Article 159 E

Travaux Préparatoires
(EPC 1973)

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Art. 159

MPÜ

Verwaltungsrat während einer Übergangszeit

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MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 6

Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 140 to 166
ELFTER TEIL
ÜBERGANGSBESTIMMUNGEN

Artikel 158
Verwaltungsrat während einer Übergangszeit

(1) Die in Artikel 168 Absatz 1 genannten Staaten bestellen ihre Vertreter im Verwaltungsrat; auf Einladung der Regierung der Bundesrepublik Deutschland tritt der Verwaltungsrat nicht später als zwei Monate nach Inkrafttreten des Übereinkommens zusammen, um insbesondere den Präsidenten des Europäischen Patentamts zu ernennen.

(2) Die Amtszeit des ersten nach Inkrafttreten des Übereinkommens ernannten Präsidenten des Verwaltungsrats beträgt vier Jahre.


Artikel 159
Ernennung von Bediensteten während einer Übergangszeit

(1) Bis zum Erlass des Statuts der Beamten und der für die sonstigen Bediensteten des Europäischen Patentamts geltenden Beschäftigungsbedingungen stellen der Verwaltungsrat und der Präsident des Europäischen Patentamts im Rahmen ihrer Zuständigkeit das erforderliche Personal ein und schließen zu diesem Zweck befristete Verträge. Der Verwaltungsrat kann für die Einstellung des Personals allgemeine Grundsätze aufstellen.


Artikel 160
Erstes Haushaltsjahr


PART XI
TRANSITIONAL PROVISIONS

Article 158
Administrative Council during a transitional period

(1) The States referred to in Article 168, 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.

Article 159
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 drawn up, 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.

Article 160
First accounting period

(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.
ENTWURF EINES ÜBEREINKOMMENS
ÜBER EIN EUROPÄISCHES PATENTERTEILUNGSVERFAHREN

DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

PROJET DE CONVENTION
INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
PATENTTERTEILUNGSVERFAHRENS 1973
(München, 10. September bis 6. Oktober 1973)

MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS, 1973
(Munich, 10 September to 6 October 1973)

CONFERENCE DIPLOMATIQUE DE MUNICH
POUR L’INSTITUTION D’UN SYSTÈME EUROPÉEN
DE DÉLIVRANCE DE BREVETS
(1973)
(Munich, 10 septembre - 6 octobre 1973)

VORBEREITENDE DOKUMENTE
ausgearbeitet von der
Regierungskonferenz über die Einführung eines europäischen Patenterteilungsverfahrens
herausgegeben von der
Regierung der Bundesrepublik Deutschland

PREPARATORY DOCUMENTS
drawn up by the
Inter-Governmental Conference for the setting up of a European System for the Grant of Patents
and published by the
Government of the Federal Republic of Germany

DOCUMENTS PRÉPARATOIRES
élaborés par la
Conférence intergouvernementale pour l’institution d’un système européen de délivrance de brevets
et publiés par le
Gouvernement de la République fédérale d’Allemagne

1972
Article 166 (Entry into force)

141. The Conference endorsed the proposal made by Working Party II that the number of patent applications to be provided for in paragraph 1 should be fixed at 180,000. This number was chosen on the basis of the number of applications filed in the territory of the six Member States of the European Economic Community.

The time limit for the entry into force of the Convention was extended to three months.

142. The Conference considered it necessary for the Administrative Council to meet immediately after the entry into force of the Convention. It inserted a new paragraph 1(a) to this effect (BR/118/71, Page 19).

Article 168 (Settlement of disputes)

143. The Swiss and Netherlands delegations proposed that disputes between Contracting States should be referred to the International Court of Justice and not, as proposed by Working Party II, to an arbitral tribunal. Disputes between States were to be subject primarily to international law, in which the International Court of Justice was more competent than an arbitral tribunal convened for each individual case. The fact that the disputes to be expected might involve technical questions presented no insuperable obstacles because the Court of Justice could call on experts. In other cases too, the West European
MINUTES

of the

4th Meeting of the Inter-Governmental Conference
for the setting up of a European System
for the Grant of Patents

(Luxembourg, 20 to 28 April 1971)

BR/125 e/71 lev/KM/bp
Article 166
Entry into Force

(1) This Convention shall enter into force two 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 second month after the deposit of the instrument of ratification or accession.
FIRST PRELIMINARY DRAFT OF A CONVENTION

ESTABLISHING

A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Stage reached on 29 January 1971 -
116. In connection with this Article it was examined whether the right of the Administrative Council to set up committees should be expressly laid down in the Convention. As the Conference was of the opinion that such committees should have just as little power of decision as that vested in the Board, it considered it sufficient to deal with the matter in the Rules of Procedure of the Administrative Council.

