposes of this Treaty and the Regulations if the Assembly so decides, in the particular case, by three-fourths of the votes cast."}

4. Editorial changes have been made to Article 33(1) EPC to harmonise the English, French and German versions and cut out unnecessary detail. With the amendment of Articles 94 and 95 EPC, the references to them in Article 33(1)(a) EPC 1973 no longer apply and have been deleted.
Article 33 Competence of the Administrative Council in certain cases

**EPC 1973**

(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.

(2) The Administrative Council shall be competent, in conformity with this Convention, to adopt or amend the following provisions:

(a) the Financial Regulations;

(b) the Service Regulations for permanent employees and the conditions of employment of other employees of the European Patent Office, the salary scales of the said permanent and other employees, and also the nature, and rules for the grant, of any supplementary benefits;

(c) the Pension Scheme Regulations and any appropriate increases in existing pensions to correspond to increases in salaries;

(d) the Rules relating to Fees;

(e) its Rules of Procedure.

(3) Notwithstanding Article 18, paragraph 2, the Administrative Council shall be competent to decide, in the light of experience, that in certain categories of cases Examining Divisions shall consist of one technical examiner. Such decision may be rescinded.

(4) The Administrative Council shall be competent to authorise the President of the European Patent Office to negotiate and, with its approval, to conclude agreements on behalf of the European Patent Organisation with States, with intergovernmental organisations and with documentation centres set up by virtue of agreements with such organisations.

**EPC 2000**

(1) The Administrative Council shall be competent to amend the following provisions [...]:

(a) the time limits laid down in this Convention; [...]

(b) Parts II to VIII and Part X of this Convention, to bring them into line with an international treaty relating to patents or European Community legislation relating to patents;

(b) Becomes (c) – wording unchanged

(2) The Administrative Council shall be competent, in conformity with this Convention, to adopt or amend the following provisions:

(a) the Financial Regulations;

(b) the Service Regulations for permanent employees and the conditions of employment of other employees of the European Patent Office, the salary scales of the said permanent and other employees, and also the nature of and rules for the grant of any supplementary benefits and the rules for granting them;

(c) the Pension Scheme Regulations and any appropriate increases in existing pensions to correspond to increases in salaries;

(d) the Rules relating to Fees;

(e) its Rules of Procedure.

(3) Notwithstanding Article 18, paragraph 2, the Administrative Council shall be competent to decide, in the light of experience, that in certain categories of cases Examining Divisions shall consist of one technically qualified examiner only. Such decision may be rescinded.

(4) The Administrative Council shall be competent to authorise the President of the European Patent Office to negotiate and, with subject to its approval, to conclude agreements on behalf of the European Patent Organisation with States, with intergovernmental organisations and with documentation centres set up by virtue on the basis of agreements with such organisations.

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey** strikethrough = changes and deletions adopted by the Administrative Council (June 2001)
5. **New paragraph 5 of Article 33 EPC** was introduced during the Revision Conference in November 2000. It provides that an international treaty or Community legislation must be in force before the Administrative Council may exercise its powers under new Article 33(1)(b) EPC. Particularly where EC Directives are concerned, the Council cannot amend an Article of the EPC until the period for implementing the Directive in the EU Member States has expired.

6. The voting procedures and entry into force of a decision under the new Article 33(1)(b) EPC have been specified in **new Article 35(3) EPC**.

7. Finally, the wording of **Article 33 EPC** has been amended under Article 3(1) of the Revision Act (alignment in the three official languages, minor and consequential amendments).

8. The revised Article 33 EPC is applicable as from the entry into force of the EPC 2000.

**ARTICLE 34 EPC**

The wording of **Article 34(2) EPC** has been amended under Article 3(1) of the Revision Act (alignment in the three official languages, minor and consequential amendments).

**ARTICLE 35 EPC**

(Preparatory documents: see Article 33 EPC)

1. **Changes to several EPC provisions entail the deletion of the references** to Articles 87, 95, 134, 151(3), 154(2), 155(2), 156, 157(2) to (4), 160, 162, 163 and 167 EPC, and **the inclusion of references** to the new Articles 134a, 149a(2), 152 and 153(7) EPC in **Article 35(2) EPC**.

2. The **new Article 35(3) EPC** is introduced in response to the need to lay down a special provision governing the adoption and entry into force of a decision of the Administrative Council under new Article 33(1)(b) EPC modifying an Article in Parts II-VIII or Part X of the EPC.

Three guarantees are laid down in Article 35(3) EPC:
- an Administrative Council decision under Article 33(1)(b) EPC requires **unanimity among the contracting states voting**;
- all the contracting states must be represented when votes are being cast;
- each contracting state has a period of 12 months from the time the decision is adopted in which to declare that it does not wish to be bound by the decision, thus preventing the decision's entry into force. This period allows governments of the contracting states to confer with national legislative bodies to ensure that the change is acceptable.

These three guarantees give each contracting state a full right of veto, which can be exercised either by the country's representative on the Administrative Council or by its national government within a period of 12 months.

3. It must be emphasised that these guarantees go beyond those offered by Article 172(2) EPC, under which a revision conference is validly constituted if three quarters of the contracting states are represented at it, and the revised text of the EPC requires the approval of only three quarters of the contracting states represented and voting at the conference.

However, the guarantees offered by new Article 35(3) EPC differ from those in Article 172 EPC in one fundamental respect: whereas under Article 172(4) EPC a contracting state ceases to be a party to the EPC if it has not ratified a revised text of the EPC in due time, a state exercising its right to oppose the entry into force of an Administrative Council decision under Article 33(1)(b) EPC would not of course incur any sanction. The alternative under Article 172(4) EPC – between ratifying in due time and ceasing to be a party to the EPC – is therefore supplemented by a genuine possibility of intervention by national legislative bodies.

4. The revised Article 35 EPC is applicable as from the entry into force of the EPC 2000.
Article 33  Competence of the Administrative Council in certain cases

| EPC 1973 |
| EPC 2000 |
|-----------------|-----------------|
| (5) The Administrative Council may not take a decision under paragraph 1(b): |
| - concerning an international treaty, before the entry into force of that treaty; |
| - concerning European Community legislation, before its entry into force or, where that legislation provides for a period for its implementation, before the expiry of that period. |

Article 34  Voting rights

(1) The right to vote in the Administrative Council shall be restricted to the Contracting States.

(2) Each Contracting State shall have one vote, subject to the application of the provisions of except where Article 36 applies.

Article 35  Voting rules

| EPC 1973 |
| EPC 2000 |
|-----------------|-----------------|
| (1) The Administrative Council shall take its decisions other than those referred to in paragraph 2 by a simple majority of the Contracting States represented and voting. |
| (1) The Administrative Council shall take its decisions, other than those referred to in paragraphs 2 and 3, by a simple majority of the Contracting States represented and voting. |
| (2) A majority of three-quarters of the votes of the Contracting States represented and voting shall be required for the decisions which the Administrative Council is empowered to take under Article 7, Article 11, paragraph 1, Article 33, Article 39, paragraph 1, Article 40, paragraphs 2 and 4, Article 46, Article 87, Article 95, Article 134, paragraph 1, Article 151, paragraph 3, Article 154, paragraph 2, Article 155, paragraph 2, Article 156, Article 157, paragraphs 2 to 4, Article 160, paragraph 1, second sentence, Article 162, Article 163, Article 166, Article 167 and Article 172. |
| (2) A majority of three-quarters of the votes of the Contracting States represented and voting shall be required for the decisions which the Administrative Council is empowered to take under Article 7, Article 11, paragraph 1, Article 33, paragraphs 1(a) and (c), and 2 to 4, Article 39, paragraph 1, Article 40, paragraphs 2 and 4, Article 46, [...] Article 134a, Article 149a, paragraph 2, Article 152, Article 153, paragraph 7, Article 166 [...] and Article 172. |

(3) Unanimity of the Contracting States voting shall be required for the decisions which the Administrative Council is empowered to take under Article 33, paragraph 1(b). The Administrative Council shall take such decisions only if all the Contracting States are represented. A decision taken on the basis of Article 33, paragraph 1(b), shall not take effect if a Contracting State declares, within twelve months of the date of the decision, that it does not wish to be bound by that decision.

(3) Abstentions shall not be considered as votes.

bold [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

grey strikethrough = changes and deletions adopted by the Administrative Council (June 2001)

Becomes (4) – wording unchanged
ARTICLE 36 EPC

A minor amendment has been made to Article 36(2)(b) EPC under Article 3(1) of the Revision Act.
Article 36  Weighting of votes

(1) In respect of the adoption or amendment of the Rules relating to Fees and, if the financial contribution to be made by the Contracting States would thereby be increased, the adoption of the budget of the Organisation and of any amending or supplementary budget, any Contracting State may require, following a first ballot in which each Contracting State shall have one vote, and whatever the result of this ballot, that a second ballot be taken immediately, in which votes shall be given to the States in accordance with paragraph 2. The decision shall be determined by the result of this second ballot.

(2) The number of votes that each Contracting State shall have in the second ballot shall be calculated as follows:

(a) the percentage obtained for each Contracting State in respect of the scale for the special financial contributions, pursuant to Article 40, paragraphs 3 and 4, shall be multiplied by the number of Contracting States and divided by five;

(b) the number of votes thus given shall be rounded upwards to the next higher whole number;

(c) five additional votes shall be added to this number;

(d) nevertheless, no Contracting State shall have more than 30 votes.
CHAPTER V

ARTICLE 37 EPC
(Preparatory documents: CA/49/00; CA/F 3/00; CA/74/00, points 174-179; CA/PL PV 14, points 11-12; CA/100/00, pages 27-34; CA/124/00, point 11; CA/125/00, points 43-44; MR/2/00, pages 33-34; MR/14/00; MR/24/00, page 68)

1. In their report for the 1998 accounting period, the Board of Auditors drew attention to the fact that the budgetary and accounting practice of the European Patent Organisation does not reflect the literal wording of the EPC.

2. The source of the problem lies in the wording of Article 42 EPC 1973. **New Article 42 EPC now introduces generally accepted accounting principles** as the sole basis of budgetary and financial practice. The further amendments to Articles 37, 38 and 50 EPC reflect this new approach and contain additional changes bringing these provisions into line with the current practice.

3. **Article 37 EPC has been redrafted** and complemented so as to conform to the current practice of the European Patent Organisation. The sources of budgetary funding are now extended to third-party finance for specific restricted purposes (new sub-paragraphs (e) and (f)).

4. The revised Article 37 EPC applies provisionally as from 29.11.2000.

ARTICLE 38 EPC
(Preparatory documents: see Article 37 EPC)

1. The Board of Auditors also recommended that the pension liabilities of the European Patent Organisation should be recorded in the annual accounts.

2. **New Article 38 EPC now includes the Pension Reserve Fund as a special class of asset** of the Organisation and extends the definition of own resources.

3. Finally, minor amendments have been made to Article 38(b) EPC under Article 3(1) of the Revision Act.

4. The revised Article 38 EPC applies provisionally as from 29.11.2000.
Chapter V  Financial provisions

Article 37  Budgetary funding

EPC 1973

The expenditure of the Organisation shall be covered:

(a) by the Organisation's own resources;
(b) by payments made by the Contracting States in respect of renewal fees for European patents levied in these States;
(c) where necessary, by special financial contributions made by the Contracting States;
(d) where appropriate, by the revenue provided for in Article 146.

EPC 2000

The budget of the Organisation shall be financed:

(a) - (d) Unchanged

(e) where appropriate, and for tangible assets only, by third-party borrowings secured on land or buildings;
(f) where appropriate, by third-party funding for specific projects.

Article 38  The Organisation's own resources

EPC 1973

The Organisation's own resources shall be the yield from the fees laid down in this Convention, and also all receipts, whatever their nature.

EPC 2000

The Organisation's own resources shall comprise:

(a) all income from fees and other sources and also the reserves of the Organisation;
(b) the resources of the Pension Reserve Fund, which shall be treated as a special class of asset of the Organisation, designed to lend support to the Organisation's pension scheme by providing the appropriate reserves.
ARTICLES 39 and 40 EPC

The wording of Articles 39 and 40 EPC has been amended under Article 3(1) of the Revision Act (alignment in the three official languages, minor and consequential amendments).
Article 39  Payments by the Contracting States in respect of renewal fees for European patents

(1) Each Contracting State shall pay to the Organisation in respect of each renewal fee received for a European patent in that State an amount equal to a proportion of that fee, to be fixed by the Administrative Council; the proportion shall not exceed 75% per cent and shall be the same for all Contracting States. However, if the said proportion corresponds to an amount which is less than a uniform minimum amount fixed by the Administrative Council, the Contracting State shall pay that minimum to the Organisation.

(2) Each Contracting State shall communicate to the Organisation such information as the Administrative Council considers to be necessary to determine the amount of these payments.

(3) The due dates for these payments shall be determined by the Administrative Council.

(4) If a payment is not remitted fully by the due date, the Contracting State shall pay interest from the due date on the amount remaining unpaid.

Article 40  Level of fees and payments – Special financial contributions

(1) The amounts of the fees referred to under in Article 38 and the proportion referred to under in Article 39 shall be fixed at such a level as to ensure that the revenue in respect thereof is sufficient for the budget of the Organisation to be balanced.

(2) However, if the Organisation is unable to balance its budget under the conditions laid down in paragraph 1, the Contracting States shall remit to the Organisation special financial contributions, the amount of which shall be determined by the Administrative Council for the accounting period in question.

(3) These special financial contributions shall be determined in respect of any Contracting State on the basis of the number of patent applications filed in the last year but one prior to that of entry into force of this Convention, and calculated in the following manner:

(a) one half in proportion to the number of patent applications filed in that Contracting State;

(b) one half in proportion to the second highest number of patent applications filed in the other Contracting States by natural or legal persons having their residence or principal place of business in that Contracting State.

However, the amounts to be contributed by States in which the number of patent applications filed exceeds 25 000 shall then be taken as a whole and a new scale drawn up determined in proportion to the total number of patent applications filed in these States.

(4) Where, in respect the scale position of any Contracting State, its scale position cannot be established in accordance with paragraph 3, the Administrative Council shall, with the consent of that State, decide its scale position.

(5) Article 39, paragraphs 3 and 4, shall apply mutatis mutandis to the special financial contributions.

(6) The special financial contributions shall be repaid together with interest at a rate which shall be the same for all Contracting States. Repayments shall be made in so far as it is possible to provide for this purpose in the budget; the amount thus provided shall be distributed among the Contracting States in accordance with the scale mentioned referred to in paragraphs 3 and 4 above.

(7) The special financial contributions remitted in any accounting period shall be wholly repaid in full before any such contributions or parts thereof remitted in any subsequent accounting period are repaid.

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey** strikethrough = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 41 EPC

The wording of Article 41 EPC has been amended under Article 3(1) of the Revision Act (alignment in the three official languages, minor and consequential amendments).

ARTICLE 42 EPC
(Preparatory documents: see Article 37 EPC)

1. New Article 42(1) EPC makes it clear that the budget must be balanced and based on generally accepted accounting principles (GAAP) as defined in the Financial Regulations of the European Patent Organisation.

2. The revised Article 42 EPC applies provisionally as from 29.11.2000.

ARTICLE 43 EPC

The wording of Article 43(1) and (2) EPC has been amended under Article 3(1) of the Revision Act (alignment in the three official languages, minor and consequential amendments).

ARTICLES 44 and 45 EPC are unchanged.
Article 41  Advances

(1) At the request of the President of the European Patent Office, the Contracting States shall make grant advances to the Organisation, on account of their payments and contributions, within the limit of the amount fixed by the Administrative Council. The amount of such advances shall be apportioned determined in proportion to the amounts due by the Contracting States for the accounting period in question.

(2) Article 39, paragraphs 3 and 4, shall apply mutatis mutandis to the advances.

Article 42  Budget

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Income and expenditure of the Organisation shall form the subject of estimates in respect of each accounting period and shall be shown in the budget. If necessary, there may be amending or supplementary budgets.</td>
<td>(1) The budget of the Organisation shall be balanced. It shall be drawn up in accordance with the generally accepted accounting principles, laid down in the Financial Regulations. If necessary, there may be amending or supplementary budgets.</td>
</tr>
<tr>
<td>(2) The budget shall be balanced as between income and expenditure.</td>
<td>(2) Deleted</td>
</tr>
<tr>
<td>(3) The budget shall be drawn up in the unit of account fixed in the Financial Regulations.</td>
<td>(3) Becomes (2) – wording unchanged</td>
</tr>
</tbody>
</table>

Article 43  Authorisation for expenditure

(1) The expenditure entered in the budget shall be authorised for the duration of one accounting period, unless any provisions to the contrary are contained in the Financial Regulations provide otherwise.

(2) Subject to the conditions to be laid down in accordance with the Financial Regulations, any appropriations, other than those relating to staff costs, which are unexpended at the end of the accounting period may be carried forward, but not beyond the end of the following accounting period.

(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.

Article 44  Appropriations for unforeseeable expenditure

(1) The budget of the Organisation may contain appropriations for unforeseeable expenditure.

(2) The employment of these appropriations by the Organisation shall be subject to the prior approval of the Administrative Council.

Article 45  Accounting period

The accounting period shall commence on 1 January and end on 31 December.
ARTICLES 46 to 49 EPC

The wording of Articles 46 to 49 EPC has been amended under Article 3(1) of the Revision Act (alignment in the three official languages, minor and consequential amendments).
Article 46  Preparation and adoption of the budget

(1) The President of the European Patent Office shall lay submit the draft budget before to the Administrative Council not no later than the date prescribed in the Financial Regulations.

(2) The budget and any amending or supplementary budget shall be adopted by the Administrative Council.

Article 47  Provisional budget

(1) If, at the beginning of the accounting period, the budget has not been adopted 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 in accordance with the Financial Regulations, up to one-twelfth of the budget appropriations for the preceding accounting period, 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 paragraph 1, authorise expenditure in excess of one-twelfth of the appropriations.

(3) The payments referred to in Article 37, sub-paragraph (b), shall continue to be made, on a provisional basis, under the conditions determined under Article 39 for the year preceding that to which the draft budget relates.

(4) The Contracting States shall pay each month, on a provisional basis and in accordance with the scale referred to in Article 40, paragraphs 3 and 4, any special financial contributions necessary to ensure implementation of paragraphs 1 and 2 above. Article 39, paragraph 4, shall apply mutatis mutandis to these contributions.

Article 48  Budget implementation

(1) The President of the European Patent Office shall implement the budget and any amending or supplementary 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 in accordance with the Financial Regulations, transfer funds as between the various headings or sub-headings.

Article 49  Auditing of accounts

(1) The income and expenditure account and a balance sheet of the Organisation shall be examined by auditors whose independence is beyond doubt, appointed by the Administrative Council for a period of five years, which shall be renewable or extensible.

(2) The audit, which shall be based on vouchers and shall take place, if necessary, in situ. The audit shall ascertain that whether all income has been received and all expenditure effected in a lawful and proper manner and that whether the financial management is sound. The auditors shall draw up a report containing a signed audit opinion after the end of each accounting period.

(3) The President of the European Patent Office shall annually submit to the Administrative Council the accounts of the preceding accounting period in respect of the budget and the balance sheet showing the assets and liabilities of the Organisation together with the report of the auditors.

(4) The Administrative Council shall approve the annual accounts together with the report of the auditors and shall give discharge the President of the European Patent Office a discharge in respect of the implementation of the budget.

**bold […] = changes and deletions adopted by the Diplomatic Conference (November 2000)**

**grey strikethrough = changes and deletions adopted by the Administrative Council (June 2001)**
ARTICLE 50 EPC
(Preparatory documents: see Article 37 EPC)

1. **New Article 50(g) EPC** is consequential to the amendments to Articles 38 and 42 EPC.

2. In addition, a few amendments have been made to the first part of **Article 50 EPC** under Article 3(1) of the Revision Act (alignment in the three official languages, minor and consequential amendments).

3. The revised Article 50 EPC applies provisionally as from 29.11.2000.

ARTICLE 51 EPC
(Preparatory documents: CA/PL 8/00; CA/PL PV 13, points 25-30; CA/PL PV 14, points 13-18, CA/100/00, pages 35-36; MR/2/00, pages 41-42; MR/24/00, page 69)

1. The fee system under the EPC is not entirely coherent and lacks transparency:

   - Some fees are provided for in Articles of the EPC, with their time limits and the legal consequences for failure to pay in due time in the Articles themselves.
   - Other procedural fees are mentioned in Articles of the EPC along with the legal consequences of failure to pay in due time, but the time limits for payment are laid down in the Implementing Regulations.
   - Finally, some procedural fees appear exclusively in the Implementing Regulations, along with their time limits and the legal consequences of failure to pay in due time.

2. Therefore, **Article 51 EPC** is amended to provide a more coherent and systematic framework for the provisions governing fees, thereby improving the transparency of the EPC in this respect.

   Firstly, **new Article 51(1) EPC** provides a general clause enabling the EPO to levy fees, since the EPC 1973 does not contain such a clause.

   Secondly, under **new Article 51(2) EPC**, time limits for the payment of fees are **moved to the Implementing Regulations** with two exceptions: the time limits for payment of the opposition and appeal fees remain in Articles 99 and 108 EPC.

   Thirdly, the amounts of the fees and the manner in which they are to be paid remain in the Rules relating to Fees pursuant to Article 51(4) EPC.

3. Finally, there are only two types of fees:
   - those provided for in Articles of the EPC, in which case the legal consequences of failure to pay in due time remain in the Articles; and
   - those provided for in the Implementing Regulations, in which case the Implementing Regulations also lay down the consequences of failure to pay in due time (**new Article 51(3) EPC**).

4. Moreover, the word "legal" has been added to **Article 51(3) EPC** under Article 3(1) of the Revision Act.

5. The revised Article 51 EPC is applicable to

   - EPs already granted at the time of EPC 2000 entry into force
   - EP applications pending at the time of EPC 2000 entry into force
   - EP applications filed on or after the time of EPC 2000 entry into force
### Article 50  Financial Regulations

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Financial Regulations shall in particular establish:</td>
<td>The Financial Regulations shall lay down in particular establish:</td>
</tr>
<tr>
<td>(a) the procedure relating to the establishment and implementation of the budget and for rendering and auditing the accounts</td>
<td>(a) the procedure arrangements relating to the establishment and implementation of the budget and for the rendering and auditing of accounts;</td>
</tr>
<tr>
<td>(b) the method and procedure whereby the payments and contributions provided for in Article 37 and the advances provided for in Article 41 are to be made available to the Organisation by the Contracting States;</td>
<td>(b) Unchanged</td>
</tr>
<tr>
<td>(c) the rules concerning the responsibilities of accounting and paying officers and the arrangements for their supervision;</td>
<td>(c) the rules concerning the responsibilities of authorising and accounting officers and the arrangements for their supervision;</td>
</tr>
<tr>
<td>(d) the rates of interest provided for in Articles 39, 40 and 47;</td>
<td>(d) Unchanged</td>
</tr>
<tr>
<td>(e) the method of calculating the contributions payable by virtue of Article 146;</td>
<td>(e) Unchanged</td>
</tr>
<tr>
<td>(f) the composition of and duties to be assigned to a Budget and Finance Committee which should be set up by the Administrative Council.</td>
<td>(f) Unchanged</td>
</tr>
<tr>
<td>(g) the generally accepted accounting principles on which the budget and the annual financial statements shall be based.</td>
<td></td>
</tr>
</tbody>
</table>

### Article 51  Fees

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Rules relating to Fees shall determine in particular the amounts of the fees and the ways in which they are to be paid.</td>
<td>(1) The European Patent Office may levy fees for any official task or procedure carried out under this Convention.</td>
</tr>
<tr>
<td></td>
<td>(2) Time limits for the payment of fees other than those fixed by this Convention shall be laid down in the Implementing Regulations.</td>
</tr>
<tr>
<td></td>
<td>(3) Where the Implementing Regulations provide that a fee shall be paid, they shall also lay down the legal consequences of failure to pay such fee in due time.</td>
</tr>
<tr>
<td></td>
<td>(4) The Rules relating to Fees shall determine in particular the amounts of the fees and the ways in which they are to be paid.</td>
</tr>
</tbody>
</table>

**bold […] = changes and deletions adopted by the Diplomatic Conference (November 2000)**

**grey strikethrough = changes and deletions adopted by the Administrative Council (June 2001)**
PART II

CHAPTER I

ARTICLE 52 EPC

(Preparatory documents: CA/PL 6/99; CA/PL PV 9, points 24-27; CA/PL PV 14, points 143-156; CA/100/00, pages 37-40; CA/124/00, points 12-16; CA/125/00, points 45-73; MR/2/00, pages 43-44; MR/8/00; MR/15/00; MR/16/00; MR/24/00, pages 69-71)

1. Article 52(1) EPC has been brought into line with Article 27(1), first sentence, of the TRIPS Agreement with a view to enshrining the word "technology" in the basic provision of substantive European patent law, clearly defining the scope of the EPC, and making it plain that patent protection is available to technical inventions of all kinds.

The new wording of Article 52(1) EPC plainly expresses that patent protection is reserved for creations in the technical field. In order to be patentable, the subject-matter claimed must therefore have a "technical character" or, to be more precise, involve a "technical teaching", i.e. an instruction addressed to a skilled person as to how to solve a particular technical problem using particular technical means. It is on this understanding of the term "invention" that the patent granting practice of the EPO and the case law of the Boards of Appeal are based.

Thus, it will remain incumbent on EPO practice and case law to determine whether subject-matter claimed as an invention has a technical character and to further develop the concept of invention in an appropriate manner, in light of technical developments and the state of knowledge at the time.

2. Article 52(4) EPC is deleted and transferred to Article 53(c) EPC 2000 (see explanatory remark n° 2 to Article 53 EPC).

3. The revised Article 52 EPC is applicable to

- EPs already granted at the time of EPC 2000 entry into force
- EP applications pending at the time of EPC 2000 entry into force
- EP applications filed on or after the time of EPC 2000 entry into force
PART II SUBSTANTIVE PATENT LAW

Chapter I Patentability

Article 52 Patenable inventions

**EPC 1973**

(1) European patents shall be granted for any inventions which are susceptible of industrial application, which are new and which involve an inventive step.

(2) The following in particular shall not be regarded as inventions within the meaning of paragraph 1:

(a) discoveries, scientific theories and mathematical methods;

(b) aesthetic creations;

(c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;

(d) presentations of information.

(3) The provisions of paragraph 2 shall exclude patentability of the subject-matter or activities referred to in that provision only to the extent to which a European patent application or European patent relates to such subject-matter or activities as such.

(4) Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body shall not be regarded as inventions which are susceptible of industrial application within the meaning of paragraph 1. This provision shall not apply to products, in particular substances or compositions, for use in any of these methods.

**EPC 2000**

(1) European patents shall be granted for any inventions, in all fields of technology, provided that they are new, involve an inventive step and are susceptible of industrial application.

(2) Unchanged

(3) [...] Paragraph 2 shall exclude patentability of the subject-matter or activities referred to therein only to the extent to which a European patent application or European patent relates to such subject-matter or activities as such.

(4) Deleted – incorporated in Article 53 EPC as new sub-paragraph (c)
ARTICLE 53 EPC
(Preparatory documents: CA/PL 8/99; CA/PL PV 9, points 32-34; CA/PL PV 14, points 152 and 157-158; CA/100/00, pages 41-42; MR/2/00, pages 45-46; MR/24/00, page 71)

1. **Article 53(a) EPC has been brought into line with Article 27(2) of the TRIPS Agreement and with Article 6(1) of Directive 98/44/EC relating to the legal protection of biotechnological inventions.** Both the TRIPS Agreement and the EC Directive exclude from patentability only those inventions that must be barred from "commercial exploitation" to protect public order or morality. The word "publication" used in Article 53(a) EPC 1973 has therefore been deleted. This deletion entails no change to EPO practice.

   In addition, minor amendments have been made to Article 53(a) EPC under Article 3(1) of the Revision Act.

2. **The exclusion of methods of treatment and diagnostic methods referred to in Article 52(4) EPC 1973 has been added to the two exceptions to patentability in Article 53(a) and (b) EPC.** While these surgical or therapeutic methods constitute inventions, they have so far been excluded from patentability by the fiction of their lack of industrial applicability. It is undesirable to uphold this fiction since methods of treatment and diagnostic methods are excluded from patentability in the interests of public health. It is therefore preferable to include these inventions in the exceptions to patentability in order to group the three categories of exceptions to patentability together in Article 53(a), (b) and (c) EPC.

   It should also be noted that Article 27(3)(a) of the TRIPS Agreement states that "diagnostic, therapeutic and surgical methods for the treatment of humans or animals" may be excluded from patentability. It is thus appropriate to transfer Article 52(4) EPC 1973 to a new Article 53(c) EPC with the aim of bringing the EPC into line with the TRIPS Agreement.

   The wording of Article 52(4) EPC 1973 reappears in new Article 53(c) EPC. It is understood that shifting Article 52(4) EPC 1973 to Article 53(c) EPC 2000 entails no change to EPO practice.

3. The revised Article 53 EPC is applicable to
   - EPs already **granted** at the time of EPC 2000 entry into force
   - EP applications **pending** at the time of EPC 2000 entry into force
   - EP applications **filed on or after** the time of EPC 2000 entry into force

   ■
<table>
<thead>
<tr>
<th>Article 53</th>
<th>Exceptions to patentability</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EPC 1973</strong></td>
<td>European patents shall not be granted in respect of:</td>
</tr>
<tr>
<td>(a)</td>
<td>inventions the publication or exploitation of which would be contrary to &quot;ordre public&quot; or morality, provided that the exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation in some or all of the Contracting States;</td>
</tr>
<tr>
<td>(b)</td>
<td>plant or animal varieties or essentially biological processes for the production of plants or animals; this provision does not apply to microbiological processes or the products thereof.</td>
</tr>
</tbody>
</table>

[See Article 52(4) EPC 1973: Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body shall not be regarded as inventions which are susceptible of industrial application within the meaning of paragraph 1. This provision shall not apply to products, in particular substances or compositions, for use in any of these methods.]

<table>
<thead>
<tr>
<th><strong>EPC 2000</strong></th>
<th>European patents shall not be granted in respect of:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>inventions the [...] commercial exploitation of which would be contrary to &quot;ordre public&quot; or morality, provided that such exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation in some or all of the Contracting States;</td>
</tr>
<tr>
<td>(b)</td>
<td>plant or animal varieties or essentially biological processes for the production of plants or animals; this provision shall not apply to microbiological processes or the products thereof.</td>
</tr>
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<td>(c)</td>
<td>methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body [...] this provision shall not apply to products, in particular substances or compositions, for use in any of these methods.</td>
</tr>
</tbody>
</table>
ARTICLE 54 EPC
(Preparatory documents: CA/PL 17/99; CA/PL PV 10, points 19-21; CA/PV 14, point 6; CA/100/00, pages 43-44; MR/6/00, pages 3-4; MR/2/00, pages 47-48; MR/24/00, page 71)

1. **Article 54(3) EPC** has been redrafted (see Articles 60(2), 67(1) and 69(2) EPC). In addition, a minor editorial amendment has been made to its wording under Article 3(1) of the Revision Act.

2. Pursuant to Article 54(3) EPC, in order to preclude double patenting, European patent applications having an earlier filing or priority date than the filing or priority date of a second European patent application, and which are published on or after the filing date of that second application, are considered to form part of the state of the art for the purpose of examining the novelty of this second patent application. However, **Article 54(4) EPC** confines the prior art effect under Article 54(3) EPC to the minimum necessary to avoid a collision of rights, i.e. to those contracting states which are designated in both the earlier and the second application.

Originally, contracting states were designated upon filing the European application, and designation fees under Article 79(2) EPC were due well before the publication of the application, so that prior art under Article 54(3) EPC was determinable for each contracting state by the time the second application was published.

Since the fee reform of 1997, applications as filed designate all contracting states, and designation fees are payable within 6 months of the mention of the publication of the European search report. Pursuant to Rule 23a EPC 1973, a European application becomes prior art under Article 54(4) EPC for a given contracting state only once the designation fee has been validly paid. This postpones the time at which the Article 54(3)-prior art can be determined by at least 6 months from the publication of the application, causing legal uncertainty and logistical problems, as an application may be ready for grant before it is possible to ascertain the relevant Article 54(3)-prior art.

In 1999, a ceiling for the payment of designation fees was introduced, whereby upon payment of 7 designation fees, all contracting states are deemed to be validly designated and paid for. Most applications now designate all contracting states, significantly reducing the number of cases in which Article 54(4) EPC brings advantages to the applicant.

3. As a result, **Article 54(4) EPC is deleted**, so that any European application falling under Article 54(3) EPC constitutes prior art with effect for all the EPC contracting states at the time of its publication, eliminating the problems stemming from the 1997 fee reform. Accordingly, Rule 87 EPC 1973 has been amended (see Rule 138 EPC 2000) and Rule 23a EPC 1973 deleted.

4. The revised Article 54(3) EPC is applicable to
   EP applications **filed on or after** the time of EPC 2000 entry into force

The deleted Article 54(4) EPC 1973 is still applicable to
   EP applications **already granted** at the time of EPC 2000 entry into force
   EP applications **pending** at the time of EPC 2000 entry into force
## Article 54  Novelty

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) An invention shall be considered to be new if it does not form part of the state of the art.</td>
<td>(1) <strong>Unchanged</strong></td>
</tr>
<tr>
<td>(2) The state of the art shall be held to comprise everything made available to the public by means of an oral or written description, by use, or in any other way, before the date of filing of the European patent application.</td>
<td>(2) <strong>Unchanged</strong></td>
</tr>
<tr>
<td>(3) Additionally, the content of European patent applications as filed, of which the dates of filing are prior to the date referred to in paragraph 2 and which were published under Article 93 on or after that date, shall be considered as comprised in the state of the art.</td>
<td>(3) Additionally, the content of European patent applications as filed, of which the dates of filing are prior to the date referred to in paragraph 2 and which were published [...] on or after that date, shall be considered as comprised in the state of the art.</td>
</tr>
<tr>
<td>(4) Paragraph 3 shall be applied only in so far as a Contracting State designated in respect of the later application, was also designated in respect of the earlier application as published.</td>
<td>(4) <strong>Deleted</strong></td>
</tr>
</tbody>
</table>

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey strikethrough** = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 54 EPC
(Preparatory documents: CA/PL 4/00 + Info 2/PL 12; CA/PL PV 12, points 23-31; Info 2/PL 14; CA/PL PV 14, points 199-226; CA/100/00, pages 45-48; CA/124/00, point 17; CA/125/00, points 74-90; MR/2/00, pages 49-50; MR/9/00 Corr.1; MR/18/00; MR/24/00, pages 70-71 and page 104)

1. According to Article 54(5) EPC 1973, by way of "compensation" for the exclusion from patentability of medical methods under Article 52(4), first sentence, EPC 1973, known substances or compositions are deemed to be new, provided they are used for the first time in such a medical method. The amendment to Article 54(5) EPC 1973 (now Article 54(4) EPC 2000) takes account of the deletion of Article 54(4) EPC 1973 and the incorporation of Article 52(4) EPC 1973 into Article 53(c) EPC 2000. Apart from this editorial amendment the substance of this Article is unchanged. Up till now, the EPO, following the case law of the Boards of Appeal, has granted a broad claim for the first medical use, i.e. for a general therapeutical purpose, e.g. as a "pharmaceutical substance", a "therapeutic agent" or a "medicament", even if only one specific use is disclosed in the application (see T 128/82, "HOFFMAN-LA ROCHE", OJ EPO 1984, 164; T 36/83, "ROUSSEL-UCLAF" OJ EPO 1986, 295). Based on this practice, the first to show a use of a substance or composition in a medical method should receive broad protection covering any use in a medical method. This corresponds to the contribution to the art, namely opening the field of medical use for the substance or composition.

2. In the early 1980s, the Enlarged Board of Appeal was asked to decide whether any further medical use could receive patent protection under the EPC in spite of the wording of Article 54(5) EPC 1973 which seemed to limit patentability to the first medical use. The Enlarged Board extended the notional novelty provided for in Article 54(5) EPC to apply to each further medical use in the so-called "Swiss type claim", i.e. to a claim "directed to the use of a substance or composition for the manufacture of a medicament for a specified new and inventive therapeutic application" (G 5/83, "Second medical indication/EISAI", OJ EPO 1985, 64; Legal Advice from the Swiss Federal Intellectual Property Office, OJ EPO 1984, 581).


4. The new Article 54(5) EPC eliminates any legal uncertainty on the patentability of further medical uses. It unambiguously permits purpose-related product protection for each further new medical use of a substance or composition already known as a medicine. This protection is equivalent, as far as the further uses are concerned, to that offered by the Swiss type claim. In contrast to Article 54(5) EPC 1973 (now Article 54(4) EPC 2000) which provides broad (generic) protection for the first use in a medical method, new Article 54(5) EPC is expressly limited to a specific use in such a method. This limitation is intended to match as closely as possible the scope of protection to the scope provided by a Swiss type claim.

5. Finally, a minor amendment has been made to Article 54(5) EPC under Article 3(1) of the Revision Act.

6. The revised Article 54(4) EPC is applicable to

- EPs already granted at the time of EPC 2000 entry into force
- EP applications pending at the time of EPC 2000 entry into force
- EP applications filed on or after the time of EPC 2000 entry into force

The revised Article 54(5) EPC is applicable to

- EP applications pending at the time of EPC 2000 entry into force in so far as a decision on the grant of the patent has not yet been take
- EP applications filed on or after the time of EPC 2000 entry into force
<table>
<thead>
<tr>
<th>Article 54</th>
<th>Novelty</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EPC 1973</strong></td>
<td><strong>EPC 2000</strong></td>
</tr>
<tr>
<td>(5) The provisions of paragraphs 1 to 4 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 52, paragraph 4, provided that its use for any method referred to in that paragraph is not comprised in the state of the art.</td>
<td>(4) [...] Paragraphs 2 and 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 <strong>such</strong> method [...] is not comprised in the state of the art.</td>
</tr>
<tr>
<td>(5) Paragraphs 2 and 3 shall also not exclude the patentability of any substance or composition referred to in paragraph 4 for any specific use in any <strong>a</strong> method referred to in Article 53(c), provided that such use is not comprised in the state of the art.</td>
<td></td>
</tr>
</tbody>
</table>
ARTICLES 55 and 56 EPC

The wording of Articles 55(2) and 56 EPC has been amended under Article 3(1) of the Revision Act (alignment in the three official languages, minor and consequential amendments).

ARTICLE 57 EPC is unchanged.
**Article 55  Non-prejudicial disclosures**

(1) For the application of Article 54, a disclosure of the invention shall not be taken into consideration if it occurred no earlier than six months preceding the filing of the European patent application and if it was due to, or in consequence of:

(a) an evident abuse in relation to the applicant or his legal predecessor, or

(b) the fact that the applicant or his legal predecessor has displayed the invention at an official, or officially recognised, international exhibition falling within the terms of the Convention on international exhibitions signed at Paris on 22 November 1928 and last revised on 30 November 1972.

