



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

PI 63

NOTE

from: Presidency

to: Working Party on Intellectual Property (Patents)

No. prev. doc. : 10947/03 PI 62

Subject : Revision of the European Patent Convention
- Presidency proposal

Delegations will find attached a proposal by the Presidency concerning the amendments to the European Patent Convention which would be necessary in order to accommodate the Community Patent.

<p style="text-align: center;">PART I</p> <p style="text-align: center;">GENERAL AND INSTITUTIONAL PROVISIONS</p>	<p style="text-align: center;">PART I</p> <p style="text-align: center;">GENERAL AND INSTITUTIONAL PROVISIONS</p>
<p style="text-align: center;">Chapter I</p> <p style="text-align: center;">General provisions</p>	<p style="text-align: center;">Chapter I</p> <p style="text-align: center;">General provisions</p>
<p style="text-align: center;"><i>Article 1</i></p> <p style="text-align: center;">European law for the grant of patents</p> <p>A system of law, common to the Contracting States, for the grant of patents for invention is hereby established.</p>	<p style="text-align: center;"><i>Article 1</i></p> <p style="text-align: center;">European law for the grant of patents</p> <p>(1) This Convention establishes a system of law, common to the Contracting Parties, for the grant of patents for invention.</p> <p>(2) Contracting Party means a Contracting State or the European Community.</p>
<p style="text-align: center;"><i>Article 2</i></p> <p style="text-align: center;">European patent</p> <p>(1) Patents granted by virtue of this Convention shall be called European patents.</p> <p>(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 otherwise provided in this Convention.</p>	<p style="text-align: center;"><i>Article 2</i></p> <p style="text-align: center;">European patent</p> <p>(1) Unchanged</p> <p>(2) Unchanged</p>

	(3) A European patent granted for the European Community (hereafter "Community patent") shall have the effect and be subject to the conditions laid down in the provisions adopted in application of the Treaty establishing the European Community (hereafter "Community law"), unless this Convention provides otherwise. A European patent application in which the European Community is designated shall be subject to this Convention, unless Community law provides otherwise.
<i>Article 4a</i> Conference of ministers of the Contracting States	<i>Article 4a</i> Conference of representatives of the Contracting Parties
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.	A conference of ministers from the Contracting States responsible for patent matters, and of representatives of the European Community, shall meet at least every five years to discuss issues pertaining to the Organisation and the European patent system.
Chapter III The European Patent Office	Chapter III The European Patent Office
<i>Article 15</i> The departments charged with the procedure	<i>Article 15</i> The departments charged with the procedure

<p>For implementing the procedures laid down in this Convention, there shall be set up within the European Patent Office:</p> <p>a) a receiving section;</p> <p>b) search divisions;</p> <p>c) examining divisions;</p> <p>d) opposition divisions;</p> <p>e) a legal division;</p> <p>f) boards of appeal;</p> <p>g) an Enlarged Board of Appeal</p>	<p>For implementing the procedures laid down in this Convention, there shall be set up within the European Patent Office:</p> <p>a) a receiving section;</p> <p>b) search divisions;</p> <p>c) examining divisions;</p> <p>d) an administration division for the Community patent;</p> <p>e) opposition divisions;</p> <p>f) a legal division;</p> <p>g) boards of appeal;</p> <p>h) an Enlarged Board of Appeal.</p>
<p>Chapter IV</p> <p>The Administrative Council</p>	<p>Chapter IV</p> <p>The Administrative Council</p>
<p><i>Article 21</i></p> <p>Boards of Appeal</p>	<p><i>Article 21</i></p> <p>Boards of Appeal</p>
<p>(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.</p>	<p>(1) The Boards of Appeal shall be responsible for the examination of appeals from the decisions of the Receiving Section, Examining Divisions, Opposition Divisions, Legal Divisions and of the Administration Division.</p>

<p>(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.</p>	<p>(2) Unchanged</p>
<p>(3) For appeals from a decision of an Examining Division, a Board of Appeal shall consist of:</p> <p>(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;</p> <p>(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;</p> <p>(c) three legally qualified members in all other cases.</p>	<p>(3) Unchanged</p>

