

20.

Na osnovu člana 95 tačka 3 Ustava Crne Gore donosim

U K A Z
O PROGLAŠENJU ZAKONA O POTVRĐIVANJU PROTOKOLA I SPORAZUMA O
SLOBODNOJ TRGOVINI IZMEĐU CRNE GORE I REPUBLIKE TURSKE I
PROTOKOLA III O TRGOVINI USLUGAMA SPORAZUMA O SLOBODNOJ
TRGOVINI IZMEĐU CRNE GORE I REPUBLIKE TURSKE

Proglašavam ZAKON O POTVRĐIVANJU PROTOKOLA I SPORAZUMA O SLOBODNOJ TRGOVINI IZMEĐU CRNE GORE I REPUBLIKE TURSKE I PROTOKOLA III O TRGOVINI USLUGAMA SPORAZUMA O SLOBODNOJ TRGOVINI IZMEĐU CRNE GORE I REPUBLIKE TURSKE, koji je donijela Skupština Crne Gore 27. saziva na Petoj sjednici Drugog redovnog (jesenjeg) zasijedanja u 2021. godini, dana 29. decembra 2021. godine.

Broj: 01-1316/2
Podgorica, 30. decembar 2021. godine

Predsjednik Crne Gore,
Milo Đukanović, s.r.

Na osnovu člana 82 stav 1 tačka 17 i člana 91 stav 1 Ustava Crne Gore, Skupština Crne Gore 27. saziva na Petoj sjednici Drugog redovnog (jesenjeg) zasijedanja u 2021. godini, dana 29. decembra 2021. godine, donijela je

Z A K O N
O POTVRĐIVANJU PROTOKOLA I SPORAZUMA O SLOBODNOJ TRGOVINI IZMEĐU
CRNE GORE I REPUBLIKE TURSKЕ I PROTOKOLA III O TRGOVINI USLUGAMA
SPORAZUMA O SLOBODNOJ TRGOVINI IZMEĐU
CRNE GORE I REPUBLIKE TURSKЕ

Član 1

Potvrđuju se Protokol I Sporazuma o slobodnoj trgovini između Crne Gore i Republike Turske i Protokol III o trgovini uslugama Sporazuma o slobodnoj trgovini između Crne Gore i Republike Turske, potpisani u Ankari, 17. jula 2019. godine, u originalu na crnogorskom, turskom i engleskom jeziku.

Član 2

Tekst Protokola I i Protokola III iz člana 1 ovog zakona u originalu na crnogorskom i engleskom jeziku glasi:

PROTOKOL I
(naveden u članu 10 Sporazuma)

Član 1

Protokol I Sporazuma o slobodnoj trgovini između Crne Gore i Republike Turske, potpisan 26. novembra 2008. godine, koji je stupio na snagu 1. marta 2010. godine (u daljem tekstu: Sporazum), zamijeniće se ovim protokolom.

Član 2

Ovaj protokol će se primjenjivati na proizvode navedene u članu 9 ovog sporazuma.

Član 3

1. Poljoprivredni proizvodi porijeklom iz Republike Turske dati u Aneksu I ovog protokola će se uvoziti u Crnu Goru u skladu sa uslovima utvrđenim u tom aneksu.
2. Poljoprivredni proizvodi porijeklom iz Crne Gore dati u Aneksu II ovog protokola će se uvoziti u Republiku Tursku u skladu sa uslovima utvrđenim u tom aneksu.

Član 4

Strane će dodijeliti jedna drugoj preferencijalni tretman za proizvode navedene u aneksima ovog protokola u skladu sa odredbama Protokola II, koji se odnosi na utvrđivanje pravila o porijeklu.

Član 5

Ovaj protokol stupa na snagu prvog dana drugog mjeseca nakon prijema posljednjeg pisanog obavještenja, diplomatskim putem, kojim strane obavještavaju jedna drugu da su ispunjeni svi neophodni uslovi predviđeni njihovim nacionalnim zakonskim propisima za stupanje na snagu ovog protokola.

KAO POTVRDU TOGA, dolje potpisani, propisno ovlašćeni punomoćnici, potpisali su ovaj protokol.

Sačinjeno u Ankari, dana 17. jula 2019. godine, u dva originalna primjerka, svaki na crnogorskom, turskom i engleskom jeziku, pri čemu su svi tekstovi jednako vjerodostojni. U slučaju razlika u tumačenju ovog protokola mjerodavan je tekst na engleskom jeziku.

Za Crnu Goru

Dragica SEKULIĆ, s.r.
Ministarka ekonomije

Za Republiku Tursku

Ruhsar PEKCAN, s.r.
Ministarka trgovine

Aneks I Protokola I

Uvoz dolje navedenih proizvoda porijeklom iz Republike Turske u Crnu Goru su predmet koncesija:

Tarifna oznaka	Naimenovanje	Tarifna kvota (u tonama)	Preferencijalni tretman
0406 90 29	Kačkavalj	65	100 % smanjenje MFN-a
0406 90 32	Feta		
0406 90 99	Ostali sirevi: ostali, ostali, ostali, ostali		
0406 90 29	Kačkavalj	Neograničeno	50 % smanjenje MFN-a
0406 90 32	Feta		
0406 90 99	Ostali sirevi: ostali, ostali, ostali, ostali		
0709 93 (1. januar-31. decembar)	Bundeve (Cuucurbita spp), svježe ili rashlađene	500	100 % smanjenje MFN-a
0709 93 10 (1. novembar-31. mart)	Tikvice, svježe ili rashlađene		
0713 40	Sočivo, oljušteno ili neoljušteno ili lomljeno	Neograničeno	100 % smanjenje MFN-a
0804 20	Smokve, svježe ili rashlađene	200	100 % smanjenje MFN-a
0805 10	Pomorandže, svježe ili sušene	750	100 % smanjenje MFN-a
0805 40	Grejfrut, uključujući pomelo, svježe ili rashlađeno	400	100 % smanjenje MFN-a
0805 50	Limun (Citrus limon, Citrus limonum) i limeta (Citrus aurantifolia, Citrus Latifolia), svježi ili sušeni	3.000	100 % smanjenje MFN-a
0806 20	Suvo grožđe	100	100 % smanjenje MFN-a
0808 10 80	Jabuke: ostale, svježe	200	100 % smanjenje MFN-a
0813 10	Suve kajsije	100	100 % smanjenje MFN-a
1704	Proizvodi od šećera (uključujući bijelu čokoladu) bez kaka:	800	100 % smanjenje MFN-a
1806	Čokolada i ostali prehrambeni proizvodi koji sadrže kaka:	1.500	100 % smanjenje MFN-a
1902	Tjestenine, kuvane ili nekuvane ili punjene (mesom ili drugim materijama) ili drukčije pripremljene kao što su špageti, makaroni, rezanci, lazanje, njoki, ravijoli, kaneloni; kus-kus, pripremljen ili nepripremljen	1.300	100 % smanjenje MFN-a
1905 31	Slatki biskviti	2.000	100 % smanjenje MFN-a
1905 32	Vafli i oblande		
1905 90	Hljeb, peciva, kolači, biskviti i ostali pekarski proizvodi sa dodatkom kaka ili bez dodatka kaka; nafora, kapsule za farmaceutske proizvode, oblande, pirinčana hartija i slični proizvodi: ostali		
1905 10	Hrskavi hljeb (krisp)	1.000	100 % smanjenje MFN-a
1905 20	Medenjaci i slični proizvodi začinjani đumbirom		
1905 40	Dvopek, tost hljeb i slični tost proizvod:		
2008 19	Voće, jezgrasto voće i ostali djelovi bilja za jelo, drukčije pripremljeni ili konzervisani, sa dodatkom ili bez dodatka šećera ili drugih sredstava za zaslađivanje ili alkohola, na drugom mjestu nepomenuti niti obuhvaćeni: ostalo, uključujući mješavine	200	100 % smanjenje MFN-a
2102 10	Aktivni kvasac	500	100 % smanjenje MFN-a
2202 10	Voda, uključujući mineralnu vodu i gaziranu vodu sa dodatkom šećera ili drugih sredstava za zaslađivanje ili aromatizaciju	1.000	100 % smanjenje MFN-a

Aneks II Protokola I

Uvoz dolje navedenih proizvoda porijeklom iz Crne Gore u Republiku Tursku su predmet koncesija:

Tarifna oznaka	Naimenovanje	Tarifna kvota (u tonama)	Preferencijalni tretman
0201 ¹	Meso govede, svježe, rashlađeno i smrznuto	1.700	100 % smanjenje MFN-a
0202 ¹	Meso, govede, smrznuto		
0204 ¹	Meso ovčje ili kozje, svježe, rashlađeno ili smrznuto	1.000	100 % smanjenje MFN-a
0210	Meso i jestivi mesni i drugi klanični proizvodi, soljeni, u salamuri, sušeni ili dimljeni; jestivo brašno i prah od mesa ili od drugih klaničnih proizvoda	150	100 % smanjenje MFN-a
0709 51	Pečurke roda Agaricium, svježe ili rashlađene	150	100 % smanjenje MFN-a

¹ Izuzetno od Protokola II Sporazuma, proizvodi obuhvaćeni preferencijalnom carinskom kvotom za tarifne brojeve 0201, 0202, 0204 stiču status proizvoda sa porijeklom, samo ako su ti proizvodi dobijeni od životinja u potpunosti dobijenih u Crnoj Gori ili primjenom bilateralne kumulacije.

Tarifna oznaka	Naimenovanje	Tarifna kvota (u tonama)	Preferencijalni tretman
0709 59	Jestive pečurke i trifle: ostale, svježe ili rashlađene		
0711 59 00	Jestive pečurke i trifle: ostale, privremeno konzervisane (npr: sumpor-dioksidom, u slanoj vodi, sumporisanoj vodi ili drugim rastvorima za konzervisanje), ali u takvom stanju nepodesno za neposrednu ishranu		
0712 39 00	Jestive pečurke, judino uvo, (Auricularia spp.), drhtalica (Tremella spp.) i trifle: ostale, sušene, sječene u komadu ili mljevane, ali dalje nepripremljene		
0809 30	Breskve, uključujući nektarine, svježe	300	100 % smanjenje MFN-a
0810 40	Brusnice, borovnice i ostalo voće roda Vaccinium, svježe	350	100 % smanjenje MFN-a
0810 20 10	Maline, svježe		
0811 20 31	Maline, nekuvane ili kuvane u vodi ili pari, smrznute, sa dodatkom šećera ili bez dodatka šećera ili drugih materija za zaslađivanje	200	100 % smanjenje MFN-a
1101 00	Brašno od pšenice ili napolice	5.000	100 % smanjenje MFN-a
1211	Bilje i djelovi bilja (uključujući sjemenje i plodove) svježe, rashlađeno, smrznuto ili sušeno, sječeno ili cijelo, drobljeno ili mljevano, vrsta koje se prvenstveno upotrebljavaju u proizvodnji mirisa, farmaciji ili za insekticide, fungicide ili slične svrhe	150	100 % smanjenje MFN-a
1902	Tjestenine, kuvane ili nekuvane ili punjene (mesom ili drugim materijama) ili drukčije pripremljene kao što su špageti, makaroni, rezanci, lazanje, njoki, ravijoli, kaneloni; kus-kus, pripremljen ili nepripremljen	500	0% za industrijsku komponentu + T2 (poljoprivredna komponenta)
2007	Džemovi, voćni želei, marmelade, pire od voća ili jezgrastog voća i paste od voća ili jezgrastog voća dobijeni kuvanjem, sa dodatkom ili bez dodatka šećera ili drugih sredstava za zaslađivanje	300	30 %
2204	Vino od svježeg grožđa, uključujući ojačana vina; šira od grožđa osim one iz tar. broja 2009	2.500 hl	100 % smanjenje MFN-a
3301	Eterična ulja (bez terpena ili sa terpenima), uključujući tzv. 'concretes' i čista ulja; rezinoidi; ekstrahovane uljane smole; koncentрати eteričnih ulja u mastima, neetarskim uljima, voskovima ili slično, dobijeni postupkom ekstrakcije eteričnih ulja pomoću masti ili maceracijom; sporedni terpenski proizvodi dobijeni deterpenacijom eteričnih ulja; vodeni destilati i vodeni rastvori eteričnih ulja	Neograničeno	100 % smanjenje MFN-a

**PROTOKOL III
O TRGOVINI USLUGAMA**

**ODJELJAK I
OSNOVNE ODREDBE**

**Član 1
Cilj i obuhvat**

1. Crna Gora i Republika Turska (u daljem tekstu: strane), potvrđujući preuzete obaveze iz STO Sporazuma i posvećenost u stvaranju boljih uslova za razvoj trgovine i investicija između strana, ovim utvrđuju neophodne aranžmane za progresivnu i recipročnu liberalizaciju trgovine uslugama.