(2) In the case of paragraph 1(b), paragraph 1 shall apply only if the applicant states, when filing the European patent application, that the invention has been so displayed and files a supporting certificate within the period and under the conditions laid down in the Implementing Regulations.

**Article 56  Inventive step**

An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art. If the state of the art also includes documents within the meaning of Article 54, paragraph 3, these documents are not to be considered in deciding whether there has been an inventive step.

**Article 57  Industrial application**

An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.
CHAPTER II

Two minor editorial amendments have been made to the title of Chapter II, under Article 3(1) of the Revision Act.

ARTICLES 58 and 59 EPC are unchanged.

ARTICLE 60 EPC
(Preparatory documents: MR/6/00, pages 3-4; MR/24/00, page 73)

1. The drafting of Article 60 EPC has been clarified (see Articles 54(3), 67(1) and 69(2) EPC), and paragraph 2 has been amended to take account of the deletion of Article 54(4) EPC.

2. In addition, a few minor amendments have been made to Article 60 EPC under Article 3(1) of the Revision Act.

3. The revised Article 60 EPC is applicable to EP applications filed on or after the time of EPC 2000 entry into force.
Chapter II Persons entitled to apply for and obtain a European patents - Mention of the inventor

Article 58 Entitlement to file a European patent application

A European patent application may be filed by any natural or legal person, or any body equivalent to a legal person by virtue of the law governing it.

Article 59 Multiple applicants

A European patent application may also be filed either by joint applicants or by two or more applicants designating different Contracting States.

Article 60 Right to a European patent

**EPC 1973**

(1) The right to a European patent shall belong to the inventor or his successor in title. If the inventor is an employee the right to the European patent shall be determined in accordance with the law of the State in which the employee is mainly employed; if the State in which the employee is mainly employed cannot be determined, the law to be applied shall be that of the State in which the employer has his place of business to which the employee is attached.

(2) If two or more persons have made an invention independently of each other, the right to the European patent shall belong to the person whose European patent application has the earliest date of filing; however, this provision shall apply only if this first application has been published under Article 93 and shall only have effect in respect of the Contracting States designated in that application as published.

(3) For the purposes of proceedings before the European Patent Office, the applicant shall be deemed to be entitled to exercise the right to the European patent.

**EPC 2000**

(1) The right to a European patent shall belong to the inventor or his successor in title. If the inventor is an employee, the right to a European patent shall be determined in accordance with the law of the State in which the employee is mainly employed; if the State in which the employee is mainly employed cannot be determined, the law to be applied shall be that of the State in which the employer has his place of business to which the employee is attached.

(2) If two or more persons have made an invention independently of each other, the right to a European patent therefor shall belong to the person whose European patent application has the earliest date of filing, provided that this first application has been published. [...] 

(3) For the purposes of proceedings before the European Patent Office, the applicant shall be deemed to be entitled to exercise the right to a European patent.
ARTICLE 61 EPC
(Preparatory documents: CA/PL 12/00; CA/PL PV 13, points 32-34; CA/PL PV 14, points 19-20; CA/100/00, pages 49-50; MR/2/00, pages 51-52; MR/24/00, pages 73)

1. Article 61 EPC deals with the remedies available where a person other than the applicant is held by a national court to be the person entitled to the grant of a European patent. Article 61(1) EPC specifies a number of conditions which must be met for such remedies to be available.

2. In line with the general streamlining of the Articles of the EPC, the conditions contained in Article 61(1) EPC 1973 are transferred to the Implementing Regulations (see Rules 16 and 17 EPC 2000) and an express reference to the Implementing Regulations is added to Article 61(1) EPC 2000. This clause renders the enabling provision contained in Article 61(3) EPC 1973 redundant, and Article 61(3) EPC 1973 is deleted accordingly.

3. The adding of the reference to sub-paragraph (b) in Article 61(2) EPC merely renders the provision more precise.

4. The punctuation in Article 61(1)(a)-(b) EPC has been amended under Article 3(1) of the Revision Act.

5. The revised Article 61 EPC is applicable to
   - EPs already granted at the time of EPC 2000 entry into force
   - EP applications pending at the time of EPC 2000 entry into force
   - EP applications filed on or after the time of EPC 2000 entry into force

ARTICLE 62 EPC is unchanged.
### Article 61  European patent applications filed by non-entitled persons

#### EPC 1973

(1) If by a final decision it is adjudged that a person referred to in Article 60, paragraph 1, other than the applicant, is entitled to the grant of a European patent, that person may, within a period of three months after the decision has become final, provided that the European patent has not yet been granted, in respect of those Contracting States designated in the European patent application in which the decision has been taken or recognised, or has to be recognised on the basis of the Protocol on Recognition annexed to this Convention:

(a) prosecute the application as his own application in place of the applicant,

(b) file a new European patent application in respect of the same invention, or

(c) request that the application be refused.

(2) The provisions of Article 76, paragraph 1, shall apply mutatis mutandis to a new application filed under paragraph 1.

(3) The procedure to be followed in carrying out the provisions of paragraph 1, the special conditions applying to a new application filed under paragraph 1 and the time limit for paying the filing, search and designation fees on it are laid down in the Implementing Regulations.

#### EPC 2000

(1) If by a final decision it is adjudged that a person [...] other than the applicant is entitled to the grant of the European patent, that person may, [...] in accordance with the Implementing Regulations:

(a) prosecute the European patent application as his own application in place of the applicant,

(b) file a new European patent application in respect of the same invention, or

(c) request that the European patent application be refused.

(2) [...] Article 76, paragraph 1, shall apply mutatis mutandis to a new European patent application filed under paragraph 1(b).

(3) Deleted – see revised wording of paragraph 1

### Article 62  Right of the inventor to be mentioned

The inventor shall have the right, vis-à-vis the applicant for or proprietor of a European patent, to be mentioned as such before the European Patent Office.
CHAPTER III

ARTICLES 63 and 64 EPC

The wording of Articles 63 and 64 EPC has been amended under Article 3(1) of the Revision Act (alignment in the three official languages, minor and consequential amendments).
Chapter III Effects of the European patent and the European patent application

<table>
<thead>
<tr>
<th>Article 63</th>
<th>Term of the European patent</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>The term of the European patent shall be 20 years as from the date of filing of the application.</td>
</tr>
<tr>
<td>(2)</td>
<td>Nothing in the preceding paragraph shall limit the right of a Contracting State to extend the term of a European patent, or to grant corresponding protection which follows immediately on expiry of the term of the patent, under the same conditions as those applying to national patents:</td>
</tr>
<tr>
<td>(a)</td>
<td>in order to take account of a state of war or similar emergency conditions affecting that State;</td>
</tr>
<tr>
<td>(b)</td>
<td>if the subject-matter of the European patent is a product or a process of for manufacturing a product or a use of a product which has to undergo an administrative authorisation procedure required by law before it can be put on the market in that State.</td>
</tr>
<tr>
<td>(3)</td>
<td>Paragraph 2 shall apply mutatis mutandis to European patents granted jointly for a group of Contracting States in accordance with Article 142.</td>
</tr>
<tr>
<td>(4)</td>
<td>A Contracting State which makes provision for extension of the term or corresponding protection under paragraph 2(b) may, in accordance with an agreement concluded with the Organisation, entrust to the European Patent Office tasks associated with implementation of the relevant provisions.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 64</th>
<th>Rights conferred by a European patent</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>A European patent shall, subject to the provisions of paragraph 2, confer on its proprietor from the date of publication of on which the mention of its grant is published in the European Patent Bulletin, in each Contracting State in respect of which it is granted, the same rights as would be conferred by a national patent granted in that State.</td>
</tr>
<tr>
<td>(2)</td>
<td>If the subject-matter of the European patent is a process, the protection conferred by the patent shall extend to the products directly obtained by such process.</td>
</tr>
<tr>
<td>(3)</td>
<td>Any infringement of a European patent shall be dealt with by national law.</td>
</tr>
</tbody>
</table>

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)  
**grey strikethrough** = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 65 EPC
(Preparatory documents: CA/PL 29/99 Rev. 1; CA/PL PV 13, point 135; CA/PL PV 14, points 21-23; CA/100/00, pages 51-52; MR/2/00, pages 53-54; MR/24/00, pages 73 )

1. The amendment to Article 65(1) EPC includes the "amended European patent specification", to be published by the EPO within the context of the new limitation procedure (see Articles 105a, 105b and 105c EPC). Thus each contracting state can prescribe the filing of a translation of an amended European patent specification and sanction non-observance of such a provision under Article 65(3) EPC.

2. Moreover, the drafting of Article 65(1) and (2) EPC has been simplified. The reference to the "applicant" seems to be unnecessary and misleading.

3. The revised Article 65 EPC is applicable to

<table>
<thead>
<tr>
<th>EPs already granted at the time of EPC 2000 entry into force</th>
<th>■</th>
</tr>
</thead>
<tbody>
<tr>
<td>EPs granted on EP applications pending at the time of EPC 2000 entry into force</td>
<td>■</td>
</tr>
</tbody>
</table>

ARTICLE 66 EPC is unchanged.
### Article 65  Translation of the [...] European patent

**EPC 1973**

(1) Any Contracting State may prescribe that if the text, in which the European Patent Office intends to grant a European patent or maintain a European patent as amended for that State, is not drawn up in one of its official languages, the applicant for or proprietor of the patent shall supply to its central industrial property office a translation of this text in one of its official languages at his option or, where that State has prescribed the use of one specific official language, in that language. The period for supplying the translation shall end three months after the date on which the mention of the grant of the European patent or of the maintenance of the European patent as amended is published in the European Patent Bulletin, unless the State concerned prescribes a longer period.

(2) Any Contracting State which has adopted provisions pursuant to paragraph 1 may prescribe that the applicant for or proprietor of the patent must pay all or part of the costs of publication of such translation within a period laid down by that State.

(3) Any Contracting State may prescribe that in the event of failure to observe the provisions adopted in accordance with paragraphs 1 and 2, the European patent shall be deemed to be void ab initio in that State.

**EPC 2000**

(1) Any Contracting State may, if the European patent as granted, amended or limited by the European Patent Office is not drawn up in one of its official languages, prescribe that the [...] proprietor of the patent shall supply to its central industrial property office a translation of the patent as granted, amended or limited in one of its official languages at his option or, where that State has prescribed the use of one specific official language, in that language. The period for supplying the translation shall end three months after the date on which the mention of the grant, maintenance in amended form, or limitation of the European patent is published in the European Patent Bulletin, unless the State concerned prescribes a longer period.

(2) Any Contracting State which has adopted provisions pursuant to paragraph 1 may prescribe that the [...] proprietor of the patent must pay all or part of the costs of publication of such translation within a period laid down by that State.

(3) Any Contracting State may prescribe that in the event of failure to observe the provisions adopted in accordance with paragraphs 1 and 2, the European patent shall be deemed to be void ab initio in that State.

### Article 66  Equivalence of European filing with national filing

A European patent application which has been accorded a date of filing shall, in the designated Contracting States, be equivalent to a regular national filing, where appropriate with the priority claimed for the European patent application.

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey strikethrough** = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 67 EPC
(Preparatory documents: MR/6/00, pages 3-5; MR/24/00, page 73)

1. The drafting of Article 67(1) EPC has been clarified (see Articles 54(3), 60(2) and 69(2) EPC). In addition, the wording of Article 67(1), (2) and (4) EPC has been amended under Article 3(1) of the Revision Act (alignment in the three official languages, minor and consequential amendments).

2. The revised Article 67 EPC is applicable to

| EPs already granted at the time of EPC 2000 entry into force |
| EP applications pending at the time of EPC 2000 entry into force |
| EP applications filed on or after the time of EPC 2000 entry into force |
### Article 67 Rights conferred by a European patent application after publication

#### EPC 1973

(1) A European patent application shall, from the date of its publication under Article 93, provisionally confer upon the applicant such protection as is conferred by Article 64, in the Contracting States designated in the application as published.

(2) Any Contracting State may prescribe that a European patent application shall not confer such protection as is conferred by Article 64. However, the protection attached to the publication of the European patent application may not be less than that which the laws of the State concerned attach to the compulsory publication of unexamined national patent applications. In any event, every State shall ensure at least that, from the date of publication of a European patent application, the applicant can claim compensation reasonable in the circumstances from any person who has used the invention in the said State in circumstances where that person would be liable under national law for infringement of a national patent.

(3) Any Contracting State which does not have as an official language the language of the proceedings may prescribe that provisional protection in accordance with paragraphs 1 and 2 above shall not be effective until such time as a translation of the claims in one of its official languages at the option of the applicant or, where that State has prescribed the use of one specific official language, in that language:

(a) has been made available to the public in the manner prescribed by national law, or

(b) has been communicated to the person using the invention in the said State.

(4) The European patent application shall be deemed never to have had the effects set out in paragraphs 1 and 2 above when it has been withdrawn, deemed to be withdrawn or finally refused. The same shall apply in respect of the effects of the European patent application in a Contracting State the designation of which is withdrawn or deemed to be withdrawn.

#### EPC 2000

(1) A European patent application shall, from the date of its publication [...], provisionally confer upon the applicant such the protection as is conferred provided for by Article 64, in the Contracting States designated in the application [...].

(2) Any Contracting State may prescribe that a European patent application shall not confer such protection as is conferred by Article 64. However, the protection attached to the publication of the European patent application may not be less than that which the laws of the State concerned attach to the compulsory publication of unexamined national patent applications. In any event, every each State shall ensure at least that, from the date of publication of a European patent application, the applicant can claim compensation reasonable in the circumstances from any person who has used the invention in the said State in circumstances where that person would be liable under national law for infringement of a national patent.

(3) Unchanged

(4) The European patent application shall be deemed never to have had the effects set out in paragraphs 1 and 2 above when it has been withdrawn, deemed to be withdrawn or finally refused. The same shall apply in respect of the effects of the European patent application in a Contracting State the designation of which is withdrawn or deemed to be withdrawn.

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey** **strikethrough** = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 68 EPC

(Preparatory documents: CA/PL 29/99 Rev. 1; CA/PL 19/00; CA/PL PV 13, points 105-107, 133; CA/PL PV 14, points 24-27; CA/100/00, pages 53-54; CA/124/00, point 18; CA/125/00, points 91-93; MR/2/00, pages 55-56; MR/10/00; MR/24/00, pages 73-74)

1. The revised Article 68 EPC incorporates limitation proceedings (see Articles 105a, 105b and 105c EPC) and national revocation proceedings into the provisions previously governing only opposition proceedings, whereby the European patent is deemed not to have had effect, from the outset, to the extent that the patent has been revoked or limited.

2. Article 68 EPC thus uniformly establishes the retroactive effect of limiting or revoking a European patent in opposition, limitation and (national) revocation proceedings. The inclusion of national revocation proceedings reflects the fact that the revocation of European patents now has an ex tunc effect in all of the contracting states, formalising the harmonisation achieved in that respect.

3. Finally, the word "European" has been added to the wording of Article 68 EPC under Article 3(1) of the Revision Act (alignment in the three official languages).

4. The revised Article 68 EPC is applicable to

| EPs already granted at the time of EPC 2000 entry into force | ■ |
| EP applications pending at the time of EPC 2000 entry into force | ■ |
| EPs granted on EP applications pending at the time of EPC 2000 entry into force | ■ |
| EP applications filed on or after the time of EPC 2000 entry into force | ■ |

ARTICLE 69 EPC

(Preparatory documents: CA/PL 25/00 Add. 2; CA/PL PV 14, points 227-233; CA/100/00, pages 55-58; CA/124/00, point 19; CA/125/00, points 94-104; MR/2/00, pages 57-62; MR/24/00, pages 74-79)

1. Pursuant to Article 69(1) EPC 1973, the extent of protection of a European patent is determined by the "terms" of the claims. The expressions "Inhalt", "terms", "teneur" are unclear in scope and do not have the same meaning in all three official languages. The corresponding provision in the WIPO Basic Proposal for a Patent Law Treaty of 1991 did not include this particular construction, and merely set forth that the extent of protection shall be determined by the claims. The reference to the "terms" of the claims can also be dispensed with in view of the Protocol on the Interpretation of Article 69 EPC. Article 69(1) EPC is therefore redrafted accordingly.

2. The revised Article 69(2), first sentence, EPC clarifies that the extent of protection of the European patent application is determined by the claims as contained in the published application. This is either the European patent application published under Article 93 EPC or the Euro-PCT application published pursuant to Article 153(3) or (4) EPC 2000.

The revised Article 69(2), second sentence, EPC now not only refers to opposition proceedings, but also to the new limitation and to national revocation proceedings. A limitation of the European patent in any of these proceedings retroactively limits the extent of protection conferred by the application (see Article 68 EPC 2000).

3. Finally, the words "European patent" have been deleted from Article 69(2) EPC under Article 3(1) of the Revision Act (alignment in the three official languages).

4. The revised Article 69 EPC is applicable to

| EPs already granted at the time of EPC 2000 entry into force | ■ |
| EP applications pending at the time of EPC 2000 entry into force | ■ |
| EPs granted on EP applications pending at the time of EPC 2000 entry into force | ■ |
| EP applications filed on or after the time of EPC 2000 entry into force | ■ |
**Article 68  Effect of revocation or limitation of the European patent**

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>The European patent application and the resulting patent shall be deemed not to have had, as from the outset, the effects specified in Articles 64 and 67, to the extent that the patent has been revoked in opposition proceedings.</td>
<td>The European patent application and the resulting European patent shall be deemed not to have had, [... from the outset, the effects specified in Articles 64 and 67, to the extent that the patent has been revoked or limited in opposition, limitation or revocation proceedings.</td>
</tr>
</tbody>
</table>

**Article 69  Extent of protection**

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The extent of the protection conferred by a European patent or a European patent application shall be determined by the terms of the claims. Nevertheless, the description and drawings shall be used to interpret the claims. For the period up to grant of the European patent, the extent of the protection conferred by the European patent application shall be determined by the latest filed claims contained in the publication under Article 93. However, the European patent as granted or as amended in opposition proceedings shall determine retroactively the protection conferred by the European patent application, in so far as such protection is not thereby extended.</td>
<td>(1) The extent of the protection conferred by a European patent or a European patent application shall be determined by [...] the claims. Nevertheless, the description and drawings shall be used to interpret the claims. For the period up to grant of the European patent, the extent of the protection conferred by the European patent application shall be determined by the [...] claims contained in the application as published. However, the European patent as granted or as amended in opposition, limitation or revocation proceedings shall determine retroactively the protection conferred by the European patent application, in so far as such protection is not thereby extended.</td>
</tr>
</tbody>
</table>

**bold […] = changes and deletions adopted by the Diplomatic Conference (November 2000)  
grey strikethrough = changes and deletions adopted by the Administrative Council (June 2001)**
PROTOCOL ON THE INTERPRETATION OF ARTICLE 69 EPC
(Preparatory documents: see Article 69 EPC)

1. The provisions governing the extent of protection conferred by a European patent, i.e. Article 69 EPC 1973 and the Protocol on its interpretation, have turned out not to achieve, to the extent desired, the goal of ensuring as uniform an application and interpretation as possible. In particular, this is the case regarding the treatment of so-called equivalents.

In applying these provisions in litigation concerning the infringement of European patents, the national courts of the EPC contracting states have tried since the beginning to develop as harmonised a practice as possible. However, despite some progress, not least due to regular European Patent Judges’ Symposia, case law has failed so far to develop Europe-wide uniform criteria and rules for the interpretation of European patents and the assessment of their extent of protection.

2. In order to strengthen and clarify the extent of protection under Article 69 EPC, and to contribute to a more uniform court practice in Europe, the Protocol on the Interpretation of Article 69 EPC has been supplemented by a provision regarding the significance of equivalents. The provision is inspired from the WIPO Basic Proposal for a Patent Law Treaty of 1991.

3. Finally, the wording of Article 1 of the Protocol on the Interpretation of Article 69 EPC has been amended under Article 3(1) of the Revision Act (alignment in the three official languages, minor and consequential amendments).

4. The revised Protocol on the Interpretation of Article 69 EPC is applicable to
   - EPs already granted at the time of EPC 2000 entry into force
   - EPs granted on EP applications pending at the time of EPC 2000 entry into force
### Protocol on the Interpretation of Article 69 EPC

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Article 69</strong> should not be interpreted in the sense that the extent of the protection conferred by a European patent is to be understood as that defined by the strict, literal meaning of the wording used in the claims, the description and drawings being employed only for the purpose of resolving an ambiguity found in the claims. Neither should it be interpreted in the sense that the claims serve only as a guideline and that the actual protection conferred may extend to what, from a consideration of the description and drawings by a person skilled in the art, the patentee has contemplated. On the contrary, it is to be interpreted as defining a position between these extremes which combines a fair protection for the patentee with a reasonable degree of certainty for third parties.</td>
<td></td>
</tr>
<tr>
<td>Article 69 should not be interpreted in the sense as meaning that the extent of the protection conferred by a European patent is to be understood as that defined by the strict, literal meaning of the wording used in the claims, the description and drawings being employed only for the purpose of resolving an ambiguity found in the claims. Neither should it be interpreted in the sense taken to mean that the claims serve only as a guideline and that the actual protection conferred may extend to what, from a consideration of the description and drawings by a person skilled in the art, the patentee has contemplated. On the contrary, it is to be interpreted as defining a position between these extremes which combines a fair protection for the patentee with a reasonable degree of legal certainty for third parties.</td>
<td></td>
</tr>
</tbody>
</table>

*There is nothing equivalent to this provision in the EPC 1973.*

---

**Article 1**

**General principles**

**Article 2**

**Equivalents**

*For the purpose of determining the extent of protection conferred by a European patent, due account shall be taken of any element which is equivalent to an element specified in the claims.*
ARTICLE 70 EPC
(Preparatory documents: MR/6/00, pages 3-4; MR/24/00, page 79)

1. The amendments to Article 14(2) EPC necessitate a clarification in Article 70(2) EPC.

   At the same time, the opportunity has been taken to rectify the scope of the provision: if a European patent application is filed in a language which is not an official language of the EPO, that text is – as hitherto – the European patent application as filed, not only for the purpose mentioned in Article 70(2) EPC 1973, but also for the purposes of Articles 54(3), 61(1)(b) and (2), 76(1), 100(c), 123(2) and 138(1)(c) EPC.

2. A number of changes have been made to Article 70(3) and (4) EPC under Article 3(1) of the Revision Act (alignment in the three official languages, minor and consequential amendments).

3. The revised Article 70 EPC is applicable to

   | EPs already **granted** at the time of EPC 2000 entry into force | ■ |
   | EP applications **pending** at the time of EPC 2000 entry into force | ■ |
   | EP applications **filed on or after** the time of EPC 2000 entry into force | ■ |
### Article 70

**Authentic text of a European patent application or European patent**

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>(1)</em> The text of a European patent application or a European patent in the language of the proceedings shall be the authentic text in any proceedings before the European Patent Office and in any Contracting State.</td>
<td><em>(1)</em> Unchanged</td>
</tr>
<tr>
<td><em>(2)</em> However, in the case referred to in Article 14, paragraph 2, the original text shall, in proceedings before the European Patent Office, constitute the basis for determining whether the subject-matter of the application or patent extends beyond the content of the application as filed.</td>
<td><em>(2)</em> If, however, the European patent application has been filed in a language which is not an official language of the European Patent Office, that text shall be the application as filed within the meaning of this Convention.</td>
</tr>
<tr>
<td><em>(3)</em> Any Contracting State may provide that a translation, as provided for in this Convention, in an official language of that State, shall in that State be regarded as authentic, except for revocation proceedings, in the event of the application or patent in the language of the translation conferring protection which is narrower than that conferred by it in the language of the proceedings.</td>
<td><em>(3)</em> Any Contracting State may provide that a translation into one of its official languages, as provided for in this Convention, in an official language of that State, prescribed by it according to this Convention, shall in that State be regarded as authentic, except for revocation proceedings, in the event of the European patent application or European patent in the language of the translation conferring protection which is narrower than that conferred by it in the language of the proceedings.</td>
</tr>
<tr>
<td><em>(4)</em> Any Contracting State which adopts a provision under paragraph 3:</td>
<td><em>(4)</em> Any Contracting State which adopts a provision under paragraph 3:</td>
</tr>
<tr>
<td><em>(a)</em> must allow the applicant for or proprietor of the patent to file a corrected translation of the European patent application or European patent. Such corrected translation shall not have any legal effect until any conditions established by the Contracting State under Article 65, paragraph 2, and Article 67, paragraph 3, have been complied with mutatis mutandis;</td>
<td><em>(a)</em> must allow the applicant for or proprietor of the patent to file a corrected translation of the European patent application or European patent. Such corrected translation shall not have any legal effect until any conditions established by the Contracting State under Article 65, paragraph 2, and Article 67, paragraph 3, have been complied with mutatis mutandis;</td>
</tr>
<tr>
<td><em>(b)</em> may prescribe that any person who, in that State, in good faith is using or has made effective and serious preparations for using an invention the use of which would not constitute infringement of the application or patent in the original translation may, after the corrected translation takes effect, continue such use in the course of his business or for the needs thereof without payment.</td>
<td><em>(b)</em> may prescribe that any person who, in that State, in good faith is using has used or has made effective and serious preparations for using an invention the use of which would not constitute infringement of the application or patent in the original translation may, after the corrected translation takes effect, continue such use in the course of his business or for the needs thereof without payment.</td>
</tr>
</tbody>
</table>

**bold** [..] = changes and deletions adopted by the Diplomatic Conference (November 2000)  
**grey** strikethrough = changes and deletions adopted by the Administrative Council (June 2001)
CHAPTER IV

ARTICLES 71 to 73 EPC are unchanged.

ARTICLE 74 EPC

An editorial amendment to Article 74 EPC has been made under Article 3(1) of the Revision Act.
CHAPTER IV The European patent application as an object of property

Article 71 Transfer and constitution of rights

A European patent application may be transferred or give rise to rights for one or more of the designated Contracting States.

Article 72 Assignment

An assignment of a European patent application shall be made in writing and shall require the signature of the parties to the contract.

Article 73 Contractual licensing

A European patent application may be licensed in whole or in part for the whole or part of the territories of the designated Contracting States.

Article 74 Law applicable

Unless otherwise specified in this Convention, the European patent application as an object of property shall, in each designated Contracting State and with effect for such State, be subject to the law applicable in that State to national patent applications.
PART III

The title of Part III has been amended under Article 3(1) of the Revision Act.

CHAPTER I

ARTICLE 75 EPC

(Preparatory documents: CA/PL 12/00; CA/PL PV 13, point 34; CA/PL PV 14, point 6; CA/100/00, pages 59-60; MR/2/00, pages 63-64; MR/24/00, page 79)

1. Under Article 75(1)(a) EPC 1973, the filing of European patent applications is restricted to the EPO in Munich and to its branch at The Hague. The provision does not reflect the practice of the EPO, since filing offices have been set up by decision of the President both in the Berlin sub-Office and in the EPO's "Pschorrhöfe" building in Munich (see OJ EPO 1989, 218 and OJ EPO 1991, 223 respectively).

2. Therefore, the geographic restriction to Munich and The Hague is removed. Provisions determining where European patent applications shall be filed are more appropriately inserted into the Implementing Regulations (see Rule 35 EPC 2000).

3. In view of Article 76(1) EPC, which provides that any European divisional application shall be filed directly with the EPO, Article 75(3) EPC is redundant and thus deleted as unnecessary, whilst a reminder referring to Article 76(1) EPC is added to Article 75(1)(b) EPC.

4. Further changes to the English version of Article 75 EPC are intended to render it more consistent with its French and German counterparts. Finally, minor editorial amendments have been made to Article 75(1)(a)-(b) EPC under Article 3(1) of the Revision Act.

5. The revised Article 75 EPC is applicable to EP applications filed on or after the time of EPC 2000 entry into force.
PART III THE EUROPEAN PATENT APPLICATION APPLICATION FOR EUROPEAN PATENTS

Chapter I Filing and requirements of the European patent application

Article 75 Filing of the a European patent application

EPC 1973

(1) A European patent application may be filed:

(a) at the European Patent Office at Munich or its branch at The Hague, or

(b) if the law of a Contracting State so permits, at the central industrial property office or other competent authority of that State. An application filed in this way shall have the same effect as if it had been filed on the same date at the European Patent Office.

(2) The provisions of paragraph 1 shall not preclude the application of legislative or regulatory provisions which, in any Contracting State:

(a) govern inventions which, owing to the nature of their subject-matter, may not be communicated abroad without the prior authorisation of the competent authorities of that State, or

(b) prescribe that each application is to be filed initially with a national authority or make direct filing with another authority subject to prior authorisation.

(3) No Contracting State may provide for or allow the filing of European divisional applications with an authority referred to in paragraph 1(b).

EPC 2000

(1) A European patent application may be filed:

(a) at with the European Patent Office, [...] or

(b) if the law of a Contracting State so permits, and subject to Article 76, paragraph 1, at with the central industrial property office or other competent authority of that State. Any application filed in this way shall have the same effect as if it had been filed on the same date at with the European Patent Office.

(2) [...] Paragraph 1 shall not preclude the application of legislative or regulatory provisions which, in any Contracting State:

(a) Unchanged

(b) prescribe that any application is to be filed initially with a national authority or make direct filing with another authority subject to prior authorisation.

(3) Deleted

bold [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)
grey strikethrough = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 76 EPC
(Preparatory documents: CA/PL 12/00; CA/PL PV 13, points 31-32 and 34; CA/PL PV 14, points 28-35; CA/100/00, pages 61-62; MR/2/00, pages 65-66; MR/24/00, page 7958 )

1. Article 76 EPC governs the filing of European divisional applications. In order to increase the flexibility of the EPC in this respect and in line with the amendment to Article 75(1) EPC, the geographic restriction contained in Article 76(1) EPC – to the effect that European divisional applications shall be filed in Munich or at the branch in The Hague – is removed. Provisions determining where such divisional applications may be filed are more appropriately found in the Implementing Regulations (see Rule 36(2) EPC 2000). The further changes in the English version of Article 76(1) are stylistic in nature.

2. Article 76 EPC is streamlined in that paragraph 3 is deleted and a standard clause referring to the Implementing Regulations is inserted in paragraph 1, regarding any further rules applicable to the procedure to be followed upon filing a divisional application (see Rule 36 EPC 2000).

3. The designation system contained in Article 79 EPC has been modified, thereby entailing a consequential amendment of Article 76(2) EPC. Whereas Article 79(1) EPC 1973 provided that contracting states for which protection is sought had to be designated in the request for grant, new Article 79(1) EPC provides that all the contracting states party to the EPC at the time of the filing of a European patent application shall be deemed to be designated in the request for grant. However, the designation of a contracting state may be withdrawn by the applicant at any time, or deemed withdrawn through non-payment of the designation fee. Therefore, Article 76(2) EPC is amended accordingly, to ensure that only those contracting states which remain designated in the earlier application at the time of filing of a divisional application are deemed to be designated in the divisional application.

4. The revised Article 76 EPC is applicable to EP applications filed on or after the time of EPC 2000 entry into force □
<table>
<thead>
<tr>
<th>Article 76</th>
<th>European divisional applications</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EPC 1973</strong></td>
<td><strong>EPC 2000</strong></td>
</tr>
<tr>
<td>(1) A European divisional application must be filed directly with the European Patent Office at Munich or its branch at The Hague. It may be filed only in respect of subject-matter which does not extend beyond the content of the earlier application as filed; in so far as this provision is complied with, the divisional application shall be deemed to have been filed on the date of filing of the earlier application and shall have the benefit of any right to priority.</td>
<td>(1) A European divisional application <strong>shall</strong> be filed directly with the European Patent Office [...] <strong>in accordance with the Implementing Regulations</strong>. It may be filed only in respect of subject-matter which does not extend beyond the content of the earlier application as filed; in so far as this <strong>requirement</strong> is complied with, the divisional application shall be deemed to have been filed on the date of filing of the earlier application and shall <strong>enjoy</strong> any right of priority.</td>
</tr>
<tr>
<td>(2) The European divisional application shall not designate Contracting States which were not designated in the earlier application.</td>
<td>(2) All the Contracting States designated in the earlier application <strong>at the time of filing of a</strong> European divisional application <strong>shall be deemed to be designated in the divisional application.</strong></td>
</tr>
<tr>
<td>(3) The procedure to be followed in carrying out the provisions of paragraph 1, the special conditions to be complied with by a divisional application and the time limit for paying the filing, search and designation fees are laid down in the Implementing Regulations.</td>
<td>(3) <strong>Deleted</strong> – see revised wording of paragraph 1</td>
</tr>
</tbody>
</table>

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey** strikethrough = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 77 EPC

(Preparatory documents: CA/PL 12/00; CA/PL PV 13, points 31-32 and 34; CA/PL PV 14, points 36-37; CA/100/00, pages 63-66; MR/2/00, pages 67-70; MR/24/00, page 79)

1. Article 77 EPC deals with the forwarding to the EPO of European patent applications filed at the central industrial property offices of the contracting states.

2. In the interest of increasing the flexibility of the EPC, Article 77(2) and (3) EPC and some details contained in Article 77(1) and (5) EPC are deleted within the context of the streamlining exercise. Their substance is transferred to the Implementing Regulations (see Rule 37 EPC 2000).

3. In addition, a minor editorial amendment has been made to Article 77(3) EPC under Article 3(1) of the Revision Act.

4. The revised Article 77 EPC is applicable to EP applications filed on or after the time of EPC 2000 entry into force.
<table>
<thead>
<tr>
<th>Article 77</th>
<th>Forwarding of European patent applications</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EPC 1973</strong></td>
<td></td>
</tr>
<tr>
<td>(1) The central industrial property office of a Contracting State shall be obliged to forward to the European Patent Office, in the shortest time compatible with the application of national law concerning the secrecy of inventions in the interests of the State, any European patent applications which have been filed with that office or with other competent authorities in that State.</td>
<td></td>
</tr>
<tr>
<td>(2) The Contracting States shall take all appropriate steps to ensure that European patent applications, the subject of which is obviously not liable to secrecy by virtue of the law referred to in paragraph 1, shall be forwarded to the European Patent Office within six weeks after filing.</td>
<td></td>
</tr>
<tr>
<td>(3) European patent applications which require further examination as to their liability to secrecy shall be forwarded in such manner as to reach the European Patent Office within four months after filing, or, where priority has been claimed, fourteen months after the date of priority.</td>
<td></td>
</tr>
<tr>
<td>(4) A European patent application, the subject of which has been made secret, shall not be forwarded to the European Patent Office.</td>
<td></td>
</tr>
<tr>
<td>(5) European patent applications which do not reach the European Patent Office before the end of the fourteenth month after filing or, if priority has been claimed, after the date of priority, shall be deemed to be withdrawn. The filing, search and designation fees shall be refunded.</td>
<td></td>
</tr>
<tr>
<td><strong>EPC 2000</strong></td>
<td></td>
</tr>
<tr>
<td>(1) The central industrial property office of a Contracting State shall [...] forward to the European Patent Office [...] any European patent application [...] filed with it or [...] any other competent authority in that State, in accordance with the Implementing Regulations.</td>
<td></td>
</tr>
<tr>
<td>(2) <strong>Deleted</strong> – incorporated in the Implementing Regulations (see Rule 37 EPC 2000)</td>
<td></td>
</tr>
<tr>
<td>(3) <strong>Deleted</strong> – incorporated in the Implementing Regulations (see Rule 37 EPC 2000)</td>
<td></td>
</tr>
<tr>
<td>(4) <strong>Becomes</strong> (2) – wording unchanged</td>
<td></td>
</tr>
<tr>
<td>(3) A European patent application not forwarded to the European Patent Office in due time shall be deemed to be withdrawn. [...]</td>
<td></td>
</tr>
</tbody>
</table>

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey** strikethrough = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 78 EPC
(Preparatory documents: CA/PL 12/00; CA/PL PV 13, points 31-34; CA/PL PV 14, point 6; CA/100/00, pages 67-68; MR/2/00, pages 71-72; MR/24/00, page 79)

1. Article 78 EPC governs the requirements which must be fulfilled by a European patent application.

2. The modifications brought to Article 78 EPC are not substantive in nature. Within the context of the streamlining exercise, Article 78(3) EPC has been deleted and a similar clause inserted in new Article 78(1) EPC.

3. The legal consequence of the failure to pay the filing or the search fee in due time, to be found in Article 90(3) EPC 1973, is added to Article 78(2) EPC 2000.

4. Finally, an editorial amendment has been made to Article 78(1) EPC under Article 3(1) of the Revision Act.

5. The revised Article 78 EPC is applicable to EP applications filed on or after the time of EPC 2000 entry into force.

ARTICLE 79 EPC
(Preparatory documents: CA/PL 13/00; CA/PL PV 13, points 35-37; CA/PL PV 14, point 6; CA/100/00, pages 69-70; MR/2/00, pages 73-74; MR/24/00, pages 79-80)

1. Article 3 EPC specifies that the grant of a European patent may be requested for one or more of the contracting states. This is effected through the mechanism of Article 79 EPC, which provides that the request for the grant of a European patent shall contain the designation of the contracting state(s) in which protection is desired.

2. Initially, contracting states had to be positively designated in the request for grant. However, this practice caused problems since, in principle, a later designation made after the filing date of the European patent application was inadmissible. In order to alleviate these difficulties, the Request for Grant form was amended to include a pre-crossed, precautionary designation of all contracting states. With the 1997 fee reform, the pre-crossed box in the Request for Grant form became an express designation of all the contracting states, and a system was introduced whereby applicants could indicate their intention to pay designation fees for specific countries. In the wake of the 1999 fee reform, which introduced a ceiling for the payment of designation fees – fixed at 7 designation fees – an ever-increasing number of applicants effectively validly designate all the contracting states.

3. Therefore, the EPC is revised to reflect this practice more accurately, by providing in Article 79(1) EPC that the applicant shall be deemed to have designated all the contracting states which are party to the EPC at the time the application is filed. Applicants continue to have the option of withdrawing designations pursuant to Article 79(3) EPC and may do so at the outset, upon filing the European patent application, if they so wish.

4. Article 79(2) EPC is also amended by providing that the designation of a contracting state may be subject to the payment of a designation fee, turning the clause from a mandatory to an enabling one and thereby increasing the flexibility of the EPC on this point.

5. Finally, the time limit for the payment of designation fees contained in Article 79(2), second sentence, EPC and the last two sentences of Article 79(3) EPC are deleted, and their substance is moved to the Implementing Regulations (see Rule 39 EPC 2000).

6. A minor amendment has been made to Article 79(1) EPC under Article 3(1) of the Revision Act.

7. The revised Article 79 EPC is applicable to EP applications filed on or after the time of EPC 2000 entry into force.
## Article 78 Requirements of a European patent application

### EPC 1973

1. A European patent application shall contain:
   a. a request for the grant of a European patent;
   b. a description of the invention;
   c. one or more claims;
   d. any drawings referred to in the description or the claims;
   e. an abstract.

