



**Europäische
Patent-
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Verwaltungsrat

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Organisation**

Administrative Council

**Organisation
européenne des
brevets**

Conseil d'administration

CA/31/23

Orig.: en

Munich, 09.06.2023

SUBJECT: Modernisation of the EPO's external governance – Implementation of the first set of Basket I measures

SUBMITTED BY: Chairperson of the Administrative Council

ADDRESSEES: Administrative Council (for decision)

SUMMARY

At its 174th meeting in March 2023, the Administrative Council gave a favourable opinion on the measures proposed under the roadmap for the modernisation of the EPO's external governance (CA/C 4/23). This document presents proposals for implementing the first set of measures envisaged under Basket I. Some of these proposals will be implemented through amendments to the Council's Rules of Procedure and to CA/D 4/03 (decision of the Administrative Council of 5 June 2003 setting up a Board of the Administrative Council). The Administrative Council is invited to approve these amendments.

Moreover, the Council is invited to note the information on a set of working arrangements for the preparation, organisation and conduct of the meetings of the Administrative Council and its subsidiary bodies. The arrangements themselves are presented in an addendum (CA/31/23 Add. 1).

In addition, an accompanying document is being submitted to the Council for opinion (CA/C 8/23). It contains proposals for implementing a second set of measures envisaged under Basket I, concerning the publication of and third-party access to Council documents as well as the review and consolidation of the mandate, working methods and objectives of the Council's Technical and Operational Support Committee. If received favourably, it will be submitted to the Council for decision in October.

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PART I

I. STRATEGIC/OPERATIONAL

1. Strategic.

II. RECOMMENDATION

2. The Administrative Council is requested to:
 - approve the proposed amendments to Articles 7 and 10 of its Rules of Procedure (RoP) and the proposed amendment to CA/D 4/03 (both contained in Part II of this document)
 - note the information on a set of working arrangements for the preparation, organisation and conduct of the meetings of the Administrative Council and its subsidiary bodies, the arrangements themselves being presented in an addendum (CA/31/23 Add. 1)

III. MAJORITY NEEDED

- Three-quarters (for the proposed amendments to the RoP)
- Simple majority (for the proposed amendment to CA/D 4/03)

IV. CONTEXT

3. Continuously improving its governance has always been a key objective of the EPO. With a view to introducing even further improvements, and taking account of best practices and the highest governance standards, a programme aimed at modernising the EPO's governance was included in SP2023 as a central component of the EPO's long-term sustainability (Goal 5, Key Initiative 1).
4. After a consultation of the Contracting States on the EPO's external governance launched by the Chairperson of the Council, potential areas for modernising the EPO's external governance were presented in CA/C 11/22 and discussed with the Contracting States in the Council's meeting in June 2022. A roadmap for modernising the EPO's external governance was then prepared by the Chairperson with the support of the Office.

5. Following a unanimously favourable opinion by the Administrative Council on the measures proposed under Basket I of the roadmap (CA/C 4/23), and with the active involvement of the Board of the Administrative Council (B28), this document contains proposals for implementing the first set of measures envisaged under Basket I, reflecting the feedback received from the delegations during the Council's meeting in March 2023. Some of the proposals, which were submitted by the Chairperson of the Council to the members of the B28 and further refined in light of the discussion at the B28 meeting on 25 May 2023, will be implemented through amendments to the Council's RoP¹ and to CA/D 4/03 (decision of the Administrative Council of 5 June 2003 setting up a Board of the Administrative Council). These are submitted to the Council for decision. Others will be implemented through a set of working arrangements for the Council which are being submitted to the Council for information (CA/31/23 Add. 1).
6. In addition to this document, an accompanying document is being submitted to the Council for opinion (CA/C 8/23). It contains proposals for implementing a second set of measures envisaged under Basket I, concerning the publication of and third-party access to Council documents as well as the review and consolidation of the mandate, working methods and objectives of the Council's Technical and Operational Support Committee. If received favourably, it will be submitted to the Council for decision in October.
7. Lastly, it is worth noting that a first milestone in the modernisation of the EPO's external governance was achieved in March 2023, when a new data protection framework for the Administrative Council and its subsidiary bodies was adopted (CA/D 2/23). In addition, given that the Select Committee too acts as a data controller, for a limited range of processing operations, and since it is subject to its own RoP, a data protection instrument has been anchored in the RoP of the Select Committee as well, providing for the application the Data Protection Rules of the Administrative Council *mutatis mutandis*. This ensures a consistent application of the Council's data protection framework across its bodies.