2. Ovaj protokol se primjenjuje na mjere strana koje se odnose na trgovinu uslugama.

3. Protokol se neće primjenjivati na:

a) domaći i međunarodni prevoz u vazdušnom saobraćaju, bez obzira na to da li je dio Liste specifičnih obaveza ili ne, i na usluge koje su direktno povezane sa ostvarivanjem saobraćajnih prava, osim:

- (i) usluga popravke i održavanja aviona,
- (ii) prodaju i marketing usluga vazdušnog saobraćaja, i
- (iii) usluga kompjuterskih sistema rezervacija (CRS),

b) kabotažu u pomorskom prevozu tereta; i

c) na subvencije ili grantove koje pruža strana ili njeno državno preduzeće, uključujući vladine zajmove, garancije i osiguranje.

4. Ništa u ovom protokolu neće se tumačiti tako da se zahtijeva od bilo koje strane da privatizuje javna preduzeća ili da nametne bilo kakvu obavezu u vezi sa javnim nabavkama.

5. Odredbe ovog protokola neće se primjenjivati na usluge koje se pružaju u izvršavanju upravnih funkcija unutar teritorija strana.

6. Svaka strana zadržava pravo da vrši svoja ovlašćenja i reguliše i donosi nove propise u skladu s odredbama ovog protokola kako bi ostvarila legitimne ciljeve javne politike.

**Član 2
Inkorporiranje odredbi iz GATS-a**

U slučaju kada odredbe ovog protokola predviđaju da su odredbe GATS-a inkorporirane i čine sastavni dio ovog protokola, značenje pojmova korišćenih u GATS-u će se razumjeti kako slijedi:

(a) „Članica“ znači strana;

(b) „Lista“ označava Listu iz člana 16 (Lista specifičnih obaveza) i sastavni je dio Aneksa I;

(c) „Specifična obaveza“ označava specifičnu obavezu koja je sastavni dio Liste iz člana 16.

**Član 3
Definicije**

Za potrebe ovog protokola i u vezi sa članom 2:

(a) sljedeće definicije i pojašnjenja člana I GATS-a su, *mutatis mutandis*, inkorporirane i čine sastavni dio ovog protokola:

(i) „trgovina uslugama“;

(ii) „usluge“; i

(iii) „pružanje usluga u izvršavanju upravnih funkcija“;

- (b) „mjere strana“ znače mjere koje donose:
- (i) centralna, regionalna ili lokalna uprava i organi; i
 - (ii) nevladina tijela na koja su centralna, regionalna ili lokalna uprava ili organi prenijeli izvršnu funkciju.
- (c) „mjere strana koje utiču na trgovinu uslugama“ obuhvataju mjere koje se odnose na:
- (i) kupovinu, plaćanje ili korišćenje usluge;
 - (ii) pristup i korišćenje, u vezi sa pružanjem usluge, onih usluga koje su, na zahtjev strana, ponuđene javnosti uopšte;
 - (iii) prisutnost, uključujući i komercijalnu prisutnost, lica strane radi pružanja usluga na području druge strane;
- (d) „pružalac usluge“ znači bilo koje lice koje pruža ili želi da pruža uslugu²;
- (e) „usluga druge strane“ obuhvata uslugu koja se pruža,
- (i) sa teritorije ili na teritoriji te druge strane, ili u slučaju pomorskog saobraćaja, brodom registrovanim po zakonima te druge strane, ili koju pruža lice te druge strane pomoću broda i/ili njegovim korišćenjem u cjelini ili djelimično; ili
 - (ii) u slučaju pružanja usluge putem komercijalnog prisustva ili prisustva fizičkih lica te druge strane;
- (f) „fizičko lice strane“ znači fizičko lice koje je državljanin strane u skladu sa njenim zakonodavstvom;
- (g) „pravno lice“ znači bilo koji pravni subjekat osnovan u skladu sa važećim zakonodavstvom strane, bilo da je u privatnom ili u državnom vlasništvu ili pod kontrolom, uključujući korporaciju, trust, partnerstvo, zajedničko ulaganje, preduzeća sa jednim vlasnikom ili asocijacije;
- (h) „pravno lice druge strane“ znači pravno lice koje je:
- (a) konstituisano ili na drugi način organizovano u skladu sa zakonom te druge strane i koja samostalno posluje na teritoriji te strane, ili
 - (b) u slučaju pružanja usluge putem komercijalnog prisustva, u vlasništvu ili pod kontrolom:
 - (i) fizičkih lica te strane; ili
 - (ii) pravnih lica te strane, kako je definisano u podstavu (a);
- (i) dolje navedene definicije člana XXVIII GATS-a su inkorporirane i sastavni dio ovog protokola:
- (i) „mjera“;
 - (ii) „pružanje usluge“;
 - (iii) „komercijalno prisustvo“;
 - (iv) „sektor“ usluge;
 - (v) „monopolski pružalac usluge“;
 - (vi) „korisnik usluge“;
 - (vii) „lice“;
 - (viii) „u vlasništvu“, „kontrolisano“ i „povezano“; i
 - (ix) „direktni porezi“.
- (j) „GATS“ znači Opšti sporazum o trgovini uslugama iz 1994;
- (k) „FTA“ znači Sporazum o slobodnoj trgovini između Crne Gore i Republike Turske; i
- (l) Definicije iz stava 6 GATS Aneksa o uslugama u vazdušnom saobraćaju su inkorporirane i sastavni su dio ovog protokola *mutatis mutandis*.