2. A European patent application shall be subject to the payment of the filing fee and the search fee within one month after the filing of the application.

3. A European patent application must satisfy the conditions laid down in the Implementing Regulations.

### EPC 2000

1. A European patent application shall contain:
   a. a request for the grant of a European patent;
   b. a description of the invention;
   c. one or more claims;
   d. any drawings referred to in the description or the claims;
   e. an abstract, and satisfy the conditions laid down in the Implementing Regulations.

2. A European patent application shall be subject to the payment of the filing fee and the search fee within one month after the filing of the application.

3. Deleted – see revised paragraph 1

## Article 79 Designation of Contracting States

### EPC 1973

1. The request for the grant of a European patent shall contain the designation of the Contracting State or States in which protection for the invention is desired.

2. The designation of a Contracting State shall be subject to the payment of the designation fee. The designation fees shall be paid within six months of the date on which the European Patent Bulletin mentions the publication of the European search report.

3. The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent. Withdrawal of the designation of all the Contracting States shall be deemed to be a withdrawal of the European patent application. Designation fees shall not be refunded.

### EPC 2000

1. All the Contracting States party to this Convention at the time of filing of a European patent application shall be deemed to be designated in the request for grant of a European patent.

2. The designation of a Contracting State may be subject to the payment of a designation fee. [...]

3. The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent. [...]

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey** strikethrough = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 80 EPC

(Preparatory documents: CA/PL 5/00; CA/PL PV 12, points 37-42; CA/PL PV 14, points 38-47; CA/100/00, pages 71-72; CA/124/00, point 20; CA/125/00, points 105-109; MR/2/00, pages 75-76; MR/24/00, page 80)

1. Article 80 EPC 2000 no longer lists the requirements for the accordance of a date of filing; these are transferred to the Implementing Regulations (see Rule 40 EPC 2000), which reflect the worldwide standard laid down in Article 5 of the Patent Law Treaty 2000 (PLT).

2. Article 5 PLT states that a Contracting Party must accord a date of filing when its Patent Office receives
   - an indication that a patent is sought,
   - information allowing the applicant to be identified or contacted, and
   - a description, whereby the description may be in any language.

   Furthermore, Article 5 PLT contains many details, in particular on the possibility of re-dating the application when elements are received late, and refers to the PLT Regulations where electronic filing of an application is dealt with. Therefore, it is appropriate to consolidate the EPC provisions on the accordance of a filing date in the Implementing Regulations (see Rule 40 EPC 2000).

3. The revised Article 80 EPC is applicable to EP applications filed on or after the time of EPC 2000 entry into force.

ARTICLES 81 and 82 EPC are unchanged.

ARTICLE 83 EPC

The wording of Article 83 EPC has been amended under Article 3(1) of the Revision Act (minor and consequential amendments).

ARTICLES 84 and 85 EPC

The titles of Articles 84 and 85 EPC as well as the wording of Article 85 EPC have been amended under Article 3(1) of the Revision Act (alignment in the three official languages, minor and consequential amendments).
<table>
<thead>
<tr>
<th>Article 80</th>
<th>Date of filing</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EPC 1973</strong></td>
<td><strong>EPC 2000</strong></td>
</tr>
<tr>
<td>The date of filing of a European patent application shall be the date on which documents filed by the applicant contain:</td>
<td>The date of filing of a European patent application shall be the date on which the requirements laid down in the Implementing Regulations are fulfilled.</td>
</tr>
<tr>
<td>(a) an indication that a European patent is sought;</td>
<td></td>
</tr>
<tr>
<td>(b) the designation of at least one Contracting State;</td>
<td></td>
</tr>
<tr>
<td>(c) information identifying the applicant;</td>
<td></td>
</tr>
<tr>
<td>(d) a description and one or more claims in one of the languages referred to in Article 14, paragraphs 1 and 2, even though the description and the claims do not comply with the other requirements of this Convention.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 81</th>
<th>Designation of the inventor</th>
</tr>
</thead>
<tbody>
<tr>
<td>The European patent application shall designate the inventor. If the applicant is not the inventor or is not the sole inventor, the designation shall contain a statement indicating the origin of the right to the European patent.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 82</th>
<th>Unity of invention</th>
</tr>
</thead>
<tbody>
<tr>
<td>The European patent application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 83</th>
<th>Disclosure of the invention</th>
</tr>
</thead>
<tbody>
<tr>
<td>The European patent application must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 84</th>
<th>The Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>The claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 85</th>
<th>The Abstract</th>
</tr>
</thead>
<tbody>
<tr>
<td>The abstract shall merely serve as technical information only; it may not be taken into account for any other purpose, in particular not for the purpose of interpreting the scope of the protection sought nor for the purpose of applying Article 54, paragraph 3.</td>
<td></td>
</tr>
</tbody>
</table>

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)  
**grey** strikethrough = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 86 EPC

(Preparatory documents: CA/PL 12/00; CA/PL PV 13, points 31-34; CA/PL PV 14, point 6; CA/100/00, pages 73-74; MR/2/00, pages 77-78; MR/24/00, page 80)

1. Article 86 EPC governs the payment of renewal fees for European patent applications which are still pending after 2 years from the date of filing of the application.

2. The amendment of the first sentence of Article 86(1) EPC is a drafting improvement.

3. Article 86 EPC is streamlined by deleting paragraph 2, which deals with late payment of renewal fees within 6 months of the due date, and moving its substance to the Implementing Regulations (see Rule 51(2) EPC 2000).

4. Article 86(3) EPC is also deleted and the legal consequence of a failure to pay the renewal fee in due time is added to Article 86(1) EPC. It is emphasised that this does not modify the current situation, and under the Implementing Regulations to the EPC 2000 the application shall only be deemed to be withdrawn if the renewal fee and any additional fee have not been validly paid within the prescribed grace period for payment (see Rule 51(2) EPC 2000).

5. The second sentence of Article 86(3) EPC, to the effect that the EPO alone shall be competent to decide when the application is deemed to be withdrawn, is superfluous and therefore deleted.

6. Finally, the title and the wording of Article 86 EPC have been amended under Article 3(1) of the Revision Act.

7. The revised Article 86 EPC is applicable to

- EP applications pending at the time of EPC 2000 entry into force
- EP applications filed on or after the time of EPC 2000 entry into force
Article 86  Renewal fees for a the European patent application

EPC 1973

(1) Renewal fees shall be paid to the European Patent Office in accordance with the Implementing Regulations in respect of European patent applications. These fees shall be due in respect of the third year and each subsequent year, calculated from the date of filing of the application.

(2) When a renewal fee has not been paid on or before the due date, the fee may be validly paid within six months of the said date, provided that the additional fee is paid at the same time.

(3) If the renewal fee and any additional fee have not been paid in due time the European patent application shall be deemed to be withdrawn. The European Patent Office alone shall be competent to decide this.

(4) The obligation to pay renewal fees shall terminate with the payment of the renewal fee due in respect of the year in which the mention of the grant of the European patent is published.

EPC 2000

(1) Renewal fees for a the European patent application shall be paid to the European Patent Office in accordance with the Implementing Regulations [...]. These fees shall be due in respect of the third year and each subsequent year, calculated from the date of filing of the application. If a renewal fee [...] is not paid in due time, the [...] application shall be deemed to be withdrawn.

(2) Deleted – incorporated in the Implementing Regulations (see Rule 51(2) EPC 2000)

(3) Deleted – see the amendment to paragraph 1

(2) The obligation to pay renewal fees shall terminate with the payment of the renewal fee due in respect of the year in which the mention of the grant of the European patent is published in the European Patent Bulletin.
CHAPTER II

ARTICLE 87 EPC
(Preparatory documents: CA/PL 16/98; CA/PL 9/99 and Rev.1; CA/PL PV 8, points 5-8; CA/PL PV 9, points 35-40; CA/PL PV 13, points 38-41; CA/PL PV 14, points 48-51; CA/100/00, pages 75-78; CA/124/00, point 21; CA/125/00, points 110-112; MR/2/00, pages 79-82; MR/12/00; MR/24/00, page 80)

1. Article 87 EPC deals with priority rights. Under the EPC 1973, the automatic recognition of these rights is limited to states which are party to the Paris Convention.

2. **Article 87(1) EPC is amended to align it with Article 2 of the TRIPS Agreement**, which requires that priority rights also be extended to first filings made in any WTO member state.

   Furthermore, the wording of **Article 87(1) EPC** is updated by **removing the reference to inventor's certificates**, which is now obsolete.

3. **Article 87(5) EPC 1973 prescribes a mechanism for the mutual recognition of priority rights with third countries where automatic recognition pursuant to Article 87(1) EPC does not apply.** This mechanism is so unwieldy that it has never been activated. Hence, **Article 87(5) EPC is amended in order to make its application a simple, rapid and viable option where the mutual recognition of priority rights between the EPO and a non-Paris Union, non-WTO state is deemed to be desirable.**

4. **New Article 87(5) EPC thus enables the President of the EPO, rather than the Administrative Council, to issue the communication recognising that a first filing at the EPO gives rise to a right of priority, and refers to industrial property authorities rather than to states.** These two changes remove the essentially technical issue of recognition of priority rights from the political arena, so that it can be dealt with more appropriately and effectively at a technical, working level.

   In addition, since the terms for recognising a priority right are well laid down in the Paris Convention, there is no need to set up a comprehensive framework regarding such recognition, and a communication noting the *de facto* mutual recognition of priority rights in conformity with the Paris Convention should suffice. Therefore, the requirement that a bilateral or multilateral agreement be concluded is removed.

   The requirement that the other country in question accord such priority rights for first filings made in or for any EPC contracting state is also removed, as the retaining of such a requirement would cause Article 87(5) EPC to remain completely unworkable.

5. Finally, in order to ensure greater consistency of the **English version** with its German and French counterparts, the word "notification" in the English version is replaced by "communication". Furthermore, a few editorial amendments have been made to **Article 87(3), (4) and (5) EPC** under Article 3(1) of the Revision Act.

6. **The revised Article 87 EPC is applicable to EP applications filed on or after the time of EPC 2000 entry into force.**
## Chapter II Priority

### Article 87 Priority right

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) A person who has duly filed in or for any State party to the Paris Convention for the Protection of Industrial Property, an application for a patent or for the registration of a utility model or for a utility certificate or for an inventor's certificate, or his successors in title, shall enjoy, for the purpose of filing a European patent application in respect of the same invention, a right of priority during a period of twelve months from the date of filing of the first application.</td>
<td>(1) Any person who has duly filed, in or for (a) any State party to the Paris Convention for the Protection of Industrial Property or (b) any member of the World Trade Organization, an application for a patent, [...] a utility model or a utility certificate [...], or his successor in title, shall enjoy, for the purpose of filing a European patent application in respect of the same invention, a right of priority during a period of twelve months from the date of filing of the first application.</td>
</tr>
<tr>
<td>(2) Every filing that is equivalent to a regular national filing under the national law of the State where it was made or under bilateral or multilateral agreements, including this Convention, shall be recognised as giving rise to a right of priority.</td>
<td>(2) Unchanged</td>
</tr>
<tr>
<td>(3) By a regular national filing is meant any filing that is sufficient to establish the date on which the application was filed, whatever may be the outcome of the application.</td>
<td>(3) A regular national filing is meant any filing that is sufficient to establish the date on which the application was filed, whatever may be the outcome of the application.</td>
</tr>
<tr>
<td>(4) A subsequent application for the same subject-matter as a previous first application and filed in or in respect of the same State shall be considered as the first application for the purposes of determining priority, provided that, at the date of filing the subsequent application, the previous application has been withdrawn, abandoned or refused, without being open to public inspection and without leaving any rights outstanding, and has not served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.</td>
<td>(4) A subsequent application for in respect of the same subject-matter as a previous first application and filed in or in respect of for the same State shall be considered as the first application for the purposes of determining priority, provided that, at the date of filing the subsequent application, the previous application has been withdrawn, abandoned or refused, without being open to public inspection and without leaving any rights outstanding, and has not served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.</td>
</tr>
<tr>
<td>(5) If the first filing has been made in a State which is not a party to the Paris Convention for the Protection of Industrial Property, paragraphs 1 to 4 shall apply only in so far as that State, according to a notification published by the Administrative Council, and by virtue of bilateral or multilateral agreements, grants on the basis of a first filing made at the European Patent Office as well as on the basis of a first filing made in or for any Contracting State and subject to conditions equivalent to those laid down in the Paris Convention, a right of priority having equivalent effect.</td>
<td>(5) If the first filing has been made with an industrial property authority [...] which is not subject to the Paris Convention for the Protection of Industrial Property or the Agreement Establishing the World Trade Organization, paragraphs 1 to 4 shall apply [...] if that authority, according to a communication issued by the President of the European Patent Office [...], recognises that a first filing made at with the European Patent Office [...] gives rise to a right of priority under conditions and with effects equivalent to those laid down in the Paris Convention.</td>
</tr>
</tbody>
</table>

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey strikethrough** = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 88 EPC
(Preparatory documents: CA/PL 17/98; CA/PL PV 8, point 8; CA/PL PV 14, point 6; CA/100/00, pages 79-80; MR/2/00, pages 83-84; MR/24/00, page 80)

1. Article 88(1) EPC relates to the formal requirements for claiming priority. Under the EPC 1973, applicants wishing to claim priority had to file a declaration of priority, a copy of the previous application and, where the latter is not in an official language of the EPO, a translation of the previous application into one of those languages. Further formal conditions were contained in Rule 38 EPC 1973.

2. The formal requirements for claiming priority have evolved in light of changing international standards and the ongoing progress in both electronic communication and international cooperation between patent offices. Thus, the Patent Law Treaty 2000 (PLT) contains rules restricting the requirements for claiming priority which may be imposed on applicants by patent offices.

3. The requirement under Article 88(1) EPC that a copy of the previous application and its translation must be filed in all cases must be altered. Pursuant to both Rule 51 bis.1 (e) PCT (with regard to which the EPO had to make a reservation) and Rule 4(4) PLT, where the earlier application is not in a language accepted by the EPO, a translation of the priority document may only be required where the validity of the priority claim is relevant to the determination of the patentability of the invention concerned.

4. Moreover, Rule 4(3) PLT specifies that where the earlier application was filed at the same Office or is available to that Office from a digital library it accepts, the Office may not require that a copy of the previous application be filed. Although Rule 38(4) EPC 1973 had already relieved the applicant of this obligation in certain specific cases (see the Decision of the President of the EPO dated 22.12.1998, OJ EPO 1999, 80), further alignment of Article 88(1) EPC is necessary to ensure full compliance with the PLT.

5. Therefore, in order to increase the flexibility of the EPC in this respect, all formal requirements for claiming priority contained in Article 88(1) EPC are moved to the Implementing Regulations. Rule 52 EPC 2000 (Declaration of priority) and Rule 53 EPC 2000 (Priority documents) now reflect the norms imposed by the PLT and the PCT.

6. The revised Article 88 EPC is applicable to

- EPs already granted at the time of EPC 2000 entry into force
- EP applications pending at the time of EPC 2000 entry into force
- EP applications filed on or after the time of EPC 2000 entry into force

ARTICLE 89 EPC is unchanged.
Article 88  Claiming priority

EPC 1973

(1) An applicant for a European patent desiring to take advantage of the priority of a previous application shall file a declaration of priority, a copy of the previous application and, if the language of the latter is not one of the official languages of the European Patent Office, a translation of it in one of such official languages. The procedure to be followed in carrying out these provisions is laid down in the Implementing Regulations.

(2) Multiple priorities may be claimed in respect of a European patent application, notwithstanding the fact that they originated in different countries. Where appropriate, multiple priorities may be claimed for any one claim. Where multiple priorities are claimed, time limits which run from the date of priority shall run from the earliest date of priority.

(3) If one or more priorities are claimed in respect of a European patent application, the right of priority shall cover only those elements of the European patent application which are included in the application or applications whose priority is claimed.

(4) If certain elements of the invention for which priority is claimed do not appear among the claims formulated in the previous application, priority may nonetheless be granted, provided that the documents of the previous application as a whole specifically disclose such elements.

EPC 2000

(1) An applicant [...] desiring to take advantage of the priority of a previous application shall file a declaration of priority and any other document required, in accordance with the Implementing Regulations.

(2) Unchanged

(3) Unchanged

(4) Unchanged

Article 89  Effect of priority right

The right of priority shall have the effect that the date of priority shall count as the date of filing of the European patent application for the purposes of Article 54, paragraphs 2 and 3, and Article 60, paragraph 2.
PART IV

ARTICLE 90 EPC

(Preparatory documents CA/PL 5/00; CA/PL PV 12, points 37-42; CA/PL PV 14, point 6; CA/100/00, pages 81-84; MR/2/00, pages 85-88; MR/24/00, page 80)

1. New Article 90(1) EPC incorporates Article 90(1)(a) EPC 1973, and has been redrafted. Reference is made to Rule 55 EPC 2000.

2. Article 90(2) EPC remains in essence the same. The opportunity to correct deficiencies is now provided for in new paragraph 4.

3. New Article 90(3) EPC replaces Articles 90(1)(b) and 91(1) EPC 1973. The details of carrying out the formalities' examination are transferred to the Implementing Regulations (see Rule 57 EPC 2000). The legal consequences addressed in Article 90(3) EPC 1973 are now contained in Articles 14(2) and 78(2) EPC.

4. New Article 90(4) EPC guarantees that the applicant will always be given the opportunity to correct deficiencies, as laid down in Articles 90(2) and 91(2) EPC 1973.

5. The legal effect of any deficiencies established by the EPO and not corrected by the applicant is now included in new Article 90(5) EPC. The wording corresponds to that of Article 91(3) EPC 1973.

The legal effect mentioned in Article 91(4) EPC 1973 needs not be retained in an Article of the EPC. Under new Article 79(2) EPC, the levying of designation fees may be provided for in the Implementing Regulations (see Rule 39(1) EPC 2000). Therefore, the effect of non-payment should also be regulated there (see Rule 39(2) EPC 2000).

Under new Article 90(5) EPC, the omission of the designation of the inventor now also leads to a refusal of the application, and no longer to the application being deemed withdrawn as stated in Article 91(5) EPC 1973. There appears to be no logical reason for the different legal effects in Article 91(3) and (5) EPC 1973. All these deficiencies concern obligations that must, in principle, be fulfilled on filing.

Article 91(6) EPC needs not be retained in an Article of the EPC either, as it regulates a matter concerning the filing date which should be dealt with in the Implementing Regulations to Article 90(1) EPC (see Rule 56 EPC 2000).

6. Finally, the wording of Article 90(3) and (5) EPC has been amended under Article 3(1) of the Revision Act (editorial improvement and correction of oversights).

7. The revised Article 90 EPC is applicable to

| EP applications pending at the time of EPC 2000 entry into force | ■ |
| EP applications filed on or after the time of EPC 2000 entry into force | ■ |
PART IV PROCEDURE UP TO GRANT

<table>
<thead>
<tr>
<th>Article 90 Examination on filing and examination as to formal requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EPC 1973</strong></td>
</tr>
<tr>
<td>(1) The Receiving Section shall examine whether:</td>
</tr>
<tr>
<td>a) the European patent application satisfies the requirements for the accordance of a date of filing;</td>
</tr>
<tr>
<td>b) the filing fee and the search fee have been paid in due time;</td>
</tr>
<tr>
<td>c) in the case provided for in Article 14, paragraph 2, the translation of the European patent application in the language of the proceedings has been filed in due time.</td>
</tr>
<tr>
<td>(2) If a date of filing cannot be accorded, the Receiving Section shall give the applicant an opportunity to correct the deficiencies in accordance with the Implementing Regulations. If the deficiencies are not remedied in due time, the application shall not be dealt with as a European patent application.</td>
</tr>
<tr>
<td>(3) If the filing fee and the search fee have not been paid in due time or, in the case provided for in Article 14, paragraph 2, the translation of the application in the language of the proceedings has not been filed in due time, the application shall be deemed to be withdrawn.</td>
</tr>
</tbody>
</table>

[See Article 91(2) EPC 1973: (2) Where the Receiving Section notes that there are deficiencies which may be corrected, it shall give the applicant an opportunity to correct them in accordance with the Implementing Regulations.]

[See Article 91(3) EPC 1973: (3) If any deficiencies noted in the examination under paragraph 1(a) to (d) are not corrected in accordance with the Implementing Regulations, the application shall be refused; where the provisions referred to in paragraph 1(d) concern the right of priority, this right shall be lost for the application.]

| **EPC 2000** |
| (1) The European Patent Office shall examine, in accordance with the Implementing Regulations, whether the [...] application satisfies the requirements for the accordance of a date of filing. |
| (2) If a date of filing cannot be accorded following the examination under paragraph 1, the application shall not be dealt with as a European patent application. |
| (3) If the European patent application has been accorded a date of filing, the European Patent Office shall examine, in accordance with the Implementing Regulations, whether the requirements in Articles 14, 78 and 81, and, where applicable, Articles 88, paragraph 1, and Article 133, paragraph 2, as well as any other requirement laid down in the Implementing Regulations, have been satisfied. |
| (4) Where the European Patent Office in carrying out the examination under paragraphs 1 or 3 notes that there are deficiencies which may be corrected, it shall give the applicant an opportunity to correct them [...]. |
| (5) If any deficiency noted in the examination under paragraph 3 is not corrected [...], the European patent application shall be refused unless a different legal consequence is provided for by this Convention. Where the deficiency concerns the right of priority, this right shall be lost for the application. |
ARTICLE 91 EPC
(Preparatory documents: CA/PL 5/00; CA/PL PV 12, points 37-42; CA/PL PV 14, point 6; CA/100/00, pages 85-88; MR/2/00, pages 89-92; MR/24/00, page 80)

Article 91 EPC 1973 is deleted in its entirety and will no longer be applicable as from the entry into force of the EPC 2000. All necessary matter is now covered by new Article 90 EPC.
**Article 91**

<table>
<thead>
<tr>
<th><strong>EPC 1973</strong></th>
<th><strong>EPC 2000</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Examination as to formal requirements</td>
<td></td>
</tr>
<tr>
<td>(1) If a European patent application has been accorded a date of filing, and is not deemed to be withdrawn by virtue of Article 90, paragraph 3, the Receiving Section shall examine whether:</td>
<td>(1) See new Article 90(3) and Rule 57 EPC 2000</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) the requirements of Article 133, paragraph 2, have been satisfied;</td>
<td></td>
</tr>
<tr>
<td>(b) the application meets the physical requirements laid down in the Implementing Regulations for the implementation of this provision;</td>
<td></td>
</tr>
<tr>
<td>(c) the abstract has been filed;</td>
<td></td>
</tr>
<tr>
<td>(d) the request for the grant of a European patent satisfies the mandatory provisions of the Implementing Regulations concerning its content and, where appropriate, whether the requirements of this Convention concerning the claim to priority have been satisfied;</td>
<td></td>
</tr>
<tr>
<td>(e) the designation fees have been paid;</td>
<td></td>
</tr>
<tr>
<td>(f) the designation of the inventor has been made in accordance with Article 81;</td>
<td></td>
</tr>
<tr>
<td>(g) the drawings referred to in Article 78, paragraph 1(d), were filed on the date of filing of the application.</td>
<td></td>
</tr>
<tr>
<td>(2) Where the Receiving Section notes that there are deficiencies which may be corrected, it shall give the applicant an opportunity to correct them in accordance with the Implementing Regulations.</td>
<td>(2) See new Article 90(4) EPC</td>
</tr>
<tr>
<td>(3) If any deficiencies noted in the examination under paragraph 1(a) to (d) are not corrected in accordance with the Implementing Regulations, the application shall be refused; where the provisions referred to in paragraph 1(d) concern the right of priority, this right shall be lost for the application.</td>
<td>(3) See new Article 90(5) EPC</td>
</tr>
<tr>
<td>(4) Where, in the case referred to in paragraph 1(e), the designation fee has not been paid in due time in respect of any designated State, the designation of that State shall be deemed to be withdrawn.</td>
<td>(4) Incorporated in the Implementing Regulations (see Rule 39(2) EPC 2000)</td>
</tr>
</tbody>
</table>

**bold […]** = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey strikethrough** = changes and deletions adopted by the Administrative Council (June 2001)
Article 91 **Deleted**

(5) Where, in the case referred to in paragraph 1(f), the omission of the designation of the inventor is not, in accordance with the Implementing Regulations and subject to the exceptions laid down therein, corrected within 16 months after the date of filing of the European patent application or, if priority is claimed, after the date of priority, the application shall be deemed to be withdrawn.

(6) Where, in the case referred to in paragraph 1(g), the drawings were not filed on the date of filing of the application and no steps have been taken to correct the deficiency in accordance with the Implementing Regulations, either the application shall be re-dated to the date of filing of the drawings or any reference to the drawings in the application shall be deemed to be deleted, according to the choice exercised by the applicant in accordance with the Implementing Regulations.

(5) **See new Article 90(5) and Rule 60 EPC 2000**

(6) **Incorporated in the Implementing Regulations**

(see Rule 56 EPC 2000)
ARTICLE 92 EPC
(Preparatory documents: CA/PL 14/00; CA/PL PV 13, points 42-45; CA/PL PV 14, point 6; CA/100/00, pages 89-90; MR/2/00, pages 93-94; MR/24/00, page 81)

1. **Article 92(1) EPC has been redrafted without any change in substance.** The purpose of the Article is to indicate that the EPO is to draw up search reports on pending European applications for which the search fee has been paid. The wording of Article 92(1) EPC 1973 is, however, too restrictive and does not cover cases in which an application is no longer pending for other reasons than being deemed withdrawn under Article 90(3) EPC 1973. Referring simply to "the European patent application" implies that a search is only performed on an application which has a filing date (otherwise it is not a European patent application, see Article 90(2) EPC) and is pending when the search is performed. The basis of the search report (the claims) is retained in new Article 92 EPC which now expressly enshrines the obligation for the EPO to publish the search report (see Article 93(2) EPC 1973). Further details are a matter for the Implementing Regulations (see Rules 61 to 64 EPC 2000).

2. **Article 92(2) EPC is deleted,** it being self-evident that the EPO is obliged to send the search report to the applicant. The transmittal of the search report and of copies of cited documents is a matter for the Implementing Regulations (see Rule 65 EPC 2000).

3. A minor editorial amendment has been made to the title of Article 92 EPC, under Article 3(1) of the Revision Act.

4. The revised Article 92 EPC is applicable to

   - **EP applications pending at the time of EPC 2000 entry into force**
   - **EP applications filed on or after the time of EPC 2000 entry into force**

ARTICLE 93 EPC
(Preparatory documents: CA/PL 14/00; CA/PL PV 13, points 42-45; CA/PL PV 14, points 52-54; CA/100/00, pages 91-92; MR/2/00, pages 95-96; MR/24/00, page 81)

1. **Article 93(1) EPC has been redrafted** to shorten and clarify its meaning, **without any change in substance.** The internationally accepted standard of publication after 18 months, with the possible exceptions thereto, is retained in the Article. The second sentence of Article 93(1) EPC 1973 has become **new paragraph 2.**

2. **Article 93(2) EPC 1973 is deleted,** its substance being moved to the Implementing Regulations (see Rule 68(1) EPC 2000). The obligation for the EPO to publish the search report is now expressly mentioned in Article 92 EPC.

3. The revised Article 93 EPC is applicable to

   - **EP applications pending at the time of EPC 2000 entry into force**
   - **EP applications filed on or after the time of EPC 2000 entry into force**
### Article 92  
**Drawing up of the European search report**

**EPC 1973**

(1) If a European patent application has been accorded a date of filing and is not deemed to be withdrawn by virtue of Article 90, paragraph 3, the Search Division shall draw up the European search report on the basis of the claims, with due regard to the description and any drawings, in the form prescribed in the Implementing Regulations.

(2) Immediately after it has been drawn up, the European search report shall be transmitted to the applicant together with copies of any cited documents.

**EPC 2000**

[...] The European Patent Office shall, in accordance with the Implementing Regulations, draw up and publish a European search report in respect of the European patent application on the basis of the claims, with due regard to the description and any drawings. [...]  

(2) Deleted – incorporated in the Implementing Regulations (see Rule 65 EPC 2000)

### Article 93  
**Publication of the European patent application**

**EPC 1973**

(1) A European patent application shall be published as soon as possible after the expiry of a period of eighteen months from the date of filing or, if priority has been claimed, as from the date of priority.  

Nevertheless, at the request of the applicant the application may be published before the expiry of the period referred to above. It shall be published simultaneously with the publication of the specification of the European patent when the grant of the patent has become effective before the expiry of the period referred to above.

(2) The publication shall contain the description, the claims and any drawings as filed and, in an annex, the European search report and the abstract, in so far as the latter are available before the termination of the technical preparations for publication. If the European search report and the abstract have not been published at the same time as the application, they shall be published separately.

**EPC 2000**

(1) The European Patent Office shall publish the European patent application [...] as soon as possible  

(a) after the expiry of a period of eighteen months from the date of filing or, if priority has been claimed, from the date of priority, or  

(b) at the request of the applicant, [...] before the expiry of that period.  

(2) The European patent application shall be published at the same time as the specification of the European patent when the decision to grant the patent becomes effective before the expiry of the period referred to in paragraph 1(a).  

(2) Deleted – incorporated in the Implementing Regulations (see Rule 68(1) EPC 2000)
ARTICLE 94 EPC

(Preparatory documents: CA/PL 6/00, CA/PL PV 12, points 43-47; CA/PL PV 14, points 55-57; CA/100/00, pages 93-94; CA/124/00, point 22; CA/125/00, points 113-115; MR/2/00, pages 97-98; MR/24/00, page 81)

1. New Article 94 EPC combines Articles 94 and 96 EPC 1973, and deals with the initiation as well as the conduct of the examination procedure. The title is amended accordingly. The obligation to pay a fee and the legal effect of non-payment of the fee or of non-compliance with any other obligation are retained in the Article.

2. New Article 94(1), first sentence, EPC is nearly identical with Article 94(1) EPC 1973. Only the word "written" has been deleted and replaced by the words "in accordance with the Implementing Regulations". The latter deal with the practical arrangements for filing the request for examination, including the form and the time limit (see Rule 70 EPC 2000). As regards the requirement to use the written form, see Rule 1 EPC 2000. It will also be possible to determine in the Implementing Regulations who may file the request for examination. Normally, this will be the applicant (see Rule 70(1) EPC 2000). However, in view of the deletion of Article 95 EPC, the possibility that a third party requests examination should not be excluded.

3. The principle that the request is not deemed filed until the fee for examination has been paid is retained in Article 94(1), second sentence, EPC and corresponds to similar provisions concerning opposition (Article 99 EPC), appeal (Article 108 EPC) and limitation (new Article 105a EPC).

4. Article 94(2) EPC 2000 corresponds to Article 94(3) EPC 1973. The words "in due time" have however been inserted, as the time limit for filing the request will no longer be laid down in Article 94 EPC.

5. Article 96(2) EPC 1973 has been taken over in new Article 94(3) EPC. In line with EPO practice, it is now made clear that the EPO may not only invite the applicant to file his observations, but may also invite him to amend the application in accordance with Article 123 EPC.

6. New Article 94(4) EPC corresponds in essence to Article 96(3) EPC 1973, and contains the legal effect of the failure to reply to a communication from the Examining division. The word "invitation" has been replaced by the more correct term "communication".

7. Finally, a minor editorial amendment has been made to Article 94(1) EPC under Article 3(1) of the Revision Act.

8. The revised Article 94 EPC is applicable to

| EP applications pending at the time of EPC 2000 entry into force |
| EP applications filed on or after the time of EPC 2000 entry into force |
### Article 94  Examination of the European patent application

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The European Patent Office shall examine, on written request, whether a European patent application and the invention to which it relates meet the requirements of this Convention.</td>
<td>(1) The European Patent Office shall, in accordance with the Implementing Regulations, examine on [...] request whether the European patent application and the invention to which it relates meet the requirements of this Convention. [...] The request shall not be deemed to be filed until after the examination fee has been paid. [...]</td>
</tr>
<tr>
<td>(2) A request for examination may be filed by the applicant up to the end of six months after the date on which the European Patent Bulletin mentions the publication of the European search report. The request shall not be deemed to be filed until after the examination fee has been paid. The request may not be withdrawn.</td>
<td>(2) If no request for examination has been made in due time, the application shall be deemed to be withdrawn.</td>
</tr>
<tr>
<td>(3) If no request for examination has been filed by the end of the period referred to in paragraph 2, the application shall be deemed to be withdrawn.</td>
<td>(3) If the examination [...] reveals that the application or the invention to which it relates does not meet the requirements of this Convention, the Examining Division shall invite the applicant, in accordance with the Implementing Regulations and as often as necessary, to file his observations within a period to be fixed by the Examining Division.]</td>
</tr>
</tbody>
</table>

[See Article 96(2) EPC 1973: (2) If the examination of a European patent application reveals that the application or the invention to which it relates does not meet the requirements of this Convention, the Examining Division shall invite the applicant, in accordance with the Implementing Regulations and as often as necessary, to file his observations within a period to be fixed by the Examining Division.]

[See Article 96(3) EPC 1973: (3) If the applicant fails to reply in due time to any invitation under paragraph 1 or paragraph 2, the application shall be deemed to be withdrawn.]

[4] If the applicant fails to reply in due time to any communication from the Examining Division, the application shall be deemed to be withdrawn.
ARTICLE 95 EPC
(Preparatory documents: CA/PL 6/00, CA/PL PV 12, points 43-47; CA/PL PV 14, point 6; CA/100/00, pages 95-96; CA/124/00, point 22; CA/125/00, points 113-115; MR/2/00, pages 99-100; MR/24/00, page 81)

1. The time limit applicable to the filing of a request for examination is transferred to the Implementing Regulations (see new Article 94(1) EPC and Rule 70(1) EPC 2000). It is not envisaged at this stage to change the existing six-month time limit. The situation could however change in the future, and the rigorous limitation of the possibilities to adjust the time limit to unforeseeable developments laid down in Article 95 EPC 1973 is no longer desirable. It may e.g. be necessary to adapt the European examination procedure to changes in the PCT system. Also, an excessive increase in examiner workload may force the European Patent Organisation to introduce some sort of deferred examination. A certain amount of flexibility is therefore necessary. Any change in the system could as a matter of course only be made by decision of the Administrative Council, which would guarantee a proper decision-making process.

2. If ever some system of deferred examination were to be introduced, the EPC should leave open the possibility that third parties can request examination. As new Article 94(1) EPC does not state who may file the request for examination, the Implementing Regulations could foresee that a third party may file the request as well.

3. In view of the above, Article 95 EPC 1973 is deleted and is no longer applicable as from the entry into force of the EPC 2000.

ARTICLE 96 EPC
(Preparatory documents: CA/PL 6/00, CA/PL PV 12, points 43-47; CA/PL PV 14, point 6; CA/100/00, pages 97-98; CA/124/00, point 22; CA/125/00, points 113-115; MR/2/00, pages 101-102; MR/24/00, page 81)

1. New Article 94 EPC combines Articles 94 and 96 EPC 1973. The situation described in Article 96(1) EPC 1973, which concerns a practicality in connection with the filing of the request for examination, is dealt with in the Implementing Regulations (see Rule 70(2) EPC 2000).

2. Article 96 EPC 1973 is therefore deleted and is no longer applicable as from the entry into force of the EPC 2000.
Article 95

**Deleted**

**EPC 1973**

Extension of the period within which requests for examination may be filed

(1) The Administrative Council may extend the period within which requests for examination may be filed if it is established that European patent applications cannot be examined in due time.

(2) If the Administrative Council extends the period, it may decide that third parties will be entitled to make requests for examination. In such cases, it shall determine the appropriate rules in the Implementing Regulations.

(3) Any decision of the Administrative Council to extend the period shall apply only in respect of applications filed after the publication of such decision in the Official Journal of the European Patent Office.

(4) If the Administrative Council extends the period, it must lay down measures with a view to restoring the original period as soon as possible.

**EPC 2000**

**Deleted**

Article 96

**Deleted**

**EPC 1973**

Examination of the European patent application

(1) If the applicant for a European patent has filed the request for examination before the European search report has been transmitted to him, the European Patent Office shall invite him after the transmission of the report to indicate, within a period to be determined, whether he desires to proceed further with the European patent application.

(2) If the examination of a European patent application reveals that the application or the invention to which it relates does not meet the requirements of this Convention, the Examining Division shall invite the applicant, in accordance with the Implementing Regulations and as often as necessary, to file his observations within a period to be fixed by the Examining Division.

(3) If the applicant fails to reply in due time to any invitation under paragraph 1 or paragraph 2, the application shall be deemed to be withdrawn.

**EPC 2000**

(1) Incorporated in the Implementing Regulations

(see Rule 70(2) EPC 2000)

(2) See new Article 94(3) EPC

(3) See new Article 94(4) EPC

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey strikethrough** = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 97 EPC
(Preparatory documents: CA/PL 6/00, CA/PL PV 12, points 43-47; CA/PL PV 14, point 6; CA/100/00, pages 99-10; MR/2/00, pages 103-106; MR/24/00, page 81-82)

1. Paragraphs 1 and 2 of Article 97 EPC 2000 are swapped – and the title reflects this as well.

2. **New Article 97(1) EPC now deals with the grant of a patent.** All formal requirements that must be fulfilled before the Examining Division can decide to grant the patent are transferred to the Implementing Regulations (see Rule 71 EPC 2000). It is not necessary to list them in Article 97 EPC as well, in particular because it prevents the EPO from adjusting flexibly to future developments. If, for example, the EPO were to decide to publish granted patents only electronically in future, a printing fee would no longer be appropriate.

**Article 97(3) and (5) EPC 1973 are thus also deleted.** The obligation to file translations of the claims is maintained in the Implementing Regulations (see Rule 71(3) EPC 2000). The legal effect of non-fulfilment of the formal requirements is also laid down in the Implementing Regulations (see Rule 71(7) EPC 2000).

3. **Article 97(2) EPC 2000 has been redrafted** to bring the wording in line with paragraph 1, without any change in substance. Furthermore, its wording has been amended under Article 3(1) of the Revision Act (alignment in the three official languages, editorial improvement).