¹ A consolidation and simplification where necessary of the RoP to create a consistent and coherent set of rules is planned for towards the end of the modernisation process, once the proposals approach their completion.

V. ARGUMENTS

A. AMENDMENTS TO THE COUNCIL'S RULES OF PROCEDURE

8. The proposals for amending the Council's RoP concern Articles 7 (Other participants) and 10 (Voting).²

(a) Introduction of a quorum requiring the presence of the representatives of the majority of the Contracting States to enable the Council to take a vote

9. While the arrangements put in place at other international organisations (and by governing bodies operating under domestic law) vary, depending on the specific body in question or the nature of the decision being taken,³ a quorum is a procedural requirement commonly imposed to ensure that a governing body's oversight and decision-making processes are truly representative.

10. Taking into account the relevant procedural rules at other international organisations and bodies (e.g. the Council of the EU, the EUIPO, the OECD, the UN or WIPO), it is proposed to introduce a new paragraph 1 in Article 10 (Voting) establishing a "presence quorum" requiring the presence of the representatives of the majority⁴ of the Contracting States as a precondition for the Council to take decisions. In the unlikely event that the necessary quorum cannot be met, it is proposed that the vote on the decision in question be postponed. In the event that, due to the absence of a quorum, not even the agenda for a meeting can be adopted, the Chairperson should close the meeting and convene a subsequent meeting at an appropriate time.

11. Lastly, it should be pointed out that the concept of "presence" will cover the different ways in which members can attend (in person or remote). Similarly, members who have arranged to be represented by another member of their delegation in accordance with Article 1(4) RoP will be regarded as "present", as will those who have delegated their voting powers under exceptional circumstances (i.e. through proxy voting). Moreover, it should be noted that any quorum requirement will in no way affect the majorities of Contracting States represented and voting in a meeting required under the voting rules in Article 35 EPC.

² In view of its interconnection with the measures envisaged under Basket III, the proposal to make it a requirement under the RoP for voting on elections and appointments to the Council and its subsidiary bodies and on the appointment of senior employees under Article 11 EPC to take place by secret ballot (as set out in CA/C 4/23) will be presented as part of the implementation of the measures under Basket III.

³ Compare, for example, the General Assembly of the UN, which requires the presence of a majority of its members (50%) for a decision to be taken and the presence of at least a third of its members (33%) for a plenary meeting to be opened, with the Council of the Organisation for Economic Co-operation and Development (OECD), which requires the presence of a majority of members (50%) for a meeting agenda to be adopted.

⁴ This is to be understood as requiring an absolute majority, i.e. more than half of all Contracting States. Currently, this would require the presence of at least 20 out of the 39 Contracting States.