Član 4 Tretman najpovlašćenije nacije

² U slučaju kada se usluga ne pruža direktno od strane pravnog lica, već kroz druge oblike komercijalnog prisustva, kao što su filijale ili predstavništva, pružalac usluga (tj. pravno lice) će, međutim, kroz takvo prisustvo ostvariti tretman koji se predviđa za pružaoce usluga u skladu sa ovim protokolom. Takav tretman će se proširiti na oblik prisustva putem kojeg se usluga pruža i ne mora se pružati ostalim djelovima pružaoce usluge lociranim izvan teritorije pružanja usluge.

1. Ne dovodeći u pitanje mjere koje su preuzete u skladu sa članom VII GATS, i osim ako je predviđeno Listom izuzeća od MFN tretmana koja je sastavni dio Aneksa I, strana će odmah i bezuslovno, odobriti uslugama i pružaocima usluga druge strane tretman koji nije manje povoljan od tretmana koji odobrava sličnim uslugama i pružaocima usluga bilo koje treće strane.

2. Tretman koji proizilazi iz sporazuma o ekonomskoj integraciji koje zaključuje jedna od strana i notifikovanih u skladu sa članom V ili članom V *bis* GATS, nije predmet stava 1.

3. Ako strana zaključi sporazum iz stava 2, ista će na zahtjev druge strane pružiti adekvatnu mogućnost da pregovara tretman ne manje povoljan od onog koji je predviđen tim sporazumom.

4. Prava i obaveze strana u vezi sa prednostima priznatim susjednim zemljama biće regulisane stavom 3 člana II GATS.

Član 5 Pristup tržištu

Obaveze koje proističu iz pristupa tržištu će biti regulisane u skladu sa članom XVI GATS, koji je inkorporiran i sastavni dio ovog protokola.

Član 6 Nacionalni tretman

Obaveze koje proističu iz nacionalnog tretmana će biti regulisane u skladu sa članom XVII GATS, koji je inkorporiran i sastavni dio ovog protokola.

Član 7 Dodatne obaveze

Dodatne obaveze će biti regulisane u skladu sa članom XVIII GATS, koji je inkorporiran i sastavni dio ovog protokola.

Član 8 Domaća regulativa

1. U sektorima u kojima su preuzete specifične obaveze, svaka strana osigurava da se sve mjere opšte primjene koje utiču na trgovinu uslugama sprovode na razuman, objektivan i nepristrasan način.

2. Kako bi se osiguralo da mjere koje se odnose na stručnost zahtjeva i postupaka, tehničke standarde i zahtjeve u pogledu licenci, ne predstavljaju nepotrebne prepreke trgovini uslugama, svaka strana će osigurati, da shodno potrebi za pojedine sektore u kojima su preuzete specifične obaveze, takve mjere:

- a) budu zasnovane na objektivnim i transparentnim kriterijumima, kao što su stručnost i sposobnost za pružanje usluga;
- b) ne budu složenije nego što je potrebno za osiguranje kvaliteta usluge; i
- c) u slučaju postupaka izdavanja licenci same po sebi ne predstavljaju ograničenje u pružanju usluge.

3. Regulatorni organi svake strane učiniće javno dostupnim zahtjeve, uključujući i potrebnu dokumentaciju koja je potrebna za popunjavanje zahtjeva koji se odnose na pružanje usluga.

4. Ako strana traži odobrenje za pružanje usluge za koju je preuzeta specifična obaveza, osiguraće da njeni nadležni organi:

- a) u razumnom vremenskom roku nakon podnošenja zahtjeva za koji se smatra da je potpun u skladu sa domaćim zakonima i propisima, obavijestiti o odluci vezano za podnijeti zahtjev;
- b) u mjeri u kojoj je to moguće, uspostaviti indikativni vremenski okvir za obradu zahtjeva;
- c) ukoliko je zahtjev odbijen, u mjeri u kojoj je to moguće obavijesti podnosioca zahtjeva o razlozima odbijanja, bilo direktno ili na zahtjev po potrebi;
- d) na zahtjev podnosioca zahtjeva, bez nepotrebno odlaganja, dostaviti informacije o statusu istog;
- e) ukoliko je to praktično, podnosiocima zahtjeva pružiti mogućnost da ispravljaju manje greške i propuste u svojim prijavama i nastojati da pruži smjernice o potrebnim dodatnim informacijama; i
- f) gdje to smatraju odgovarajućim, prihvataju kopije dokumenata koji su ovjereni u skladu sa domaćim zakonodavstvom umjesto originalnih dokumenata.

5. Svaka strana će osigurati da je svaka taksa/naknada naplaćena od strane nadležnog organa opravdana i da sama po sebi ne ograničava pružanje odgovarajuće usluge.

6. U sektorima u kojima su preuzete specifične obaveze u profesionalnim uslugama, svaka strana će obezbijediti adekvatne procedure za verifikaciju kompetentnosti profesionalaca druge strane.

Član 9 Međusobno priznavanje

1. U svrhu izvršavanja relevantnih standarda ili kriterijuma za odobravanje, izdavanje dozvole ili sertifikata za pružaoca usluge, svaka strana može na zahtjev druge strane da prizna obrazovanje ili stečeno iskustvo, uslove koji su zadovoljeni ili dozvole ili sertifikate izdate u drugoj strani. Takva priznavanja mogu se bazirati na sporazumu ili aranžmanu sa stranom o kojoj je riječ, ili se može samostalno priznavati.

2. Kada strana priznaje, sporazumom ili aranžmanom, obrazovanje ili stečeno iskustvo, uslove koji su zadovoljeni ili dozvole ili izdate sertifikate na teritoriji treće strane, strana će obezbijediti drugoj strani adekvatnu priliku za pregovaranje njenog pristupanja ovoj vrsti sporazuma ili aranžmana, postojećeg ili budućeg, ili za pregovaranje sličnog sporazuma ili aranžmana. Ako strana vrši samostalno priznavanje, pružiće odgovarajuću priliku drugoj strani da pokaže da obrazovanje, stečeno iskustvo, uslovi koji su zadovoljeni, odnosno dozvole ili izdati sertifikati na teritoriji druge strane, treba da budu priznati.

3. Strane će ohrabriti svoje nadležne organe da započnu pregovore o priznavanju profesionalnih kvalifikacija i/ili postupaka registracije sa ciljem postizanja ranijih rezultata.