4. **New Article 97(3) EPC** is essentially identical to Article 97(4), first sentence, EPC 1973. The provisions concerning the minimum period that must lapse before the grant can take effect have been deleted from the Article. With the other grant formalities being transferred to the Implementing Regulations (see Rule 71 EPC 2000), this matter too is more appropriately regulated at a lower legislative level. Consequently, **Article 97(6) EPC 1973 has been deleted as unnecessary.**

5. The revised Article 97 EPC is applicable to
   - EP applications **pending** at the time of EPC 2000 entry into force
   - EP applications **filed on or after** the time of EPC 2000 entry into force
## Article 97  
**Grant or refusal**

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>(2)</em> If the Examining Division is of the opinion that the application and the invention to which it relates meet the requirements of this Convention, it shall decide to grant the European patent for the designated Contracting States provided that:</td>
<td><em>(1)</em> If the Examining Division is of the opinion that the European patent application and the invention to which it relates meet the requirements of this Convention, it shall decide to grant a European patent [...], provided that the conditions laid down in the Implementing Regulations are fulfilled.</td>
</tr>
<tr>
<td>(a) it is established, in accordance with the provisions of the Implementing Regulations, that the applicant approves the text in which the Examining Division intends to grant the patent;</td>
<td><em>(a)</em> to <em>(c)</em> <strong>Deleted</strong> – incorporated in the Implementing Regulations (see Rule 71 EPC 2000)</td>
</tr>
<tr>
<td>(b) the fees for grant and printing are paid within the time limit prescribed in the Implementing Regulations;</td>
<td><em>(2)</em> If the Examining Division [...] is of the opinion that such application or the invention to which it relates does not meet the requirements of this Convention, except where a different sanction is provided for by this Convention.</td>
</tr>
<tr>
<td>(c) the renewal fees and any additional fees already due have been paid.</td>
<td><em>(3)</em> <strong>Deleted</strong> – incorporated in the Implementing Regulations (see Rule 71(7) EPC 2000)</td>
</tr>
<tr>
<td><em>(1)</em> The Examining Division shall refuse a European patent application if it is of the opinion that such application or the invention to which it relates does not meet the requirements of this Convention, except where a different sanction is provided for by this Convention.</td>
<td><em>(3)</em> The decision to grant a European patent shall [...] take effect on the date on which the mention of the grant is published in the European Patent Bulletin. [...]</td>
</tr>
<tr>
<td><em>(3)</em> If the fees for grant and printing are not paid in time, the application shall be deemed to be withdrawn.</td>
<td><em>(4)</em> The decision to grant a European patent shall not take effect until the date on which the European Patent Bulletin mentions the grant. This mention shall be published at least 3 months after the start of the time limit referred to in paragraph 2 (b).</td>
</tr>
<tr>
<td><em>(4)</em> The decision to grant a European patent shall not take effect until the date on which the European Patent Bulletin mentions the grant. This mention shall be published at least 3 months after the start of the time limit referred to in paragraph 2 (b).</td>
<td><em>(5)</em> <strong>Deleted</strong> – incorporated in the Implementing Regulations (see Rule 71(3) and (7) EPC 2000)</td>
</tr>
<tr>
<td><em>(5)</em> Provision may be made in the Implementing Regulations for the applicant to file a translation, in the two official languages of the European Patent Office other than the language of the proceedings, of the claims appearing in the text in which the Examining Division intends to grant the patent. In such case, the period laid down in paragraph 4 shall be at least five months. If the translation has not been filed in due time, the application shall be deemed to be withdrawn.</td>
<td><em>(6)</em> <strong>Deleted</strong></td>
</tr>
<tr>
<td><em>(6)</em> At the request of the applicant, mention of grant of the European patent shall be published before expiry of the time limit under paragraph 4 or 5. Such request may only be made if the requirements pursuant to paragraphs 2 and 5 are met.</td>
<td></td>
</tr>
</tbody>
</table>

**bold** 

* [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey strikethrough**

* = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 98 EPC
(Preparatory documents: CA/PL 14/00, CA/PL PV 13, points 42-45; CA/PL PV 14, point 6; CA/100/00, pages 103-104; MR/2/00, pages 107-108; MR/24/00, page 82)

1. **Article 98 EPC has been redrafted without any change in substance.** The wording is brought into line with that of Article 93 EPC. The contents of the specification are transferred to the Implementing Regulations (see Rule 73(1) EPC 2000).

2. **Article 98 EPC now contains the words "as soon as possible" in order to indicate that it is not always technically possible to publish the specification on the same day as the mention of the grant.**

3. **The revised Article 98 EPC is applicable to**
   - EPs already **granted** at the time of EPC 2000 entry into force
   - EP applications **pending** at the time of EPC 2000 entry into force
   - EP applications **filed on or after** the time of EPC 2000 entry into force
**Article 98**  
**Publication of the specification of the European patent**

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>At the same time as it publishes the mention of the grant of the European patent, the European Patent Office shall publish a specification of the European patent containing the description, the claims and any drawings.</td>
<td>[...] The European Patent Office shall publish the specification of the European patent <strong>as soon as possible after</strong> the mention of the grant of the European patent <strong>has been published in the European Patent Bulletin.</strong></td>
</tr>
</tbody>
</table>

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)  
**grey strikethrough** = changes and deletions adopted by the Administrative Council (June 2001)
PART V

The limitation procedure (see new Articles 105a, 105b and 105c EPC) has been inserted in the title of Part V.

ARTICLE 99 EPC
(Preparatory documents: CA/PL 15/00; CA/PL PV 13, points 47-58; CA/PL PV 14, points 58-60; CA/100/00, pages 105-106; MR/2/00, pages 109-110; MR/8/00; MR/24/00, page 82-83)

1. Article 99(1) EPC remains in essence the same, only the second sentence is transferred to the Implementing Regulations (see Rule 76(1) EPC 2000). Article 99(1), first sentence, EPC has been redrafted and clarified, without change in substance.

2. As the time limit of nine months and the payment of the opposition fee are of an essential nature, these requirements for admissibility remain in Article 99(1) EPC. Further requirements for admissible oppositions are laid down in Rule 76(2) and (3) EPC 2000. The legal consequences of an inadmissible opposition are dealt with in Rule 77 EPC 2000.

3. Under Article 99(3) EPC 1973, an opposition may be filed even if the European patent has been surrendered or has lapsed for all the designated states. There is no need for this to be in Article 99 EPC itself. A similar situation is already covered by Rule 56 EPC 1973 (see now Rule 84(1) EPC 2000), which provides that, if the European patent has been surrendered or has lapsed, the opposition proceedings may be continued by the EPO on request. Therefore, Article 99(3) EPC 1973 is deleted and incorporated in the Implementing Regulations (see Rule 75 EPC 2000).

4. Minor amendments have been made to Article 99(1) and (4) EPC under Article 3(1) of the Revision Act (editorial improvements or clarifications).

5. The revised Article 99 EPC is applicable to

EPs already granted at the time of EPC 2000 entry into force

EPs granted on EP applications pending at, or filed on or after, the time of EPC 2000 entry into force

ARTICLE 100 EPC

Minor amendments have been made to Article 100(a) and (c) EPC under Article 3(1) of the Revision Act (alignment in the three official languages).
## PART V  
**OPPOSITION AND LIMITATION PROCEDURE**

### Article 99  
**Opposition**

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Within nine months from the publication of the mention of the grant of the European patent, any person may give notice to the European Patent Office of opposition to the European patent granted. Notice of opposition shall be filed in a written reasoned statement. It shall not be deemed to have been filed until the opposition fee has been paid.</td>
<td>(1) Within nine months from the publication of the mention of the grant of the European patent in the European Patent Bulletin, any person may give notice to the European Patent Office of opposition to that patent [...], in accordance with the Implementing Regulations. [...] Notice of opposition shall not be deemed to have been filed until after the opposition fee has been paid.</td>
</tr>
<tr>
<td>(2) The opposition shall apply to the European patent in all the Contracting States in which that patent has effect.</td>
<td>(2) <strong>Unchanged</strong></td>
</tr>
<tr>
<td>(3) An opposition may be filed even if the European patent has been surrendered or has lapsed for all the designated States.</td>
<td>(3) <strong>Deleted</strong> – incorporated in the Implementing Regulations (see Rule 75 EPC 2000)</td>
</tr>
<tr>
<td>(4) Opponents shall be parties to the opposition proceedings as well as the proprietor of the patent.</td>
<td>(4) <strong>Becomes</strong> (3) – wording unchanged</td>
</tr>
<tr>
<td>(5) Where a person provides evidence that in a Contracting State, following a final decision, he has been entered in the patent register of such State instead of the previous proprietor, such person shall, at his request, replace the previous proprietor in respect of such State. By derogation from Article 118, the previous proprietor and the person making the request shall not be deemed to be joint proprietors unless both so request.</td>
<td>(4) Where a person provides evidence that in a Contracting State, following a final decision, he has been entered in the patent register of such State instead of the previous proprietor, such person shall, at his request, replace the previous proprietor in respect of such State. By derogation from Notwithstanding Article 118, the previous proprietor and the person making the request shall not be deemed to be regarded as joint proprietors unless both so request.</td>
</tr>
</tbody>
</table>

### Article 100  
**Grounds for opposition**

Opposition may only be filed on the grounds that:

(a) the subject-matter of the European patent is not patentable **within the terms of** Articles 52 to 57;

(b) the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;

(c) the subject-matter of the European patent extends beyond the content of the application as filed, or, if the patent was granted on a divisional application or on a new application filed in accordance with Article 61, beyond the content of the earlier application as filed.
ARTICLE 101 EPC
(Preparatory documents: CA/PL 15/00; CA/PL PV 13, points 47-58; CA/PL PV 14, points 61-65; CA/100/00, pages 107-110; MR/2/00, pages 110-114; MR/24/00, page 83)

1. **New Article 101 EPC** combines present Article 101(1) and (2) with Article 102(1) to (3) EPC 1973, and is partly re-structured for clarification. The details of the opposition procedure contained in Article 102(3) to (5) EPC 1973 are incorporated into the Implementing Regulations (see Rule 82(1) and (2) EPC 2000).

2. Article 101(1) EPC is amended to make it clear that the opposition division is **not obliged** to consider all the grounds for opposition referred to in Article 100 EPC. This clarification reflects the case law of the Enlarged Board of Appeal (G 10/91, OJ EPO 1993, 420), on which current practice is based.

3. The examination of grounds for opposition is guided by the following principles developed by the Enlarged Board:
   - the opposition division **is obliged** to examine only those grounds for opposition listed in the opponent's statement under Rule 76(2)(c) EPC 2000;
   - in addition to this, the opposition division **may** in accordance with Article 114(1) EPC examine of its own motion any ground for opposition under Article 100 EPC not invoked by the opponent where said ground is relevant and prejudices the maintenance of the European patent.

These principles are reflected in the Implementing Regulations (see Rule 81(1) EPC 2000).

4. Article 101(2) EPC 1973 is deleted and moved to the new paragraph 1. **New Article 101(2) EPC** corresponds to Article 102(1) and (2) EPC 1973, but also contains a clarification. For the European patent to be revoked, it is sufficient for **one** of the grounds for opposition to prejudice its maintenance. The patent is maintained where **none** of the grounds for opposition prejudices its maintenance. This clarification relates exclusively to the substantive issue of when a patent should be revoked and when it should be maintained. The details of how an opposition should be examined during the opposition procedure and which grounds for opposition must be dealt with in the opposition division's decision are dealt with in Rule 81 EPC 2000.

5. **New Article 101(3)(a) EPC** corresponds to Article 102(3) EPC 1973, the formal requirements referred to in Article 102(3)(a)-(b) and (5) EPC 1973 being moved to the Implementing Regulations (see Rule 82(1) and (2) EPC 2000).

6. **New Article 101(3)(b) EPC** adds a clarifying point. If the proprietor of the patent requests amendments during the opposition proceedings, the opposition division examines whether, with reference to all the provisions of the EPC, the substantive requirements for maintaining the patent are met. If the examination shows that they are, the patent is maintained as amended. If these requirements are **not** met, the patent is revoked. Article 102(1) EPC 1973 provided for revocation of the patent only if the grounds for opposition prejudiced its maintenance. This meant that, strictly speaking, Article 102(1) EPC 1973 did not provide the legal basis for revoking the patent if the patent as amended did not meet, for example, the requirements of Articles 84 or 123(3) EPC or Rules 27 or 29 EPC 1973. In such cases it has been the practice at the EPO to revoke the patent under Article 102(3) EPC 1973, even though this provision does not expressly so provide. For the purposes of clarification, **new Article 101(3)(b) EPC expressly** provides for the revocation of the patent as amended.

Finally, a minor amendment has been made to Article 101(3) EPC under Article 3(1) of the Revision Act (alignment in the three official languages).

7. The revised Article 101 EPC is applicable to

- **EPs already granted** at the time of EPC 2000 entry into force
- **EPs granted** on EP applications pending at, or filed on or after, the time of EPC 2000 entry into force
### Article 101 Examination of the opposition - Revocation or maintenance of the European patent

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) If the opposition is admissible, the Opposition Division shall examine whether the grounds for opposition laid down in Article 100 prejudice the maintenance of the European patent.</td>
<td>(1) If the opposition is admissible, the Opposition Division shall examine, in accordance with the Implementing Regulations, whether [...] at least one ground for opposition under Article 100 prejudices the maintenance of the European patent. During this examination, the Opposition Division shall invite the parties, as often as necessary, to file observations [...] on communications from another party or issued by itself.</td>
</tr>
<tr>
<td>(2) In the examination of the opposition, which shall be conducted in accordance with the provisions of the Implementing Regulations, the Opposition Division shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the Opposition Division, on communications from another party or issued by itself.</td>
<td>(2) Deleted – incorporated in paragraph 1</td>
</tr>
</tbody>
</table>

[See Article 102(1) and (2) EPC 1973:  
(1) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 100 prejudice the maintenance of the European patent, it shall revoke the patent.  
(2) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 100 do not prejudice the maintenance of the patent unamended, it shall reject the opposition.]

[See Article 102(3) EPC 1973:  
(3) If the Opposition Division is of the opinion that, taking into consideration the amendments made by the proprietor of the patent during the opposition proceedings, the patent and the invention to which it relates meet the requirements of this Convention, it shall decide to maintain the patent as amended, provided that:  
(a) it is established, in accordance with the provisions of the Implementing Regulations, that the proprietor of the patent approves the text in which the Opposition Division intends to maintain the patent;  
(b) the fee for the printing of a new specification of the European patent is paid within the time limit prescribed in the Implementing Regulations.]

(3) If the Opposition Division is of the opinion that, taking into consideration the amendments made by the proprietor of the European patent during the opposition proceedings, the patent and the invention to which it relates  
(a) meet the requirements of this Convention, it shall decide to maintain the patent as amended, provided that the conditions laid down in the Implementing Regulations are fulfilled;  
(b) do not meet the requirements of this Convention, it shall revoke the patent. |

**bold** […] = changes and deletions adopted by the Diplomatic Conference (November 2000)  
**grey strikethrough** = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 102 EPC
(Preparatory documents: CA PL 15/00; CA/PL PV 13, points 47-58; CA/PL PV 14, point 6; CA/100/00, pages 111-114; MR/2/00, pages 115-118; MR/24/00, page 83)

1. **Article 102 EPC 1973 is partly combined with new Article 101 EPC** (see explanatory remark n° 1 to Article 101 EPC). Article 101(2) EPC 2000 contains Article 102(1) and (2) EPC 1973 (see explanatory remark n° 4 to Article 101 EPC). The details of the opposition procedure covered by Article 102(3)(a)-(b) and (5) EPC 1973 are incorporated in the Implementing Regulations (see Rule 82(1) and (2) EPC 2000).

   The title of Article 102 EPC 1973 has been added to the title of Article 101 EPC 2000.

2. The deleted Article 102 EPC is no longer applicable as from the entry into force of the EPC 2000.

ARTICLE 103 EPC
(Preparatory documents: CA/PL 15/00; CA/PL PV 13, points 47-58; CA/PL PV 14, point 6; CA/100/00, pages 115-116; MR/2/00, pages 119-120; MR/24/00, page 83)

1. **Article 103 EPC has been redrafted** without any substantive changes. Reference is now made to new Article 101(3)(a) EPC – replacing Article 102(3) EPC 1973 – and the wording has been brought into line with that of revised Articles 93 and 98 EPC. The content of a new patent specification is laid down in the Implementing Regulations (see Rule 87 EPC 2000).

2. The new text contains the words "as soon as possible" in order to indicate that it is not always technically possible to publish the new specification on the same day as the mention of the opposition decision is published.

3. A minor editorial amendment has been made to **Article 103 EPC** under Article 3(1) of the Revision Act.

4. The revised Article 103 EPC is applicable to

   - EPs already **granted** at the time of EPC 2000 entry into force
   - EPs **granted** on EP applications pending at, or filed on or after, the time of EPC 2000 entry into force
**Article 102**  Deleted

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revocation or maintenance of the European patent</td>
<td>Title has been added to the title of Article 101 EPC</td>
</tr>
<tr>
<td>(1) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 100 prejudice the maintenance of the European patent, it shall revoke the patent.</td>
<td>(1) Becomes Article 101(2), first sentence, EPC</td>
</tr>
<tr>
<td>(2) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 100 do not prejudice the maintenance of the patent unamended, it shall reject the opposition.</td>
<td>(2) Becomes Article 101(2), second sentence, EPC</td>
</tr>
<tr>
<td>(3) If the Opposition Division is of the opinion that, taking into consideration the amendments made by the proprietor of the patent during the opposition proceedings, the patent and the invention to which it relates meet the requirements of this Convention, it shall decide to maintain the patent as amended, provided that:</td>
<td>(3) Becomes Article 101(3)(a) EPC</td>
</tr>
<tr>
<td>(a) it is established, in accordance with the provisions of the Implementing Regulations, that the proprietor of the patent approves the text in which the Opposition Division intends to maintain the patent;</td>
<td>(a) Incorporated in the Implementing Regulations (see Rule 82(1) EPC 2000)</td>
</tr>
<tr>
<td>(b) the fee for the printing of a new specification of the European patent is paid within the time limit prescribed in the Implementing Regulations.</td>
<td>(b) Incorporated in the Implementing Regulations (see Rule 82(2) EPC 2000)</td>
</tr>
<tr>
<td>(4) If the fee for the printing of a new specification is not paid in due time, the patent shall be revoked.</td>
<td>(4) Incorporated in the Implementing Regulations (see Rule 82(3), second sentence, EPC 2000)</td>
</tr>
<tr>
<td>(5) Provision may be made in the Implementing Regulations for the proprietor of the patent to file a translation of any amended claims in the two official languages of the European Patent Office other than the language of the proceedings. If the translation has not been filed in due time the patent shall be revoked.</td>
<td>(5) Incorporated in the Implementing Regulations (see Rule 82(2) EPC 2000)</td>
</tr>
</tbody>
</table>

### Article 103  Publication of a new specification of the European patent

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>If a European patent is amended under Article 102, paragraph 3, the European Patent Office shall, at the same time as it publishes the mention of the opposition decision, publish a new specification of the European patent containing the description, the claims and any drawings, in the amended form.</td>
<td>If a the European patent is maintained as amended under Article 101, paragraph 3(a), the European Patent Office shall [...] publish a new specification of the European patent [...] as soon as possible after the mention of the opposition decision has been published in the European Patent Bulletin.</td>
</tr>
</tbody>
</table>

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey** strikethrough = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 104 EPC
(Preparatory documents: CA/PL 15/00; CA/PL PV 13, points 47-58; CA/PL PV 14, point 6; CA/100/00, pages 117-118; MR/2/00, pages 121-122; MR/24/00, page 83)

1. **Article 104(1) EPC** has been slightly redrafted. Furthermore, **Article 104(1) and (2) EPC** is amended in such a way that the details of a decision ordering a different apportionment of costs and the procedure for fixing costs are transferred to the Implementing Regulations (see Rule 88 EPC 2000).

2. Finally, minor amendments have been made to **Article 104(3) EPC** under Article 3(1) of the Revision Act (alignment in the three official languages, editorial improvement or clarification).

3. The revised Article 104 EPC is applicable to

<table>
<thead>
<tr>
<th>EPs already granted at the time of EPC 2000 entry into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>EPs granted on EP applications pending at, or filed on or after, the time of EPC 2000 entry into force</td>
</tr>
</tbody>
</table>

ARTICLE 105 EPC
(Preparatory documents: CA/PL 15/00; CA/PL PV 13, points 47-58; CA/PL PV 14, point 6; CA/100/00, pages 119-120; MR/2/00, pages 123-124; MR/24/00, page 83)

1. **Article 105 EPC has been redrafted to clarify its meaning.** The word "court" has been deleted entirely, since not in all states an action for declaration of non-infringement must be instituted before a court. The details relating to intervention in Article 105 EPC 1973 are transferred to the Implementing Regulations (see Rule 89 EPC 2000).

2. The revised Article 105 EPC is applicable to

<table>
<thead>
<tr>
<th>EPs already granted at the time of EPC 2000 entry into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>EPs granted on EP applications pending at, or filed on or after, the time of EPC 2000 entry into force</td>
</tr>
</tbody>
</table>
Article 104  Costs

EPC 1973

(1) Each party to the proceedings shall meet the costs he has incurred unless a decision of an Opposition Division or Board of Appeal, for reasons of equity, orders, in accordance with the Implementing Regulations, a different apportionment of costs incurred during taking of evidence or in oral proceedings.

(2) On request, the registry of the Opposition Division shall fix the amount of the costs to be paid under a decision apportioning them. The fixing of the costs by the registry may be reviewed by a decision of the Opposition Division on a request filed within the period laid down in the Implementing Regulations.

(3) Any final decision of the European Patent Office fixing the amount of costs shall be dealt with, for the purpose of enforcement in the Contracting States, in the same way as a final decision given by a civil court of the State in the territory of which enforcement is to be carried out. Verification of such decision shall be limited to its authenticity.

EPC 2000

(1) Each party to the opposition proceedings shall bear the costs it has incurred, unless [...] the Opposition Division [...] for reasons of equity, orders, in accordance with the Implementing Regulations, a different apportionment of costs [...].

(2) The procedure for fixing costs shall be laid down in the Implementing Regulations.

(3) Any final decision of the European Patent Office fixing the amount of costs shall be dealt with, for the purpose of enforcement in the Contracting States, in the same way as a final decision given by a civil court of the State in the territory of which enforcement is to be carried out take place. Verification of such decision shall be limited to its authenticity.

Article 105  Intervention of the assumed infringer

EPC 1973

(1) In the event of an opposition to a European patent being filed, any third party who proves that proceedings for infringement of the same patent have been instituted against him may, after the opposition period has expired, intervene in the opposition proceedings, if he gives notice of intervention within three months of the date on which the infringement proceedings were instituted. The same shall apply in respect of any third party who proves both that the proprietor of the patent has requested that he cease alleged infringement of the patent and that he has instituted proceedings for a court ruling that he is not infringing the patent.

(2) Notice of intervention shall be filed in a written reasoned statement. It shall not be deemed to have been filed until the opposition fee has been paid. Thereafter the intervention shall, subject to any exceptions laid down in the Implementing Regulations, be treated as an opposition.

EPC 2000

(1) Any third party may, in accordance with the Implementing Regulations, intervene in opposition proceedings after the opposition period has expired, if the third party proves that

(a) proceedings for infringement of the same patent have been instituted against him, [...] or

(b) following a request of the proprietor of the patent to cease alleged infringement, the third party has instituted proceedings for a [...] ruling that he is not infringing the patent.

(2) [...] An admissible intervention [...] shall [...] be treated as an opposition.

bold [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)
grey strikethrough = changes and deletions adopted by the Administrative Council (June 2001)
NEW ARTICLES 105a, 105b, 105c EPC
(Preparatory documents: CA/PL 11/96; CA/PL 29/99; CA/PL 29/99 Rev. 1; CA/PL PV 4, points 95-107; CA/PL PV 11, points 23-40; CA/PL PV 13, points 128-138; CA/PL PV 14, points 159-171; CA/100/00, pages 121-126; CA/124/00, point 23; CA/125/00, points 116-122; MR/2/00, pages 125-130; MR/10/00; MR/PD 3/00; MR/15/00; MR/24/00, page 83-91)

1. **Under the limitation procedure introduced in the new Articles 105a, 105b and 105c EPC, the European patent may be limited or revoked ab initio** (see Article 68 EPC) **at the request of the patent proprietor.**

   Limitation or revocation **may be requested at any time**, although **precedence must always be given to opposition proceedings.**

   Making the limitation procedure **ex parte** and doing away with an examination of the patentability of the residual patent guarantees a speedy decision from the EPO.

2. **Under Article 105a(1) EPC**, a European patent – as **granted** or as **amended** in opposition or limitation proceedings before the EPO (see Rule 90 EPC 2000) – **may be revoked or limited** (by an amendment of the claims) at the request of the proprietor(s), subject to payment of a fee.

   Rule 92 EPC 2000 sets out the criteria for admissibility (written request containing particulars of the patent proprietor(s), the number of the European patent whose limitation or revocation is requested, list of the contracting states in which the patent has taken effect, the complete version of the amended claims and, as the case may be, of the amended description and drawings (where limitation of the patent is requested), particulars of the representative (where a representative has been appointed)).

3. **Article 105a(2) EPC** governs the relation between the limitation procedure and opposition proceedings. The priority it gives to opposition proceedings prevents limitation procedures occurring where an opposition has already been lodged (see Rule 93(1) EPC 2000). The procedure to be followed in the cases, likely to be infrequent in practice, where opposition proceedings are initiated following the valid lodging of a request for limitation or revocation is laid down in the Implementing Regulations (see Rule 93(2) EPC 2000):
   - if revocation is requested, such proceedings are **to continue** and the patent may be revoked;
   - if limitation of the patent is requested, limitation proceedings are **terminated**.

4. The European limitation procedure does not however take precedence over **national proceedings** (revocation proceedings in particular). Where parallel cases do occur, the national proceedings can be stayed or continued in accordance with national law or practice. Where national proceedings resulting in limitation have already been concluded, the limitation may be extended to further contracting states via European limitation proceedings (provided the requirements of the EPC are met). It is also emphasised that limitation of a European patent in proceedings before the EPO does not preclude further limitation in **national** proceedings.
Article 105a  Request for limitation or revocation

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is nothing equivalent to this provision in the EPC 1973.</td>
<td>(1) At the request of the proprietor, the European patent may be revoked or be limited by an amendment of the claims. The request shall be filed with the European Patent Office in accordance with the Implementing Regulations. It shall not be deemed to have been filed until after the limitation or revocation fee has been paid.</td>
</tr>
<tr>
<td></td>
<td>(2) The request may not be filed while opposition proceedings in respect of the European patent are pending.</td>
</tr>
</tbody>
</table>
5. Under Article 105b(1) EPC, the limitation procedure requires the EPO to examine whether the requirements laid down in the Implementing Regulations for a requested limitation or revocation have been met (see Rules 94 and 95 EPC 2000). With limitation, this means in particular establishing whether the requested amendment of the claims actually limits the patent or whether it is designed to protect something else, and whether the requirements of Article 84 EPC are met. Moreover, the EPO has to apply the EPC's relevant general rules of procedure, in particular Article 123(2) and (3) EPC.

6. The EPO does not examine whether
   - the aim of the limitation (e.g. delimitation with respect to a particular prior art) is achieved, or
   - the subject-matter of the limited patent is still patentable under Articles 52 to 57 EPC.

7. Under Article 105b(2) EPC, the EPO (an Examining Division, see Rule 91 EPC 2000) is required to limit or revoke the European patent, provided the prescribed conditions under Article 105b(1) EPC are met. Otherwise the request must be rejected.

8. The procedure to be followed is laid down in detail in the Implementing Regulations. In particular, limitation should be based on the amended claims submitted by the proprietor (see Rule 92(2)(d) EPC 2000). The communication notifying the patent proprietor (the requester) that the request for limitation can be allowed will invite him to file a translation of the amended claims and to pay the fee for printing (see Rule 95(3) EPC 2000). He thus has the opportunity to check the version of the patent intended for publication. Any obvious mistakes or typing errors may be rectified on request. On the other hand, he may no longer make any substantive amendments to the claims, as the request for limitation has already been examined and allowed.

9. Decisions of the Examining Divisions in limitation proceedings are subject to appeal (before a Technical Board of Appeal) in accordance with Articles 106 ff EPC (see Article 21 EPC).

10. When the decision to revoke or limit the European patent in accordance with Article 105b(3) EPC takes effect, the effects of the European patent are cancelled ab initio (see Article 68 EPC) in full or in part in respect of all the contracting states in which it is or was valid. If, however, prior European or national rights are invoked during the limitation proceedings in respect of certain contracting states, the patent may be limited for these states by means of a separate set of claims (see Rule 138 EPC 2000).

11. Under Article 105c EPC, when the EPO publishes the mention of the decision to limit the European patent, it will publish an amended European patent specification containing the new version of the claims, a translation thereof into the official languages of the EPO and, where appropriate, the description and drawings as amended (see Rule 96 EPC 2000).

12. If the amended European patent specification is not drawn up in an official language of the contracting state in which the patent is valid, that state may require that a translation be filed (see Article 65 EPC 2000).

13. A few minor amendments have been made to Articles 105a(1) and 105b(3) EPC under Article 3(1) of the Revision Act (editorial improvement, alignment in the three official languages).

14. The revised Articles 105a, 105b and 105c EPC are applicable to

| EPs already granted at the time of EPC 2000 entry into force |
| EPs granted on EP applications pending at, or filed on or after, the time of EPC 2000 entry into force |
Article 105b  Limitation or revocation of the European patent

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is nothing equivalent to this provision in the</td>
<td>(1) The European Patent Office shall examine whether the requirements</td>
</tr>
<tr>
<td>EPC 1973</td>
<td>laid down in the Implementing Regulations for limiting or revoking the</td>
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<tr>
<td></td>
<td>European patent have been met.</td>
</tr>
<tr>
<td></td>
<td>(2) If the European Patent Office considers that the request for</td>
</tr>
<tr>
<td></td>
<td>limitation or revocation of the European patent meets these requirements,</td>
</tr>
<tr>
<td></td>
<td>it shall decide to limit or revoke the European patent in accordance</td>
</tr>
<tr>
<td></td>
<td>with the Implementing Regulations. Otherwise, it shall reject the</td>
</tr>
<tr>
<td></td>
<td>request.</td>
</tr>
<tr>
<td></td>
<td>(3) The decision to limit or revoke the European patent shall apply to</td>
</tr>
<tr>
<td></td>
<td>the European patent in all the Contracting States in respect of which</td>
</tr>
<tr>
<td></td>
<td>it has been granted. It shall take effect on the date on which the</td>
</tr>
<tr>
<td></td>
<td>mention of the decision is published in the European Patent Bulletin</td>
</tr>
<tr>
<td></td>
<td>mentions the decision.</td>
</tr>
</tbody>
</table>

Article 105c  Publication of the amended specification of the European patent

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is nothing equivalent to this provision in the</td>
<td>If the European patent is limited under Article 105b, paragraph 2, the</td>
</tr>
<tr>
<td>EPC 1973</td>
<td>European Patent Office shall publish the amended specification of the</td>
</tr>
<tr>
<td></td>
<td>European patent as soon as possible after the mention of the limitation</td>
</tr>
<tr>
<td></td>
<td>has been published in the European Patent Bulletin.</td>
</tr>
</tbody>
</table>
PART VI

ARTICLE 106 EPC

(Preparatory documents CA/PL 16/00; CA/PL PV 13, points 60-63; CA/PL PV 14, points 71-72; CA/100/00, pages 127-128; MR/2/00, pages 131-132; MR/24/00, page 91)

1. Article 106(1) EPC in conjunction with Article 106(3) EPC defines which decisions are appealable: only final decisions are appealable, unless a separate appeal is allowed by a decision which is not final. This is an essential structural feature of the means of legal redress at the EPO and therefore kept in Article 106(1) and (2) EPC 2000.

2. Article 106(2) EPC 1973 is incorporated in the Implementing Regulations (see Rule 98 EPC 2000) for the same reasons as set out in explanatory remark n° 3 to Article 99(3) EPC.

3. Article 106(4) and (5) EPC 1973 contain restrictions on appeals relating to the apportionment and fixing of costs. The restriction in Article 106(4) EPC has generally proved effective. However, in rare cases it can lead to hardship, e.g. if a party who has to bear a proportion of high costs cannot appeal because in other respects he is not adversely affected by the decision ordering the apportionment of costs. Thus, it appears sensible to leave open the option to amend these provisions which moreover do not relate to fundamental aspects of the appeal procedure. They have therefore been included in the Implementing Regulations (see Rule 97 EPC 2000) – with a basis for the restriction of the right to appeal in new Article 106(3) EPC.

4. A minor editorial amendment has been made to Article 106(2) EPC under Article 3(1) of the Revision Act.

5. The revised Article 106 EPC is applicable to

| EPs already granted at the time of EPC 2000 entry into force                     | ■ |
| EP applications pending at the time of EPC 2000 entry into force               | ■ |
| EP applications filed on or after the time of EPC 2000 entry into force        | ■ |

ARTICLE 107 EPC is unchanged.

ARTICLE 108 EPC

(Preparatory documents CA/PL 16/00; CA/PL PV 13, points 60-63; CA/PL PV 14, point 6; CA/100/00, pages 129-130; MR/2/00, pages 133-134; MR/24/00, page 91)

1. Article 108 EPC relates to time limits and the form of appeals. The time limits for filing the notice of appeal and the statement setting out the grounds for appeal remain in the Article while formal requirements are laid down in the Implementing Regulations (see Rule 99 EPC 2000) as was the case under Rules 64 and 65 EPC 1973. However, in view of the future use of electronic means of communication, it is useful to avoid references to "in writing" or "in written form" and leave such regulation to the Implementing Regulations.

2. Under Article 3(1) of the Revision Act, the title of Article 108 EPC has been amended for the sake of harmonisation in the three official languages and a minor editorial change has been made to the wording of Article 108 EPC.

3. The revised Article 108 EPC is applicable to

| EPs already granted at the time of EPC 2000 entry into force                     | ■ |
| EP applications pending at the time of EPC 2000 entry into force               | ■ |
| EP applications filed on or after the time of EPC 2000 entry into force        | ■ |
PART VI APPEALS PROCEDURE

Article 106 Decisions subject to appeal

EPC 1973

(1) An appeal shall lie from decisions of the Receiving Section, Examining Divisions, Opposition Divisions and the Legal Division. It shall have suspensive effect.

(2) An appeal may be filed against the decision of the Opposition Division even if the European patent has been surrendered or has lapsed for all the designated States.

(3) A decision which does not terminate proceedings as regards one of the parties can only be appealed together with the final decision, unless the decision allows separate appeal.

(4) The apportionment of costs of opposition proceedings cannot be the sole subject of an appeal.

(5) A decision fixing the amount of costs of opposition proceedings cannot be appealed unless the amount is in excess of that laid down in the Rules relating to Fees.

EPC 2000

(1) Unchanged

(2) Deleted – incorporated in the Implementing Regulations (see Rule 98 EPC 2000)

(2) A decision which does not terminate proceedings as regards one of the parties can only be appealed together with the final decision, unless the decision allows a separate appeal.

(3) The right to file an appeal against decisions relating to the apportionment or fixing of costs in opposition proceedings may be restricted in the Implementing Regulations.

(4) Deleted – incorporated in the Implementing Regulations (see Rule 97 EPC 2000)

(5) Deleted – incorporated in the Implementing Regulations (see Rule 97 EPC 2000)

Article 107 Persons entitled to appeal and to be parties to appeal proceedings

Any party to proceedings adversely affected by a decision may appeal. Any other parties to the proceedings shall be parties to the appeal proceedings as of right.

Article 108 Time limit and form of appeal

EPC 1973

Notice of appeal must be filed in writing at the European Patent Office within two months after the date of notification of the decision appealed from. The notice shall not be deemed to have been filed until after the fee for appeal has been paid. Within four months after the date of notification of the decision, a written statement setting out the grounds of appeal must be filed.

EPC 2000

Notice of appeal shall be filed [...], in accordance with the Implementing Regulations, at the European Patent Office within two months after the date of notification of the decision [...]. Notice of appeal shall not be deemed to have been filed until after the fee for appeal has been paid. Within four months after the date of notification of the decision, a [...] statement setting out the grounds of appeal shall be filed in accordance with the Implementing Regulations.
ARTICLE 109 EPC

A minor editorial amendment has been made to the wording of Article 109(2) EPC under Article 3(1) of the Revision Act.

ARTICLE 110 EPC

(Preparatory documents CA/PL 16/00; CA/PL PV 13, points 60-63; CA/PL PV 14, point 6; CA/100/00, pages 131-132; MR/2/00, pages 135-136; MR/24/00, page 91)

1. Both Article 110(1) EPC 1973 and Article 110, first sentence, EPC 2000 make the basic distinction between admissibility and allowability: only if an appeal is admissible shall the Board of Appeal examine whether the appeal is allowable (examination on the merits).

Under the EPC 1973, the requirements of admissibility of an appeal were governed partly by Articles of the EPC (see Articles 106 to 108 EPC 1973), partly by the Implementing Regulations (see Rule 64 EPC 1973) which also governed the examination of an appeal as to admissibility (see Rule 65 EPC 1973) and provided that the legal consequence of an appeal being inadmissible is its rejection.

Under the EPC 2000, this regulation is kept on the level of the Implementing Regulations (see Rule 101(1) EPC 2000).

2. Article 110(2) EPC 1973 already provided that the examination of the appeal shall be conducted in accordance with the Implementing Regulations. This provision is retained in revised Article 110, second sentence, EPC.

The concept already applied under the EPC 1973, namely that the Implementing Regulations contain comprehensive provisions on the examination of appeals, is further illustrated by Rule 66(1) EPC 1973. This Rule laid down that, unless otherwise provided, the provisions relating to proceedings before the department which has taken the decision under appeal shall be applicable to appeal proceedings mutatis mutandis.

3. Article 110(2) EPC 1973 also contained a practical application of the right to be heard which is enshrined in Article 113 EPC and thus need not be kept in Article 110 EPC.

Article 110(3) EPC 1973 only concerned the examination of ex parte appeal proceedings. The deemed withdrawal of the application laid down in Article 110(3) EPC 1973 is, as a rule, the most advantageous legal consequence for the applicant since, under the present practice governed by Rule 69(1) EPC 1973, the applicant will be informed about the loss of rights and thereby enabled to choose the suitable legal remedy, i.e. request either an appealable decision under Rule 69(2) EPC 1973 concerning the loss of rights or further processing under Article 121 EPC 1973 or re-establishment of rights under Article 122 EPC 1973. However, if the ex parte appeal only concerns an isolated issue, e.g. the designation of a certain contracting state, deemed withdrawal of the appeal would be a more appropriate legal consequence. This shows that there is a need for flexibility to be able to take into account future developments of the granting procedure. Therefore, the provisions in Article 110(2) and (3) EPC 1973 are transferred to the implementing Regulations (see Rule 100(2) and (3) EPC 2000).

4. The revised Article 110 EPC is applicable to

- EPs already granted at the time of EPC 2000 entry into force
- EP applications pending at the time of EPC 2000 entry into force
- EP applications filed on or after the time of EPC 2000 entry into force
Article 109  Interlocutory revision

(1) If the department whose decision is contested considers the appeal to be admissible and well founded, it shall rectify its decision. This shall not apply where the appellant is opposed by another party to the proceedings.