(b) Proxy voting

12. Providing delegations with more flexibility to effectively engage in the work of the Administrative Council has been identified as a key area for improvement when modernising the EPO's governance. As a "corollary" to the introduction of a presence quorum, it is therefore proposed to introduce a new paragraph 6 in Article 10 (Voting) to enable a Council member to cast their vote through another in circumstances where they are unable to attend a meeting either in person or virtually.
13. Proxy voting, however, will be a merely optional form of voting and delegations will have full discretion, in accordance with their respective constitutional requirements, as to when they choose to have recourse to it, if at all. Furthermore, in order to ensure that recourse to proxy voting remains the exception rather than becoming the rule, and in line with the practice established at other international organisations and bodies (e.g. the EUIPO, WIPO, the Council of the EU), the circumstances that allow proxy voting must be so exceptional as to preclude attendance at the meeting, and proxy voting will only be possible where an alternate representative is also unable to attend. Examples of such exceptional circumstances could include scheduling conflicts with events of particular importance in the Contracting State, or national emergencies precluding not only in-person but even remote attendance of the meeting.
14. The possibility of proxy voting is proposed to come with a number of safeguards intended to ensure sound and proper decision-making in the Council. One of these safeguards stems from the requirement that the number of proxy votes that a member can cast on behalf of another will be limited to one. This will ensure that the EPO's practice is consistent with the approach taken at other international organisations and bodies, such as WIPO and the Council of the EU, and will eliminate the risk of votes being "collected", making it impossible for "voting blocs" to form. In addition, there will also be a rule that a proxy cannot be assigned "permanently" but, at most, only for one single meeting (in its entirety) at a time. Lastly, the Council Secretariat will have to be informed of any proxy voting arrangement in writing, and it will be the Chairperson's duty to ensure that the Council is duly informed of any such proxy votes.

(c) Participation of the President of the Boards of Appeal in meetings of the Council and its subsidiary bodies

15. During the discussions on the modernisation of the EPO's external governance in March 2023, it was clarified that, in addition to the proposed amendments to the RoP, further revisions to the RoP could be envisaged, such as amendments relating to the participation of the President of the Boards of Appeal (PBoA) in meetings of the Council and its subsidiary bodies.⁵

⁵ In the context of clarifying the PBoA's participation and other procedural rights in the conduct of the Council's business, it is also proposed to amend the provisions on the settlement of disputes relating to Council decisions so that the role of the PBoA in these proceedings is reflected even more accurately. It is envisaged that the necessary revisions to Article 18 RoP will be submitted to the Council for decision in October 2023.

16. In line with established practice it is therefore proposed to provide for the participation of the PBoA in the meetings of the Administrative Council, the B28 and other subsidiary bodies of the Council in the PBoA's own right. Codifying this practice will ensure that the Council's RoP also properly reflect the organisational autonomy of the Boards of Appeal (BoA) and the separation of powers. Participation in Council meetings may be regarded as a procedural precondition for exercising the functions and powers delegated to the PBoA, but it is a procedural aspect distinct from (the act of) delegation.
17. By virtue of the Act of Delegation through which powers and functions of the President of the Office have been delegated to the PBoA (OJ EPO 2018, A63), and within the scope of the delegated functions and powers, the PBoA can exercise certain procedural rights provided for the President of the Office under the RoP such as closely co-operating with the Chairperson in matters relating to the BoA, requesting the inclusion of an item on the agenda, submitting documents and launching a written procedure (Articles 4(1), 9(2.1) and 10(4) RoP). This, however, does not require any amendment to the provisions in question as it follows from the system of delegation that within its scope the PBoA is entitled to act and exercise the procedural rights of the President of the Office under the relevant provisions of the RoP.
18. The wording of new Article 7(2) RoP clarifies that the PBoA's participation is required and guaranteed in respect of all items relating to the Boards of Appeal Unit, whether they are confidential or not. For all other items that are not confidential, it will be left to the PBoA's discretion to decide whether they participate. The reference to the Unit follows Rule 12a(1) EPC, under which this term encompasses the BoA, the Enlarged Board of Appeal (EBoA) and their registries and support services. New Article 7(2) RoP also covers the PBoA's participation in their capacity as the EBoA's Chairperson.
19. Article 7 applies to subsidiary bodies *mutatis mutandis* by virtue of Article 14(5) RoP, and this would include new Article 7(2) as well. As a result, the PBoA's participation in the subsidiary bodies will also be properly ensured and under the same terms as for the Council.