4. Bilo koji sporazum ili aranžman ili samostalno priznavanje biće u skladu sa relevantnim odredbama STO sporazuma, posebno sa stavom 3 člana VII GATS.

Član 10

Transparentnost i objavljivanje poverljivih informacija

Prava i obaveze strana u odnosu na transparentnost će biti regulisana stavovima 1 i 2 člana III i člana III *bis* GATS-a, koji su inkorporirani i sastavni dio ovog protokola.

Član 11

Monopoli i ekskluzivni pružaoci usluga

Prava i obaveze strana u odnosu na monopole i ekskluzivne pružaoce usluga će biti regulisana stavovima 1, 2 i 5 člana VIII GATS-a, koji je inkorporiran i sastavni dio ovog protokola.

Član 12

Poslovna praksa

Prava i obaveze strana u odnosu na poslovnu praksu će biti regulisana članom IX GATS-a, koji je inkorporiran i sastavni dio ovog protokola.

Član 13

Plaćanja i transferi

1. Osim u slučajevima predviđenim u članu 14, strana neće primjenjivati ograničenja na međunarodne transfere i plaćanja za tekuće transakcije sa drugom stranom vezano za specifične obaveze.

2. Ništa u ovom protokolu neće uticati na prava i obaveze članica Međunarodnog monetarnog fonda u skladu sa članovima Sporazuma MMF-a, uključujući upotrebu deviznog režima u skladu sa članovima Sporazuma MMF, pod uslovom da članica ne nametne ograničenja ni na koju kapitalnu transakciju suprotno njenim specifičnim obavezama koje se odnose na ovakve transakcije, osim u skladu sa članom 14 ili na zahtjev MMF-a.

Član 14

Ograničenja radi zaštite platnog bilansa

1. U slučaju ozbiljnih platnobilansnih i spoljnih finansijskih poteškoća ili prijetnje da do njih dođe, strana može usvojiti ili zadržati ograničenja na trgovinu uslugama za koje je preuzela specifične obaveze, uključujući i restrikcije na plaćanja i transfere za transakcije koje se odnose na takve obaveze. Priznaje se da postoji naročiti pritisak na platni bilans strane koja je u procesu ekonomskog razvoja ili ekonomske tranzicije kada može biti nužna primjena ograničenja da bi se osiguralo, *inter alia*, održavanje nivoa finansijskih rezervi neophodan za sprovođenje programa ekonomskog razvoja ili ekonomske tranzicije.

2. Ograničenja iz stava 1:

- (a) neće biti diskriminatorna;
- (b) biće u saglasnosti sa članovima Sporazuma Međunarodnog monetarnog fonda;
- (c) izbjegavaće nepotrebne štete u komercijalnim, ekonomskim i finansijskim interesima druge strane;
- (d) neće biti uvođene u obimu većem od onog koji je potreban za prevazilaženje situacije iz stava 1;
- (e) biće privremena i postupno će se ukidati u skladu sa poboljšanjem stanja navedenog u stavu 1.

3. Prilikom određivanja uvođenja ovakvih ograničenja, strane mogu da daju prioritet pružanju usluga koje su važnije za njihove ekonomske i razvojne programe. Međutim, ovakva ograničenja se neće usvojiti ili primjenjivati sa ciljem zaštite pojedinih sektora usluga.

4. Strana koja primjenjuje ili usvaja ovakve restriktivne mjere, ili svaka njihova izmjena, odmah će biti notifikovana Zajedničkom komitetu i u najkraćem roku će prezentovati vremenski raspored za njihovo uklanjanje.

Član 15

Izuzeća

Prava i obaveze strana u odnosu na opšta izuzeća i izuzeća iz bezbjedonosnih razloga će biti regulisana članom XIV i stavom 1 člana XIV *bis* GATS-a, koji je inkorporiran i sastavni dio ovog protokola.

Član 16

Liste specifičnih obaveza

1. Svaka strana u Listi navodi specifične obaveze koje preduzima u skladu sa članovima 5, 6 i 7. Što se tiče sektora u kojima se preduzimaju specifične obaveze, svaka Lista će definisati elemente navedene u podstavovima (a) do (e) stava 1 člana XX GATS-a.
2. Mjere koje nisu konzistentne sa članovima 5 i 6 tretiraće se kako je predviđeno stavom 2 člana XX GATS-a.
3. Liste specifičnih obaveza strana su navedene su u Aneksu I.
4. Nijedna strana neće uvoditi nova ograničenja vezano za usluge ili pružaoce usluga druge strane u odnosu na tretman koji je dodijeljen u skladu sa specifičnim obavezama iz stava 1.

Član 17 Izmjena Lista

1. Strane će, na pisani zahtjev druge strane, održati konsultacije u vezi sa bilo kojom izmjenom ili povlačenjem specifične obaveze iz Liste specifičnih obaveza strane koja šalje zahtjev.
2. Konsultacije će biti održane u roku od tri mjeseca od kada je strana zahtijevala iste. U konsultacijama, strane će imati za cilj da osiguraju opšti nivo obostranih korisnih obaveza, koji nije manje povoljan za trgovinu od predviđenog Listom specifičnih obaveza prije održavanja konsultacija.
3. Izmjene lista su predmet procedura koje su predviđene članom 29 (Rad Zajedničkog komiteta) i članom 34 (Izmjene i dopune) Sporazuma o slobodnoj trgovini.

Član 18 Odnos sa Sporazumom

1. Ovaj protokol će biti sastavni dio Sporazuma o slobodnoj trgovini između Crne Gore i Republike Turske, potpisanog 26. novembra 2008. godine koji je stupio na snagu 1. marta 2010. godine, kako je propisano članom 35 (Protokoli i Aneksi) Sporazuma o slobodnoj trgovini.
2. Odredbe Sporazuma o slobodnoj trgovini se neće primjenjivati na ovaj protokol, osim člana 28 (Osnivanje Zajedničkog komiteta), Član 29 (Rad Zajedničkog komiteta), Član 32 (Ispunjenje obaveza), Član 34 (Izmjene i dopune), Član 35 (Protokoli i aneksi), Član 36 (Rok važnosti i odustajanje), Član 37 (Stupanje na snagu) Sporazuma o slobodnoj trgovini.
3. U svrhu primjene člana 32 (Ispunjavanje obaveza) Sporazuma o slobodnoj trgovini, primjenjuju se, *mutatis mutandis*, postupci utvrđeni u članu 21 (Postupak obavještanja i konsultacija radi primjene mjera) Sporazuma o slobodnoj trgovini.
4. Osim ako nije drukčije naznačeno, sve konsultacije koje će se održati na osnovu ovog protokola podležu *mutatis mutandis* odredbama iz člana 21 (Postupak obavještanja i konsultacija radi primjene mjera) Sporazuma o slobodnoj trgovini.
5. U slučaju neusaglašenosti između ovog protokola i odredaba Sporazuma o slobodnoj trgovini, odredbe ovog protokola će prevladati.