(2) If the appeal is not allowed within three months after receipt of the statement of grounds, it shall be remitted to the Board of Appeal without delay, and without comment as to its merit.

Article 110  Examination of appeals

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) If the appeal is admissible, the Board of Appeal shall examine whether the appeal is allowable.</td>
<td>[...] If the appeal is admissible, the Board of Appeal shall examine whether the appeal is allowable. The examination of the appeal shall be conducted in accordance with the Implementing Regulations.</td>
</tr>
<tr>
<td>(2) In the examination of the appeal, which shall be conducted in accordance with the provisions of the Implementing Regulations, the Board of Appeal shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the Board of Appeal, on communications from another party or issued by itself.</td>
<td>(2) <strong>Deleted</strong> – incorporated in the Implementing Regulations (see Rule 100(2) EPC 2000)</td>
</tr>
<tr>
<td>(3) If the applicant fails to reply in due time to an invitation under paragraph 2, the European patent application shall be deemed to be withdrawn, unless the decision under appeal was taken by the Legal Division.</td>
<td>(3) <strong>Deleted</strong> – incorporated in the Implementing Regulations (see Rule 100(3) EPC 2000)</td>
</tr>
</tbody>
</table>
ARTICLES 111 and 112 EPC

Minor amendments have been made to Articles 111(2) and 112(1) and (2) EPC under Article 3(1) of the Revision Act (editorial improvements and clarifications, alignment in the three official languages).
Article 111 Decision in respect of appeals

(1) Following the examination as to the allowability of the appeal, the Board of Appeal shall decide on the appeal. The Board of Appeal may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution.

(2) If the Board of Appeal remits the case for further prosecution to the department whose decision was appealed, that department shall be bound by the ratio decidendi of the Board of Appeal, in so far as the facts are the same. If the decision which was appealed emanated from the Receiving Section, the Examining Division shall similarly be bound by the ratio decidendi of the Board of Appeal.

Article 112 Decision or opinion of the Enlarged Board of Appeal

(1) In order to ensure uniform application of the law, or if an important point of law of fundamental importance arises:

(a) the Board of Appeal shall, during proceedings on a case and either of its own motion or following a request from a party to the appeal, refer any question to the Enlarged Board of Appeal if it considers that a decision is required for the above purposes. If the Board of Appeal rejects the request, it shall give the reasons in its final decision;

(b) the President of the European Patent Office may refer a point of law to the Enlarged Board of Appeal where two Boards of Appeal have given different decisions on that question.

(2) In the cases covered by paragraph 1(a) the parties to the appeal proceedings shall be parties to the proceedings before the Enlarged Board of Appeal.

(3) The decision of the Enlarged Board of Appeal referred to in paragraph 1(a) shall be binding on the Board of Appeal in respect of the appeal in question.

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey strikethrough** = changes and deletions adopted by the Administrative Council (June 2001)
NEW ARTICLE 112a EPC
(Preparatory documents CA/PL 17/00; CA/PL PV 13, points 65-70; CA/PL PV 14, points 112-117; CA/100/00, pages 133-142; CA/124/00 point 9; CA/125/00, points 25-32; MR/2/00, pages 137-146; MR/8/00; MR/10/00; MR/21/00; MR/24/00, pages 91-93)

1. In order to make possible a limited judicial review of decisions of the Boards of Appeal, the Enlarged Board of Appeal should be given the competence to decide on petitions for review.

2. Under new Article 112a(1) EPC, a party adversely affected by a decision of a Board of Appeal may file a petition for review.

3. Under new Article 112a(2) EPC a petition for review may only be based on the grounds defined in the EPC. These are
   - fundamental procedural defects which occurred in appeal proceedings and,
   - the existence of a criminal act which may have had an impact on the decision.

4. Fundamental procedural defects are, in the first instance, those defined in Article 112a(2)(a) to (c) EPC, that is
   - a breach of Article 24 EPC governing exclusion of and objection to members of a Board of Appeal,
   - the participation of persons not appointed as a member of the Boards of Appeal, and
   - fundamental violation of Article 113 EPC.

   In addition, Article 112a(2)(d) EPC opens up the possibility of using the Implementing Regulations to define further fundamental procedural defects on which a petition for review might be based. New Rule 104(a) and (b) EPC 2000 provides that a petition may also be based on a fundamental procedural defect arising from
   - failure to arrange for the holding of oral proceedings requested by a party, or
   - failure to decide on a request relevant for the Board's decision.

5. The examples in Article 112a(2)(a) to (c) EPC and particularly the wording of Article 112a(2)(d) EPC make it clear that only fundamental (but not minor) procedural defects can be the basis for a petition for review. Under no circumstances may the petition for review be a means to review the application of substantive law. This restriction is justified because the function of the petition for review is to remedy intolerable deficiencies occurring in individual appeal proceedings, not to further the development of EPO procedural practice or to ensure the uniform application of the law.

6. Rule 106 EPC 2000 further provides that a petition for review shall only be admissible if the defect was objected to during appeal proceedings and the objection rejected by the Board of Appeal, unless the objection could not have been raised during appeal proceedings.

7. One of the most serious defects from which a decision might suffer is that criminal behaviour might have had an impact on the decision. Also in these cases the possibility of review by the Enlarged Board of Appeal should exist. However, the EPO has no power to establish whether a certain behavior was an offence within the meaning of criminal law. For the purpose of Article 112a(2)(e) EPC, a criminal act can only be established in criminal proceedings by a sentence which is res judicata. Rule 105 EPC 2000 lays down how the existence of a criminal act is to be established: a criminal act shall only be a ground for a petition for review if a competent court or authority has finally established that the criminal act occurred. A conviction is not necessary.

8. The criminal act may be “finally established” in any of the following ways:
   - by a final judgment under (criminal) law;
   - by another final decision of a competent court;
   - by a final decision of a competent authority (e.g. under administrative criminal law, to the extent that such a breach of law can be liable to influence the decision of the Board of Appeal).
**Article 112a  Petition for review by the Enlarged Board of Appeal**

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is nothing equivalent to this provision in the EPC 1973.</td>
<td>(1) Any party to appeal proceedings adversely affected by the decision of the Board of Appeal may file a petition for review of the decision by the Enlarged Board of Appeal.</td>
</tr>
<tr>
<td>(2) The petition may only be filed on the grounds that:</td>
<td></td>
</tr>
<tr>
<td>(a) a member of the Board of Appeal took part in the decision in breach of Article 24, paragraph 1, or despite being excluded pursuant to a decision under Article 24, paragraph 4;</td>
<td>(b) the Board of Appeal included a person not appointed as a member of the Boards of Appeal;</td>
</tr>
<tr>
<td>(c) a fundamental violation of Article 113 occurred;</td>
<td>(d) any other fundamental procedural defect defined in the Implementing Regulations occurred in the appeal proceedings; or</td>
</tr>
<tr>
<td>(e) a criminal act established under the conditions laid down in the Implementing Regulations may have had an impact on the decision.</td>
<td></td>
</tr>
</tbody>
</table>
The operative criterion is not whether the (criminal) court or authority has passed sentence, as this would leave out cases where, for example, the perpetrator dies before sentence can be pronounced, or where a finding of diminished capacity makes sentencing impossible. Instead, the crucial issue is whether an act constituting a criminal offence has actually occurred, and whether the fact of its having occurred has been definitely established by a competent court or authority.

9. In view of national differences relating to the definition of behaviour which is "criminal" within the meaning of penal law or subject to other sanctions, the definition of what constitutes a "criminal act" within the meaning of Article 112a(2)(e) EPC should be left to the case law of the Enlarged Board.

10. Article 112a(3) EPC makes it clear that the petition for review is an extraordinary legal remedy the filing of which does not affect the force of res judicata of the decision under attack. Implicitly it follows that a successful petition for review results in a decision of the Enlarged Board of Appeal which sets aside the decision of the Board of Appeal, i.e. overturns its res judicata effect, and re-opens appeal proceedings. This is further clarified in Article 112a(5) EPC.

11. Article 112a(4) EPC provides for the form, the time limits and the fee for the petition for review. Further details are left to the Implementing Regulations. The contents of the statement setting out the grounds for the petition for review is defined in Rule 107 EPC 2000 which in particular clarifies that it must be sufficiently substantiated.

Rule 107 EPC 2000 implements Article 112a(4), first sentence, EPC, by providing that the petition for review shall contain:
- the name and address of the petitioner;
- a statement identifying the decision to be reviewed;
- the reasons for setting aside the decision of the Board of Appeal, and the facts and evidence on which the petition is based.

12. The possibility of filing a petition for review must not cause long-lasting legal uncertainty for third parties. The outcome of the re-opened appeal proceedings following successful review proceedings might be that a revoked patent or a rejected patent application is revived so that protection already lost will be re-established. Thus, it is important that the deadline for filing such petitions be short.

13. The short time limit under Article 112a(4), second sentence, EPC, i.e. two months after the notification of the decision of the Board of Appeal, would make it nearly impossible to base a petition for review on criminal behaviour. In these exceptional and particularly serious cases, the time-limit should therefore start when the competent court or authority has finally established that the criminal act occurred. The protection of a party adversely affected by criminal behaviour should prevail over legal certainty for third parties. However, there shall be an absolute time limit after the expiry of which no petition for review will be admissible; a period of five years is appropriate.

14. The time limits under Article 112a(4) EPC are excluded from further processing under Article 121(4) EPC 2000.

15. A high fee – EUR 2 500 – is payable for a petition for review. However, Rule 110 EPC 2000 provides that the fee for the petition for review shall be reimbursed if the Enlarged Board re-opens the proceedings before the Board of Appeal.

16. The filing of a petition for review will be entered in the European patent register.
### Article 112a  Petition for review by the Enlarged Board of Appeal

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(3) The petition for review shall not have suspensive effect.</td>
<td></td>
</tr>
<tr>
<td>(4) The petition for review shall be filed in a reasoned statement, in accordance with the Implementing Regulations. If based on paragraph 2(a) to (d), the petition shall be filed within two months after the date of notification of the decision of the Board of Appeal. If based on paragraph 2(e), the petition shall be filed within two months of the date on which the criminal act has been established and in any event no later than five years from notification of the decision of the Board of Appeal. The petition shall not be deemed to have been filed until after the prescribed fee has been paid.</td>
<td></td>
</tr>
</tbody>
</table>
17. Rule 108(1) EPC 2000 implements Article 112a(5) EPC by providing that the petition for review shall be rejected as inadmissible if
- it is not filed by a party adversely affected by the decision under attack (Article 112a(1) EPC);
- it is not filed on one of the grounds listed in Article 112a(2) EPC and Rule 104 EPC 2000;
- it has not been filed in due time (Article 112a(4) EPC);
- the alleged procedural defect was not objected to during the appeal proceedings (Rule 106 EPC 2000);
- it does not indicate the decision to be reviewed (Rule 107(1)(b) EPC 2000); or
- the reasoned statement setting out the grounds for the petition does not sufficiently substantiate the reasons why the decision under attack should be set aside (Rule 107(2) EPC 2000).

If the admissible petition for review is allowable, the Enlarged Board of Appeal shall set aside the decision of the Board of Appeal and order the re-opening of the proceedings before the Board of Appeal which rendered the decision (Article 112a(5) EPC, Rule 108(3) EPC 2000). If appropriate, the Enlarged Board may order that the Board of Appeal be composed differently (Rule 108(3), second sentence, EPC 2000).

18. Under Rule 109(1) EPC 2000, the provisions relating to proceedings before the Boards of Appeal shall apply in proceedings under Article 112a EPC, with the exceptions provided for in Rule 109(1), second sentence, EPC 2000.

In the interest of a quick and effective screening of petitions for review which are clearly inadmissible or not allowable, special procedural provisions apply to the three-member panel of the Enlarged Board established under Article 22(2), second sentence, and Rule 109(2) EPC 2000 (see explanatory remark n° 4 to Article 22 EPC). The proceedings before this panel shall be as simple and short as possible. Therefore, this body shall decide in written summary proceedings without the involvement of other parties and on the basis of the petition (see Rule 109(3) EPC 2000). A quick screening procedure at the outset of review proceedings to sort out petitions which clearly cannot be successful is essential in order to avoid an inappropriate prolongation of legal uncertainty for third parties. It is also of great importance to counteract effectively intentional prolongation of proceedings by filing a petition for review.

19. If the petition for review is successful, i.e. if the alleged defect is proven, the consequence shall be that the decision of the Board of Appeal is set aside and appeal proceedings re-opened before the Board. This decision overturns the res judicata effect of the previous decision. The result of the second appeal proceedings may be the same as in the first appeal proceedings, or different.

The revival of lost patent protection may prejudice third-party interests. Thus, provision must be made for intervening rights. Article 112a(6) EPC governs this issue in terms similar to those of Article 122(5) EPC 2000 (protection of third-party interests in case of re-establishment of rights). The requirement of good faith guarantees that no rights can be acquired in an abusive way.

20. A few minor amendments have been made to Article 112a(4), (5) and (6) EPC under Article 3(1) of the Revision Act (editorial improvement and clarification, alignment in the three official languages).

21. The revised Article 112a EPC is applicable to decisions of the Boards of Appeal taken as from the date of the entry into force of the EPC 2000.
**Article 112a  Petition for review by the Enlarged Board of Appeal**

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(5) The Enlarged Board of Appeal shall examine the petition for review in accordance with the Implementing Regulations. If the petition is allowable, the Enlarged Board of Appeal shall set aside the decision under review and shall re-open proceedings before the Boards of Appeal in accordance with the Implementing Regulations.</td>
<td></td>
</tr>
<tr>
<td>(6) Any person who, in a designated Contracting State, has in good faith used or made effective and serious preparations for using an invention which is the subject of a published European patent application or a European patent in the period between the decision of the Board of Appeal under review and publication in the European Patent Bulletin of the mention of the decision of the Enlarged Board of Appeal on the petition, may without payment continue such use in the course of his business or for the needs thereof.</td>
<td></td>
</tr>
</tbody>
</table>
PART VII

CHAPTER I

ARTICLE 113 EPC

Under Article 3(1) of the Revision Act, the title of Article 113 EPC and the wording of Article 113(2) EPC have been amended.

ARTICLE 114 EPC is unchanged.

ARTICLE 115 EPC

(Preparatory documents: CA/PL 18/00; CA/PL PV 13, points 73, 83, 84; CA/PL PV 14, point 6; CA/100/00, pages 143-144; MR/2/00, pages 147-148; MR/24/00, page 93)

1. Article 115 EPC remains substantially unchanged. The only changes relate to
   - Article 115, first sentence, EPC 2000 which contains a clarification to the effect that, in proceedings before the EPO, it should also be possible to present observations concerning the patentability of the invention to which the patent relates. This reflects current practice, which takes into consideration observations presented in opposition proceedings (see also Article 115(2) EPC 1973)
   - Article 115(1), second sentence, EPC 1973 which is transferred to the Implementing Regulations (see Rule 114(1) EPC 2000)
   - Article 115(2) EPC 1973 which is deleted, its substance being moved to the Implementing Regulations (see Rule 114(2) EPC 2000).

2. The revised Article 115 EPC is applicable to

| EPs already granted at the time of EPC 2000 entry into force | ■ |
| EP applications pending at the time of EPC 2000 entry into force | ■ |
| EP applications filed on or after the time of EPC 2000 entry into force | ■ |
### Article 113  Right to be heard and basis of decisions

1. The decisions of the European Patent Office may only be based on grounds or evidence on which the parties concerned have had an opportunity to present their comments.

2. The European Patent Office shall consider, examine, and decide upon, the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.

### Article 114  Examination by the European Patent Office of its own motion

1. In proceedings before it, the European Patent Office shall examine the facts of its own motion; it shall not be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought.

2. The European Patent Office may disregard facts or evidence which are not submitted in due time by the parties concerned.

### Article 115  Observations by third parties

**EPC 1973**

1. Following the publication of the European patent application, any person may present observations concerning the patentability of the invention in respect of which the application has been filed. Such observations must be filed in writing and must include a statement of the grounds on which they are based. That person shall not be a party to the proceedings before the European Patent Office.

2. The observations referred to in paragraph 1 shall be communicated to the applicant for or proprietor of the patent who may comment on them.

**EPC 2000**

[...] In proceedings before the European Patent Office, following the publication of the European patent application, any third party may, in accordance with the Implementing Regulations, present observations concerning the patentability of the invention to which the application or patent relates. [...] That person shall not be a party to the proceedings [...].

(2) *Deleted – incorporated in the Implementing Regulations (see Rule 114(2) EPC 2000)*
ARTICLE 116 EPC

A minor editorial amendment has been made to Article 116(2) EPC under Article 3(1) of the Revision Act.

ARTICLE 117 EPC

(Preparatory documents: CA/PL 18/00; CA/PL PV 13, points 74, 83, 84; CA/PL PV 14, points 73-74; CA/100/00, pages 145-148; MR/2/00, pages 149-150; MR/24/00, page 94)

1. In proceedings before the EPO, the following EPO departments have the power to take evidence: the Receiving Section (see decision J 20/85, OJ EPO 1987, 102), the Examining Divisions, the Opposition Divisions, the Legal Division, the Boards of Appeal and the Enlarged Board of Appeal (see also new Article 112a EPC). Revised Article 117(1) EPC no longer lists the individual departments concerned, but instead refers to "proceedings before the European Patent Office" in general.

2. New Article 117(2) EPC replaces Article 117(2) to (6) EPC 1973. The details of the procedure for taking evidence are transferred to the Implementing Regulations (see Rules 118 to 120 EPC 2000).

3. The revised Article 117 EPC is applicable to

- EPs already granted at the time of EPC 2000 entry into force
- EP applications pending at the time of EPC 2000 entry into force
- EP applications filed on or after the time of EPC 2000 entry into force
**Article 116  Oral proceedings**

(1) Oral proceedings shall take place either at the instance of the European Patent Office if it considers this to be expedient or at the request of any party to the proceedings. However, the European Patent Office may reject a request for further oral proceedings before the same department where the parties and the subject of the proceedings are the same.

(2) Nevertheless, oral proceedings shall take place before the Receiving Section at the request of the applicant only where the Receiving Section considers this to be expedient or where it envisions refusing to refuse the European patent application.

(3) Oral proceedings before the Receiving Section, the Examining Divisions and the Legal Division shall not be public.

(4) Oral proceedings, including delivery of the decision, shall be public, as regards the Boards of Appeal and the Enlarged Board of Appeal, after publication of the European patent application, and also before the Opposition Divisions, in so far as the department before which the proceedings are taking place does not decide otherwise in cases where admission of the public could have serious and unjustified disadvantages, in particular for a party to the proceedings.

**Article 117  Means and taking of evidence**

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) In any proceedings before an Examining Division, an Opposition Division, the Legal Division or a Board of Appeal the means of giving or obtaining evidence shall include the following:</td>
<td>(1) In [...] proceedings before the European Patent Office the means of giving or obtaining evidence shall include the following:</td>
</tr>
<tr>
<td>(a) hearing the parties;</td>
<td>(a) <em>Unchanged</em></td>
</tr>
<tr>
<td>(b) requests for information;</td>
<td>(b) <em>Unchanged</em></td>
</tr>
<tr>
<td>(c) the production of documents;</td>
<td>(c) [...] production of documents</td>
</tr>
<tr>
<td>(d) hearing the witnesses;</td>
<td>(d) hearing [...] witnesses</td>
</tr>
<tr>
<td>(e) opinions by experts;</td>
<td>(e) <em>Unchanged</em></td>
</tr>
<tr>
<td>(f) inspection;</td>
<td>(f) <em>Unchanged</em></td>
</tr>
<tr>
<td>(g) sworn statements in writing.</td>
<td>(g) <em>Unchanged</em></td>
</tr>
</tbody>
</table>

(2) The Examining Division, Opposition Division or Board of Appeal may commission one of its members to examine the evidence adduced.

(2) The procedure for taking such evidence shall be laid down in the Implementing Regulations.

(2) *Deleted – incorporated in the Implementing Regulations (see Rule 119(1) EPC 2000)*

*bold* [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

*grey strikethrough* = changes and deletions adopted by the Administrative Council (June 2001)
**Article 117 Means and taking of evidence**

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(3) If the European Patent Office considers it necessary for a party, witness or expert to give evidence orally, it shall either:</td>
<td>(3) <strong>Deleted</strong> – incorporated in the Implementing Regulations (see Rules 118 and 120(1) EPC 2000)</td>
</tr>
<tr>
<td>(a) issue a summons to the person concerned to appear before it, or</td>
<td></td>
</tr>
<tr>
<td>(b) request, in accordance with the provisions of Article 131, paragraph 2, the competent court in the country of residence of the person concerned to take such evidence.</td>
<td>(4) <strong>Deleted</strong> – incorporated in the Implementing Regulations (see Rule 120(1) EPC 2000)</td>
</tr>
<tr>
<td>(4) A party, witness or expert who is summoned before the European Patent Office may request the latter to allow his evidence to be heard by a competent court in his country of residence. On receipt of such a request, or if there has been no reply to the summons by the expiry of a period fixed by the European Patent Office in the summons, the European Patent Office may, in accordance with the provisions of Article 131, paragraph 2, request the competent court to hear the person concerned.</td>
<td>(5) <strong>Deleted</strong> – incorporated in the Implementing Regulations (see Rule 120(2) EPC 2000)</td>
</tr>
<tr>
<td>(5) If a party, witness or expert gives evidence before the European Patent Office, the latter may, if it considers it advisable for the evidence to be given on oath or in an equally binding form, request the competent court in the country of residence of the person concerned to re-examine his evidence under such conditions.</td>
<td>(6) <strong>Deleted</strong> – incorporated in the Implementing Regulations (see Rule 120(3) EPC 2000)</td>
</tr>
<tr>
<td>(6) When the European Patent Office requests a competent court to take evidence, it may request the court to take the evidence on oath or in an equally binding form and to permit a member of the department concerned to attend the hearing and question the party, witness or expert either through the intermediary of the court or directly.</td>
<td></td>
</tr>
</tbody>
</table>
ARTICLE 118 EPC

Minor amendments have been made to Article 118 EPC under Article 3(1) of the Revision Act.

ARTICLE 119 EPC

(Preparatory documents: CA/PL 18/00; CA/PL PV 13, points 75, 83, 84; CA/PL PV 14, point 6; CA/100/00, pages 149-150; MR/2/00, pages 153-154; MR/24/00, page 94)

1. Article 119(1), first sentence, EPC has been redrafted to make it clear that the details of notification are laid down in the Implementing Regulations, as has always been the case (see Rules 125 to 130 EPC 2000).

2. In the English text of Article 119(1), second sentence, EPC the word "given" has been substituted by the word "effected". In addition, a minor amendment has been made to the wording of Article 119 EPC under Article 3(1) of the Revision Act.

3. The revised Article 119 EPC is applicable to

- EPs already granted at the time of EPC 2000 entry into force
- EP applications pending at the time of EPC 2000 entry into force
- EP applications filed on or after the time of EPC 2000 entry into force

ARTICLE 120 EPC

(Preparatory documents: CA/PL 18/00; CA/PL PV 13, points 76, 83, 84; CA/PL PV 14, points 75-76; CA/100/00, pages 151-152; MR/2/00, pages 155-156; MR/24/00, page 94)

1. Article 120 EPC has been redrafted to clarify its meaning.

2. Article 120(a) EPC 2000 states now that any time limits which are not fixed in an Article of the EPC and which have to be observed in proceedings before the EPO are to be specified in the Implementing Regulations.

3. Article 120(b) EPC 2000 corresponds to Article 120(a) EPC 1973, the reasons for extension of time limits being moved to the Implementing Regulations (see Rules 131 to 134 EPC 2000).

4. The revised Article 120 EPC is applicable to

- EPs already granted at the time of EPC 2000 entry into force
- EP applications pending at the time of EPC 2000 entry into force
- EP applications filed on or after the time of EPC 2000 entry into force
### Article 118 Unity of the European patent application or European patent

Where the applicants for or proprietors of a European patent are not the same in respect of different designated Contracting States, they shall be regarded as joint applicants or proprietors for the purposes of proceedings before the European Patent Office. The unity of the application or patent in these proceedings shall not be affected; in particular the text of the application or patent shall be uniform for all designated Contracting States, unless otherwise provided for in this Convention.

### Article 119 Notification

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>The European Patent Office shall, as a matter of course, notify those concerned of decisions and summonses, and of any notice or other communication from which a time limit is reckoned, or of which those concerned must be notified under other provisions of this Convention, or of which notification has been ordered by the President of the European Patent Office. Notifications may, where exceptional circumstances so require, be given through the intermediary of the central industrial property offices of the Contracting States.</td>
<td><strong>Decisions, summonses, notices and communications shall be notified by the European Patent Office of its own motion in accordance with the Implementing Regulations.</strong> Notifications may, where exceptional circumstances so require, be <strong>effected through the intermediary of the central industrial property offices of the Contracting States.</strong></td>
</tr>
</tbody>
</table>

### Article 120 Time limits

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Implementing Regulations shall specify:</td>
<td><strong>The Implementing Regulations shall specify:</strong></td>
</tr>
<tr>
<td>(a) the manner of computation of time limits and the conditions under which such time limits may be extended, either because the European Patent Office or the authorities referred to in Article 75, paragraph 1(b), are not open to receive documents or because mail is not delivered in the localities in which the European Patent Office or such authorities are situated or because postal services are generally interrupted or subsequently dislocated;</td>
<td>(a) the time limits which are to be observed in proceedings before the European Patent Office and are not fixed by this Convention;</td>
</tr>
<tr>
<td>(b) the minima and maxima for time limits to be determined by the European Patent Office.</td>
<td>(b) <strong>Becomes (c) – wording unchanged</strong></td>
</tr>
</tbody>
</table>
ARTICLE 121 EPC
(Preparatory documents: CA/PL 19/99; CA/PL PV 10, points 22-30; CA/PL PV 14, points 172-181; CA/100/00, pages 153-156; MR/2/00, pages 157-160; MR/11/00; MR/24/00, page 94)

1. The new version of Article 121 EPC broadens the scope of application of further processing and makes it the standard legal remedy in cases of failure to observe time limits in the European patent grant procedure. It takes account of practical requirements, according to which further processing should, in the interests of procedural economy and legal certainty, be given priority over the classical re-establishment of rights. The latter has proved to be too complex and unwieldy, and does not fulfil the requirements of a largely standardised "mass procedure".

2. Under Article 121(1) EPC 2000, applicants may, following failure to observe a time limit vis-à-vis the EPO, request the further processing of their application. The possibility of further processing is thus as a rule available, subject to the excluding provision of Article 121(4) EPC (see explanatory remark n° 5 below), in respect of all time limits which applicants fail to observe in the grant procedure or in related ex parte appeal proceedings. Hence, in contrast to the provisions under the EPC 1973, further processing can be applied to the time limits for the payment of filing, search and designation fees, the national basic fees (Rules 38 and 39 EPC 2000) and the time limit for filing the request for examination (Rule 70(1) EPC 2000). However, as before, Article 121 EPC does not apply to time limits to be observed by parties in inter partes opposition and appeal proceedings.

3. Article 121(2) EPC 2000 provides that a request for further processing is to be granted where the requirements laid down in the Implementing Regulations are met. As far as the conditions for filing a request are concerned, reference is made to Rule 135(1) EPC 2000. The request is now effected by simply paying the prescribed fee. The two-month time limit for filing the request is triggered by communication of the failure to observe the time limit or of the loss of rights brought about by the omitted act. The omitted act must be completed within the period for making the request. In line with Article 121(3) EPC 1973, the request is decided on by the department competent to decide on the omitted act (Rule 135(3) EPC 2000).

4. If a request for further processing is granted, according to Article 121(3) EPC 2000 the European patent application must be treated as if the non-observance of the time limit had not happened.

5. Under Article 121(4) EPC 2000, further processing is ruled out for the priority period under Article 87(1) EPC, the time limits for appeal (Article 108 EPC), petition for review (Article 112a(3) EPC) and requests for further processing and re-establishment of rights. Further exceptions to this principle may be provided for in the Implementing Regulations, thus affording the flexibility needed to adapt the scope of application of Article 121 EPC to changing practical requirements and new time limits. Under Rule 135(2) EPC 2000, further processing is thus ruled out in respect of the periods for filing translations under Article 14(2) and (4) EPC (Rule 6(1) EPC 2000), for seeking remedies under Article 61 EPC (Rule 16(1)(a) EPC 2000), for filing the declaration of priority or a correction thereof (Rule 52(2) and (3) EPC 2000), for subsequent filing of parts of the description or drawings (Rule 56 EPC 2000), for subsequent communication of information on deposit of biological material (Rule 31(2) EPC 2000), for payment of further search fees (Rule 64 EPC 2000), for payment of renewal fees under Article 86(2) EPC (Rule 51(2) to (5) EPC 2000), and for the time limits in connection with reference to a previously filed application (Rule 40(3) EPC 2000), examination on filing (Rule 56 EPC 2000), correction of deficiencies after formalities examination (Rules 58 and 59 EPC 2000) and the request for an appealable decision (Rule 112(2) EPC 2000).

6. The revised Article 121 EPC is applicable to

| EP applications pending at the time of EPC 2000 entry into force, if the time limit for requesting further processing has not expired yet |
| EP applications filed on or after the time of EPC 2000 entry into force |
**Article 121 Further processing of the European patent application**

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) If the European patent application is to be refused or is refused or</td>
<td>(1) If an applicant fails to observe a time limit vis-à-vis the European</td>
</tr>
<tr>
<td>deemed to be withdrawn following failure to reply within a time limit set</td>
<td>Patent Office, he may request further processing of the European</td>
</tr>
<tr>
<td>by the European Patent Office, the legal consequence provided for shall</td>
<td>patent application.</td>
</tr>
<tr>
<td>not ensue or, if it has already ensued, shall be retracted if the applicant</td>
<td>(2) The European Patent Office shall grant the request, provided that the</td>
</tr>
<tr>
<td>requests further processing of the application.</td>
<td>requirements laid down in the Implementing Regulations are met.</td>
</tr>
<tr>
<td></td>
<td>Otherwise, it shall reject the request.</td>
</tr>
<tr>
<td></td>
<td>(3) If the request is granted, the legal consequences of the failure to</td>
</tr>
<tr>
<td></td>
<td>observe the time limit shall be deemed not to have ensued.</td>
</tr>
<tr>
<td></td>
<td>(4) Further processing shall be ruled out in respect of the time limits</td>
</tr>
<tr>
<td></td>
<td>in Article 87, paragraph 1, Article 108 and Article 112a, paragraph 4,</td>
</tr>
<tr>
<td></td>
<td>as well as the time limits for requesting further processing or</td>
</tr>
<tr>
<td></td>
<td>re-establishment of rights. The Implementing Regulations may rule out</td>
</tr>
<tr>
<td></td>
<td>further processing for other time limits.</td>
</tr>
<tr>
<td>(2) The request shall be filed in writing within two months of the date</td>
<td>(2) <strong>Deleted</strong> – incorporated in the Implementing Regulations (see Rule</td>
</tr>
<tr>
<td>on which either the decision to refuse the application or the communication</td>
<td>135(1) EPC 2000)</td>
</tr>
<tr>
<td>that the application is deemed to be withdrawn was notified. The omitted</td>
<td>(3) <strong>Deleted</strong> – incorporated in the Implementing Regulations (see Rule</td>
</tr>
<tr>
<td>act must be completed within this time limit. The request shall not be</td>
<td>135(3) EPC 2000)</td>
</tr>
<tr>
<td>deemed to have been filed until the fee for further processing has been</td>
<td></td>
</tr>
<tr>
<td>paid.</td>
<td></td>
</tr>
<tr>
<td>(3) The department competent to decide on the omitted act shall decide on</td>
<td></td>
</tr>
<tr>
<td>the request.</td>
<td></td>
</tr>
</tbody>
</table>

*bold* [*…*] = changes and deletions adopted by the Diplomatic Conference (November 2000)

*grey* **strikethrough** = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 122 EPC
(Preparatory documents: CA/PL 19/99; CA/PL PV 10, points 22-30; CA/PL PV 14, points 172-181; CA/100/00, pages 157-160; MR/2/00, pages 161-164; MR/24/00, page 94)

1. The title of Article 122 EPC has been changed under Article 3(1) of the Revision Act.

2. The further amendments to Article 122 EPC take account of the broadening of the scope of application of further processing (see Article 121 EPC) and also aim to remove from Article 122 EPC details relating to procedure and time limits.

The requirements for re-establishment of rights (Article 122(1) EPC), the procedure involved (Rule 136 EPC 2000) and the provisions governing the right of continued use (Article 122(5) EPC 2000) remain unchanged. The scope of application of re-establishment of rights, however, is narrowed down in view of the new provisions governing further processing (see explanatory remark n° 5 below).

3. According to new Article 122(2) EPC, the EPO will grant a request for re-establishment of rights provided that the conditions of Article 122(1) EPC and the other requirements laid down in the Implementing Regulations have been met. The provisions in Article 122(2) to (4) EPC 1973 are incorporated into the Implementing Regulations (see Rule 136 EPC 2000). The period for filing the request continues to be two months from the removal of the cause of non-compliance with the time limit, and the one-year period for admissibility of the request continues to apply.

For re-establishment of the priority period under Article 87(1) EPC, the minimum time limit fixed by Rule 14(4) of the Patent Law Treaty 2000 has been incorporated: the time limit for such requests ends two months after expiry of the priority period (see Rule 136(1), second sentence, EPC 2000).

4. New Article 122(3) EPC corresponds to the equivalent provision concerning further processing and makes the principle underlying re-establishment of rights quite clear, i.e. that the consequences of failure to observe a time limit will be deemed not to have ensued where a request for re-establishment is granted.

5. New Article 122(4) EPC provides for re-establishment to be ruled out in respect of the time limit for requesting re-establishment (repeated in Rule 136(3) EPC 2000).

The Implementing Regulations may rule out re-establishment for other time limits as well. In view of the broader scope of application of further processing (see Article 121 EPC), re-establishment for those time limits in respect of which further processing can be requested has been ruled out (see Rule 136(3) EPC 2000). Re-establishment is therefore ruled out for the following in particular:
- time limits for payment of fees under Rules 38, 39(1), 45(2), 70(1) and (3) and 159(1)(c)-(f) EPC 2000,
- any time limits set by the EPO.

6. As far as the grant procedure is concerned, re-establishment will thus be replaced to some extent by further processing, but will now apply where the priority period or the time limit for requesting further processing have not been observed. Moreover, any time limits for which further processing is ruled out (see explanatory remark n° 5 to Article 121 EPC) are susceptible of re-establishment under Article 122 EPC)

7. Only patent proprietors will continue to be able to request re-establishment of rights as a legal remedy in opposition proceedings and appeal proceedings following opposition.
Article 122  Re-establishment of rights

EPC 1973

(1) The applicant for or proprietor of a European patent who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-à-vis the European Patent Office shall, upon application, have his rights re-established if the non-observance in question has the direct consequence, by virtue of this Convention, of causing the refusal of the European patent application, or of a request, or the deeming of the European patent application to have been withdrawn, or the revocation of the European patent, or the loss of any other right or means of redress.

(2) The application must be filed in writing within two months from the removal of the cause of non-compliance with the time limit. The omitted act must be completed within this period. The application shall only be admissible within the year immediately following the expiry of the unobserved time limit. In the case of non-payment of a renewal fee, the period specified in Article 86, paragraph 2, shall be deducted from the period of one year.

(3) The application must state the grounds on which it is based, and must set out the facts on which it relies. It shall not be deemed to be filed until after the fee for re-establishment of rights has been paid.

(4) The department competent to decide on the omitted act shall decide upon the application.

(5) The provisions of this Article shall not be applicable to the time limits referred to in paragraph 2 of this Article, Article 61, paragraph 3, Article 76, paragraph 3, Article 78, paragraph 2, Article 79, paragraph 2, Article 87, paragraph 1, and Article 94, paragraph 2.

EPC 2000

(1) An applicant for or proprietor of a European patent who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-à-vis the European Patent Office shall, upon request, have his rights re-established upon request if the non-observance of this time limit has the direct consequence [...] of causing the refusal of the European patent application, or of a request, or the deeming of the European patent application to have been withdrawn, or the revocation of the European patent, or the loss of any other right or means of redress.

(2) The European Patent Office shall grant the request, provided that the conditions of paragraph 1 and any other requirements laid down in the Implementing Regulations are met. Otherwise, it shall reject the request.

(3) If the request is granted, the legal consequences of the failure to observe the time limit shall be deemed not to have ensued.

(2) Deleted – incorporated in the Implementing Regulations (see Rule 136(1) EPC 2000)

(3) Deleted – incorporated in the Implementing Regulations (see Rule 136(2) EPC 2000)

(4) Deleted – incorporated in the Implementing Regulations (see Rule 136(4) EPC 2000)

(4) Re-establishment of rights shall be ruled out in respect of the time limit for requesting re-establishment of rights. The Implementing Regulations may rule out re-establishment for other time limits.
8. Minor amendments have been made to Article 122(1) and (5) EPC under Article 3(1) of the Revision Act (editorial improvements and clarifications, alignment in the three official languages).

9. The revised Article 122 EPC is applicable to

- EPs already granted at the time of EPC 2000 entry into force, if the time limit for requesting re-establishment has not expired yet
- EP applications pending at the time of EPC 2000 entry into force, if the time limit for requesting re-establishment has not expired yet
- EP applications filed on or after the time of EPC 2000 entry into force

ARTICLE 123 EPC

(Preparatory documents: CA/PL 18/00; CA/PL PV 13, point 77; CA/PL PV 14, points 77-78; CA/100/00, pages 161-162; MR/2/00, pages 165-166; MR/24/00, page 95)

1. The applicant's right to make amendments to the application (and, where applicable, the patent) is maintained in the new version of Article 123(1) EPC. The first sentence has been redrafted in order to make it clear that not only the conditions under which amendments may be made are laid down in the Implementing Regulations (see Rule 137 EPC 2000), but also other matters such as the form of the amendments (see Rule 50(1), first sentence, EPC 2000). The new version leaves open the possibility for the Implementing Regulations to limit, under certain circumstances, the right to make amendments to the description.

2. Article 123(3) EPC 2000 contains a substantive clarification. According to the new version, the European patent as a whole (i.e. the claims, description and any drawings) may not be amended in such a way as to extend the protection it confers (see T 1149/97 – Fluid transducer/SOLARTRON, OJ EPO 2000, 259). This principle is applicable in all proceedings before the EPO, as well as in national proceedings. The new wording brings Article 123(3) EPC 2000 into line with Article 138(1)(d) EPC.

3. Finally, Article 123(2) and (3) EPC has been brought into line with Article 123(1) EPC by means of editorial amendments. In addition, a few minor amendments have been made to Article 123 EPC under Article 3(1) of the Revision Act (editorial improvements and clarifications).