B. AMENDMENT TO THE B28 DECISION

20. Mirroring the amended provisions of the RoP on the PBoA's participation in the Council's meetings, and in line with established practice, an amendment is proposed to the decision of the Administrative Council of 5 June 2003 setting up a Board of the Administrative Council (CA/D 4/03) to explicitly provide for the PBoA's participation in the Board's discussions relating to the Boards of Appeal Unit.
21. In view of the mandate and composition of the Boards of Appeal Committee (BOAC) as well as the need to respect and preserve the separation of powers and the BoA's organisational autonomy, regular participation of the BOAC's Chairperson in B28 meetings is not envisaged. Nevertheless, it remains the Council Chairperson's prerogative to extend an invitation to the BOAC Chairperson on an ad hoc basis where they find it necessary and appropriate in respect of a specific item on the B28's agenda.

C. WORKING ARRANGEMENTS FOR THE PREPARATION, ORGANISATION AND CONDUCT OF MEETINGS OF THE ADMINISTRATIVE COUNCIL AND ITS SUBSIDIARY BODIES⁶

22. Organising and structuring the meetings of the Administrative Council more efficiently is a key aspect of modernising the EPO's external governance. The measures proposed in this regard aim to give delegations more time not only to discuss strategic issues but also to prepare for these discussions, and so enable the Council to fulfil its supervisory and legislative functions even more efficiently.

(a) Timely distribution of electronic presentations by the Office to delegations

23. Documents submitted to the Council by the Office are frequently accompanied by supporting presentations. These electronic presentations are intended to summarise, on a handful of slides, the content of the documents in question, highlight their key elements and serve as visual aids helping the delegations to digest complex concepts and issues.

24. In order to give delegations enough time to consider and assess the relevant materials,⁷ the Office commits to ensuring a timely distribution of such supporting presentations. It is therefore proposed that the Office will endeavour to make electronic presentations accompanying CA documents available to delegations at least five calendar days⁸ before the Council meeting in question. Regular reports and presentations which are submitted to the Council in the format of a Council document, on the other hand, will remain subject to the sixteen-calendar-day MICADO deadline.

(b) Streamlining regular reports by the Office

25. Reliable periodic reporting by the Office is essential for the Administrative Council to exercise its supervisory authority under the EPC. This means that these reports should be well structured and concise, and presented clearly and succinctly, so as to maximise their value while safeguarding the efficiency of the Council's work. This applies, in particular, to oral presentations of periodic reports, which are key items on the agenda of any Council meeting.

⁶ For the purpose of this document references to the Administrative Council in the context of proposing work arrangements are to be understood as also encompassing the Council's subsidiary bodies.

⁷ In this context, it is worth noting that the EPO's institutional workflow requires the majority of strategic documents to be "pre-discussed" by the concerned subsidiary body of the Council. This additionally ensures that delegations are properly informed of any relevant information or materials they need for their considerations and assessments.

⁸ Given that the Council's RoP refer exclusively to calendar day deadlines, it would appear inconsistent if the timeline for providing delegations with electronic presentations was based on the concept of working days. Moreover, working days might be calculated differently across Contracting States (in light of public holidays, etc.); a clearly calculable duration is therefore preferred.