<p>(4) For appeals from a decision of an Opposition Division, a Board of Appeal shall consist of:</p> <p>(a) two technically qualified members and one legally qualified member, when the decision was taken by an Opposition Division consisting of three members;</p> <p>(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.</p>	<p>(4) unchanged</p>
	<p>(5) For appeals from a decision of the Administration division, a Board of Appeal shall consist of three legally qualified members.</p>
	<p style="text-align: center;"><i>Article 24a</i> Consistent interpretation</p>

	With regard to the interpretation and application of this Convention, the European Patent Office shall take due account of the principles deriving from any judgement of the Court of Justice of the European Communities concerning the interpretation of this Convention or of such provisions of Community law which are identical in substance to the provisions of this Convention.
<i>Article 25</i> Technical opinion	<i>Article 25</i> Technical opinion
At the request of the competent national court hearing an infringement or revocation action, the European Patent Office shall be obliged, 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 issuing such opinions.	At the request of the competent court hearing an infringement or revocation action, or examining a request for a compulsory licence, the European Patent Office shall be obliged, on payment of an appropriate fee, to give a technical opinion concerning the European patent or the Community Patent which is the subject of such action or request. The Examining Division shall be responsible for issuing such opinions ¹ .

¹ The current Article 25 of the EPC restricts the request for a technical opinion to the national courts competent for infringement or revocation. The document replaces the words "competent national court" with the words "competent court" so as to encompass the Community jurisdiction. In addition, this document lays down that the technical opinion may be requested by the Community Patent Court. Such an opinion may be useful, for instance, for delimiting licences, and in the case of sub-licences in order to determine whether there is subsidiarity. The wording chosen in this document allows any authority concerned responsible for granting sub-licences to request a technical opinion. The EPO may levy a fee for such services.

<p style="text-align: center;">Chapter IV The Administrative Council</p>	<p style="text-align: center;">Chapter IV The Administrative Council</p>
<p style="text-align: center;"><i>Article 33</i></p> <p style="text-align: center;">Competence of the Administrative Council in certain cases</p>	<p style="text-align: center;"><i>Article 33</i></p> <p style="text-align: center;">Competence of the Administrative Council in certain cases</p>
<p>(1) The Administrative Council shall be competent to amend the following provisions:</p> <ul style="list-style-type: none"> 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; c) the Implementing Regulations. 	<p>(1) The Administrative Council shall be competent to amend the following provisions:</p> <ul style="list-style-type: none"> a) the time limits laid down in this Convention; b) parts II to VIII, IXa and X of this Convention, to bring them into line with an international treaty relating to patents or with Community law relating to patents; c) the Implementing Regulations.
<p style="text-align: center;"><i>Article 34</i></p> <p style="text-align: center;">Voting rights</p>	<p style="text-align: center;"><i>Article 34</i></p> <p style="text-align: center;">Voting rights</p>
<p>(1) The right to vote in the Administrative Council shall be restricted to the Contracting States.</p>	<p>(1) The right to vote in the Administrative Council shall be restricted to the Contracting Parties.</p>
<p>(2) Each Contracting State shall have one vote, except where Article 36 applies.</p>	<p>(2) Each Contracting Party shall have one vote, except where Article 36 applies.</p>

	(3) The European Community may take part in the vote in place of its Member States. In such case, it shall have the number of votes, which equates to the number of votes of its Member States. The European Community shall not take part in the ballot if one of its Member States exercises its right to vote, and vice versa.
<i>Article 35</i> Votes	<i>Article 35</i> Votes
	(2) A majority of three-quarters of the votes cast shall be required for the decisions which the Administrative Council is empowered to take under Article 7, Article 11(1), Article 33(1)(a) and (c) and (2) and (4), Article 39(1), Article 39a, Article 40(2) and (4), Article 46, Article 134a, Article 149a(2), Article 152, Article 153(7), Article 166 and Article 172.
Chapter V Financial provisions	Chapter V Financial provisions
<i>Article 37</i> Budgetary funding	<i>Article 37</i> Budgetary funding