4. The revised Article 123 EPC is applicable to

- EPs already granted at the time of EPC 2000 entry into force
- EP applications pending at the time of EPC 2000 entry into force
- EP applications filed on or after the time of EPC 2000 entry into force
**Article 122  Re-establishment of rights**

**EPC 1973**

(6) Any person who, in a designated Contracting State, in good faith has used or made effective and serious preparations for using an invention which is the subject of a published European patent application or a European patent in the course of the period between the loss of rights referred to in paragraph 1 and publication of the mention of re-establishment of those rights, may without payment continue such use in the course of his business or for the needs thereof.

(7) Nothing in this Article shall limit the right of a Contracting State to grant restitutio in integrum in respect of time limits provided for in this Convention and to be observed vis-à-vis the authorities of such State.

**EPC 2000**

(5) Any person who, in a designated Contracting State, has in good faith used or made effective and serious preparations for using an invention which is the subject of a published European patent application or a European patent in [...] the period between the loss of rights referred to in paragraph 1 and publication in the European Patent Bulletin of the mention of re-establishment of those rights, may without payment continue such use in the course of his business or for the needs thereof.

(6) Nothing in this Article shall limit the right of a Contracting State to grant re-establishment of rights in respect of time limits provided for in this Convention and to be observed vis-à-vis the authorities of such State.

**Article 123  Amendments**

**EPC 1973**

(1) The conditions under which a European patent application or a European patent may be amended in proceedings before the European Patent Office are laid down in the Implementing Regulations. In any case, an applicant shall be allowed at least one opportunity of amending the description, claims and drawings of his own volition.

(2) A European patent application or a European patent may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed.

(3) The claims of the European patent may not be amended during opposition proceedings in such a way as to extend the protection conferred.

**EPC 2000**

(1) [...] A European patent application or [...] European patent may be amended in proceedings before the European Patent Office, in accordance with the Implementing Regulations. In any case, the applicant shall be given at least one opportunity of amending the application of his own volition.

(2) A European patent application or [...] European patent may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed.

(3) [...] The European patent may not be amended [...] in such a way as to extend the protection it confers.
ARTICLE 124 EPC
(Preparatory documents: CA/PL 18/00; CA/PL PV 13, points 78, 83; CA/PL PV 14, points 79-85; CA/100/00, pages 163-164; MR/2/00, pages 167-168; MR/24/00, page 95)

1. Under Article 124(1) EPC 1973, the EPO may invite the applicant to indicate the states in which he has filed national patent applications and to give the reference numbers for such applications. **New Article 124(1) EPC extends the scope of application of this provision**, so that the EPO can also obtain from the applicant **information about the prior art** considered in proceedings concerning corresponding patent applications for an invention to which the European patent application relates.

2. Since the priority of a national patent application is claimed for the majority of European patent applications, the EPO should be in a position to request more information about corresponding national or regional applications – particularly first filings on which priority is based – than is possible under Article 124 EPC 1973. In particular, the search results for these applications or other data concerning the relevant prior art considered in proceedings before a national or regional office can be helpful to the EPO when processing the corresponding European patent applications. If the EPO does not already have such information (see Article 130 EPC), it should be able to obtain from the applicant any data relating to such prior art which he can easily access. By providing such information, the applicant can help to speed up the European grant procedure and enhance the quality of search and substantive examination.

3. Under Rule 141 EPC 2000, the EPO may specify the period within which the applicant must provide the information on prior art.

4. The revised Article 124 EPC is applicable to

- **EP applications pending at the time of EPC 2000 entry into force**
- **EP applications filed on or after the time of EPC 2000 entry into force**

ARTICLE 125 EPC is unchanged

ARTICLE 126 EPC
(Preparatory documents: CA/PL 8/00, point 14; CA/PL PV 13, points 25-30; CA/PL PV 14, point 6; CA/100/00, pages 165-166; MR/2/00, pages 169-170; MR/24/00, page 95)

1. **Article 126 EPC** relates to the termination of financial obligations, both in terms of fees owed to the European Patent Organisation and in terms of rights to refunds against the European Patent Organisation.

2. This provision is oddly included in the common provisions governing the patent granting procedures of the EPO. The preparatory documents to the EPC 1973 show that, initially, Article 126 EPC began as a provision in the draft Implementing Regulations, together with the content of Rule 91 EPC 1973, which allows the President to waive enforced recovery procedures (see **First Preliminary Draft of the Implementing Regulations to the Convention establishing a European System for the Grant of Patents, 1971**, p. 256, No. 10, re: Article 145).

3. The historical materials expressly state that in practice the scope of application of Article 126 EPC was expected to be confined to those fees laid down by the President of the EPO in accordance with Article 3 Rules relating to Fees. (See **Bericht über die Sitzung der Arbeitsgruppe I, 14-17 September 1971 in Luxemburg**, BR/132 d/71, p. 25.) The reason is that procedural fees prescribed under the EPC are generally due before the EPO performs the act for which the fee is charged. The sanction for failure to pay is generally either total or partial loss of rights. At any rate, if the procedural act is not performed, the fee ceases to be due to the EPO. In particular, Article 126 EPC does not apply to payments by contracting states in respect of renewal fees for European patents under Article 39 EPC.

4. Therefore **Article 126 EPC 1973 is deleted** and is no longer applicable as from the entry into force of the EPC 2000.
Article 124  Information on prior art

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information concerning national patent applications</td>
<td>Information on prior art</td>
</tr>
<tr>
<td>(1) The Examining Division or the Board of Appeal may invite the applicant</td>
<td>(1) The European Patent Office may, in accordance with the Implementing</td>
</tr>
<tr>
<td>to indicate, within a period to be determined by it, the States in which</td>
<td>Regulations, invite the applicant to provide information on prior art</td>
</tr>
<tr>
<td>he has made applications for national patents for the whole or part of</td>
<td>taken into consideration in national or regional patent proceedings and</td>
</tr>
<tr>
<td>the invention to which the European patent application relates, and to</td>
<td>concerning an invention to which the European patent application</td>
</tr>
<tr>
<td>give the reference numbers of the said applications.</td>
<td>relates.</td>
</tr>
<tr>
<td>(2) If the applicant fails to reply in due time to an invitation under</td>
<td>(2) Unchanged</td>
</tr>
<tr>
<td>paragraph 1, the European patent application shall be deemed to be</td>
<td></td>
</tr>
<tr>
<td>withdrawn.</td>
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</tbody>
</table>

Article 125  Reference to general principles

In the absence of procedural provisions in this Convention, the European Patent Office shall take into account the principles of procedural law generally recognised in the Contracting States.

Article 126  Deleted

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Termination of financial obligations</td>
<td>Deleted</td>
</tr>
<tr>
<td>(1) Rights of the Organisation to the payment of a fee to the European</td>
<td></td>
</tr>
<tr>
<td>Patent Office shall be extinguished after four years from the end of the</td>
<td></td>
</tr>
<tr>
<td>calendar year in which the fee fell due.</td>
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</tr>
<tr>
<td>(2) Rights against the Organisation for the refunding by the European</td>
<td></td>
</tr>
<tr>
<td>Patent Office of fees or sums of money paid in excess of a fee shall be</td>
<td></td>
</tr>
<tr>
<td>extinguished after four years from the end of the calendar year in which</td>
<td></td>
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<tr>
<td>the right arose.</td>
<td></td>
</tr>
<tr>
<td>(3) The period laid down in paragraphs 1 and 2 shall be interrupted in</td>
<td></td>
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<tr>
<td>the case covered by paragraph 1 by a request for payment of the fee and</td>
<td></td>
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<tr>
<td>in the case covered by paragraph 2 by a reasoned claim in writing. On</td>
<td></td>
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<tr>
<td>interruption it shall begin again immediately and shall end at the</td>
<td></td>
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<tr>
<td>latest six years after the end of the year in which it originally began,</td>
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<tr>
<td>unless, in the meantime, judicial proceedings to enforce the right have</td>
<td></td>
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<tr>
<td>begun; in this case the period shall end at the earliest one year after</td>
<td></td>
</tr>
<tr>
<td>the judgment enters into force.</td>
<td></td>
</tr>
</tbody>
</table>

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey strikethrough** = changes and deletions adopted by the Administrative Council (June 2001)
CHAPTER II

A minor editorial amendment has been made to the title of Chapter II, under Article 3(1) of the Revision Act.

ARTICLE 127 EPC

(Preparatory documents: CA/PL 18/00; CA/PL PV 13, points 79, 83, 84; CA/PL PV 14, points 86-88; CA/100/00, pages 167-168; MR/2/00, pages 171-172; MR/24/00, page 95)

1. The title of Article 127 EPC has been redrafted in order to clarify that the Register kept by the EPO is called “European Patent Register”. This is also reflected now in Article 127 EPC itself.

2. Article 127, first sentence, EPC 2000 has been redrafted without any change in substance. The former wording was however too restrictive with regard to the particulars of the European Patent Register. Thus it is now clarified that the Implementing Regulations specify in detail which particulars of European patent applications and patents, including the proceedings concerning them, are to be recorded in the European Patent Register (see Rule 143 EPC 2000).

3. A minor editorial amendment has been made to Article 127 EPC, under Article 3(1) of the Revision Act.

4. The revised Article 127 EPC is applicable to

- EPs already granted at the time of EPC 2000 entry into force
- EP applications pending at the time of EPC 2000 entry into force
- EP applications filed on or after the time of EPC 2000 entry into force
**Chapter II**  
Information to the public or to official authorities

**Article 127**  
**European Patent Register**

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Register of European Patents</strong></td>
<td><strong>European Patent Register</strong></td>
</tr>
<tr>
<td>The European Patent Office shall keep a register, to be known as the Register of European Patents, which shall contain those particulars the registration of which is provided for by this Convention. No entry shall be made in the Register prior to the publication of the European patent application. The Register shall be open to public inspection.</td>
<td>The European Patent Office shall keep a European Patent Register, in which the particulars specified in the Implementing Regulations shall be recorded. No entry shall be made in the European Patent Register prior to before the publication of the European patent application. The European Patent Register shall be open to public inspection.</td>
</tr>
</tbody>
</table>

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)  
**grey strikethrough** = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 128 EPC
(Preparatory documents: CA/PL 18/00; CA/PL PV 13, points 80, 83, 84; CA/PL PV 14, point 6; CA/100/00, pages 169-172; MR/2/00, pages 173-176; MR/24/00, page 95)

1. Article 128(1) to (4) EPC remains essentially unchanged.

2. **Article 128(5) EPC** is amended in such a way that the particulars which the EPO may communicate to third parties or publish can be specified in the Implementing Regulations. No corresponding Rule has been established for the time being.

3. A few editorial minor amendments have been made to **Article 128 EPC** under Article 3(1) of the Revision Act.

4. The revised Article 128 EPC is applicable to

   - EPs already **granted** at the time of EPC 2000 entry into force
   - EP applications **pending** at the time of EPC 2000 entry into force
   - EP applications **filed on or after** the time of EPC 2000 entry into force
### Article 128 Inspection of files

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The files relating to European patent applications, which have not yet been published, shall not be made available for inspection without the consent of the applicant.</td>
<td>(1) [...] Files relating to European patent applications [...] which have not yet been published shall not be made available for inspection without the consent of the applicant.</td>
</tr>
<tr>
<td>(2) Any person who can prove that the applicant for a European patent has invoked the rights under the application against him may obtain inspection of the files prior to the publication of that application and without the consent of the applicant.</td>
<td>(2) Any person who can prove that the applicant [...] has invoked the rights under the <strong>European</strong> patent application against him may obtain inspection of the files prior to before the publication of that application and without the consent of the applicant.</td>
</tr>
<tr>
<td>(3) Where a European divisional application or a new European patent application filed under Article 61, paragraph 1, is published, any person may obtain inspection of the files of the earlier application prior to the publication of that application and without the consent of the relevant applicant.</td>
<td>(3) Where a European divisional application or a new European patent application filed under Article 61, paragraph 1, is published, any person may obtain inspection of the files of the earlier application prior to before the publication of that application and without the consent of the applicant.</td>
</tr>
<tr>
<td>(4) Subsequent to the publication of the European patent application, the files relating to such application and the resulting European patent may be inspected on request, subject to the restrictions laid down in the Implementing Regulations.</td>
<td>(4) Subsequent to After the publication of the European patent application, the files relating to such application and the resulting European patent may be inspected on request, subject to the restrictions laid down in the Implementing Regulations.</td>
</tr>
<tr>
<td>(5) Even prior to the publication of the European patent application, the European Patent Office may communicate the following bibliographic data to third parties or publish them:</td>
<td>(5) Even prior to before the publication of the European patent application, the European Patent Office may communicate [...] to third parties or publish <strong>the particulars specified in the Implementing Regulations.</strong> (a) to (e) <strong>Deleted</strong></td>
</tr>
<tr>
<td>(a) the number of the European patent application;</td>
<td></td>
</tr>
<tr>
<td>(b) the date of filing of the European patent application and, where the priority of a previous application is claimed, the date, State and file number of the previous application;</td>
<td></td>
</tr>
<tr>
<td>(c) the name of the applicant;</td>
<td></td>
</tr>
<tr>
<td>(d) the title of the invention;</td>
<td></td>
</tr>
<tr>
<td>(e) the Contracting States designated.</td>
<td></td>
</tr>
</tbody>
</table>
ARTICLE 129 EPC
(Preparatory documents: CA/PL 19/98; CA/PL PV 8, point 12; CA/PL PV 14, point 6; CA/100/00, pages 173-174; MR/2/00, pages 177-178; MR/24/00, page 95)

1. Under Article 129(a) EPC 1973, the European Patent Bulletin includes entries made in the Register of European Patents (Article 127 EPC). The information which has to be entered in the Register is listed in Rule 92(1) EPC 1973; other provisions relating to Register entries are contained in Rules 19, 20-22 and 61 EPC 1973. Under Rule 92(2) EPC 1973, the President of the EPO can also include other information in the Register, but so far has made little use of this power (see OJ EPO 1983, 458; 1986, 61 and 327), because under Article 129(a) EPC 1973 such additional information would also have to go into the Bulletin, making the printed version too unwieldy.

2. Ever since the EPO opened, users have been making suggestions for improving and expanding the Register. To implement these ideas and make much more procedural data available online without (in view of Article 129(a) EPC 1973) unduly inflating the Bulletin, the EPO has been publishing this data in a separate, unofficial "Information register (epidos)". However, splitting up the data between two separate registers is not user-friendly and should therefore be discontinued. To combine both registers without affecting the Bulletin means amending Article 129(a) EPC accordingly.

3. The amendment separates Register and Bulletin data, thereby ensuring that entries prescribed directly or indirectly by the EPC, now or in the future (see Articles 65(1), 97(3), 153(3) and Rules 21(2), 39(1), 70(1) EPC 2000), will have to appear in the Bulletin. It also empowers the President to specify further entries as appropriate. The Bulletin's contents can then be laid down directly by the President, after consulting the users as necessary.

4. Using modern electronic systems, the EPO can tailor the Register to users' information needs. It will no longer be obliged to publish, at great expense, the same information in the Bulletin in printed form as is contained in the Register. If demand for hard-copy data continues to fall, the President can quickly and easily adjust the Bulletin as necessary.

5. The revised Article 129 EPC is applicable as from the entry into force of the EPC 2000.

ARTICLE 130 EPC
(Preparatory documents: CA/PL 18/00; CA/PL PV 13, points 81, 83, 84; CA/PL PV 14, point 6; CA/100/00, pages 175-176; MR/2/00, pages 179-180; MR/24/00, page 95)

1. Article 130(1) EPC has been redrafted in such a way that the EPO and the central industrial property office of any contracting state communicate to or request from each other any useful information not only regarding European or national patent applications, but also regarding European or national patents. The wording has also been brought into line with that of Article 131(1) EPC, clarifying that such an exchange of information takes place, unless the EPC or the national law provides otherwise. Due to this clarification, the reference to Article 75(2) EPC is no longer necessary.

2. Article 130(2) EPC remains basically unchanged. Only Article 130(2)(a) EPC has been redrafted for clarification.

3. Minor editorial amendments have been made to Article 130(1) and (3) EPC under Article 3(1) of the Revision Act.

4. The revised Article 130 EPC is applicable as from the entry into force of the EPC 2000.
**Article 129  Periodical publications**

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>The European Patent Office shall periodically publish:</td>
<td>The European Patent Office shall periodically publish:</td>
</tr>
<tr>
<td>(a) a European Patent Bulletin containing entries made in the Register of European Patents, as well as other particulars the publication of which is prescribed by this Convention;</td>
<td>(a) a European Patent Bulletin containing the particulars the publication of which is prescribed by this Convention, the Implementing Regulations or the President of the European Patent Office;</td>
</tr>
<tr>
<td>(b) an Official Journal of the European Patent Office, containing notices and information of a general character issued by the President of the European Patent Office, as well as any other information relevant to this Convention or its implementation.</td>
<td>(b) an Official Journal [...] containing notices and information of a general character issued by the President of the European Patent Office, as well as any other information relevant to this Convention or its implementation.</td>
</tr>
</tbody>
</table>

**Article 130  Exchange of information**

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The European Patent Office and, subject to the application of the legislative or regulatory provisions referred to in Article 75, paragraph 2, the central industrial property office of any Contracting State shall, on request, communicate to each other any useful information regarding the filing of European or national patent applications and regarding any proceedings concerning such applications and the resulting patents.</td>
<td>(1) Unless otherwise provided in this Convention or in national laws provide otherwise, the European Patent Office and [...] the central industrial property office of any Contracting State shall, on request, communicate to each other any useful information regarding [...] European or national patent applications and patents and [...] any proceedings concerning [...] them.</td>
</tr>
<tr>
<td>(2) The provisions of paragraph 1 shall apply to the communication of information by virtue of working agreements between the European Patent Office and:</td>
<td>(2) [...] Paragraph 1 shall apply to the communication of information by virtue of working agreements between the European Patent Office and</td>
</tr>
<tr>
<td>(a) the central industrial property office of any State which is not a party to this Convention;</td>
<td>(a) the central industrial property offices of other States;</td>
</tr>
<tr>
<td>(b) any inter-governmental organisation entrusted with the task of granting patents;</td>
<td>(b) Unchanged</td>
</tr>
<tr>
<td>(c) any other organisation.</td>
<td>(c) Unchanged</td>
</tr>
<tr>
<td>(3) The communications under paragraphs 1 and 2(a) and (b) shall not be subject to the restrictions laid down in Article 128. The Administrative Council may decide that communications under paragraph 2(c) shall not be subject to such restrictions, provided that the organisation concerned shall treat the information communicated as confidential until the European patent application has been published.</td>
<td>(3) The communications under paragraphs 1 and 2(a) and (b) shall not be subject to the restrictions laid down in Article 128. The Administrative Council may decide that communications under paragraph 2(c) shall not be subject to such restrictions, provided that the organisation concerned [...] treats the information communicated as confidential until the European patent application has been published.</td>
</tr>
</tbody>
</table>
ARTICLE 131 EPC

The wording of Article 131 EPC has been amended under Article 3(1) of the Revision Act (alignment in the three official languages, editorial improvements and clarifications).

ARTICLE 132 EPC is unchanged.
Article 131 Administrative and legal co-operation

(1) Unless otherwise provided in this Convention or in national laws provide otherwise, the European Patent Office and the courts or authorities of Contracting States shall on request give assistance to each other by communicating information or opening files for inspection. Where the European Patent Office lays files open to makes files available for inspection by courts, Public Prosecutors’ Offices or central industrial property offices, the inspection shall not be subject to the restrictions laid down in Article 128.

(2) Upon receipt of letters rogatory from At the request of the European Patent Office, the courts or other competent authorities of Contracting States shall undertake, on behalf of the Office and within the limits of their jurisdiction, any necessary enquiries or other legal measures.

Article 132 Exchange of publications

(1) The European Patent Office and the central industrial property offices of the Contracting States shall despatch to each other on request and for their own use one or more copies of their respective publications free of charge.

(2) The European Patent Office may conclude agreements relating to the exchange or supply of publications.
CHAPTER III

ARTICLE 133 EPC

(Preparatory documents: CA/PL 22/00; CA/PL PV 13, points 85-89 and 92-93; CA/PL PV 14, points 89-94, CA/100/00, pages 177-178; MR/2/00, pages 181-182; MR/24/00, page 95)

1. Article 133 EPC contains the general principles governing representation with respect to proceedings under the EPC. It remains unchanged subject to minor editorial streamlining and changes aimed at increasing the consistency of the text of the EPC.

2. In particular, the deletion of the words "within the territory of" does not purport to change the geographical area of application of the provision. The territorial field of application of the EPC generally is defined by the contracting states themselves, pursuant to Article 168 EPC.

3. Finally, minor editorial amendments have been made to Article 133(3) and (4) EPC under Article 3(1) of the Revision Act.

4. The revised Article 133 EPC is applicable to

- EPs already granted at the time of EPC 2000 entry into force
- EP applications pending at the time of EPC 2000 entry into force
- EP applications filed on or after the time of EPC 2000 entry into force
Chapter III  Representation

<table>
<thead>
<tr>
<th>Article 133</th>
<th>General principles of representation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EPC 1973</strong></td>
<td><strong>EPC 2000</strong></td>
</tr>
<tr>
<td>(1) Subject to the provisions of paragraph 2, no person shall be compelled to be represented by a professional representative in proceedings established by this Convention.</td>
<td>(1) Subject to [...] paragraph 2, no person shall be compelled to be represented by a professional representative in proceedings established by this Convention.</td>
</tr>
<tr>
<td>(2) Natural or legal persons not having either a residence or their principal place of business within the territory of one of the Contracting States must be represented by a professional representative and act through him in all proceedings established by this Convention, other than in filing the European patent application; the Implementing Regulations may permit other exceptions.</td>
<td>(2) Natural or legal persons not having their residence or [...] principal place of business [...] in a Contracting State shall be represented by a professional representative and act through him in all proceedings established by this Convention, other than in filing a European patent application; the Implementing Regulations may permit other exceptions.</td>
</tr>
<tr>
<td>(3) Natural or legal persons having their residence or principal place of business within the territory of one of the Contracting States may be represented in proceedings established by this Convention by an employee, who need not be a professional representative but who must be authorised in accordance with the Implementing Regulations. The Implementing Regulations may provide whether and under what conditions an employee of such a legal person may also represent other legal persons which have their principal place of business within the territory of one of the Contracting States and which have economic connections with the first legal person.</td>
<td>(3) Natural or legal persons having their residence or principal place of business [...] in a Contracting State may be represented in proceedings established by this Convention by an employee, who need not be a professional representative but who shall be authorised in accordance with the Implementing Regulations. The Implementing Regulations may provide whether and under what conditions an employee of such a legal person may also represent other legal persons which have their principal place of business [...] in a Contracting State and which have economic connections with the first legal person.</td>
</tr>
<tr>
<td>(4) The Implementing Regulations may prescribe special provisions concerning the common representation of parties acting in common.</td>
<td>(4) The Implementing Regulations may prescribe lay down special provisions concerning the common representation of parties acting in common.</td>
</tr>
</tbody>
</table>
ARTICLE 134 EPC
(Preparatory documents: CA/PL 18/98 and 22/00; CA/PL PV 8, points 10-11; and PV 13, points 85-90 and 93, CA/PL PV 14, points 89-94, CA/100/00, pages 179-184; MR/2/00, pages 183-188; MR/24/00, page 95)

1. Article 134 EPC deals with issues of professional representation, determining who may represent persons in proceedings established under the EPC, and in particular the conditions under which a person may be entered on the list of professional representatives.

2. Furthermore, Article 163 EPC 1973 dealing with the entitlement of national representatives of a state acceding to the EPC to be entered on that list has been included among the transitional provisions of Part XI of the EPC, which are now superseded. It is therefore deleted.

   However, Article 163(6) EPC 1973 governs the entitlement of national representatives in a state having newly acceded to the EPC after the expiry of the transitional period (which ended on 7 October 1981, see OJ EPO 1978, 327) to be entered on the list of professional representatives. This provision is not transitional in nature and retains its significance as a so-called "grandfather clause".

3. As a result, the substance of the "grandfather clause" of Article 163 EPC is added to a new Article 134(3) EPC as a permanent feature of the EPC, in order to deal with the situation of national representatives of states acceding to the EPC in the future.

4. Finally, Article 134(8)(b) EPC 1973 deals with the establishment of an institute constituted by persons entitled to act as professional representatives. The epi having been established, this provision as framed is obsolete. Therefore, Article 134(8) EPC 1973 has been severed and turned into a new Article 134a EPC anchoring in the EPC the existence of the epi.

5. The wording of Article 134 EPC has been streamlined and minor editorial changes have been made to improve the consistency of the text. In addition, the wording of Article 134(4) and (6) EPC has been amended under Article 3(1) of the Revision Act (editorial improvements and clarifications).

6. The revised Article 134 EPC is applicable as from the entry into force of the EPC 2000.
### Article 134  Representation before the European Patent Office

#### EPC 1973

(1) Professional representation of natural or legal persons in proceedings established by this Convention may only be undertaken by professional representatives whose names appear on a list maintained for this purpose by the European Patent Office.

(2) Any natural person who fulfils the following conditions may be entered on the list of professional representatives:

(a) he must be a national of one of the Contracting States;

(b) he must have his place of business or employment within the territory of one of the Contracting States;

(c) he must have passed the European qualifying examination.

[See Article 163 EPC 1973:
(1) … any natural person who fulfils the following conditions may be entered on the list of professional representatives:

(a) he must be a national of a Contracting State;

(b) he must have his place of business or employment within the territory of one of the Contracting States;

(c) he must be entitled to represent natural or legal persons in patent matters before the central industrial property office of the Contracting State in which he has his place of business or employment.

(3) When … the entitlement … is not conditional upon the requirement of special professional qualifications, persons applying to be entered on the list … must have habitually so acted for at least five years.]

(3) Entry shall be effected upon request, accompanied by certificates which must indicate that the conditions laid down in paragraph 2 are fulfilled.

(4) Persons whose names appear on the list of professional representatives shall be entitled to act in all proceedings established by this Convention.

#### EPC 2000

(1) [...] Representation of natural or legal persons in proceedings established by this Convention may only be undertaken by professional representatives whose names appear on a list maintained for this purpose by the European Patent Office.

(2) Any natural person who […]

(a) is a national of a Contracting State,

(b) has his place of business or employment […] in a Contracting State and

(c) has passed the European qualifying examination

may be entered on the list of professional representatives.

(3) During a period of one year from the date on which the accession of a State to this Convention takes effect, entry on that list may also be requested by any natural person who

(a) is a national of a Contracting State;

(b) has his place of business or employment in the State having acceded to the Convention and

(c) is entitled to represent natural or legal persons in patent matters before the central industrial property office of that State. Where such entitlement is not conditional upon the requirement of special professional qualifications, the person shall have regularly so acted in that State for at least five years.

(4) Entry shall be effected upon request, accompanied by certificates which shall indicate indicating that the conditions laid down in paragraph 2 or 3 are fulfilled.

(4) Becomes (5) – wording unchanged
Article 134  Representation before the European Patent Office

EPC 1973

(5) For the purpose of acting as a professional representative, any person whose name appears on the list referred to in paragraph 1 shall be entitled to establish a place of business in any Contracting State in which proceedings established by this Convention may be conducted, having regard to the Protocol on Centralisation annexed to this Convention. The authorities of such State may remove that entitlement in individual cases only in application of legal provisions adopted for the purpose of protecting public security and law and order. Before such action is taken, the President of the European Patent Office shall be consulted.

(6) The President of the European Patent Office may, in special circumstances, grant exemption from the requirement of paragraph 2(a).

EPC 2000

(6) For the purpose of acting as a professional representative, any person whose name appears on the list referred to in paragraph 1 of professional representatives shall be entitled to establish a place of business in any Contracting State in which proceedings established by this Convention may be conducted, having regard to the Protocol on Centralisation annexed to this Convention. The authorities of such State may remove that entitlement in individual cases only in application of legal provisions adopted for the purpose of protecting public security and law and order. Before such action is taken, the President of the European Patent Office shall be consulted.

(7) The President of the European Patent Office may [...] grant exemption from:

(a) the requirement of paragraphs 2(a) or 3(a) in special circumstances;

(b) the requirement of paragraph 3(c), second sentence, if the applicant furnishes proof that he has acquired the requisite qualification in another way.

(8) The Administrative Council may adopt provisions governing:

(a) the qualifications and training required of a person for admission to the European qualifying examination and the conduct of such examination;

(b) the establishment or recognition of an institute constituted by the persons entitled to act as professional representatives by virtue of either the European qualifying examination or the provisions of Article 163, paragraph 7;

(c) any disciplinary power to be exercised by that institute or the European Patent Office on such persons.

(8) Deleted – becomes new Article 134a EPC
NEW ARTICLE 134a EPC
(Preparatory documents: CA/PL 18/98 and 22/00; CA/PL PV 8, points 10-11 and CA/PL PV 13, points 85-93; CA/PL PV 14, points 95-102; CA/100/00, pages 185-188; CA/124/00, point 24; CA/125/00, points 123-126; MR/2/00, pages 189-192; MR/24/00, page 96)

1. Article 134(8)(b) EPC 1973 deals with the establishment of an institute constituted by persons entitled to act as professional representatives. With the ep in existence, this paragraph as framed is obsolete. The rest of Article 134(8) EPC 1973 sets forth the powers of the Administrative Council to - adopt provisions governing the standards for admission as a professional representative, - the conducting of qualifying examinations and - the disciplinary powers to be exercised by that institute or the EPO.

In the interest of clarity, these provisions are turned into a new Article 134a EPC, containing the substance of existing Article 134(8) EPC 1973 and anchoring the existence of the ep in the EPC.

2. A new sub-paragraph (d) is added to Article 134a EPC. In the course of exercising their professional activities in relation to European patent applications or European patents, European professional representatives give and receive confidential information, the secrecy of which ought to be safeguarded. Article 2 of the Regulation on Discipline for professional representatives (epi Disciplinary Rules) adopted by the Administrative Council provides that secrecy relating to confidential information must be maintained by the professional representative.

US law distinguishes between the lawyer’s obligation of confidentiality and the evidentiary privilege protecting the confidentiality of attorney-client communications. In Bristol-Myers Squibb v. Rhône Poulenc Rorer (Southern District of New York, 21 April 1999), applying lex loci, the US District Court held that the epi Disciplinary Rules on secrecy did not confer on European professional representatives the equivalent of the US attorney-client privilege, with the result that the entire contents of the files of the European professional representatives of a French company were ordered to be produced in court by the US judge. The US attorney-client privilege applies only in limited circumstances, which may be summarised as follows: “where legal advice is sought from a professional legal advisor in his capacity as such the communication relating to that purpose made in confidence by the client [or attorney] are at his instance permanently protected from disclosure by himself or the legal advisor except if the privilege is waived” (Wigmore, Evidence, 1961, § 2292 at 554, cited in Bristol-Myers at 22).

Therefore, the problem is that in US court proceedings, US domestic law refers to European law to decide whether any attorney-client privilege applies to communications between a European professional representative and his client or any other person. At present, no such evidentiary privilege exists, the reason being that neither the EPO nor its Boards of Appeal have the capacity to force a European professional representative to disclose such information. Thus, with a view to protecting – in the course of US proceedings – the confidence of communications between European professional representatives and their clients, it appears necessary to introduce a representative-client privilege applicable in EPO proceedings, equivalent to that existing in the US. Consequently, new Article 134a(1)(d) EPC confers on the Administrative Council the competence to create an evidentiary exception modeled on the US attorney-client privilege, applying solely to proceedings before the EPO (see Rule 153 EPC 2000).

3. New Article 134a(2) EPC stating that any person entered on the list of professional representatives shall be a member of the ep, anchors in the EPC the principle clearly formulated in Article 5(1) of the Regulation on the Establishment of the Institute, and implied in Article 134(8)(b) EPC 1973.

4. A minor editorial amendment has been made Article 134a(1)(c) EPC under Article 3(1) of the Revision Act.

5. The revised Article 134a EPC is applicable as from the entry into force of the EPC 2000.
 Article 134a  
Institute of Professional Representatives before the European Patent Office

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
</table>
| [See Article 134(8) EPC 1973:  
(8) The Administrative Council may adopt provisions governing:  
(a) the qualifications and training required of a person for admission to the European qualifying examination and the conduct of such examination;  
(b) the establishment or recognition of an institute constituted by the persons entitled to act as professional representatives by virtue of either the European qualifying examination or the provisions of Article 163, paragraph 7;  
(c) any disciplinary power to be exercised by that institute or the European Patent Office on such persons.]  |  
(1) The Administrative Council shall be competent to adopt and amend provisions governing:  
(a) the Institute of Professional Representatives before the European Patent Office, hereinafter referred to as the Institute;  
(b) the qualifications and training required of a person for admission to the European qualifying examination and the conduct of such examination;  
(c) any disciplinary power [...] exercised by the Institute or the European Patent Office in respect of professional representatives;  
(d) the obligation of confidentiality of the professional representative and the privilege from disclosure in proceedings before the European Patent Office in respect of communications between a professional representative and his client or any other person.  
(2) Any person entered on the list of professional representatives referred to in Article 134, paragraph 1, shall be a member of the Institute. |
PART VIII

CHAPTER I

ARTICLE 135 EPC
(Preparatory documents: CA/PL 23/00; CA/PL PV 13, points 94-97; CA/PL PV 14, point 6; CA/100/00, pages 189-192; MR/2/00, pages 193-196; MR/24/00, page 96)

1. The content of Articles 135 and 136 EPC 1973 has been combined in one Article, and certain elements of Articles 135(2) and 136(1) EPC 1973 have been transferred to the Implementing Regulations (see Rule 155 EPC 2000).

2. The title of Article 135 EPC has been amended under Article 3(1) of the Revision Act (alignment in the three official languages).

3. There has been an editorial change to Article 135(1) EPC reflecting the new paragraph numbering in Article 77 EPC 2000 and the deletion of Article 162 EPC. In addition, minor editorial changes have been made to Article 135(1)(a) EPC under Article 3(1) of the Revision Act.

4. The content of Article 135(2), first sentence, EPC 1973 has been transferred to the Implementing Regulations (see Rule 155(1) EPC 2000). An editorial change has been made to Article 135(2), second sentence, EPC and it has been renumbered as Article 135(4) EPC 2000. New Article 135(2) EPC corresponds to Article 136(2), first and second sentences, EPC 1973.

5. New Article 135(3) EPC contains the essential elements of Article 136(1) EPC 1973 and makes it clear that the request for conversion must be made in accordance with the Implementing Regulations (see Rule 155(1) EPC 2000).


7. The revised Article 135 EPC is applicable to

- EPs already granted at the time of EPC 2000 entry into force
- EP applications pending at the time of EPC 2000 entry into force
- EP applications filed on or after the time of EPC 2000 entry into force
PART VIII IMPACT ON NATIONAL LAW

Chapter I Conversion into a national patent application

Article 135 Request for the application of national procedure conversion

EPC 1973

(1) The central industrial property office of a designated Contracting State shall apply the procedure for the grant of a national patent only at the request of the applicant for or proprietor of a European patent, and in the following circumstances:

(a) when the European patent application is deemed to be withdrawn pursuant to Article 77, paragraph 5, or Article 162, paragraph 4;

(b) in such other cases as are provided for by the national law in which the European patent application is refused or withdrawn or deemed to be withdrawn, or the European patent is revoked under this Convention.

(2) The request for conversion shall be filed within three months after the European patent application has been withdrawn or after notification has been made that the application is deemed to be withdrawn, or after a decision has been notified refusing the application or revoking the European patent. The effect referred to in Article 66 shall lapse if the request is not filed in due time.

EPC 2000

(1) The central industrial property office of a designated Contracting State shall, at the request of the applicant for or proprietor of a European patent, apply the procedure for the grant of a national patent [...] in the following circumstances:

a) when the European patent application is deemed to be withdrawn pursuant to Article 77, paragraph 3 [...];

(b) in such other cases as are provided for by the national law, in which the European patent application is refused or withdrawn or deemed to be withdrawn, or the European patent is revoked under this Convention.

(2) In the case referred to in paragraph 1(a) [...], the request for conversion shall be filed with the central industrial property office with which the European patent application has been filed. That office shall, subject to the provisions of governing national security, transmit the request directly to the central industrial property offices of the Contracting States specified therein [...].

(3) In the cases referred to in paragraph 1(b), the request for conversion must be submitted to the European Patent Office in accordance with the Implementing Regulations. It shall not be deemed to be filed until the conversion fee has been paid. The European Patent Office shall transmit the request to the central industrial property offices of the Contracting States specified therein. [...]

(4) The effect of the European patent application referred to in Article 66 shall lapse if the request for conversion is not submitted in due time.
ARTICLE 136 EPC
(Preparatory documents: CA/PL 23/00; CA/PL PV 13, points 94-97; CA/PL PV 14, point 6, CA/100/00, pages 193-194; MR/2/00, pages 197-198; MR/24/00, page 96)

1. Article 136 EPC 1973, whose content is reflected for the most part in the new Article 135(2), (3) and (4) EPC, has been deleted. The second part of the first sentence in Article 136(1) EPC and the last part of the third sentence in Article 136(1) EPC are transferred to the Implementing Regulations (see Rule 155(2) EPC 2000).

2. The deleted Article 136 EPC is no longer applicable as from the entry into force of the EPC 2000.

ARTICLE 137 EPC
(Preparatory documents: MR/6/00, pages 3-5; MR/24/00, page 96)

1. Article 137(1) EPC 2000 refers to new Article 135(2) or (3) EPC.

   The English text of Article 137(2)(b) EPC has been clarified.

   In addition, the wording of Article 137(2) EPC has been amended under Article 3(1) of the Revision Act (editorial improvements and clarifications).

2. The revised Article 137 EPC is applicable to

   - EPs already granted at the time of EPC 2000 entry into force
   - EP applications pending at the time of EPC 2000 entry into force
   - EP applications filed on or after the time of EPC 2000 entry into force
## Article 136  **Deleted**

### EPC 1973

Submission and transmission of the request

(1) A request for conversion shall be filed with the European Patent Office and shall specify the Contracting States in which application of the procedure for the grant of a national patent is required. The request shall not be deemed to be filed until the conversion fee has been paid. The European Patent Office shall transmit the request to the central industrial property offices of the Contracting States specified therein, accompanied by a copy of the files relating to the European patent application or the European patent.

(2) However, if the applicant is notified that the European patent application has been deemed to be withdrawn pursuant to Article 77, paragraph 5, the request shall be filed with the central industrial property office with which the application has been filed. That office shall, subject to the provisions of national security, transmit the request, together with a copy of the European patent application, directly to the central industrial property offices of the Contracting States specified by the applicant in the request. The effect referred to in Article 66 shall lapse if such transmission is not made within twenty months after the date of filing or, if a priority has been claimed, after the date of priority.

### EPC 2000

(1) Transferred to Article 135(3) EPC and to the Implementing Regulations (see Rule 155 EPC 2000)

(2) Transferred to Article 135(2) and (4) EPC

## Article 137  Formal requirements for conversion

### EPC 1973

(1) A European patent application transmitted in accordance with Article 136 shall not be subjected to formal requirements of national law which are different from or additional to those provided for in this Convention.