26. As part of the efforts to modernise governance, it is therefore proposed to streamline even further how these agenda items are presented. To this end, a number of measures can be envisaged that will ensure that the Administrative Council continues to receive regular and sufficiently detailed updates on the Office's activities but that their presentation focuses on key issues and matters of particular strategic relevance. Overall, this balanced approach is intended to provide the delegations with greater opportunity to evaluate these reports and comment on them.
27. It is therefore proposed that reports will be drafted and presented in a concise manner with a view to ensuring that the length and content of such reports reflects the strategic importance of the topic in hand and the level of information required to make an informed decision. Any allocated timeframe will, however, only apply to the report itself and will not restrict delegations in any ensuing discussion.
28. Furthermore, Article 10(2)(e) EPC mandates the President to submit a management report to the Administrative Council each year. While, strictly, the EPC requires only one annual report by the Office, it has become established practice for the Office to present an activities report at every Council meeting. In addition, there are other reports which are presented on a quarterly basis, such as the periodic reports on budget implementation, risk assurance and RFPSS management.
29. Amendments to periodic reporting cycles will help to make progress updates more concise. Specifically, it is proposed that the Office will continue to submit each year a comprehensive review (the Annual Review) at the Council's June meeting,⁹ thus allowing delegations to take their decisions in light of the results and developments of the previous year and plan for the remainder of the year accordingly. Shorter progress reports focusing on key updates (including, for example, a set of relevant KPIs) may be presented at other Council meetings.
30. Lastly, as an optional means for delivering recurring Office reports, presentations by the President and/or the vice-presidents may be recorded as videos. In such a case, these presentations will be shared with the delegations at least five calendar days before the Council meeting in question.
31. All in all, these measures are expected to streamline oral reporting without compromising the quality and comprehensiveness of the information provided, and so free up time for discussion at Council meetings.

⁹ While a few delegations suggested that the Office could consider submitting the Annual Review earlier, at the Council's meeting in March, a number of considerations related to the budget cycle (including the validation of the accounts by the Board of Auditors) speak in favour of keeping the established routine whereby the Annual Review is submitted to the Council in June. However, the Office continues to reflect on ways to improve comprehensive reporting and will address them in the context of SP2028.

(c) Optimising procedures during Council meetings

32. Reports given at Council meetings by the Chairperson of the Council and chairpersons of its subsidiary bodies are an important source of information for the delegations. At the same time, experience has shown that it is very rare that delegations comment on them after they have been presented. Moreover, some of these reports are provided in a written format, while others are presented only orally. It is therefore proposed that all reports of the Chairperson of the Council and the chairpersons of the subsidiary bodies will be submitted to the delegations in written format at least five calendar days¹⁰ before the Council meeting in question. It will be left to the discretion of each chairperson whether they also wish to give a complementary oral presentation of the report during the meeting.
33. Moreover, to capitalise on the opportunities that have emerged from holding meetings of the Council virtually (in the form of e-meetings or "hybrid" meetings), it is suggested that delegations could be encouraged to share any statements which mainly express gratitude or congratulations on achievements in advance and in writing. From a technical perspective, such statements could be submitted via existing, well-established communication channels (e.g. in the chat tool provided by the Council Secretariat). It is therefore proposed that the Council Secretariat will invite delegations to use these communication channels to submit any congratulatory statements or any similar interventions of general diplomatic courtesy. This will ensure that these statements are on record and properly reflected in the minutes of the meeting, while overall freeing up time for discussion and debate.
34. Ultimately, however, while delegations are encouraged to follow the practice described above, it will remain at their discretion whether to submit a statement to the Council electronically/in writing or to make it orally.

(d) Transparent planning of the Council's work/business

35. Since 2019, in order to facilitate the preparation of the meetings of the Administrative Council, the Chairperson, in co-ordination with the Office, has been publishing, in his summary of conclusions of the B28's November meeting, a table scheduling the main projects to be presented to the Council in the following year (for the most recent publication, see B28/10/22). However, this important document could be given more visibility and should be regularly updated. It is therefore proposed to make the table scheduling the "Main projects to be presented to EPO governing bodies" an integrated feature on the Single Access Portal after its presentation at the Council's December meeting, and to regularly update it during the year.

¹⁰ In the discussions during the Council's meeting in March 2023 a period of eight calendar days was initially proposed. However, a period of five calendar days has now been suggested to ensure alignment with the distribution of electronic presentations as proposed under point C(a). Given that these reports are not envisaged to be submitted in the form of CA documents, the sixteen-calendar-day deadline under Article 9(2.1) RoP does not apply.