<p>The budget of the Organisation shall be financed:</p> <p>a) by the Organisation's own resources;</p> <p>b) by payments made by the Contracting States in respect of renewal fees for European patents levied in these States;</p> <p>c) where necessary, by special financial contributions made by the Contracting States;</p> <p>d) where appropriate, by the revenue provided for in Article 146;</p> <p>e) where appropriate, and for tangible assets only, by third-party borrowings secured on land or buildings;</p> <p>f) where appropriate, by third party funding for specific projects.</p>	<p>The budget of the Organisation shall be financed:</p> <p>a) by the Organisation's own resources;</p> <p>b) by payments made by the Contracting States in respect of renewal fees for European patents levied in these States;</p> <p>c) by the amounts retained by the Organisation from renewal fees paid for Community patents;</p> <p>d) where necessary, by special financial contributions made by the Contracting States;</p> <p>e) where appropriate, by the revenue provided for in Article 146;</p> <p>f) where appropriate, and for tangible assets only, by third-party borrowings secured on land or buildings;</p> <p>g) where appropriate, by third party funding for specific projects.</p>
	<p style="text-align: center;"><i>Article 39a</i></p> <p style="text-align: center;">Amounts retained by the Organisation from renewal fees paid for Community patents</p>

	By way of derogation from Articles 39, 146 and 147, the Organisation shall retain from each renewal fee paid for a Community patent an amount equal to a proportion of that fee, to be fixed by the Administrative Council subject to a favourable opinion of the select committee of the Administrative Council. The proportion shall not be less than 50 per cent. The decision of the Administrative Council shall take due account of the tasks performed by the administration division.
<i>Article 59</i> Multiple applicants	<i>Article 59</i> Multiple applicants
A European patent application may also be filed either by joint applicants or by two or more applicants designating different Contracting States.	A European patent application may also be filed either by joint applicants or by two or more applicants designating different Contracting Parties. If the European Community and Contracting States, which are Member States of the European Community are designated in the European patent application, two or more applicants shall be deemed to be joint applicants ² .
<i>Article 63</i> Term of the European patent	<i>Article 63</i> Term of the European patent

² This a logical consequence of the fact that, in the case of Community patents, it is not possible to have the same flexibility with regard to subdividing the territory of protection as for European patents.

<p>(1) The term of the European patent shall be 20 years as from the date of filing of the application.</p>	<p>(1) Unchanged</p>
<p>(2) 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,</p> <p>a) in order to take account of a state of war or similar emergency conditions affecting that State;</p> <p>b) if the subject-matter of the European patent is a product or a process of 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.</p>	<p>(2) Unchanged</p>
<p>(3) The provisions of paragraph 2 shall apply to European patents granted jointly for any group of Contracting States in accordance with Article 142.</p>	<p>(3) Unchanged</p>

	(3a) Paragraph 2 shall apply <i>mutatis mutandis</i> to Community patents.
(4) 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.	(4) A Contracting Party 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.
Article 64 Rights conferred by a European patent	Article 64 Rights conferred by a European patent
(1) A European patent shall, subject to the provisions of paragraph 2, confer on its proprietor from the date of publication of the mention of its grant, 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.	(1) A European patent shall, subject to the provisions of paragraph 2, confer on its proprietor from the date of publication of the mention of its grant, 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. A Community patent shall confer the rights laid down by Community law.
(2) 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.	(2) Unchanged

(3) Any infringement of a European patent shall be dealt with by national law.	(3) Any infringement of a European patent shall be dealt with by national law or, in the case of a Community patent, by Community law, unless otherwise provided in the Community Patent Regulation.
PART II SUBSTANTIVE PATENT LAW	PART II SUBSTANTIVE PATENT LAW
Chapter III Effects of the European patent and the European patent application	Chapter III Effects of the European patent and the European patent application
<i>Article 65</i> Translation of the specification of the European patent	<i>Article 65³</i> Translation of the specification of the European patent

³ The amendment of Article 65 takes account of the possibility for the patent holder to convert his ComPat into a bundle of national patents. This Article has to be read in conjunction with Article 79.