(2) Any central industrial property office to which the application is transmitted may require that the applicant shall, within not less than two months:

(a) pay the national application fee;

(b) file a translation in one of the official languages of the State in question of the original text of the European patent application and, where appropriate, of the text, as amended during proceedings before the European Patent Office, which the applicant wishes to submit to the national procedure.

### EPC 2000

(1) A European patent application transmitted in accordance with Article 135, paragraph 2 or 3, shall not be subjected to formal requirements of national law which are different from or additional to those provided for in this Convention.

(2) Any central industrial property office to which the European patent application is transmitted may require that the applicant shall, within a period of not less than two months:

(a) pay the national application fee; and

(b) file a translation of the original text of the European patent application in one of the official languages of the State in question and, where appropriate, of the text as amended during proceedings before the European Patent Office which the applicant wishes to submit to use as the basis for the national procedure.

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey** strikethrough = changes and deletions adopted by the Administrative Council (June 2001)
CHAPTER II

ARTICLE 138 EPC

1. The aim of the amendments to Article 138 EPC is to have the patent proprietor's right to limit a European patent in national proceedings relating to its validity expressly enshrined in the EPC. This establishes self-limitation by the patent proprietor as a practice which is recognised in most contracting states, formalising and extending the degree of harmonisation achieved in that respect. This is necessary above all in view of the recent accession to the EPC of new states.

2. The new title reflects the addition of paragraph 3.

3. The changes to the introductory part of Article 138(1) EPC are primarily editorial in nature. They make it easier for reference to be made to Article 138 EPC in other legal instruments such as any future agreement on litigation. However, the deletions also make it clear that Article 138 EPC does not make national revocation of European patents conditional on the adoption of special national provisions. In that respect the principle behind Article 2(2) EPC applies: European patents, within the boundaries drawn by Article 138 EPC, are subject to the conditions applicable to national patents.

4. The changes to Article 138(1)(b) and (c) EPC are also editorial in nature and serve to bring the English and French versions into line with the German text.

5. The new wording of Article 138(2) EPC makes it clear that limitation and partial revocation of a European patent are always to take the form of a corresponding amendment to the patent claims. This does away with the possibility previously provided for under Article 138(2), second sentence, EPC 1973 to pronounce partial revocation by amending the claims, the description or the drawings.

6. In European opposition proceedings (see Article 101(3) EPC 2000) and for most national revocation proceedings, it is accepted that a patent proprietor faced with objections to the validity of his patent may limit it to those parts which are not affected by the objections. There was also provision for self-limitation in revocation proceedings under the 1989 Community Patent Convention (see Article 58(3) CPC 1989).

New Article 138(3) EPC makes this principle explicit and binding in proceedings relating to the validity of European patents. Now the patent proprietor has the right in such proceedings to submit an amended, i.e. limited, version of the claims which in his view meets the objections to the validity of his patent. This limited version of the patent must then form the basis for subsequent proceedings. If the court or authority dealing with the case considers that the proprietor's own limitation is insufficient, it may further limit the patent or revoke it in full.

7. As in European opposition proceedings and in accordance with the new limitation procedure (see Articles 105a, 105b and 105c EPC), the effect of limiting or revoking a European patent in national revocation proceedings is retroactive. A reference to national revocation proceedings has therefore been added to Article 68 EPC 2000.

8. The revised Article 138 EPC is applicable to

- EPs already granted at the time of EPC 2000 entry into force
- EPs granted on EP applications pending at the time of EPC 2000 entry into force
Chapter II  Revocation and prior rights

### Article 138  Revocation of European patents

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Subject to the provisions of Article 139, a European patent may only be revoked under the law of a Contracting State, with effect for its territory, on the following grounds:</td>
<td></td>
</tr>
<tr>
<td>(a) if the subject-matter of the European patent is not patentable within the terms of Articles 52 to 57;</td>
<td></td>
</tr>
<tr>
<td>(b) if the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;</td>
<td></td>
</tr>
<tr>
<td>(c) if the subject-matter of the European patent extends beyond the content of the application as filed or, if the patent was granted on a divisional application or on a new application filed in accordance with Article 61, beyond the content of the earlier application as filed;</td>
<td></td>
</tr>
<tr>
<td>(d) if the protection conferred by the European patent has been extended;</td>
<td></td>
</tr>
<tr>
<td>(e) if the proprietor of the European patent is not entitled under Article 60, paragraph 1.</td>
<td></td>
</tr>
<tr>
<td>(2) If the grounds for revocation only affect the European patent in part, revocation shall be pronounced in the form of a corresponding limitation of the said patent. If the national law so allows, the limitation may be effected in the form of an amendment to the claims, the description or the drawings.</td>
<td></td>
</tr>
<tr>
<td>(1) Subject to [...] Article 139, a European patent may [...] be revoked [...] with effect for a Contracting State only on the [...] grounds that:</td>
<td></td>
</tr>
<tr>
<td>(a) [...] the subject-matter of the European patent is not patentable under Articles 52 to 57;</td>
<td></td>
</tr>
<tr>
<td>(b) [...] the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;</td>
<td></td>
</tr>
<tr>
<td>(c) [...] the subject-matter of the European patent extends beyond the content of the application as filed or, if the patent was granted on a divisional application or on a new application filed under Article 61, beyond the content of the earlier application as filed;</td>
<td></td>
</tr>
<tr>
<td>(d) [...] the protection conferred by the European patent has been extended; or</td>
<td></td>
</tr>
<tr>
<td>(e) [...] the proprietor of the European patent is not entitled under Article 60, paragraph 1.</td>
<td></td>
</tr>
<tr>
<td>(2) If the grounds for revocation affect the European patent only in part, the patent shall be limited by a corresponding amendment of the claims and revoked in part. [...]</td>
<td></td>
</tr>
<tr>
<td>(3) In proceedings before the competent court or authority relating to the validity of the European patent, the proprietor of the patent shall have the right to limit the patent by amending the claims. The patent as thus limited shall form the basis for the proceedings.</td>
<td></td>
</tr>
</tbody>
</table>
ARTICLE 139 EPC

Title of Article 139 EPC and wording of Article 139(2) EPC have been amended under Article 3(1) of the Revision Act (alignment in the three official languages, editorial improvements and clarifications).

CHAPTER III

ARTICLE 140 EPC
(Preparatory documents: MR/6/00, pages 3-5; MR/24/00, page 96)

1. The reference to Article 136 EPC has been deleted.

2. The revised Article 140 EPC is applicable as from the entry into force of the EPC 2000.

ARTICLE 141 EPC
(Preparatory documents: MR/6/00, pages 3-5; MR/24/00, page 97)

1. In Article 141(1) EPC, the reference to Article 86(4) EPC 1973 has been replaced by a reference to Article 86(2) EPC 2000.

2. Title of Article 141 and wording of Article 141(2) EPC have been amended under Article 3(1) of the Revision Act (alignment in the three official languages, editorial improvements and clarifications).

3. The revised Article 141 EPC is applicable to

- EPs already granted at the time of EPC 2000 entry into force
- EPs granted on EP applications pending at, or filed on or after, the time of EPC 2000 entry into force
Article 139  Prior rights of earlier date or and rights arising on the same date

(1) In any designated Contracting State a European patent application and a European patent shall have with regard to a national patent application and a national patent the same prior right effect as a national patent application and a national patent.

(2) A national patent application and a national patent in a Contracting State shall have with regard to a European patent in which designating that Contracting State is designated the same prior right effect as if the European patent were a national patent.

(3) Any Contracting State may prescribe whether and on what terms an invention disclosed in both a European patent application or patent and a national application or patent having the same date of filing or, where priority is claimed, the same date of priority, may be protected simultaneously by both applications or patents.

Chapter III  Miscellaneous effects

Article 140  National utility models and utility certificates

EPC 1973

Article 66, Article 124, Articles 135 to 137 and Article 139 shall apply to utility models and utility certificates and to applications for utility models and utility certificates registered or deposited in the Contracting States whose laws make provision for such models or certificates.

EPC 2000

Articles 66, […] 124, […] 135, […] 137 and […] 139 shall apply to utility models and utility certificates and to applications for utility models and utility certificates registered or deposited in the Contracting States whose laws make provision for such models or certificates.

Article 141  Renewal fees for a European patents

EPC 1973

(1) Renewal fees in respect of a European patent may only be imposed for the years which follow that referred to in Article 86, paragraph 4.

(2) Any renewal fees falling due within two months after the publication of the mention of the grant of the European patent shall be deemed to have been validly paid if they are paid within that period. Any additional fee provided for under national law shall not be charged.

EPC 2000

(1) Renewal fees for a European patent may only be imposed for the years which follow that referred to in Article 86, paragraph 2.

(2) Any renewal fees falling due within two months after of the publication in the European Patent Bulletin of the mention of the grant of the European patent shall be deemed to have been validly paid if they are paid within that period. Any additional fee provided for under national law shall not be charged.
PART IX

ARTICLES 142 to 147 EPC are unchanged.
PART IX SPECIAL AGREEMENTS

Article 142 Unitary patents

(1) Any group of Contracting States, which has provided by a special agreement that a European patent granted for those States has a unitary character throughout their territories, may provide that a European patent may only be granted jointly in respect of all those States.

(2) Where any group of Contracting States has availed itself of the authorisation given in paragraph 1, the provisions of this Part shall apply.

Article 143 Special departments of the European Patent Office

(1) The group of Contracting States may give additional tasks to the European Patent Office.

(2) Special departments common to the Contracting States in the group may be set up within the European Patent Office in order to carry out the additional tasks. The President of the European Patent Office shall direct such special departments; Article 10, paragraphs 2 and 3, shall apply mutatis mutandis.

Article 144 Representation before special departments

The group of Contracting States may lay down special provisions to govern representation of parties before the departments referred to in Article 143, paragraph 2.

Article 145 Select committee of the Administrative Council

(1) The group of Contracting States may set up a select committee of the Administrative Council for the purpose of supervising the activities of the special departments set up under Article 143, paragraph 2; the European Patent Office shall place at its disposal such staff, premises and equipment as may be necessary for the performance of its duties. The President of the European Patent Office shall be responsible for the activities of the special departments to the select committee of the Administrative Council.

(2) The composition, powers and functions of the select committee shall be determined by the group of Contracting States.

Article 146 Cover for expenditure for carrying out special tasks

Where additional tasks have been given to the European Patent Office under Article 143, the group of Contracting States shall bear the expenses incurred by the Organisation in carrying out these tasks. Where special departments have been set up in the European Patent Office to carry out these additional tasks, the group shall bear the expenditure on staff, premises and equipment chargeable in respect of these departments. Article 39, paragraphs 3 and 4, Article 41 and Article 47 shall apply mutatis mutandis.

Article 147 Payments in respect of renewal fees for unitary patents

If the group of Contracting States has fixed a common scale of renewal fees in respect of European patents the proportion referred to in Article 39, paragraph 1, shall be calculated on the basis of the common scale; the minimum amount referred to in Article 39, paragraph 1, shall apply to the unitary patent. Article 39, paragraphs 3 and 4, shall apply mutatis mutandis.

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey** strikethrough = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLES 148 and 149 EPC are unchanged.
Article 148  The European patent application as an object of property

(1) Article 74 shall apply unless the group of Contracting States has specified otherwise.

(2) The group of Contracting States may provide that a European patent application for which these Contracting States are designated may only be transferred, mortgaged or subjected to any legal means of execution in respect of all the Contracting States of the group and in accordance with the provisions of the special agreement.

Article 149  Joint designation

(1) The group of Contracting States may provide that these States may only be designated jointly, and that the designation of one or some only of such States shall be deemed to constitute the designation of all the States of the group.

(2) Where the European Patent Office acts as a designated Office under Article 153, paragraph 1, paragraph 1 shall apply if the applicant has indicated in the international application that he wishes to obtain a European patent for one or more of the designated States of the group. The same shall apply if the applicant designates in the international application one of the Contracting States in the group, whose national law provides that the designation of that State shall have the effect of the application being for a European patent.
NEW ARTICLE 149a EPC

(Preparatory documents: CA/PL 24/00; CA/PL PV 13, points 153-155; CA/PL PV 14, points 182-196; CA/100/00, pages 199-202; CA/124/00, point 25; CA/125/00, points 127-136; MR/2/00, pages 203-206; MR/24/00, page 97)

1. **New Article 149a EPC creates a clear legal basis for any future agreements between the EPC contracting states concerning such matters as translation requirements or litigation concerning European patents.**

2. The Paris Intergovernmental Conference of 1999 mandated two working parties to submit to the governments of the EPC contracting states proposals aiming at reducing the cost of European patents and improving litigation concerning European patents (see OJ EPO 1999, 545). The mandate included the task of drawing up optional protocols to the EPC with a view to limiting translation requirements and to creating an integrated judicial system.

   The two Working Parties on "Cost Reduction" and "Litigation" have held several meetings and accomplished their tasks by respectively finalising
   - a draft agreement on the application of Article 65 EPC and
   - a draft agreement on the establishment of a European patent litigation system, including a "Facultative Advisory Council" (initially referred to as "common entity").

3. In the light of these developments and the possible outcome that in future such agreements could be concluded between the EPC contracting states, involving also the European Patent Organisation and the EPO, it appears necessary to provide for a clear legal basis in the EPC dealing with such special agreements and their interface with the EPC and the EPO.

4. **New Article 149a(1) EPC** expressly underlines that the EPC does not prevent any contracting state from concluding with other contracting states agreements on any matters which under the EPC are governed by national law (see Articles 2, 64(2) and 65 EPC). Letters (a) to (d) explicitly refer to those agreements which are currently under consideration, i.e.
   - an agreement establishing a common European patent court of first and second instance, competent to settle litigation on infringement and validity of European patents (EPLA);
   - an agreement establishing a Facultative Advisory Council (or "common entity"), competent to deliver opinions on issues of European or harmonised national patent law referred to it by national courts or quasi-judicial authorities of a contracting state party to such an agreement; and
   - an agreement under which a translation of the European patent under Article 65 EPC would be dispensed with fully or in part, or may be filed with the EPO (see the so-called London Agreement, OJ EPO 2001, 549).

5. **New Article 149a(2)** addresses the involvement of the European Patent Organisation once an agreement under paragraph 1(a) or (b) has been concluded and entered into force.

   As it is most likely that any such agreement will provide that members of EPO Boards of Appeal may (and ought to) serve on the European patent court and/or Facultative Advisory Council, while continuing to serve on the Boards of Appeal, there should be a clear legal basis in the EPC enabling the Administrative Council to decide that the members of the Boards are entitled to do so. **Paragraph 2(a) makes provision for this.**

   Furthermore, in the case where the EPC contracting states signing an agreement on a Facultative Advisory Council would want the Facultative Advisory Council to be established and to operate within the framework of the European Patent Organisation, a clear legal basis in the EPC must be created enabling the Administrative Council to decide that the EPO provides the Facultative Advisory Council with the necessary staff, premises and equipment and that the expenses incurred by such an entity be borne fully or in part by the Organisation. **Paragraph 2(b) makes provision for this.**

6. The revised Article 164 EPC is applicable as from the entry into force of the EPC 2000.
Article 149a Other agreements between the Contracting States

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is nothing equivalent to this provision in the EPC 1973.</td>
<td>(1) Nothing in this Convention shall be construed as limiting the right of some or all of the Contracting States to conclude special agreements on any matters concerning European patent applications or European patents which under this Convention are subject to and governed by national law, such as, in particular</td>
</tr>
<tr>
<td></td>
<td>(a) an agreement establishing a European patent court common to the Contracting States party to it;</td>
</tr>
<tr>
<td></td>
<td>(b) an agreement establishing an entity common to the Contracting States party to it to deliver, at the request of national courts or quasi-judicial authorities, opinions on issues of European or harmonised national patent law;</td>
</tr>
<tr>
<td></td>
<td>(c) an agreement under which the Contracting States party to it dispense fully or in part with translations of European patents under Article 65;</td>
</tr>
<tr>
<td></td>
<td>(d) an agreement under which the Contracting States party to it provide that translations of European patents as required under Article 65 may be filed with, and published by, the European Patent Office.</td>
</tr>
<tr>
<td></td>
<td>(2) The Administrative Council shall be competent to decide that:</td>
</tr>
<tr>
<td></td>
<td>(a) the members of the Boards of Appeal or the Enlarged Board of Appeal may serve on a European patent court or a common entity and take part in proceedings before that court or entity in accordance with any such agreement;</td>
</tr>
<tr>
<td></td>
<td>(b) the European Patent Office shall provide a common entity with such support staff, premises and equipment as may be necessary for the performance of its duties, and the expenses incurred by that entity shall be borne fully or in part by the Organisation.</td>
</tr>
</tbody>
</table>

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey strikethrough** = changes and deletions adopted by the Administrative Council (June 2001)
PART X

The new title of Part X includes the term "Euro-PCT applications", which is now standard usage (see also new Article 153(2) EPC). In addition, a minor editorial amendment has been made to the title under Article 3(1) of the Revision Act.

ARTICLES 150 to 158 EPC
(Preparatory documents: CA/PL 12/98; CA/PL 13/98, point 9; CA/PL PV 7, points 93-104; CA/PL 21/00; CA/PL PV 13, points 122-127; CA/PL PV 14, point 6; CA/100/00, pages 203-226; MR/2/00, pages 207-230; MR/24/00, pages 97-98)

1. The revision of Part X of the EPC is chiefly aimed at clearing the Articles of the EPC of provisions relating to details and transferring them to the Implementing Regulations. After more than twenty years of interaction between the EPC and PCT, some provisions have clearly become superfluous and are therefore deleted. In addition, to avoid repetition and redundancies, the remaining Articles are re-organised in line with the procedures in question.

2. A basic provision (Article 150 EPC) is now followed by two Articles defining the EPO's functions as a receiving Office (Article 151 EPC) and as an international authority in the international phase of the PCT (new Article 152 EPC). A final Article combines the provisions relating to the European phase (Article 153 EPC).

ARTICLE 150 EPC

1. The principles governing the interaction between the EPC and PCT continue to be laid down in Article 150(1) and (2) EPC. The use of "PCT" in place of the unwieldly and seldom-used "Cooperation Treaty" applies to all three language versions of the EPC and merely confirms what has long been standard usage.

2. Article 150(2), second sentence, EPC expressly refers to the PCT Regulations, as the PCT itself lacks a provision declaring the Regulations to be an integral part of the Treaty.

3. Article 150(2), fourth sentence, EPC 1973 is deleted: in the light of Article 150(2), third sentence, EPC, it is an unnecessary repetition to assert yet again the precedence of the PCT with regard to the time limit for the request for examination. This time limit, moreover, is already defined in conformity with the PCT in Rule 159(1)(f) EPC 2000.

4. Because of the relationship of the subject-matter – EPO as designated Office or elected Office – Article 150(3) EPC 1973 is incorporated in new Article 153(2) EPC 2000.

5. The substance of Article 150(4) EPC has been transferred to Article 150(2) EPC (see explanatory remark n° 2 above).

6. The revised Article 150 EPC is applicable to

| PCT applications pending at the time of the EPC 2000 entry into force |
| PCT applications filed on or after the time of the EPC 2000 entry into force |
PART X

INTERNATIONAL APPLICATIONS PURSUANT TO UNDER THE PATENT COOPERATION TREATY – EURO-PCT APPLICATIONS

Article 150  Application of the Patent Cooperation Treaty

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The Patent Cooperation Treaty of 19 June 1970, hereinafter referred to as the Cooperation Treaty, shall be applied in accordance with the provisions of this Part.</td>
<td>(1) The Patent Cooperation Treaty of 19 June 1970, hereinafter referred to as the PCT, shall be applied in accordance with the provisions of this Part.</td>
</tr>
<tr>
<td>(2) International applications filed under the Cooperation Treaty may be the subject of proceedings before the European Patent Office. In such proceedings, the provisions of that Treaty shall be applied, supplemented by the provisions of this Convention. In case of conflict, the provisions of the Cooperation Treaty shall prevail. In particular, for an international application the time limit within which a request for examination must be filed under Article 94, paragraph 2, of this Convention shall not expire before the time prescribed by Article 22 or Article 39 of the Cooperation Treaty as the case maybe.</td>
<td>(2) International applications filed under the PCT may be the subject of proceedings before the European Patent Office. In such proceedings, the provisions of the PCT or its Regulations shall be applied, supplemented by the provisions of this Convention. In case of conflict, the provisions of the PCT or its Regulations shall prevail. Fourth sentence deleted – incorporated in the Implementing Regulations (see Rule 159(1)(f) EPC 2000)</td>
</tr>
<tr>
<td>(3) An international application, for which the European Patent Office acts as designated Office or elected Office, shall be deemed to be a European patent application.</td>
<td>(3) Deleted – see new Article 153(2) EPC</td>
</tr>
<tr>
<td>(4) Where reference is made in this Convention to the Cooperation Treaty, such reference shall include the Regulations under that Treaty.</td>
<td>(4) Deleted – see new Article 150(2) EPC</td>
</tr>
</tbody>
</table>

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey** strikethrough = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 151 EPC

1. The role of the EPO as PCT receiving Office and the regulations governing the filing and transmittal of international applications (Articles 151 and 152 EPC 1973) have been combined into one provision.

2. The reference to Article 75(2) EPC in Article 152(1) EPC 1973 has been moved to Article 151 EPC 2000.

3. Rule 157 EPC 2000 now includes details of the conditions under which the EPO acts as a receiving Office (in particular, the requirement that the applicant be a resident or national of an EPC and PCT contracting state, and the details of where and how the international application is to be filed with the EPO).

4. Experience has shown that there is no need for paragraphs 2 and 3 of Article 151 EPC 1973, which are therefore deleted but may be incorporated in the Implementing Regulations in case of future necessity.

5. Finally, minor editorial amendments have been made to Article 151 EPC under Article 3(1) of the Revision Act.

6. The revised Article 151 EPC is applicable to

   - PCT applications pending at the time of the EPC 2000 entry into force
   - PCT applications filed on or after the time of the EPC 2000 entry into force
### Article 151  The European Patent Office as a receiving Office

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The European Patent Office may act as a receiving Office within the meaning of Article 2(xv) of the Cooperation Treaty if the applicant is a resident or national of a Contracting State to this Convention in respect of which the Cooperation Treaty has entered into force.</td>
<td>[…] The European Patent Office shall act as a receiving Office within the meaning of the PCT, in accordance with the Implementing Regulations. Article 75, paragraph 2, shall apply mutatis mutandis.</td>
</tr>
<tr>
<td>(2) The European Patent Office may also act as a receiving Office if the applicant is a resident or national of a State which is not a Contracting State to this Convention, but which is a Contracting State to the Cooperation Treaty and which has concluded an agreement with the Organisation whereby the European Patent Office acts as a receiving Office, in accordance with the provisions of the Cooperation Treaty, in place of the national office of that State.</td>
<td>(2) Deleted</td>
</tr>
<tr>
<td>(3) Subject to the prior approval of the Administrative Council, the European Patent Office may also act as a receiving Office for any other applicant, in accordance with an agreement concluded between the Organisation and the International Bureau of the World Intellectual Property Organization.</td>
<td>(3) Deleted</td>
</tr>
</tbody>
</table>
ARTICLE 152 EPC

1. The EPO's role as International Searching Authority and International Preliminary Examining Authority is treated separately in the largely repetitive Articles 154 and 155 EPC 1973. The main reason for this is the two-stage nature of the PCT, which differentiates between Chapter I and Chapter II. However, this distinction has become meaningless, as Chapter II has been binding since 1997 on all the states parties to both the EPC and the PCT. Moreover, the consolidated treatment in Rule 105 EPC 1973 of the EPO's tasks as an international searching authority and preliminary examining authority has worked well for many years. This is to be reflected in an Article of the EPC itself by the joint provision of new Article 152 EPC.

2. The reservation clauses relating to the entering into force of Chapters I and II PCT in Articles 154(1) and 155(1) EPC 1973 are unnecessary, as they repeat the "contracting state" principle already laid down in Articles 9(1) and (2) and 31(2)(a)-(b) PCT.

3. The requirement in Articles 154(2) and 155(2) EPC 1973 for the prior approval of the Administrative Council is also superfluous, as this already results from Article 33(4) EPC. The option under the EPC for the Administrative Council to include applicants from non-EPC states in the agreement with WIPO is retained in Article 152, second sentence, EPC 2000.

4. The EPO's two-tiered review system for the PCT protest procedure, provided for under Articles 154(3) and 155(3) EPC 1973 in conjunction with Rule 105 EPC 1973, is not only unique amongst international authorities but also work-intensive, costly and leads to unjustifiable delays. Recent practice has shown that provision can be made in the Implementing Regulations for a simplified protest procedure which complies with Rules 40.2(c) and 68.3(c) PCT, continuing to guarantee legal certainty (see Rule 158(3) EPC 2000). Articles 154(3) and 155(3) EPC 1973 are therefore deleted.

5. A minor editorial amendment has been made to Article 152 EPC under Article 3(1) of the Revision Act.

6. The new Article 152 EPC is applicable to

- PCT applications pending at the time of the EPC 2000 entry into force
- PCT applications filed on or after the time of the EPC 2000 entry into force
### Article 152 The European Patent Office as an International Searching Authority or International Preliminary Examining Authority

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>[See Article 154(1) EPC 1973:</td>
<td>[...] The European Patent Office shall act as an International Searching</td>
</tr>
<tr>
<td>(1) The European Patent Office shall act as an International Searching</td>
<td>Authority and International Preliminary Examining Authority within the</td>
</tr>
<tr>
<td>Authority within the meaning of Chapter I of the Cooperation Treaty for</td>
<td>meaning of the PCT, in accordance with an agreement between the</td>
</tr>
<tr>
<td>applicants who are residents or nationals of a Contracting State in</td>
<td>Organisation and the International Bureau of the World Intellectual</td>
</tr>
<tr>
<td>respect of which the Cooperation Treaty has entered into force, subject</td>
<td>Property Organization, for applicants who are residents or nationals of a</td>
</tr>
<tr>
<td>to the conclusion of an agreement between the Organisation and the</td>
<td>Contracting State party to this Convention. This agreement may provide</td>
</tr>
<tr>
<td>International Bureau of the World Intellectual Property Organization.]</td>
<td>that the European Patent Office shall also act [...] for other applicants.</td>
</tr>
<tr>
<td>[See Article 154(2) EPC 1973:</td>
<td></td>
</tr>
<tr>
<td>(2) Subject to the prior approval of the Administrative Council, the</td>
<td></td>
</tr>
<tr>
<td>European Patent Office shall also act as an International Searching</td>
<td></td>
</tr>
<tr>
<td>Authority for any other applicant, in accordance with an agreement</td>
<td></td>
</tr>
<tr>
<td>concluded between the Organisation and the International Bureau of the</td>
<td></td>
</tr>
<tr>
<td>World Intellectual Property Organization.]</td>
<td></td>
</tr>
</tbody>
</table>
ARTICLE 153 EPC

1. The provisions governing entry into the "European phase", the subsequent proceedings before the EPO as designated Office or elected Office, the effects of the international publication and the international search report are contained in Articles 153, 156, 157 und 158 EPC 1973.

2. Articles 153 and 156 EPC 1973 in particular can be consolidated: firstly, because Chapters I and II PCT are equally binding on all the states parties to the EPC and PCT, which renders the second sentence of Article 156 EPC meaningless; and secondly, because experience has shown that there is no need for two separate provisions dealing with the EPO's activities as designated Office and elected Office. The consolidation of the corresponding provisions in the Implementing Regulations (Rule 107 EPC 1973) has also worked well for many years.

3. The key element of Article 153(1), first sentence, EPC 1973 are now contained in sub-paragraph (a) of new Article 153(1) EPC; the substance of Article 156, first sentence, EPC 1973 is transferred to sub-paragraph (b).

4. The retention of Article 153(1), second sentence, EPC 1973 is unnecessary, as it merely reiterates Article 4(1)(ii), final clause, PCT ("... if under the national law of the designated State, the designation of that State has the effect of an application for a regional patent, the designation of the said State shall be treated as an indication of the wish to obtain the regional patent..."; see also Article 45 PCT). The second sentence of Article 156 EPC 1973 is also superfluous.

5. New Article 153(2) EPC governs, in addition to Article 11(3) PCT, the conditions under which an international application has the effect of a European application, and clarifies the principle deriving from Article 150(3) EPC 1973. The term "Euro-PCT application" is also introduced. See also below explanatory remark n° 9 to new Article 153(5) EPC.

6. Article 153(2) EPC 1973 governing competence for review under Article 25 PCT is transferred to the Implementing Regulations (see Rule 159(2) EPC 2000). There is no obvious reason why such competence should be defined in an Article of the EPC.

7. New Article 153(3) EPC incorporates the substance of Article 158(1), first sentence, EPC 1973 concerning the effect of international publication of a Euro-PCT application. The explicit reference to the relevant PCT provision has been removed in order to avoid discrepancies if the PCT is revised.

8. New Article 153(4) EPC largely corresponds to Article 158(3) EPC 1973, laying down when a translation of the Euro-PCT application is to be filed with the EPO and published by the EPO, and what effect such publication has.
### Article 153  The European Patent Office as designated Office or elected Office

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The European Patent Office shall act as a designated Office within the meaning of Article 2(xiii) of the Cooperation Treaty for those Contracting States to this Convention in respect of which the Cooperation Treaty has entered into force and which are designated in the international application if the applicant informs the receiving Office in the international application that he wishes to obtain a European patent for these States. The same shall apply if, in the international application, the applicant designates a Contracting State of which the national law provides that designation of that State shall have the effect of the application being for a European patent.</td>
<td>(1) The European Patent Office shall be a designated Office for any Contracting State party to this Convention in respect of which the PCT is in force, which is designated in the international application and for which the applicant wishes to obtain a European patent, and an elected Office, if the applicant has elected a State designated pursuant to letter (a).</td>
</tr>
</tbody>
</table>

[See Article 150(3) EPC 1973: An international application, for which the European Patent Office acts as designated Office or elected Office, shall be deemed to be a European patent application.]

| (2) When the European Patent Office acts as a designated Office, the Examining Division shall be competent to take decisions which are required under Article 25, paragraph 2(a), of the Cooperation Treaty. | (2) An international application for which the European Patent Office is a designated or elected Office and which has been accorded an international date of filing, shall be equivalent to a regular European application (Euro-PCT application). |

[See Article 158(1), first sentence, EPC 1973: Publication under Article 21 of the Cooperation Treaty of an international application for which the European Patent Office is a designated Office shall, subject to paragraph 3, take the place of the publication of a European patent application and shall be mentioned in the European Patent Bulletin.]

| (3) The international publication of a Euro-PCT application in one of the official languages of the European Patent Office shall take the place of the publication of the European patent application and shall be mentioned in the European Patent Bulletin. | (2) Deleted – incorporated in the Implementing Regulations (see Rule 159(2) EPC 2000) |

[See Article 158(3) EPC 1973: If the international application is published in a language other than one of the official languages of the European Patent Office, that Office shall publish the international application, supplied as specified in paragraph 2. Subject to the provisions of Article 67, paragraph 3, the provisional protection in accordance with Article 67, paragraphs 1 and 2, shall be effective from the date of that publication.]

| (4) If the Euro-PCT application is published in another language, a translation into one of the official languages shall be filed with the European Patent Office, which shall publish it. Subject to [...] Article 67, paragraph 3, the provisional protection under Article 67, paragraphs 1 and 2, shall be effective from the date of that publication. | |

*bold [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)*

*grey strikethrough = changes and deletions adopted by the Administrative Council (June 2001)*
9. **New Article 153(5) EPC** clarifies the conditions for entry into the European phase, referring expressly to new paragraphs 3 and 4 and to the Implementing Regulations, where these conditions are specified (see Rule 159 EPC 2000). This is now combined with the stipulation, taken from Article 158(1), second sentence, EPC 1973, that a Euro-PCT application shall only be considered as comprised in the state of the art under Article 54(3) EPC if the conditions in question are fulfilled.

10. In accordance with the new structure, the provisions of Article 157(1) EPC 1973 regarding the function of the international search report, of any declaration replacing it under Article 17(2)(a) PCT and of their international publication have been transferred to **new Article 153(6) EPC**. As in new Article 153(3) EPC, the explicit references to the relevant PCT provisions have been removed in order to avoid discrepancies if the PCT is revised.

11. The requirement under Article 157(2)(a) EPC 1973 for a **supplementary European search report** and the provision in Article 157(3) EPC 1973 authorising the Administrative Council to make exceptions are transferred to **new Article 153(7) EPC**.

12. The fee provision in Article 157(2)(b) EPC 1973 is transferred to the Implementing Regulations, which thus contain all the fees that fall due on entry into the European phase, together with the provisions on the legal consequences of late payment (see Rules 159-160 and 162 EPC 2000).

13. Minor amendments have been made to the wording of **Article 153(1)(a)-(b) and (3) EPC** under Article 3(1) of the Revision Act (alignment in the three official languages, editorial improvements or clarifications).

14. The new Article 153 EPC is applicable to

<p>| PCT applications <strong>pending</strong> at the time of the EPC 2000 entry into force | ■ |
| PCT applications <strong>filed on or after</strong> the time of the EPC 2000 entry into force | ■ |</p>
<table>
<thead>
<tr>
<th>Article 153</th>
<th>The European Patent Office as designated Office or elected Office</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EPC 1973</strong></td>
<td><strong>EPC 2000</strong></td>
</tr>
</tbody>
</table>
| [See Article 158(1), second sentence, EPC 1973: Such an application shall not however be considered as comprised in the state of the art in accordance with Article 54, paragraph 3, if the conditions laid down in paragraph 2 are not fulfilled.]
| (5) The Euro-PCT application shall be treated as a European patent application and shall [...] be considered as comprised in the state of the art under Article 54, paragraph 3, if the conditions laid down in paragraph 3 or 4 and in the Implementing Regulations are fulfilled. |
| [See Article 157(1) EPC 1973: (1) Without prejudice to the provisions of paragraphs 2 to 4, the international search report under Article 18 of the Cooperation Treaty or any declaration under Article 17, paragraph 2(a), of that Treaty and their publication under Article 21 of that Treaty shall take the place of the European search report and the mention of its publication in the European Patent Bulletin.]
| (6) [...] The international search report drawn up in respect of a Euro-PCT application or the declaration replacing it, and their international publication, shall take the place of the European search report and the mention of its publication in the European Patent Bulletin. |
| [See Article 157(2) and (3) EPC 1973: (2) Subject to the decisions of the Administrative Council referred to in paragraph 3: (a) a supplementary European search report shall be drawn up in respect of all international applications; … (3) The Administrative Council may decide under what conditions and to what extent: (a) the supplementary European search report is to be dispensed with; (b) the search fee is to be reduced. …] |
| (7) [...] A supplementary European search report shall be drawn up in respect of any Euro-PCT application under paragraph 5. The Administrative Council may decide that the supplementary search report is to be dispensed with or that the search fee is to be reduced. |
ARTICLES DELETED FROM PART X

ARTICLE 152 EPC 1973

Article 152 EPC 1973 is deleted. The reference to Article 75(2) EPC in Article 152(2) EPC has been transferred to Article 151 EPC 2000 and the remaining provisions are incorporated in the Implementing Regulations (see Rule 157 EPC 2000).

ARTICLE 154 EPC 1973

1. Article 154 EPC 1973 is deleted. See explanatory remarks to new Article 152 EPC.

2. The deleted Article 154 EPC is no longer applicable as from the entry into force of the EPC 2000. However, Article 154(3) EPC 1973 remains applicable to PCT applications pending at that time.
### Article 152  Deleted

**EPC 1973**

Filing and transmittal of the international application

(1) If the applicant chooses the European Patent Office as a receiving Office for his international application, he shall file it directly with the European Patent Office. Article 75, paragraph 2, shall nevertheless apply mutatis mutandis.

(2) In the event of an international application being filed with the European Patent Office through the intermediary of the competent central industrial property office, the Contracting State concerned shall take all necessary measures to ensure that the application is transmitted to the European Patent Office in time for the latter to be able to comply in due time with the conditions for transmittal under the Cooperation Treaty.

(3) Each international application shall be subject to the payment of the transmittal fee, which shall be payable within one month after receipt of the application.

**EPC 2000**

Incorporated in Rule 157 EPC 2000 (see also Article 151, second sentence, EPC 2000)

### Article 154  Deleted

**EPC 1973**

The European Patent Office as an International Searching Authority

(1) The European Patent Office shall act as an International Searching Authority within the meaning of Chapter I of the Cooperation Treaty for applicants who are residents or nationals of a Contracting State in respect of which the Cooperation Treaty has entered into force, subject to the conclusion of an agreement between the Organisation and the International Bureau of the World Intellectual Property Organization.

(2) Subject to the prior approval of the Administrative Council, the European Patent Office shall also act as an International Searching Authority for any other applicant, in accordance with an agreement concluded between the Organisation and the International Bureau of the World Intellectual Property Organization.

(3) The Boards of Appeal shall be responsible for deciding on a protest made by an applicant against an additional fee charged by the European Patent Office under the provisions of Article 17, paragraph 3(a), of the Cooperation Treaty.

**EPC 2000**

Transferred to Article 152 EPC 2000

Transferred to Article 152 EPC, second sentence, EPC 2000

Deleted

*bold* [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

*grey* strikethrough = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLES DELETED FROM PART X

ARTICLE 155 EPC 1973

1. Article 155 EPC 1973 is deleted. See explanatory remarks to Article 152 EPC 2000.

2. The deleted Article 154 EPC is no longer applicable as from the entry into force of the EPC 2000. However, Article 155(3) EPC 1973 remains applicable to PCT applications pending at that time.

ARTICLE 156 EPC 1973

1. Article 156 EPC 1973 is deleted. See explanatory remarks to Article 153 EPC 2000.

2. The deleted Article 156 EPC is no longer applicable as from the entry into force of the EPC 2000.
**Article 155 Deleted**

**EPC 1973**

The European Patent Office as an International Preliminary Examining Authority

(1) The European Patent Office shall act as an International Preliminary Examining Authority within the meaning of Chapter II of the Cooperation Treaty for applicants who are residents or nationals of a Contracting State bound by that Chapter, subject to the conclusion of an agreement between the Organisation and the International Bureau of the World Intellectual Property Organization.

(2) Subject to the prior approval of the Administrative Council, the European Patent Office shall also act as an International Preliminary Examining Authority for any other applicant, in accordance with an agreement concluded between the Organisation and the International Bureau of the World Intellectual Property Organization.

(3) The Boards of Appeal shall be responsible for deciding on a protest made by an applicant against an additional fee charged by the European Patent Office under the provisions of Article 34, paragraph 3(a), of the Cooperation Treaty.