36. It should also be noted that the roadmap originally proposed that certain periodically tabled items, classed as A items, for which there is typically no request for discussion (e.g. annual compendia of statistics on activities at the EPO and national offices, status of ratification procedures or quarterly RFPSS management reports) could potentially be dropped from the agendas of the meetings of the Council, with the information instead being made available on an online platform such as the Single Access Portal. However, in light of the reservations expressed by the delegations in the March 2023 Council meeting, it is concluded that there is insufficient support for this specific measure and it will therefore require further reflection before being reconsidered at a later stage.

VI. ALTERNATIVES

37. None.

VII. FINANCIAL IMPLICATIONS

38. N/A.

VIII. LEGAL BASIS

39. Article 33(2)(e) EPC.

IX. DOCUMENTS CITED

40. CA/D 8/06 as subsequently amended (Rules of Procedure of the Administrative Council); CA/C 11/22; CA/C 4/23; CA/C 8/23; CA/D 4/03; CA/D 2/23.

X. RECOMMENDATION FOR PUBLICATION

41. Yes.

PART II

Draft

DECISION OF THE ADMINISTRATIVE COUNCIL of [date of decision] amending Articles 7 and 10 of its Rules of Procedure

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,
Having regard to the European Patent Convention, and in particular Article 33(2)(e) thereof,
HAS DECIDED AS FOLLOWS:

Article 1

The following new paragraph 2 is inserted into Article 7 of the Rules of Procedure of the Administrative Council (hereinafter referred to as "the Rules of Procedure"):

"President of the Boards of Appeal

(2) The President of the Boards of Appeal shall take part in the deliberations of the Council relating to the Boards of Appeal Unit and may take part in other deliberations of the Council that do not relate to confidential items. Unless the Council decides otherwise in a particular case, the President of the Boards of Appeal may be assisted by other employees of the Boards of Appeal Unit."

Current paragraphs 2 to 5 of Article 7 of the Rules of Procedure are renumbered accordingly with no further changes.

Section I “Voting at meetings” of Article 10 of the Rules of Procedure is amended to read as follows:

"I. Voting at meetings

- (1) The presence of the representatives of the majority of the Contracting States shall be required for a vote on any decision to be taken (quorum). In the absence of such a quorum the vote shall be postponed.
- (2) Subject to Article 35, paragraphs 2 and 3, of the European Patent Convention and divergent provisions in these Rules of Procedure, the Council shall take its decisions by a simple majority of the Contracting States represented and voting.
- (3) Voting shall be by a show of hands, unless any Member requests either a secret ballot or a roll call before voting has commenced. Votes may be cast electronically.
- (4) Immediately after a first vote by a show of hands, the result of which shall be ascertained and made known by the Chairperson, any Member may demand a second vote by roll call, which shall then replace the first.
- (5) In the event of a vote by roll call, the Chairperson shall call the roll of the delegations in the alphabetical order of the names of the Contracting States in their respective languages, beginning with the delegation of the Contracting State whose name was drawn by lot.
- (6) In exceptional circumstances, where a Member is unable to attend a meeting either in person or remotely through electronic means and where no representation by another member of their delegation is possible, they may choose to be represented by a Member of another delegation in voting proceedings at that meeting. In addition to their own vote, a Member may cast the vote of only one other Member. Any such representation shall be communicated to the Council Secretariat in writing, and the Chairperson shall ensure that the Council is duly informed thereof."

The paragraphs of section II “Written procedure” of Article 10 of the Rules of Procedure are renumbered accordingly. The reference in current paragraph 4 to “paragraphs 1 to 3” is amended to read “paragraphs 1 to 6”. Otherwise no changes are made to section II.

Article 2

Paragraph 4 of Article 1 of CA/D 4/03 is amended to read as follows:

"The President of the Boards of Appeal shall take part in the Board's discussions relating to the Boards of Appeal Unit."

