



Autonomy of the boards of appeal

Print

1. Current legal position

The **current legal position** is that the Boards of Appeal, together with their associated administrative services, are integrated into the European Patent Office as Directorate-General 3 (DG 3). However, the boards' administrative and organisational attachment to the EPO which is an administrative authority obscures their judicial nature and is not fully commensurate with their function as a judicial body.

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Latest draft

[CA/46/04](#) dated 28.5.2004: draft basic proposal for a revision of the EPC implementing the organisational autonomy of the Boards of Appeal of the European Patent Office within the European Patent Organisation

[CA/46/04 Corr.1](#) dated 9.6.2004

See also

[Standing Advisory Committee before the EPO \(SACEPO\)](#)

[European Round-Table on Patent Practice \(EUROTAB\)](#)

2. Creating a third organ of the European Patent Organisation

The envisaged revision of the EPC aims at establishing the Boards of Appeal, together with their registries and the other support services in the present DG 3, as the third organ of the European Patent Organisation alongside the Administrative Council and the Office. This new organ of the Organisation would be designated the "European Court of Patent Appeals" and fulfil the judicial functions provided for in the EPC.

The Organisation would then have the three-way separation of powers typical of a state bound by the rule of law, into legislature, executive and judiciary, the latter being the new judicial body.

3. Scope of EPC Revision

To this end, the general and institutional provisions and the financial provisions of the EPC must be revised to implement the new organisational structure of the European Patent Organisation. On the other hand, the **patent grant procedure** in all its phases (including the appeal procedure) is to remain **essentially unchanged**. The EPC's procedural provisions will largely require only technical amendment to reflect the proposed new structure of the Organisation.

4. Status of the project

The organisational autonomy of the Boards of Appeal was extensively discussed in the Administrative Council in June and in December 2003. Even if some states are reluctant and doubt the necessity of changing the present status of the Boards of Appeal, the majority of reactions were positive. Also SACEPO warmly welcomed this initiative. In November 2003 the Administrative Council's Committee on Patent Law started to examine the details of the proposal - a discussion which continued in 2004. At its meeting in June 2004, the Administrative Council found that establishing the Boards of Appeal as the third organ of the European Patent Organisation on the basis of the present draft should be one of the items of the agenda of a future Diplomatic Conference revising the EPC.

5. Details of the revision project

1. Strengthening the personal and organisational independence of the judges and the appeal bodies

To make the judges' personal independence more evident to the outside world, it is the main proposal of the EPO to replace the renewable five-year term of office by a **lifetime appointment** with grounds for termination exhaustively regulated in the EPC. One major factor in the **Appeal Court's** organisational independence is having its **own budget**. The Appeal Court's budget will be financed by the income of the European Patent Organisation. In this respect, the situation will remain as it is today: Even now, financial expenditure for the boards cannot be covered by fees for proceedings before them, but only from the Organisation's general budget. Lack of internal funding is not peculiar to the boards, but applies to nearly all courts; it is the price that has to be paid for a generally accessible legal system.

2. Co-operation Appeal Court - Office, seat of the Appeal Court

The Appeal Court and the Office are to **co-operate in administrative matters**. That will not undermine the Appeal Chambers' independence, and it will make it possible to use the Office's efficient infrastructure and minimise the cost of implementing autonomy. Areas such as automation, salary administration, Language Service, meeting rooms and treasury matters can be covered by agreements between the two bodies. This approach will minimise the additional expenditure required to implement organisational autonomy of the Boards of Appeal. The **Court's headquarters** are to remain in **Munich**. That is in the interests of the parties and their representatives, for whom moving the Court to another location would be a major logistical headache; and it also allows optimum use to be made of the Office's facilities and avoids considerable additional costs for the Organisation. At another location it would not be possible to exploit the Office's facilities on the scale envisaged in the present draft. The consequence would be duplication of structures, a far higher number of new posts and far higher expenditure.

3. Structure of the Appeal Court

The envisaged judicial organ of the European Patent Organisation consists of a President of the Court, the Appeal Chambers, a High Chamber, a Presidium of the Court, the Registry and the other support services. To make the Court's structure transparent, also such provisions are to be enshrined in the EPC itself which govern the bodies not directly involved in judicial decision-making, in particular provisions relating to the Presidium and the selection committees which prepare judges' appointments.

The **President of the Court** is appointed by the Administrative Council for a renewable term of five years. The President of the Court as such is responsible for managing the Court of the European Patent Organisation, but his influence naturally does not extend to judicial activities. At the same time as being appointed President, he is appointed judge of the Court (if he does not already hold that position). Accordingly, he must possess the qualifications required to become a technically or legally qualified judge.

The tasks and composition of the **Appeal Chambers** are the same as those of the present Boards of Appeal. The legally and the technically qualified judges of the Appeal Chambers are appointed by the Council on a proposal from the President of the Court. The EPO strongly supports the idea that

appointments be lifetime appointments, however, the term of office normally ending with voluntary resignation or retirement.

The **High Chamber** like the Enlarged Board of Appeal is responsible for referrals from the Appeal Chambers and the President of the Office under Article 112 and for petitions under Article 112a EPC 2000. The members of the High Chamber are appointed by the Council. Membership of the High Chamber is also open to national judges or members of quasi-judicial authorities, who may continue their activities at the national level (external members). They are also appointed by the Council.

The **Presidium of the Court** has three principal duties:

1. adopting the Rules of Procedure of the Appeal Chambers,
2. adopting the business distribution scheme of the Appeal Chambers and
3. advising the President of the Court.

Furthermore, it is competent to lay down, i.a.,

1. rules governing selection committees for new judges and presiding judges the Court,
2. the procedure for deputising for the President of the Court,
3. rules governing the composition of the High Chamber in cases of removal of judges of the Appeal Court from office,
4. rules governing the composition of the disciplinary committee.

It also has to designate judges to take part in the Council's procedure for selecting a new President of the Court.

4. **Supervision by Administrative Council**

Without prejudice to its judicial independence, the new judicial body is to be supervised by the Administrative Council. The President of the Court has to account for his activities to the Council, and he is answerable to the Council for his administrative activities in respect of the Court in the same way as the President of the Office in respect of the Office. The Council's budgetary sovereignty constitutes an important instrument of supervision and control.

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