<p>(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.</p>	<p>(1) Unchanged</p>
<p>(1a)</p>	<p>(1a) The European Community may prescribe that the proprietor of a Community patent shall supply to the European Patent Office translations of all the claims other than those referred to in Article 14 paragraph 6, of the patent as granted, amended or limited into the official languages of the European Community, in accordance with and within the period determined by Community law.</p>

<p>(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.</p>	<p>(2) Any Contracting Party which has adopted provisions pursuant to paragraphs 1 or 1a 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 Party.</p>
<p>(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.</p>	<p>(3) Any Contracting Party may prescribe that, in the event of failure to observe the provisions adopted in accordance with paragraphs 1, 1a and 2 the European patent shall be deemed to be void ab initio in respect of that Party.</p>
	<p>Article 65a</p> <p>Conversion of a Community patent into European patent</p>
	<p>The holder of the patent may opt for the Community Patent to be considered as a European Patent designating one or more Member States of the European Union, under conditions and within the time limits specified by the implementing regulation.⁴</p>
<p>Article 67</p> <p>Rights conferred by a European patent application after publication</p>	<p>Article 67</p> <p>Rights conferred by a European patent application after publication</p>

⁴ In accordance with the relevant Article of the proposal for a Community Patent Regulation

<p>(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.</p>	<p>(1) Unchanged</p>
<p>(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.</p>	<p>(2) Unchanged</p>

<p>(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:</p> <p>a) has been made available to the public in the manner prescribed by national law, or</p> <p>b) has been communicated to the person using the invention in the said State.</p>	<p>(3) Unchanged</p>
<p>(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.</p>	<p>(4) The European patent application shall be deemed never to have had the effects set out in paragraphs 1 and 2 if it has been withdrawn, is deemed to be withdrawn or has been finally refused. The same shall apply if the designation of a Contracting State or the European Community has been withdrawn or is deemed to be withdrawn.</p>

	(5) The rights conferred by a European patent application designating the European Community shall be governed by Community law.
PART III APPLICATION FOR EUROPEAN PATENTS	PART III APPLICATION FOR EUROPEAN PATENTS
Chapter I Filing and requirements of the European patent application	Chapter I Filing and requirements of the European patent application
<i>Article 79</i> Designation of the Contracting States	<i>Article 79</i> Designation of the Contracting States
(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.	(1) All the Contracting Parties 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 the designation fee.	(2) The designation of a Contracting Party may be subject to the payment of the designation fee.
(3) The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent.	(3) The designation of a Contracting Party may be withdrawn at any time up to the grant of the European patent.

	(4) Where the European patent is granted for both the European Community and one or more of its Member States, any designation of such State shall be deemed withdrawn as of the date referred to in Article 97 paragraph 3.
Article 99 Opposition	Article 99 Opposition
(1) Within nine months of 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 the opposition fee has been paid.	(1) unchanged
(2) The opposition shall apply to the European patent in all the Contracting States in which that patent has effect.	(2) The opposition shall apply to the European patent with effect for the Contracting Parties in respect of which it has been granted.
PART VI APPEALS PROCEDURE	PART VI APPEALS PROCEDURE
Article 106 Decisions subject to Appeal	Article 106 Decisions subject to Appeal

(1)	An appeal shall lie from decisions of the Receiving Section, Examining Divisions, Opposition, Divisions and the Legal Division. It shall have suspensive effect.	(1)	An appeal shall lie from decisions of the Receiving Section, Examining Divisions, Opposition, Legal Divisions and the Administrative Division. It shall have suspensive effect.
(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 separate appeal.	(2)	Unchanged
(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.	(3)	Unchanged
PART VII COMMON PROVISIONS		PART VII COMMON PROVISIONS	
Chapter II Information to the public or official authorities		Chapter II Information to the public or official authorities	
<i>Article 131</i> Administrative and legal cooperation		<i>Article 131</i> Administrative and legal cooperation	

<p>(1) Unless otherwise provided in this Convention or in national laws, 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 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.</p>	<p>(1) Unless this Convention, national law or Community law provide otherwise, the European Patent Office and the courts or authorities of Contracting States, and the instances of the European Community shall on request give assistance to each other by communicating information or opening files for inspection. Where the European Patent Office makes files available for inspection by courts, Public Prosecutors' Offices, central industrial property offices or instances of the European Community, the inspection shall not be subject to the restrictions laid down in Article 128.</p>
	<p>(1a) National legislation may not impede the application of paragraph 1 to relations between the Office and the bodies of the European Community, except for reasons of national defence</p>
<p>(2) Upon receipt of letters rogatory from the European Patent Office, the courts or other competent authorities of Contracting States shall undertake, on behalf of that Office and within the limits of their jurisdiction, any necessary enquiries or other legal measures.</p>	<p>(2) Unchanged</p>