Article 3

This decision enters into force on XX XXXXXX 2023.

Done at Munich, XX

For the Administrative Council
The Chairperson

Josef KRATOCHVÍL

ANNEX 1 COMPARISON BETWEEN EXISTING AND NEW TEXT

Existing text	New text
Article 7 – Other participants <u>President of the European Patent Office</u> (1) The President of the European Patent Office shall take part in all the deliberations of the Council (Article 29, paragraph 2, of the European Patent Convention). Unless the Council decides otherwise in a particular case, he/she may be assisted by other employees of the European Patent Office. <u>Observers</u> (2) Unless the Council decides otherwise in a particular case, observers (Article 30 of the European Patent Convention) may take part in those deliberations of the Council which do not relate to confidential agenda items (Article 9, paragraph 3). <u>Board of Auditors</u> (3) The Board of Auditors may take part in all the deliberations of the Council (Article 77, paragraph 4, of the Financial Regulations of the European Patent Organisation). <u>Staff representatives</u> (4.1) Unless the Council decides otherwise in a particular case, and subject to sub-paragraph (2), up to four staff representatives may take part in those deliberations of the Council which do not relate to confidential agenda items (Article 9, paragraph 3). (4.2) Administrative approval for their participation shall be at the discretion of the President of the European Patent Office.	Article 7 – Other participants <u>President of the European Patent Office</u> (1) The President of the European Patent Office shall take part in all the deliberations of the Council (Article 29, paragraph 2, of the European Patent Convention). Unless the Council decides otherwise in a particular case, he/she may be assisted by other employees of the European Patent Office. <u>President of the Boards of Appeal</u> (2) The President of the Boards of Appeal shall take part in the deliberations of the Council relating to the Boards of Appeal Unit and may take part in other deliberations of the Council that do not relate to confidential items. Unless the Council decides otherwise in a particular case, the President of the Boards of Appeal may be assisted by other employees of the Boards of Appeal Unit. <u>Observers</u> (3) Unless the Council decides otherwise in a particular case, observers (Article 30 of the European Patent Convention) may take part in those deliberations of the Council which do not relate to confidential agenda items (Article 9, paragraph 3). <u>Board of Auditors</u> (4) The Board of Auditors may take part in all the deliberations of the Council (Article 77, paragraph 4, of the Financial Regulations of the European Patent Organisation). <u>Staff representatives</u> (5.1) Unless the Council decides otherwise in a particular case, and subject to sub-paragraph (2), up to four staff representatives may take part in those deliberations of the Council which do not relate to confidential agenda items (Article 9, paragraph 3). (5.2) Administrative approval for their participation shall be at the discretion of the President of the European Patent Office.