Član 19 Aneksi, Dodaci i fusnote

Aneksi, Dodaci i fusnote čine sastavni dio ovog protokola.

ODJELJAK II Privremeni boravak fizičkih lica u poslovne svrhe

Član 20 Područje primjene

1. Ovaj odjeljak se primjenjuje na mjere koje utiču na ulazak i privremeni boravak fizičkih lica koja su pružaoци usluga strane i fizičkih lica strane koja su zaposlena kod pružaoца usluga strane, u vezi sa pružanjem usluge.
2. Ovaj odjeljak ne primjenjuje se na mjere koje utiču na fizička lica koja traže pristup tržištu rada strane, niti se primjenjuje na mjere u vezi sa državljanstvom, prebivalištem ili zaposlenjem na stalnoj osnovi.
3. Ništa u ovom odjeljku ne sprečava stranu da primjenjuje mjere za regulisanje ulaska fizičkih lica na njenu teritoriju ili njihov privremeni boravak na istoj, uključujući i mjere neophodne za zaštitu integriteta i osiguranje propisnog kretanja fizičkih lica preko njenih granica, pod uslovom da se te mjere ne primjenjuju na način kojem je cilj poništenje ili umanjeње koristi koje uživa druga strana prema ovom protokolu.³

Član 21 Opšte načelo

Svaka strana primjenjuje svoje mjere u vezi s odredbama ovog odjeljka što je brže moguće, kako bi se izbjeglo neprimjereno ometanje ili odlaganje trgovine robom ili uslugama prema ovom Sporazumu o slobodnoj trgovini.

Član 22 Specifične obaveze

³ Sama činjenica da je potrebna viza za fizička lica ne smatra se poništavanjem ili umanjeњem koristi prema uslovima određene obaveze iz Aneksa I (Lista specifičnih obaveza).

1. Prilikom izrade Liste specifičnih obaveza u skladu sa članovima 5 (Pristup tržištu) i 6 (Nacionalni tretman) Protokola, svaka strana u svojoj Listi navodi obaveze koje preuzima u pogledu ulaska i privremenog boravka fizičkih lica druge strane na svojoj teritoriji. Ove liste sadrže ograničenja i uslove u vezi sa tim obavezama za svaku kategoriju pružaoca usluge, uključujući period boravka i svaku mogućnost produženja boravka, sve numeričke kvote i svaki zahtjev za ekonomski test potreba.

2. Svaka strana odobrava ulazak i privremeni boravak fizičkim licima druge strane u skladu s ovim odjeljkom, uključujući uslove za svaku kategoriju iz Aneksa I (Lista specifičnih obaveza), pod uslovom da fizička lica poštuju relevantne zakone i propise o imigraciji koji se primjenjuju na ulazak i privremeni boravak, kao što su zakoni i propisi koji se odnose na javno zdravlje i sigurnost i nacionalnu bezbjednost.

3. Sama činjenica da strana odobrava ulazak i privremeni boravak fizičkom licu druge strane ne tumači se kao da oslobađa to lice od ispunjavanja bilo kog važećeg uslova u pogledu dobijanja licence ili drugih zahtjeva, uključujući sve obavezne kodekse ponašanja, za praktikovanje određenog zanimanja ili učešće u poslovnim aktivnostima.

Član 23 **Pružanje informacija**

1. U smislu ovog odjeljka, svaka strana osigurava da njeni nadležni organi učine javno dostupnim informacije neophodne za efikasno izdavanje odobrenja za ulazak i privremeni boravak na njevoj teritoriji.

2. Informacije iz podstava (1) naročito sadrže opise:

- (a) svih kategorija odobrenja i dozvola relevantnih za ulazak i privremeni boravak za svaku kategoriju iz Aneksa I (Lista specifičnih obaveza);
- (b) zahtjeva i postupaka za podnošenje zahtjeva i izdavanje odobrenja i dozvola za prvi ulazak i privremeni boravak, uključujući uslove koje treba ispuniti i način podnošenja zahtjeva; i
- (c) zahtjeva i postupaka za podnošenje zahtjeva za izdavanje i produženje odobrenja i dozvola za ulazak i privremeni boravak.

3. Svaka strana pruža drugoj strani podatke o relevantnim publikacijama ili internet stranicama na kojima su dostupne informacije iz podstava (2).

Član 24 **Uslovi i postupci povezani sa ulaskom i privremenim boravkom**

1. Strane, u skladu sa domaćim zakonima i propisima, osiguravaju transparentnost, efikasnost, propisni i pravični postupak prilikom pružanja usluga u vezi sa izdavanjem viza, radnih dozvola ili bilo koje slične vrste odobrenja u vezi sa ulaskom i privremenim boravkom fizičkih lica.

2. Zahtjevani dokumenti za izdavanje vize, radne dozvole i sve slične vrste dokumenata moraju biti relevantni i ne pretjerani u odnosu na svrhu za koju se prikupljaju.

3. Naknade za obradu zahtjeva za ulazak i privremeni boravak i rad pružaoca usluga moraju biti razumne i utvrđene u odnosu na podrazumijevane administrativne troškove.

4. Potpuni zahtjevi obrađuju se brzo i ekspeditivno. Nadležni organi svake strane obavještavaju podnosioca zahtjeva za ulazak, privremeni boravak ili radnu dozvolu o ishodu njegovog zahtjeva, odmah nakon donošenja odluke. Obavještenje obuhvata period boravka i sve druge uslove, po potrebi.