<p style="text-align: center;"><i>Article 139</i></p> <p style="text-align: center;">Administrative and legal cooperation</p>	<p style="text-align: center;"><i>Article 139</i></p> <p style="text-align: center;">Prior Rights and Rights arising on the same date</p>
<p>(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.</p>	<p>(1) Unchanged</p>
<p>(2) A national patent application and a national patent in a Contracting State shall have with regard to a European patent in which that Contracting State is designated the same prior right effect as they have with regard to a national patent</p>	<p>(2) A national patent application and a national patent in a contracting state shall have with regard to a European patent granted for that Contracting State the same prior right effect as if the European patent were a national patent. A national patent application and a national patent in a Member State of the European Community shall have with regard to a Community patent the same prior right effect as if the Community patent were a national patent.</p>
	<p>PART IXA</p> <p>SPECIFIC PROVISIONS CONCERNING COMMUNITY PATENTS</p>

	Chapter I General provisions
	<i>Article 149b</i> Provisions applicable to the Community patent
	The provisions of this Part shall apply to Community patents
	<i>Article 149c</i> Respect for Community law.
	(1) The Administration Division for the Community Patent and the Select Committee of the Administrative Council, in carrying out their tasks, shall respect Community law.
	(2) The instances referred to in paragraph 1 shall pay particular attention to the established body of Community law in relation to patents as referred to in the Annex to this Convention.
	(3) Community law under paragraph 1 shall furthermore comprise, in particular, the principles deriving from any judgement of the Court of justice of the European Communities concerning the interpretation of this Convention or of such provisions of Community law which are identical in substance to the provisions of this Convention.

	Chapter II The Administration Division for the Community Patent
	<i>Article 149d</i> General responsibility of the Administration Division
	(1) The Administration Division shall be responsible for all acts of the European Patent Office relating to Community patents, insofar as those acts are not the responsibility of other departments of the Office
	(2) It shall report on its activities to the President of the Office.
	<i>Article 149e</i> Filing and publication of translations
	(1) The Administration Division shall be responsible for receiving and publishing the translations of the claims of Community patents prescribed under Article 65 paragraph (1a).
	(2) The Administration Division shall also be responsible for receiving and publishing translations of Community patents supplied in accordance with Community law.
	<i>Article 149f</i> Community patent Register

	(1) The European Patent Office shall keep a Community Patent Register in which the particulars specified in the Implementing Regulations shall be recorded. The Community Patent Register shall be open to public inspection.
	(2) The Administration Division shall be responsible for all decisions in respect of entries to be made in the Community Patent Register ⁵ .
	Article 149g Community Patent Bulletin
	The Administration Division shall publish a Community Patent Bulletin containing the particulars the publication of which is prescribed by the Implementing Regulations.
	Article 149h Renewal Fees for Community Patents
	(1) Renewal fees for Community patents shall be administered by the Administration Division, in accordance with the Implementing Regulations.

⁵ One of the mentions which should be inscribed in the register would be the indication of the non-filing of the translation within specified time limits.

	(2) Income from such fees shall, after deduction of the amounts retained by the European Patent Organisation pursuant to Article 39a, be distributed among the Member States of the European Community in accordance with the distribution key determined under Community law.
	Article 149i Lapse
	The Administration Division shall be responsible for declaring that a Community patent has lapsed in accordance with Community law.
	Article 149j Failure to comply with time-limits.
	In proceedings before the Administration Division Article 122 shall apply
	Chapter III Select Committee of the Administrative Council
	Article 149k General rules

	(1) A Select Committee of the Administrative Council shall be set up. It shall be composed of representatives of the European Community and representatives of all of its Member States.
	(2) The European Patent Office shall place at the disposal of this Committee such staff, premises and equipment as may be necessary for the performance of its duties.
	(3) The President of the Office shall take part in the deliberations of the Select Committee. He shall be responsible for the activities of the Administration Division to the Select Committee.
	Article 149l Votes in the Select Committee
	(1) In the Select Committee, the European Community and each Member State shall have one vote. Article 36 shall not apply.
	(2) Subject to paragraph 3, the Select Committee shall arrive at its decisions by the majority required in Article 35(1)
	(3) Favourable opinions pursuant to Article 149o shall require the majority set out in Article 35(2).