Existing text	New text
<u>Attendance of other participants</u> (5) In the case of a meeting with physical presence (Article 8, paragraph 2), when other participants within the meaning of this Article are prevented from physical attendance, they may choose to attend remotely through electronic means. The Council Secretariat (Article 6) shall be informed thereof in advance and in writing.	<u>Attendance of other participants</u> (6) In the case of a meeting with physical presence (Article 8, paragraph 2), when other participants within the meaning of this Article are prevented from physical attendance, they may choose to attend remotely through electronic means. The Council Secretariat (Article 6) shall be informed thereof in advance and in writing.
Article 10 – Voting I. Voting at meetings (1) Voting shall be by a show of hands, unless any Member requests either a secret ballot or a roll call before voting has commenced. Votes may be cast electronically. Subject to Article 35(2) and (3) EPC 2000 and divergent provisions in these Rules of Procedure, the Council shall take its decisions by a simple majority of the Contracting States represented and voting. (2) Immediately after a first vote by a show of hands, the result of which shall be ascertained and made known by the Chairperson, any Member may demand a second vote by roll call, which shall then replace the first. (3) In the event of a vote by roll call, the Chairperson shall call the roll of the delegations in the alphabetical order of the names of the Contracting States in their respective languages, beginning with the delegation of the Contracting State whose name he/she has drawn by lot.	Article 10 – Voting I. Voting at meetings (1) The presence of the representatives of the majority of the Contracting States shall be required for a vote on any decision to be taken (quorum). In the absence of such a quorum the vote shall be postponed. (2) Subject to Article 35, paragraphs 2 and 3, of the European Patent Convention and divergent provisions in these Rules of Procedure, the Council shall take its decisions by a simple majority of the Contracting States represented and voting. (3) Voting shall be by a show of hands, unless any Member requests either a secret ballot or a roll call before voting has commenced. Votes may be cast electronically. (4) Immediately after a first vote by a show of hands, the result of which shall be ascertained and made known by the Chairperson, any Member may demand a second vote by roll call, which shall then replace the first. (5) In the event of a vote by roll call, the Chairperson shall call the roll of the delegations in the alphabetical order of the names of the Contracting States in their respective languages, beginning with the delegation of the Contracting State whose name was drawn by lot. (6) In exceptional circumstances, where a Member is unable to attend a meeting either in person or remotely through electronic means and where no representation by another member of their delegation is possible, they may choose to be represented by a Member of another delegation in voting proceedings at that meeting. In addition to their own vote, a Member may cast the vote of only

Existing text	New text
II. Written procedure (4) By derogation from paragraphs 1 to 3, on a proposal from either the Chairperson or the President of the European Patent Office the Council may take a vote by written procedure in accordance with the following provisions. (5) If a vote is to be taken by written procedure, the Chairperson shall communicate the wording of the proposal at issue to all Members and to the President of the European Patent Office. At the same time the Chairperson shall invite Members to inform him/her, within fourteen calendar days, (a) whether they agree to use the written procedure and (b) whether they approve the proposal. (6) A proposal submitted for voting by written procedure may not be amended; it shall be approved or rejected in its entirety. (7) The proposal shall be deemed to be adopted if (a) three quarters of the Contracting States have agreed to the use of the written procedure and (b) the Contracting States have approved the Chairperson's proposal by whichever majority is required under Articles 34 to 36 of the European Patent Convention. (8) If a proposal submitted for voting by written procedure fails to achieve the majorities required in accordance with the above provisions, it shall be included in the provisional agenda of the Council's next meeting. (9) The Chairperson shall maintain a list of decisions taken by written procedure. At the beginning of each meeting of the Council, the Chairperson shall inform the participants of any decisions taken by written procedure since its last meeting.	one other Member. Any such representation shall be communicated to the Council Secretariat in writing, and the Chairperson shall ensure that the Council is duly informed thereof. II. Written procedure (7) By derogation from paragraphs 1 to 6, on a proposal from either the Chairperson or the President of the European Patent Office the Council may take a vote by written procedure in accordance with the following provisions. (8) If a vote is to be taken by written procedure, the Chairperson shall communicate the wording of the proposal at issue to all Members and to the President of the European Patent Office. At the same time the Chairperson shall invite Members to inform him/her, within fourteen calendar days, (a) whether they agree to use the written procedure and (b) whether they approve the proposal. (9) A proposal submitted for voting by written procedure may not be amended; it shall be approved or rejected in its entirety. (10) The proposal shall be deemed to be adopted if (a) three quarters of the Contracting States have agreed to the use of the written procedure and (b) the Contracting States have approved the Chairperson's proposal by whichever majority is required under Articles 34 to 36 of the European Patent Convention. (11) If a proposal submitted for voting by written procedure fails to achieve the majorities required in accordance with the above provisions, it shall be included in the provisional agenda of the Council's next meeting. (12) The Chairperson shall maintain a list of decisions taken by written procedure. At the beginning of each meeting of the Council, the Chairperson shall inform the participants of any decisions taken by written procedure since its last meeting.