The Conference deferred examination of the question of whether different rules should be applicable to the setting up of a finance committee.

Article 35 m (Voting Rules)

117. The German, Netherlands and United Kingdom delegations proposed providing for a majority of only three-quarters in all the cases which, under paragraph 1, required unanimity. The difficulty of arriving at a unanimous decision would in many cases necessarily lead to undesirable delays in the entry into force of decisions. It was also hardly advisable to allow, in Article 162, that the Convention itself could be revised without the agreement of all the Contracting States when decisions of far less importance taken by the Administrative Council required unanimity. The Conference adopted this proposal.

As a result of the unanimity requirement being eliminated, the voting rules laid down in paragraph 1 B, C and D were also deleted.

BR/125 e/71 ley/KN/sap
Article 35 g (Board of the Administrative Council)

113. The Conference then examined whether it should be made compulsory to set up a Board. It considered that it would suffice to allow the Administrative Council to set up a Board if and when required. As the Board itself was to consist of five members, it also appeared unnecessary to set it up if there were less than eight Contracting States. Paragraph 1 was amended accordingly.

114. In accordance with the rule laid down for the terms of office of the President and Vice-President of the Administrative Council (see point 112, Article 35 f), the Conference, in derogation from paragraph 3, provided for different durations for the first terms of office of the members of the Board, in order to ensure continuity in the work of the Board.

115. The Conference also examined what duties the Board is to carry out. The opinion expressed by some delegations that the Board should be able to take decisions in place of the Administrative Council when so authorised by the Administrative Council was rejected. The Conference therefore agreed that the Administrative Council may delegate certain tasks, such as the preparation of its decisions, to the Board, but that it could not delegate its own decisions to the Board. Decisions could therefore only be taken by the Administrative Council itself in plenary session. This is the sense in which the final paragraph adopted by the Conference ("The Board shall perform the duties given to it by the Administrative Council in accordance with the Rules of Procedure") is to be interpreted.
MINUTES

of the

4th Meeting of the Inter-Governmental Conference

for the setting up of a European System

for the Grant of Patents

(Luxembourg, 20 to 28 April 1971)
Article 35g
Board of the Administrative Council

(1) The Administrative Council shall have a Board composed of five of its members.

(2) The President and the Vice-President of the Council shall be members of the Board ex officio; the other three members shall be elected by the Council.

(3) The term of office of the members of the Board shall be three years; this term shall not be renewable for members other than ex officio members.

(4) The Board shall assist the President in carrying out the duties devolving upon him during the interval between the meetings of the Council, in accordance with the provisions of the Rules of Procedure.
FIRST PRELIMINARY DRAFT OF A CONVENTION

ESTABLISHING

A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Stage reached on 29 January 1971 -
Article 35 d (Representation of inter-governmental organisations)

109. The German delegation reserved the right to defer its decision as to whether or not the Commission of the European Communities should have a seat on the Administrative Council without the right to vote in it.

Article 35 e (Attendance of the President of the European Patent Office)

110. The Conference was of the opinion that it need not be expressly laid down that the President of the European Patent Office will not take part in the deliberations of the Administrative Council in abnormal circumstances (see point ... under Article 36). It therefore decided not to amend this Article.

Article 35 f (The President and Vice-President)

111. In connection with paragraph 2, the Conference noted that in the event of the President or Vice-President relinquishing his office prematurely, his successor would be appointed not only for the remainder of the term of office but for a new three-year term of office.

112. As proposed by the German delegation, the Conference provided in a new paragraph that the first terms of office of the President and Vice-President should not expire at the same time, in order to guarantee continuity within the Administrative Council. (Article 35f, paragraph 3, BR/118/71, Page 11).
MINUTES

of the

4th Meeting of the Inter-Governmental Conference

for the setting up of a European System

for the Grant of Patents

(Luxembourg, 20 to 28 April 1971)

BR/125 e/71 lev/KM/bp
CHAPTER Ic
Proceedings of the Administrative Council

Article 35f
The President and Vice-President

(1) The Administrative Council shall elect from among its members a President and a Vice-President.

The Vice-President shall ex officio replace the President in the event of his being prevented from attending to his duties.

(2) The duration of the term of office of the President and the Vice-President shall be three years; it shall be renewable.
FIRST PRELIMINARY DRAFT OF A CONVENTION

ESTABLISHING

A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Stage reached on 29 January 1971 -
PART XI

TRANSITIONAL PROVISIONS

Article 159

Administrative Council during a transitional period

(1) The States referred to in Article 153, 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.

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