	Article 149m Favourable opinion
	<p>The Select Committee shall deliver favourable opinions, which shall be required as a precondition for allowing the Administrative Council to reach decisions on the following:</p> <p>a) the proportion of renewal fees referred to in Article 39a;</p> <p>b) measures applying to budgetary matters relating to the Community patent.</p> <p>c) the Implementing Regulations relating to this Part.</p>
	Article 149n Sole competence
	<p>The Select Committee of the Administrative Council shall be solely competent to adopt and amend:</p> <p>a) its Rules of Procedure;</p> <p>b) the particulars to be entered in the Community Patent Register and Bulletin under Article 149f and 149g.</p>

<p style="text-align: center;">PART X</p> <p style="text-align: center;">INTERNATIONAL APPLIATION PURSUANT TO THE PATENT COOPERATION TREATY</p>	<p style="text-align: center;">PART X</p> <p style="text-align: center;">INTERNATIONAL APPLICATION PURSUANT TO THE PATENT COOPERATION TREATY</p>
<p style="text-align: center;"><i>Article 153</i></p> <p style="text-align: center;">The European Patent Office as a designated office or as an elected office</p>	<p style="text-align: center;"><i>Article 153</i></p> <p style="text-align: center;">The European Patent Office as a designated office or as an elected office⁶</p>

⁶ This new provision is reflected in Article 4 PCT :
The request shall contain :
* the designation of the Contracting States or States in which protection for the invention is desired on the basis of the international application (classical national designation)
* if for any designated States a regional patent is available and the patent applicant wishes to obtain a regional patent rather than a national patent, the request shall so indicate (EP designation for instance)
* if, under a treaty concerning a regional patent, the applicant cannot limit his application to certain of the States party to that treaty, designation of one of those States and the indication of the wish to obtain the regional treaty, shall be treated as designation of all the States party to that treaty (specific provision dedicated for the ComPat in the context of the Luxembourg Convention –1975- ie it is based on the assumption that the applicant could only obtain a ComPat but never a patent designating a MS of the EC. In addition, this provision is related to Articles 142-149 EPC)

<p>(1) The European Patent Office shall be:</p> <p>a) a designated office for any 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</p> <p>b) an elected office, if the applicant has elected a state designated pursuant to letter (a).</p>	<p>(1) The European Patent Office shall act as:</p> <p>a) a designated office for the European Community [by way of derogation from Article 149(2)]⁷ or 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 that he wishes to obtain a European patent, and</p> <p>b) an elected office if the applicant has elected a designated office pursuant to subparagraph a)⁸.</p>
<p>PART XII FINAL PROVISIONS</p>	<p>PART XII FINAL PROVISIONS</p>
<p><i>Article 166</i> Accession</p>	<p><i>Article 166</i> Accession</p>

⁷ Article 149 (2) does not deal with the ComPat but could be applied to the Liechtenstein-Switzerland agreement. Anyway, for reason of clarification, it could be useful to mention such derogation.

⁸ Amendment intended to allow a Community patent to be obtained on the basis of a EURO-PCT application.

<p>(1) This Convention shall be open to accession by:</p> <p>a) the States referred to in Article 165, paragraph 1;</p> <p>b) any other European State at the invitation of the Administrative Council.</p>	<p>(1) This Convention shall be open to accession by:</p> <p>a) the States referred to in Article 165, paragraph 1;</p> <p>b) any other European State at the invitation of the Administrative Council;</p> <p>c) the European Community.</p>
<p>(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.</p>	<p>(2) Any Contracting Party, which 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.</p>
<p>(3) Instruments of accession shall be deposited with the Government of the Federal Republic of Germany</p>	<p>(3) Unchanged</p>
<p>Article 175</p> <p>Preservation of acquired rights</p>	<p>Article 175</p> <p>Preservation of acquired rights</p>
<p>(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.</p>	<p>(1). In the event of a Contracting Party 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.</p>