5. Period za obradu potpunih zahtjeva za radnu dozvolu ne može biti duži od 30 dana, osim u slučajevima kada postoje opravdani razlozi.

6. Na zahtjev podnosioca zahtjeva, nadležni organi dotične strane bez nepotrebnog odlaganja i, u mjeri u kojoj je to moguće, pružaju informacije o statusu zahtjeva podnosioca.

7. U slučaju nepotpunog zahtjeva, podnosilac zahtjeva se odmah obavještava o informacijama potrebnim za popunjavanje zahtjeva i daje mu se prilika da ispravi sve nedostatke u razumnom vremenskom periodu.

8. Kada se zahtjev odbije, podnosilac zahtjeva se obavještava o odbijanju i pružaju mu se informacije o dostupnim postupcima revizije.

ODJELJAK III **TELEKOMUNIKACIJE**

Član 25 **Definicije**

U smislu ovog poglavlja:

ovlašćenje podrazumijeva licencu, koncesiju, dozvolu, registraciju ili drugo odobrenje koje strana može zahtijevati za pružanje javnih telekomunikacionih usluga;

kolokacija podrazumijeva pristup i korišćenje fizičkog prostora u cilju instalacije, održavanja ili popravke opreme u/na objektima koja su u vlasništvu, ili se nadziru i koriste, od strane drugog pružaoca javnih telekomunikacionih usluga;

troškovna orijentisanost podrazumijeva zasnovanost na troškovima uz mogućnost uključivanja razumne dobiti i koja može biti bazirana na različitim troškovnim modelima za različite objekte ili usluge;

krajnji korisnik podrazumijeva krajnjeg potrošača, ili pretplatnika, javnih telekomunikacionih usluga, koji nije ovlašćen da preprodaje i/ili pruža javne telekomunikacione usluge;

preduzeće podrazumijeva bilo koji subjekat koji je osnovan ili organizovan u skladu sa važećim zakonodavstvom, bez obzira da li posluje na profitabilnoj ili neprofitabilnoj osnovi, da li je u privatnoj ili u državnoj svojini ili država nad tim subjektom vrši nadzor, uključujući bilo koju kompaniju, korporaciju, trust, partnerstvo, preduzetnika, zajedničko ulaganje ili drugo poslovno udruženje i filijalu preduzeća;

preduzeće strane podrazumijeva preduzeće koje je osnovano ili organizovano u skladu sa važećim zakonodavstvom te strane i posluje na teritoriji te strane;

ključni elementi su oni elementi mreže ili javnih telekomunikacionih usluga koji su:

- (a) ključni za pružanje javnih telekomunikacionih usluga;
- (b) isključivo ili pretežno obezbijeđeni od strane jednog ili ograničenog broja pružaoca usluga i
- (c) nezamjenljivi u pružanju neke usluge na ekonomski isplativ ili tehnički izvodljiv način;

interkonekcija podrazumijeva povezivanje dvije ili više javnih telekomunikacionih mreža na teritoriji jedne strane u cilju omogućavanja korisnicima jednog pružaoca usluga da komuniciraju sa korisnicima drugog pružaoca usluga, kao i da imaju mogućnost da pristupe uslugama koje pruža drugi pružalac usluga;

iznajmljene linije podrazumijevaju telekomunikacionu vezu između dvije ili više krajnje tačke, koja je dodijeljena određenom korisniku ili drugim korisnicima koje je taj korisnik odabrao;

operator sa značajnom tržišnom snagom podrazumijeva pružaoca javnih telekomunikacionih usluga koji ima mogućnost da značajno utiče na uslove učešća i snabdijevanja na relevantnom tržištu mreža ili javnih telekomunikacionih usluga, sa aspekta cijene, kao rezultat:

- (a) kontrole ključnih elemenata; ili
- (b) korišćenja svoje pozicije na tržištu.

elementi mreže podrazumijevaju svaki objekat ili opremu koja se koristi za pružanje javnih telekomunikacionih usluga čija tehnička definicija sadrži sve bitne karakteristike, funkcije i mogućnosti koje ista obezbjeđuje;

nediskriminatornost podrazumijeva tretman koji nije nepovoljniji od onog koji se nudi drugim pružaocima usluga ili korisnicima sličnih telekomunikacionih usluga, u uporedivim okolnostima;

prenosivost brojeva podrazumijeva pravo krajnjih korisnika javnih telekomunikacionih usluga da, za fiksne brojeve telefona na svojoj lokaciji, a za brojeve mobilnih telefona na bilo kojoj lokaciji, zadrže iste telefonske brojeve ukoliko se odluče da koriste drugog pružaoca sličnih javnih telekomunikacionih usluga na teritoriji te strane;

javne telekomunikacione mreže podrazumijevaju infrastrukturu koja se koristi za pružanje javnih telekomunikacionih usluga;

javne telekomunikacione usluge podrazumijevaju bilo koje telekomunikacione usluge koje su javno ponuđene. Takve usluge mogu sadržati, između ostalog, telefoniju i prenos podataka, bez bilo kakve promjene u formi ili sadržaju prenošene informacije od početne do krajnje tačke, sa izuzetkom usluga informacionog društva;

referentna interkonekciona ponuda podrazumijeva ponudu za interkonekciju operatora sa značajnom tržišnom snagom, registrovanu ili odobrenu od strane regulatornog tijela za telekomunikacije, koja je dovoljno detaljna da omogući pružaocima javnih telekomunikacionih usluga koji su spremni da prihvate cijene, rokove i uslove iz ponude, da ostvare interkonekciju bez obaveze vođenja pregovora;

telekomunikacije podrazumijevaju emitovanje, transmisiju i prijem signala preko bilo kojeg fizičkog, elektromagnetnog ili optičkog medijuma;

regulatorno tijelo za telekomunikacije podrazumijeva organ ili organe u sektoru telekomunikacionih usluga, koje je nadležno za sva regulatorna pitanja u skladu sa nacionalnim zakonodavstvom strane;

terminalna tačka mreže podrazumijeva fizičku mrežnu priključnu tačku u kojoj se javna telekomunikaciona mreža povezuje sa objektima i opremom krajnjih korisnika ili, ukoliko je to primjenljivo, tačka u kojoj se povezuje sa drugom telekomunikacionom mrežom; i

korisnik podrazumijeva fizičko ili pravno lice koje koristi telekomunikacione usluge, bez obzira na to da li je pretplatnik ili ne, a koji može biti i pružalac javnih telekomunikacionih usluga.