**EPC 2000**

(1) Transferred to Article 152 EPC 2000

(2) Transferred to Article 152, second sentence, EPC 2000

(3) Deleted – see explanatory remark n° 2 to Article 155 EPC

**Article 156 Deleted**

**EPC 1973**

The European Patent Office as an elected Office

The European Patent Office shall act as an elected Office within the meaning of Article 2(xiv) of the Cooperation Treaty if the applicant has elected any of the designated States referred to in Article 153, paragraph 1, or Article 149, paragraph 2, for which Chapter II of that Treaty has become binding. Subject to the prior approval of the Administrative Council, the same shall apply where the applicant is a resident or national of a State which is not a party to that Treaty or which is not bound by Chapter II of that Treaty, provided that he is one of the persons whom the Assembly of the International Patent Cooperation Union has decided to allow, pursuant to Article 31, paragraph 2(b), of the Cooperation Treaty, to make a demand for international preliminary examination.

**EPC 2000**

Transferred to Article 153(1)(b) EPC 2000

*bold […]* = changes and deletions adopted by the Diplomatic Conference (November 2000)

*grey strikethrough* = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLES DELETED FROM PART X

ARTICLE 157 EPC

1. Article 157 EPC 1973 is deleted. See the explanatory remarks to Article 153 EPC 2000.
2. The deleted Article 157 EPC is no longer applicable as from the entry into force of the EPC 2000.

ARTICLE 158 EPC

1. Article 158 EPC 1973 is deleted. See the explanatory remarks to Article 153 EPC 2000.
2. The deleted Article 158 EPC is no longer applicable as from the entry into force of the EPC 2000.
**Article 157  Deleted**

**EPC 1973**

International search report

(1) Without prejudice to the provisions of paragraphs 2 to 4, the international search report under Article 18 of the Cooperation Treaty or any declaration under Article 17, paragraph 2(a), of that Treaty and their publication under Article 21 of that Treaty shall take the place of the European search report and the mention of its publication in the European Patent Bulletin.

(2) Subject to the decisions of the Administrative Council referred to in paragraph 3:

(a) a supplementary European search report shall be drawn up in respect of all international applications;

(b) the applicant shall pay the search fee, which shall be paid at the same time as the national fee provided for in Article 22, paragraph 1, or Article 39, paragraph 1, of the Cooperation Treaty. If the search fee is not paid in due time the application shall be deemed to be withdrawn.

(3) The Administrative Council may decide under what conditions and to what extent

(a) the supplementary European search report is to be dispensed with;

(b) the search fee is to be reduced.

(4) The Administrative Council may at any time rescind the decisions taken pursuant to paragraph 3.

**EPC 2000**

(1) Transferred to Article 153(6)

(2) Transferred to Article 153(7)

(3) Transferred to Article 153(7)

(4) Deleted

**Article 158  Deleted**

**EPC 1973**

Publication of the international application and its supply to the European Patent Office

(1) Publication under Article 21 of the Cooperation Treaty of an international application for which the European Patent Office is a designated Office shall, subject to paragraph 3, take the place of the publication of a European patent application and shall be mentioned in the European Patent Bulletin. Such an application shall not however be considered as comprised in the state of the art in accordance with Article 54, paragraph 3, if the conditions laid down in paragraph 2 are not fulfilled.

(2) The international application shall be supplied to the European Patent Office in one of its official languages. The applicant shall pay to the European Patent Office the national fee provided for in Article 22, paragraph 1, or Article 39, paragraph 1, of the Cooperation Treaty.

(3) If the international application is published in a language other than one of the official languages of the European Patent Office, that Office shall publish the international application, supplied as specified in paragraph 2. Subject to the provisions of Article 67, paragraph 3, the provisional protection in accordance with Article 67, paragraphs 1 and 2, shall be effective from the date of that publication.

**EPC 2000**

Transferred to Article 153(3) to (5) EPC 2000 or incorporated in the Implementing Regulations (see Rule 165 EPC 2000)

**bold […]** = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey strikethrough** = changes and deletions adopted by the Administrative Council (June 2001)
PART XI
(Preparatory documents: CA/PL 18/98; CA/PL PV 8, points 9-11; CA/PL PV 14, point 6; CA/100/00, pages 227-240; MR/2/00, pages 231-232; MR/24/00, pages 98-99)

1. Upon the creation of the European Patent Organisation, transitional provisions had to be provided for to allow the EPO to be set up.

   Part XI of the EPC, entitled "Transitional provisions" and consisting of Articles 159 to 163 EPC, contains the necessary temporary measures which allowed operations to begin.

   All these Articles are obsolete, and Part XI is thus deleted in its entirety.

2. The deleted Articles 159 to 163 EPC are no longer applicable as from the entry into force of the EPC 2000.

ARTICLE 159 EPC

Article 159 EPC deals with the constitution of the Administrative Council once the EPC 1973 entered into force on 7.10.1977. All of its clauses are now obsolete, and Article 159 EPC is therefore deleted.

ARTICLE 160 EPC

1. Article 160(1) EPC governs the appointment of EPO employees in an interim period before the adoption of the Service Regulations for permanent employees. It is obsolete and thus deleted.

2. Article 160(2) EPC provides that the Administrative Council may during a transitional period appoint, as members of the Enlarged Board of Appeal or of the Boards of Appeal, legally or technically qualified members of national courts or authorities of the EPC contracting states. The Administrative Council has never determined the end of the transitional period under Article 160(2) EPC, and appointments have until recently been made under this provision.

3. The appointment of legally qualified members from the national courts or authorities of the EPC contracting states to the Enlarged Board of Appeal has proven to be a success and is considered to contribute significantly to furthering the harmonisation of patent case law in Europe. Accordingly, this possibility is retained as a permanent feature of the EPC and inserted into Article 11(5) EPC 2000 (see explanatory remarks to Article 11 EPC).

4. Consequently, Article 160(2) EPC is deleted.
PART XI TRANSITIONAL PROVISIONS – *DELETED*

**Article 159  *Deleted***

**EPC 1973**

Administrative Council during a transitional period

(1) The States referred to in Article 169, paragraph 1, shall appoint their representatives to the Administrative Council; on the invitation of the Government of the Federal Republic of Germany, the Administrative Council shall meet no later than two months after the entry into force of this Convention, particularly for the purpose of appointing the President of the European Patent Office.

(2) The duration of the term of office of the first Chairman of the Administrative Council appointed after the entry into force of this Convention shall be four years.

(3) The term of office of two of the elected members of the first Board of the Administrative Council set up after the entry into force of this Convention shall be five and four years respectively.

**EPC 2000**

*Deleted*

**Article 160  *Deleted***

**EPC 1973**

Appointment of employees during a transitional period

(1) Until such time as the Service Regulations for permanent employees and the conditions of employment of other employees of the European Patent Office have been adopted, the Administrative Council and the President of the European Patent Office, each within their respective powers, shall recruit the necessary employees and shall conclude short-term contracts to that effect. The Administrative Council may lay down general principles in respect of recruitment.

(2) During a transitional period, the expiry of which shall be determined by the Administrative Council, the Administrative Council, after consulting the President of the European Patent Office, may appoint as members of the Enlarged Board of Appeal or of the Boards of Appeal technically or legally qualified members of national courts and authorities of Contracting States who may continue their activities in their national courts or authorities. They may be appointed for a term of less than five years, though this shall not be less than one year, and may be reappointed.

**EPC 2000**

(1) *Deleted*

(2) *Deleted* – transferred to Article 11(5) EPC 2000

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey strikethrough** = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 161 EPC

Article 161 EPC, dealing with the first accounting period of the European Patent Organisation, is obsolete and thus deleted.

ARTICLE 162 EPC

Article 162 EPC, governing the progressive expansion of the activity of the EPO, is deleted as it no longer has any significance.
Article 161

**Deleted**

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
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<tbody>
<tr>
<td>First accounting period</td>
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</table>

(1) The first accounting period of the Organisation shall extend from the date of entry into force of this Convention 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 entry into force of this Convention. Until contributions provided for in Article 40 due in accordance with the first budget are received by the Organisation, the Contracting States shall, upon the request of and within the limit of the amount fixed by the Administrative Council, make 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 40. Article 39, paragraphs 3 and 4, shall apply mutatis mutandis to the advances.

Article 162

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<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
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<tbody>
<tr>
<td>Progressive expansion of the field of activity of the European Patent Office</td>
<td>Deleted</td>
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</tbody>
</table>

(1) European patent applications may be filed with the European Patent Office from the date fixed by the Administrative Council on the recommendation of the President of the European Patent Office.

(2) The Administrative Council may, on the recommendation of the President of the European Patent Office, decide that, as from the date referred to in paragraph 1, the processing of European patent applications may be restricted. Such restriction may be in respect of certain areas of technology. However, examination shall in any event be made as to whether European patent applications can be accorded a date of filing.

(3) If a decision has been taken under paragraph 2, the Administrative Council may not subsequently further restrict the processing of European patent applications.

(4) Where, as a result of the procedure being restricted under paragraph 2, a European patent application cannot be further processed, the European Patent Office shall communicate this to the applicant and shall point out that he may make a request for conversion. The European patent application shall be deemed to be withdrawn on receipt of such communication.

**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey strikethrough** = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 163 EPC

1. Article 163 EPC governs the entitlement of professional representatives to be entered on the list of professional representatives under Article 134 EPC during a transitional period which ended on 7 October 1981 (see OJ EPO 1978, 327). Article 163 EPC is therefore deleted.

2. However, Article 163(6) EPC provides for the entering on the list of national representatives having their place of business or employment in a state having acceded to the EPC after the expiry of the transitional period, pursuant to the conditions set forth in Article 163(1) to (5) EPC. This provision retains its entire significance as a so-called "grandfather clause". It should remain in the EPC in order to deal with the situation of national representatives of states acceding to the EPC in the future.

3. The substance of the "grandfather clause" in Article 163 EPC is therefore included in Article 134(3) EPC 2000 in streamlined form, as a permanent feature of the EPC (see explanatory remarks n° 2 and 3 to Article 134 EPC).
Article 163

**Deleted**

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
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<tbody>
<tr>
<td><strong>EPC 1973</strong></td>
<td><strong>EPC 2000</strong></td>
</tr>
<tr>
<td><strong>Professional representatives during a transitional period</strong></td>
<td><strong>Conditions of Article 163(1)(a)-(c) transferred to Article 134(3)(a)-(c) EPC 2000</strong></td>
</tr>
<tr>
<td>(1) During a transitional period, the expiry of which shall be determined by the Administrative Council, notwithstanding the provisions of Article 134, paragraph 2, any natural person who fulfils the following conditions may be entered on the list of professional representatives:</td>
<td></td>
</tr>
<tr>
<td>(a) he must be a national of a Contracting State;</td>
<td>(2) Substance transferred to Article 134(4) EPC 2000</td>
</tr>
<tr>
<td>(b) he must have his place of business or employment within the territory of one of the Contracting States;</td>
<td>(3) Substance of Article 163(3), first sentence, transferred to Article 134(3)(c), second sentence, EPC 2000</td>
</tr>
<tr>
<td>(c) he must be entitled to represent natural or legal persons in patent matters before the central industrial property office of the Contracting State in which he has his place of business or employment.</td>
<td></td>
</tr>
<tr>
<td>(2) Entry shall be effected upon request, accompanied by a certificate, furnished by the central industrial property office, which must indicate that the conditions laid down in paragraph 1 are fulfilled.</td>
<td></td>
</tr>
<tr>
<td>(3) When, in any Contracting State, the entitlement referred to in paragraph 1(c) is not conditional upon the requirement of special professional qualifications, persons applying to be entered on the list who act in patent matters before the central industrial property office of the said State must have habitually so acted for at least five years. However, persons whose professional qualification to represent natural or legal persons in patent matters before the central industrial property office of one of the Contracting States is officially recognised in accordance with the regulations laid down by such State shall not be subject to the condition of having exercised the profession. The certificate furnished by the central industrial property office must indicate that the applicant satisfies one of the conditions referred to in the present paragraph.</td>
<td></td>
</tr>
<tr>
<td>(4) The President of the European Patent Office may grant exemption from:</td>
<td>(4) Substance transferred to Article 134(7) EPC 2000</td>
</tr>
<tr>
<td>(a) the requirement of paragraph 3, first sentence, if the applicant furnishes proof that he has acquired the requisite qualification in another way;</td>
<td>(5) <strong>Deleted</strong></td>
</tr>
<tr>
<td>(b) the requirement of paragraph 1(a) in special circumstances.</td>
<td></td>
</tr>
<tr>
<td>(5) The President of the European Patent Office shall grant exemption from the requirement of paragraph 1(a) if on 5 October 1973 the applicant fulfilled the requirements of paragraph 1(b) and (c).</td>
<td></td>
</tr>
<tr>
<td>(6) Persons having their places of business or employment in a State which acceded to this Convention less than one year before the expiry of the transitional period referred to in paragraph 1 or after the expiry of the transitional period may, under the conditions laid down in paragraphs 1 to 5, during a period of one year calculated from the date of entry into force of the accession of that State, be entered on the list of professional representatives.</td>
<td>(6) Time limit of one year taken over in Article 134(3) EPC 2000</td>
</tr>
<tr>
<td>(7) After the expiry of the transitional period, any person whose name was entered on the list of professional representatives during that period shall, without prejudice to any disciplinary measures taken under Article 134, paragraph 8(c), remain thereon or, on request, be restored thereto, provided that he then fulfils the requirement of paragraph 1(b).</td>
<td>(7) <strong>Deleted</strong></td>
</tr>
</tbody>
</table>
PART XII

ARTICLE 164 EPC
(Preparatory documents: CA/6/00; CA/PL 20/00; CA/PL PV 13, points 4-9, 140-151; CA/PL PV 14, points 197-198; CA/100/00, pages 241-242; CA/124/00, points 26-27; CA/125/00, points 137-147; MR/2/00, pages 245-246; MR/PLD 5/00; MR/24/00, pages 99-103)

1. The new Protocol on Staff Complement of the EPO at The Hague is mentioned in Article 164(1) EPC as an integral part of the EPC.

2. A minor editorial amendment has been made to Article 164(1) EPC under Article 3(1) of the Revision Act (marked with strikethrough).

3. The revised Article 164 EPC is applicable as from the entry into force of the EPC 2000.

NEW PROTOCOL ON STAFF COMPLEMENT
(Preparatory documents: see Article 164 EPC)

1. The aim of the Protocol on Staff Complement is to ensure that the ratio of staff at The Hague to the total staff complement under the table of posts for 2000 remains substantially unchanged after the Office-wide introduction of BEST.

   Under the Protocol, the proportion of posts assigned to the duty station at The Hague in 2000 will be permanently fixed. However, minor deviations owing to fluctuations in staff or administrative changes (e.g. the creation of new directorates) will be permissible. More sizable fluctuations of up to 10% either side of the authorised complement at The Hague must be temporary only and necessary for the smooth running of the EPO.

2. A minor editorial amendment has been made to the abbreviated title of the Protocol on Staff Complement under Article 3(1) of the Revision Act.

3. The new Protocol on Staff Complement applies provisionally as from 29.11.2000.

ARTICLE 165 EPC is unchanged.

ARTICLE 166 EPC

A minor editorial amendment has been made to Article 166(2) EPC under Article 3(1) of the Revision Act.
PART XII FINAL PROVISIONS

Article 164 Implementing Regulations and Protocols

<table>
<thead>
<tr>
<th>EPC 1973</th>
<th>EPC 2000</th>
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</thead>
<tbody>
<tr>
<td>(1) The Implementing Regulations, the Protocol on Recognition, the Protocol on Privileges and Immunities, the Protocol on Centralisation and the Protocol on the Interpretation of Article 69 shall be integral parts of this Convention.</td>
<td>(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 the Staff Complement shall be integral parts of this Convention.</td>
</tr>
<tr>
<td>(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.</td>
<td>(2) In [...] case of conflict between the provisions of this Convention and those of the Implementing Regulations, the provisions of this Convention shall prevail.</td>
</tr>
</tbody>
</table>

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

The European Patent Organisation shall ensure that the proportion of European Patent Office posts assigned to the duty station at The Hague as defined under the 2000 establishment plan and table of posts remains substantially unchanged. Any change in the number of posts assigned to the duty station at The Hague resulting in a deviation of more than ten per cent of that proportion, which proves necessary for the proper functioning of the European Patent Office, shall be subject to a decision by the Administrative Council of the Organisation on a proposal from the President of the European Patent Office after consultation with the Governments of the Federal Republic of Germany and the Kingdom of the Netherlands.

Article 165 Signature – Ratification

(1) This Convention shall be open for signature until 5 April 1974 by the States which took part in the Inter-Governmental Conference for the setting up of a European System for the Grant of Patents or were informed of the holding of that conference and offered the option of taking part therein.

(2) This Convention shall be subject to ratification; instruments of ratification shall be deposited with the Government of the Federal Republic of Germany.

Article 166 Accession

(1) This Convention shall be open to accession by:
(a) the States referred to in Article 165, paragraph 1;
(b) any other European State at the invitation of the Administrative Council.

(2) Any State which has been a party to the Convention and has ceased to be so as a result of the application of Article 172, paragraph 4, may again become a party to the Convention by acceding to it.

(3) Instruments of accession shall be deposited with the Government of the Federal Republic of Germany.

bold [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)
grey strikethrough = changes and deletions adopted by the Administrative Council (June 2001)
ARTICLE 167 EPC
(Preparatory documents: CA/PL 18/98, points 10-13; CA/PL PV 8, point 9; CA/PL PV 14, point 6; CA/100/00, pages 243-246; MR/2/00, pages 247-250; MR/24/00, page 103)

1. Article 167 EPC offered contracting states the possibility of making certain reservations regarding the implementation of the EPC, for a limited period of time.

2. In all, only three contracting states (AT, ES, GR) made reservations and all of them have now expired (for AT on 7.10.1987, for ES and GR on 7.10.1992). No further reservations can be made under Article 167 EPC by newly acceding contracting states, and Article 167 EPC is therefore superseded.

3. **Article 167(5) EPC** specifies that any reservations made shall continue to apply throughout the term of any European patent granted on a European patent application filed during the period when that reservation was in effect. According to the principle of non-retroactivity, even in the absence of Article 167(5) EPC, any reservation made under Article 167(2) EPC would remain binding for all European patents granted on applications which were filed whilst the reservation was in force.

   Consequently, **Article 167 EPC** is **deleted** in its entirety.

4. The deleted Article 167 EPC is no longer applicable as from the entry into force of the EPC 2000. However, Article 167(5) EPC remains applicable to European patents granted on European patent applications filed during the period in which the reservation was effective.
Article 167  Deleted

EPC 1973

Reservations

(1) Each Contracting State may, at the time of signature or when depositing its instrument of ratification or accession, make only the reservations specified in paragraph 2.

(2) Each Contracting State may reserve the right to provide that:

(a) European patents, in so far as they confer protection on chemical, pharmaceutical or food products, as such, shall, in accordance with the provisions applicable to national patents, be ineffective or revocable; this reservation shall not affect protection conferred by the patent in so far as it involves a process of manufacture or use of a chemical product or a process of manufacture of a pharmaceutical or food product;

(b) European patents, in so far as they confer protection on agricultural or horticultural processes other than those to which Article 53, sub-paragraph (b), applies, shall, in accordance with the provisions applicable to national patents, be ineffective or revocable;

(c) European patents shall have a term shorter than twenty years, in accordance with the provisions applicable to national patents;

(d) it shall not be bound by the Protocol on Recognition.

(3) Any reservation made by a Contracting State shall have effect for a period of not more than ten years from the entry into force of this Convention. However, where a Contracting State has made any of the reservations referred to in paragraph 2(a) and (b), the Administrative Council may, in respect of such State, extend the period by not more than five years for all or part of any reservation made, if that State submits, at the latest one year before the end of the ten-year period, a reasoned request which satisfies the Administrative Council that the State is not in a position to dispense with that reservation by the expiry of the ten-year period.

(4) Any Contracting State that has made a reservation shall withdraw this reservation as soon as circumstances permit. Such withdrawal shall be made by notification addressed to the Government of the Federal Republic of Germany and shall take effect one month from the date of receipt of such notification.

(5) Any reservation made in accordance with paragraph 2(a), (b) or (c) shall apply to European patents granted on European patent applications filed during the period in which the reservation has effect. The effect of the reservation shall continue for the term of the patent.

(6) Without prejudice to paragraphs 4 and 5, any reservation shall cease to have effect on expiry of the period referred to in paragraph 3, first sentence, or, if the period is extended, on expiry of the extended period.


EPC 2000

Deleted

See however explanatory remark n° 4
ARTICLE 168 EPC

Minor editorial amendments have been made to Article 168 EPC under Article 3(1) of the Revision Act.

ARTICLES 169 to 171 EPC are unchanged.
**Article 168 Territorial field of application**

(1) Any Contracting State may declare in its instrument of ratification or accession, or may inform the Government of the Federal Republic of Germany by written notification at any time thereafter, that this Convention shall be applicable to one or more of the territories for the external relations of which it is responsible. European patents granted for that Contracting State shall also have effect in the territories for which such a declaration has taken effect.

(2) If the declaration referred to in paragraph 1 is contained in the instrument of ratification or accession, it shall take effect on the same date as the ratification or accession; if the declaration is made in a notification notified after the deposit of the instrument of ratification or accession, such notification shall take effect six months after the date of its receipt by the Government of the Federal Republic of Germany.

(3) Any Contracting State may at any time declare that the Convention shall cease to apply to some or to all of the territories in respect of which it has given a notification pursuant to paragraph 1. Such declaration shall take effect one year after the date on which the Government of the Federal Republic of Germany received notification thereof.

**Article 169 Entry into force**

(1) This Convention shall enter into force three months after the deposit of the last instrument of ratification or accession by six States on whose territory the total number of patent applications filed in 1970 amounted to at least 180 000 for all the said States.

(2) Any ratification or accession after the entry into force of this Convention shall take effect on the first day of the third month after the deposit of the instrument of ratification or accession.

**Article 170 Initial contribution**

(1) Any State which ratifies or accedes to this Convention after its entry into force shall pay to the Organisation an initial contribution, which shall not be refunded.

(2) The initial contribution shall be 5% of an amount calculated by applying the percentage obtained for the State in question, on the date on which ratification or accession takes effect, in accordance with the scale provided for in Article 40, paragraphs 3 and 4, to the sum of the special financial contributions due from the other Contracting States in respect of the accounting periods preceding the date referred to above.

(3) In the event that special financial contributions were not required in respect of the accounting period immediately preceding the date referred to in paragraph 2, the scale of contributions referred to in that paragraph shall be the scale that would have been applicable to the State concerned in respect of the last year for which financial contributions were required.

**Article 171 Duration of the Convention**

The present Convention shall be of unlimited duration.
ARTICLES 172 to 175 EPC

The wording of Articles 172(2), 173(2), 174, 175(2) and (3) EPC has been amended under Article 3(1) of the Revision Act (alignment in the three official languages, editorial improvements and clarifications).
Article 172  Revision

(1) This Convention may be revised by a Conference of the Contracting States.

(2) The Conference shall be prepared and convened by the Administrative Council. The Conference shall not be deemed to be validly constituted unless at least three-quarters of the Contracting States are represented at it. In order to adopt the revised text there must be Adoption of the revised text shall require a majority of three-quarters of the Contracting States represented and voting at the Conference. Abstentions shall not be considered as votes.

(3) The revised text shall enter into force when it has been ratified or acceded to by the number of Contracting States specified by the Conference, and at the time specified by that Conference.

(4) Such States as have not ratified or acceded to the revised text of the Convention at the time of its entry into force shall cease to be parties to this Convention as from that time.

Article 173  Disputes between Contracting States

(1) Any dispute between Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiation shall be submitted, at the request of one of the States concerned, to the Administrative Council, which shall endeavour to bring about agreement between the States concerned.

(2) If such agreement is not reached within six months from the date when the dispute was referred to the Administrative Council was seized of the dispute, any one of the States concerned may submit the dispute to the International Court of Justice for a binding decision.

Article 174  Denunciation

Any Contracting State may at any time denounce this Convention. Notification of Denunciation shall be given notified to the Government of the Federal Republic of Germany. Denunciation it shall take effect one year after the date of receipt of such notification.

Article 175  Preservation of acquired rights

(1) In the event of a State ceasing to be party to this Convention in accordance with Article 172, paragraph 4, or Article 174, rights already acquired pursuant to this Convention shall not be impaired.

(2) A European patent application which is pending when a designated State ceases to be party to the Convention shall be processed by the European Patent Office, in so as far as that State is concerned, as if the Convention in force thereafter were applicable to that State.

(3) The provisions of Paragraph 2 shall apply to European patents in respect of which, on the date mentioned in that paragraph, an opposition is pending or the opposition period has not expired.

(4) Nothing in this Article shall affect the right of any State that has ceased to be a party to this Convention to treat any European patent in accordance with the text to which it was a party.
ARTICLES 176 to 178 EPC

Minor editorial amendments have been made to the title and the wording of Article 176(1) EPC under Article 3(1) of the Revision Act.

The wording of Articles 177(2) and 178(2) EPC has been amended under Article 3(1) of the Revision Act (alignment in the three official languages, corrections of obvious linguistic mistakes and oversights, consequential amendments).
Article 176  Financial rights and obligations of a former Contracting States

(1) Any State which has ceased to be a party to this Convention in accordance with Article 172, paragraph 4, or Article 174, shall have the special financial contributions which it has paid pursuant to Article 40, paragraph 2, refunded to it by the Organisation only at the time when and under the conditions whereby the Organisation refunds special financial contributions paid by other States during the same accounting period.

(2) The State referred to in paragraph 1 shall, even after ceasing to be a party to this Convention, continue to pay the proportion pursuant to Article 39 of renewal fees in respect of European patents remaining in force in that State, at the rate current on the date on which it ceased to be a party.

Article 177 Languages of the Convention

(1) This Convention, drawn up in a single original, in the English, French and German languages, shall be deposited in the archives of the Government of the Federal Republic of Germany, the three texts being equally authentic.

(2) The texts of this Convention drawn up in official languages of Contracting States other than those referred to in paragraph 1 shall, if they have been approved by the Administrative Council, be considered as official texts. In the event of conflict disagreement on the interpretation of the various texts, the texts referred to in paragraph 1 shall be authentic.

Article 178 Transmission and notifications

(1) The Government of the Federal Republic of Germany shall draw up certified true copies of this Convention and shall transmit them to the Governments of all signatory or acceding States.

(2) The Government of the Federal Republic of Germany shall notify to the Governments of the States referred to in paragraph 1:

(a) any signature;

(a) the deposit of any instrument of ratification or accession;

(c) any reservation or withdrawal of reservation pursuant to the provisions of Article 167;

(b) any declaration or notification received pursuant to the provisions of Article 168;

(e) the date of entry into force of this Convention;

(c) any denunciation received pursuant to the provisions of Article 174 and the date on which such denunciation comes into force.

SECTION I PROTOCOL ON CENTRALISATION

(Preparatory documents: CA/PL 10/98; CA/PL PV 7, points 85-90; CA/PL PV 14, points 110-111;
CA/100/00, pages 247-252; CA/124/00, point 28; CA/125/00, point 148; MR/2/00, pages 251-256;
MR/24/00, page 103)

1. The allocation of duties performed by the former IIB to the branch at The Hague in Section I(1)(b) has been removed. This will allow searches for national patent applications to be carried out by examiners in Munich too.

On the same basis, the Administrative Council will be authorised to allocate further duties in the field of searching to the EPO as a whole, not just to the branch at The Hague – in accordance with the objective of BEST to amalgamate closely connected tasks.

2. The restriction on the duties of the Berlin sub-office in Section I(3) has been removed as well. This will enable it to carry out BEST procedures, involving search and substantive examination.

The Administrative Council will be authorised to allocate further duties to the Berlin sub-office, not only in searching but also in substantive examination.

See also the explanatory remarks to Articles 16 and 17 EPC.

3. The revised Section I of the Protocol on Centralisation applies provisionally as from 29.11.2000.
Protocol on centralisation

EPC 1973

Section I

(1)(a) Upon entry into force of the Convention, States parties thereto which are also members of the International Patent Institute set up by the Hague Agreement of 6 June 1947 shall take all necessary steps to ensure the transfer to the European Patent Office no later than the date referred to in Article 162, paragraph 1, of the Convention of all assets and liabilities and all staff members of the International Patent Institute. Such transfer shall be effected by an agreement between the International Patent Institute and the European Patent Organisation. The above States and the other States parties to the Convention shall take all necessary steps to ensure that that agreement shall be implemented no later than the date referred to in Article 162, paragraph 1, of the Convention. Upon implementation of the agreement, those Member States of the International Patent Institute which are also parties to the Convention further undertake to terminate their participation in the Hague Agreement.

(b) The States parties to the Convention shall take all necessary steps to ensure that all the assets and liabilities and all the staff members of the International Patent Institute are taken into the European Patent Office in accordance with the agreement referred to in sub-paragraph (a). After the implementation of that agreement the tasks incumbent upon the International Patent Institute at the date on which the Convention is opened for signature, and in particular those carried out vis-à-vis its Member States, whether or not they become parties to the Convention, and such tasks as it has undertaken at the time of the entry into force of the Convention to carry out vis-à-vis States which, at that date, are both members of the International Patent Institute and parties to the Convention, shall be assumed by the branch located at The Hague. In addition, the Administrative Council of the European Patent Organisation may allocate further duties in the field of searching to that branch.

EPC 2000

Section I

(1)(a) Unchanged

(b) The States parties to the Convention shall take all necessary steps to ensure that all the assets and liabilities and all the staff members of the International Patent Institute are taken into the European Patent Office in accordance with the agreement referred to in sub-paragraph (a). After the implementation of that agreement the tasks incumbent upon the International Patent Institute at the date on which the Convention is opened for signature, and in particular those carried out vis-à-vis its Member States, whether or not they become parties to the Convention, and such tasks as it has undertaken at the time of the entry into force of the Convention to carry out vis-à-vis States which, at that date, are both members of the International Patent Institute and parties to the Convention, shall be assumed by the European Patent Office. In addition, the Administrative Council of the European Patent Organisation may allocate further duties in the field of searching to the European Patent Office.
Protocol on centralisation

<table>
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<th>EPC 1973</th>
<th>EPC 2000</th>
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<td>(c) The above obligations shall also apply mutatis mutandis to the sub-office set up under the Hague Agreement under the conditions set out in the agreement between the International Patent Institute and the Government of the Contracting State concerned. This Government hereby undertakes to make a new agreement with the European Patent Organisation in place of the one already made with the International Patent Institute to harmonise the clauses concerning the organisation, operation and financing of the sub-office with the provisions of this Protocol.</td>
<td>(c) Unchanged</td>
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<td>(2) Subject to the provisions of Section III, the States parties to the Convention shall, on behalf of their central industrial property offices, renounce in favour of the European Patent Office any activities as International Searching Authorities under the Patent Cooperation Treaty as from the date referred to in Article 162, paragraph 1, of the Convention.</td>
<td>(2) Unchanged</td>
</tr>
<tr>
<td>(3)(a) A sub-office of the European Patent Office for searching European patent applications shall be set up in Berlin (West) as from the date referred to in Article 162, paragraph 1, of the Convention. It shall operate under the direction of the branch at The Hague.</td>
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<td>(b) The Administrative Council shall determine the duties to be allocated to the sub-office in Berlin in the light of general considerations and of the requirements of the European Patent Office with regard to searching.</td>
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<tr>
<td>(c) At least at the beginning of the period following the progressive expansion of the field of activity of the European Patent Office, the amount of work assigned to that sub-office shall be sufficient to enable the examining staff of the Berlin Annex of the German Patent Office, as it stands at the date on which the Convention is opened for signature, to be fully employed.</td>
<td>(c) Unchanged</td>
</tr>
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<td>(d) The Federal Republic of Germany shall bear any additional costs incurred by the European Patent Organisation in setting up and maintaining the sub-office in Berlin.</td>
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<td><strong>Protocol on centralisation</strong></td>
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<td>(d) The Federal Republic of Germany shall bear any additional costs incurred by the European Patent Organisation in setting up and maintaining the sub-office in Berlin.</td>
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**bold** [...] = changes and deletions adopted by the Diplomatic Conference (November 2000)

**grey strikethrough** = changes and deletions adopted by the Administrative Council (June 2001)
Appendix 1: Articles 3, 6, 7 and 8 of the Act revising the EPC of 29 November 2000

Article 3  New text of the Convention

(1) The Administrative Council of the European Patent Organisation is hereby authorised to draw up, at the proposal of the President of the European Patent Office, a new text of the European Patent Convention. In the new text, the wording of the provisions of the Convention shall be aligned, where necessary, in the three official languages. The provisions of the Convention may also be renumbered consecutively and the references to other provisions of the Convention may be amended in accordance with the new numbering.

(2) The Administrative Council shall adopt the new text of the Convention by a majority of three quarters of the Contracting States represented and voting. On its adoption, the new text of the Convention shall become an integral part of this Revision Act.

Article 6  Provisional application

Article 1, items 4-6 and 12-15, Article 2, items 2 and 3 and Articles 3 and 7 of this Revision Act shall be applied provisionally. [References to Articles 16, 17, 18, 37, 38, 42 and 50 EPC and to the Protocol on Centralisation and the Protocol on Staff Complement]

Article 7  Transitional provisions

(1) The revised version of the Convention shall apply to all European patent applications filed after its entry into force, as well as to all patents granted in respect of such applications. It shall not apply to European patents already granted at the time of its entry into force, or to European patent applications pending at that time, unless otherwise decided by the Administrative Council of the European Patent Organisation.

(2) The Administrative Council of the European Patent Organisation shall take a decision under paragraph 1 no later than 30 June 2001, by a majority of three quarters of the Contracting States represented and voting. Such decision shall become an integral part of this Revision Act.

Article 8  Entry into force

(1) The revised text of the European Patent Convention shall enter into force two years after the fifteenth Contracting State has deposited its instrument of ratification or accession, or on the first day of the third month following the deposit of the instrument of ratification or accession by the Contracting State taking this step as the last of all the Contracting States, if this takes place earlier.

(2) Upon entry into force of the revised text of the Convention, the text valid until that time shall cease to apply.
Appendix 2: Transitional provisions

Decision of the Administrative Council of 28 June 2001 on the transitional provisions under Article 7 of the Act revising the EPC of 29 November 2000

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to Article 7, paragraph 2, of the Act revising the European Patent Convention of 29 November 2000 ("Revision Act"),

On a proposal from the President of the European Patent Office,

Having regard to the opinion of the Committee on Patent Law,

HAS DECIDED AS FOLLOWS:

Article 1

In accordance with Article 7, paragraph 1, second sentence, of the Revision Act, the following transitional provisions shall apply to the amended and new provisions of the European Patent Convention specified below:

1. Articles 14(3) to (6), 51, 52, 53, 54(3) and (4), 61, 67, 68 and 69, the Protocol on the Interpretation of Article 69, and Articles 70, 86, 88, 90, 92, 93, 94, 97, 98, 106, 108, 110, 115, 117, 119, 120, 123, 124, 127, 128, 129, 133, 135, 137 and 141 shall apply to European patent applications pending at the time of their entry into force and to European patents already granted at that time. However, Article 54(4) of the version of the Convention in force before that time shall continue to apply to these applications and patents.

2. Articles 65, 99, 101, 103, 104, 105, 105a-c and 138 shall apply to European patents already granted at the time of their entry into force and to European patents granted in respect of European patent applications pending at that time.

3. Article 54(5) shall apply to European patent applications pending at the time of its entry into force, in so far as a decision on the grant of the patent has not yet been taken.

4. Article 112a shall apply to decisions of the Boards of Appeal taken as from the date of its entry into force.

5. Articles 121 and 122 shall apply to European patent applications pending at the time of their entry into force and to European patents already granted at that time, in so far as the time limits for requesting further processing or re-establishment of rights have not yet expired at that time.

6. Articles 150 to 153 shall apply to international applications pending at the time of their entry into force. However, Articles 154(3) and 155(3) of the version of the Convention in force before that time shall continue to apply to these applications.

Article 2

This decision shall enter into force upon the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act.

Done at Munich, 28 June 2001

For the Administrative Council

The Chairman

Roland GROSSENBACHER
Appendix 3: Proposals which were not adopted by the Revision Conference

1. The present publication is based on the "Basic proposal for the revision of the European Patent Convention", dated 13.10.2000 (reference MR/2/00) which was submitted by the Administrative Council of the European Patent Organisation to the Conference of the EPC Contracting States convened under Article 172(2) EPC.

2. The Basic proposal contained a few proposals which were not adopted by the Conference. These relate in particular to:

   2.1 **Article 14 EPC**: it was proposed to delete Article 14(8) and (9) EPC 1973 and incorporate its content into the Implementing Regulations
   - see preparatory documents CA/PL 25/00; CA/PL PV 14, points 7-10; CA/100/00, pages 3-8; CA/124/00, points 6-7; CA/125/00, points 12-22 and MR/2/00, pages 5-10
   - for the discussions during the Revision Conference, see MR/8/00 and MR/24/00, page 58

   2.2 **Article 52 EPC**: it was proposed to delete "programs for computers" from Article 52(2)(c) EPC
   - see preparatory documents CA/PL 6/99; CA/PL PV 9, points 24-27; CA/PL PV 14, points 143-156; CA/100/00, pages 37-40; CA/124/00, points 12-16; CA/125/00, points 45-73 and MR/2/00, pages 43-44;
   - for the discussions during the Revision Conference, see MR/8/00; MR/15/00; MR/16/00 and MR/24/00, pages 69-71

   2.3 **The Protocol on the interpretation of Article 69 EPC**: it was proposed to add to the new Article 2 of the Protocol a second paragraph defining what is meant by "equivalent means" and to add to the Protocol a new Article 3 on "prior statements"
   - see preparatory documents CA/PL 25/00 Add. 2; CA/PL PV 14, points 227-233; CA/100/00, pages 55-58; CA/124/00, point 19; CA/125/00, points 94-104 and MR/2/00, pages 57-62
   - for the discussions during the Revision Conference, see MR/24/00, pages 74-79

3. In addition, a few provisions – which were not proposed in the Basic proposal – were adopted by the Conference, in particular
   - Article 33(5) EPC 2000
   - Article 112a(2)(a), (b) and (d) EPC 2000
   - The Protocol on Staff Complement

   For further details, reference is made to the discussions which took place during the Revision Conference, see Conference proceedings (MR/24/00).

4. Finally, it is also of interest that in a Conference Resolution adopted on 29.11.2000, the Conference highlights two items for a future revision of the EPC: computer programs and biotechnology.
   - As regards computer programs, the Resolution states that, "recognising the importance of the issue", the Conference has agreed to "maintain for the present the European Patent Convention’s current provisions on software".
   - As regards biotechnology, it is stated that "further analysis of the appropriate context in the Convention for certain provisions should also be carried out, for example concerning biotechnological inventions".

   For the time being, no new proposals have been made for revising the above provisions of the EPC.