<p>(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, as far as that State is concerned, as if the Convention in force thereafter were applicable to that State</p>	<p>(2) A European patent application which is pending when a designated Contracting Party ceases to be party to the Convention shall be processed by the European Patent Office, as far as that Contracting Party is concerned, as if the Convention in force thereafter were applicable to that Contracting Party.</p>
<p>(3) 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.</p>	<p>(3) Unchanged</p>
<p>(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.</p>	<p>(4) This Article shall not affect the right of a former Contracting Party to treat any European patent in accordance with the text of the Convention which applied to it.</p>
<p><i>Article 178</i> Transmission and notifications</p>	<p><i>Article 178</i> Transmission and notifications</p>
<p>(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.</p>	<p>(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</p>

<p>(2) The Government of the Federal Republic of Germany shall notify to the Governments of the States referred to in paragraph 1:</p> <p>(a) the deposit of any instrument of ratification or accession;</p> <p>(b) any declaration or notification received pursuant to Article 168;</p> <p>(c) any denunciation received pursuant to Article 174 and the date on which such denunciation comes into force</p>	<p>(2) The Government of the Federal Republic of Germany shall notify to the Governments of the States referred to in paragraph 1:</p> <p>(a) the deposit of any instrument of ratification or accession;</p> <p>(b) any declaration or notification received pursuant to Article 168;</p> <p>(c) any denunciation received pursuant to Article 174 and the date on which such denunciation comes into force.</p>
<p>(3) The Government of the Federal Republic of Germany shall register this Convention with the Secretariat of the United Nations</p>	<p>(3) The Government of the Federal Republic of Germany shall register this Convention with the Secretariat of the United Nations.</p>
	<p>(4) Paragraphs 1 and 2 shall apply <i>mutatis mutandis</i> to the European Community.</p>

Supplementary provision to be foreseen in the Revision Act

Article (..)

Technical adaptations

In the following provisions of the Convention the terms "Contracting State" or "Contracting States" are replaced by "Contracting Party" or "Contracting Parties" respectively: Articles 3, 26 (1), 29 (5), 34 (1) and (2), 35 (1), 37 (c); 76 (2); 105b (3); 118; 125; 138 (1); 172 (1) to (4); 173 (1) and (2); 174; 175 (1); 176 (1) and (2).

ANNEX CONCERNING THE ESTABLISHED BODY OF COMMUNITY LAW IN RELATION TO PATENTS

The Community law referred to in Article 149c (2) of the European Patent Convention comprises, in particular the following measures:

- a) Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions;
- b) Directive .../..EC of the European Parliament and of the Council of (...) on the legal protection of computer implemented inventions.

PROTOCOL ON CENTRALISATION

SECTION IVA

- (1) The Administrative Council may entrust the central industrial property office of a Contracting State having an official language other than any official language of the European Patent Office with search work in respect of European patent applications filed in its official language, to be carried out in that language, if the applicant so requests.⁹
- (2)(a) The Administrative Council may entrust the central industrial property office of a Contracting State having an official language in common with the official languages of the European Patent Office and having prior experience of co-operation with the European Patent Office in carrying out search work in respect of European patent applications, where this is necessary to maintain a critical mass of work needed by that office.
- (b) The Administrative Council may, after consulting the President of the European Patent Office, entrust the central industrial property office of any Contracting State with search work in respect of European patent applications, where this is necessary to meet any severe problems of capacity of the European Patent Office.
- (3)(a) All search work entrusted to a central industrial property office of a Contracting State under paragraphs 1 and 2 shall be carried out in accordance with the terms of a partnership agreement concluded between the Organisation and that office, and shall be carried out on behalf and under the responsibility of the European Patent Office.
- (b) All partnership agreements shall include common criteria for quality assurance which have to be complied with by the central industrial property offices to ensure that all search work carried out by them meets the same quality standards as are applied to such work carried out by the European Patent Office. Compliance with the common criteria for quality assurance shall be subject to independent periodic review.
- (4) Nothing in this section shall affect the right of the applicant to request that his European patent application be processed entirely by the European Patent Office.

⁹ *Alternative and according to the wording of the common political approach:* (1) The Administrative Council may entrust the central industrial property office of a Contracting State having an official language other than any official language of the European Patent Office with work to be carried out in its said official language in respect of European patent applications up to and including searches, if the applicant so requests.