Član 26 Obuhvat

1. Ovo poglavlje se primjenjuje na:

- (a) mjere donešene ili preduzete od strane, u vezi sa pristupom i korišćenjem javnih telekomunikacionih mreža i usluga;
- (b) mjere donešene ili preduzete od strane, u vezi sa obavezama pružaoca javnih telekomunikacionih mreža ili usluga, i
- (c) druge mjere donešene ili preduzete od strane, koje se odnose na javne telekomunikacione mreže i usluge.

2. Ovo poglavlje se neće primjenjivati na mjere koje je donijela ili preduzela strana a odnose se na emitovanje⁴ i kablovsku distribuciju radio ili televizijskog programa namijenjenog javnosti, osim u dijelu koji garantuje kompanijama koje pružaju te usluge pravo pristupa i kontinuirane upotrebe javnih telekomunikacionih mreža i usluga kao što je propisano u članu 27 (Pristup i korišćenje javnih telekomunikacionih mreža i usluga).

3. Ništa se u ovom poglavlju neće tumačiti kao obaveza strane, ili obaveza strane da primora bilo koje preduzeće, da uspostavi, izgradi, nabavi, iznajmi, upravlja ili pruža javne telekomunikacione mreže ili usluge, ukoliko takve mreže ili usluge nijesu javno ponuđene.

4. Dodatno, ovo poglavlje se neće tumačiti kao instrument za sprečavanje strane da licima koja upravljaju privatnim mrežama zabrani korišćenje njihovih mreža u svrhu pružanja javnih telekomunikacionih mreža ili usluga trećim licima.

⁴ Emitovanje se definiše na način kako je to propisano odgovarajućim zakonima svake od strana.

Član 27**Pristup i korišćenje javnih telekomunikacionih mreža i usluga**

1. S obzirom na pravo strane da ograniči pružanje usluge u skladu sa ograničenjima navedenim u njihovim Listama, strana treba da obezbijedi da preduzeća druge strane imaju pristup telekomunikacionim mrežama ili uslugama ponuđenim na njenoj teritoriji, ili izvan njenih granica, i da iste može koristiti pod razumnim i nediskriminatorskim uslovima, uključujući, između ostalog, odredbe propisane stavovima 2 do 7.

2. Strane će obezbijediti preduzećima druge strane mogućnost da:

- (a) kupe ili zakupe, i povežu terminalnu ili drugu opremu koja se povezuje sa javnim telekomunikacionim mrežama;
- (b) pružaju usluge krajnjim korisnicima posredstvom svojih ili iznajmljenih linija;
- (c) izvrše povezivanje privatnih, iznajmljenih ili sopstvenih linija sa mrežama i javnim telekomunikacionim uslugama te strane, ili sa linijama koje je iznajmilo ili posjeduje drugo preduzeće, i
- (d) obavljaju funkcije komutacije, signalizacije, obrade i konverzije, te da koriste operativne protokole po svom izboru.

3. Svaka strana će obezbijediti da preduzeća druge strane mogu koristiti javne telekomunikacione mreže i usluge u svrhu prenosa informacija na svojoj teritoriji ili van svojih granica, kao i za pristup informacijama koje se nalaze u bazama podataka, ili su na drugi način sačuvane u mašinski čitljivoj formi na teritoriji bilo koje strane. Svaka nova ili izmijenjena mjera koja značajno utiče na ovu upotrebu će biti notifikovana. Na zahtjev druge strane, svaka strana će pružiti adekvatnu mogućnost za dijalog u okviru Zajedničkog komiteta u vezi sa tom notifikacijom.

4. Bez obzira na stav 3, strana može preduzeti potrebne mjere da:

- (a) osigura bezbjednost i povjerljivost poruka, i / ili
- (b) zaštititi privatnost ličnih podataka krajnjih korisnika telekomunikacija;

pod uslovom da su takve mjere u skladu sa njenim relevantnim zakonodavstvom i da se ne primjenjuju na način koji bi predstavljao diskriminatorno, proizvoljno ili neopravdano sredstvo, ili prikriveno ograničenje u trgovini uslugama.

5. Svaka strana će obezbijediti da se ne nameću dodatni uslovi za pristup i korišćenje javnih telekomunikacionih mreža ili usluga, osim onih koji se smatraju neophodnim za:

- (a) obezbjeđenje odgovornosti pružaoca javnih telekomunikacionih mreža ili usluga za pružanje javnih usluga, a naročito njihove sposobnosti da svoje mreže ili usluge učine dostupnim široj javnosti;
- (b) zaštitu privatnosti ličnih podataka, povjerljivosti komunikacija, tehničkog integriteta i sigurnosti javnih telekomunikacionih mreža ili usluga; ili
- (c) obezbjeđenje da pružalac usluga druge strane ne pruža usluge, u skladu sa ograničenjima koja su navedena od strana u njihovim Listama obaveza.

6. Podrazumijevajući ispunjenost kriterijuma navedenih u stavu 5, uslovi pristupa i korišćenja javnih telekomunikacionih mreža ili usluga mogu uključivati i:

- (a) zahtjeve za korišćenje specifičnih tehničkih interfejsa, uključujući protokole, za međupovezivanje sa takvim mrežama i uslugama;
- (b) zahtjeve, kada je to neophodno, za interoperabilnost takvih usluga;
- (c) tipsko odobrenje terminalne ili druge opreme koja se povezuje sa mrežom, kao i tehničke zahtjeve koji se odnose na priključenje takve opreme na mreže; i
- (d) ograničenja interkonekcije privatnih, iznajmljenih ili sopstvenih, linija sa takvim mrežama ili uslugama, ili sa linijama koje su iznajmljene ili su u vlasništvu drugih preduzeća.

7. Ništa u ovom članu ne sprečava stranu da utvrdi obaveznost zahtijevanja notifikacije, licence, koncesije, dozvole, registracije ili druge vrste ovlašćenja od strane preduzeća koje želi da pruža neku vrstu javne telekomunikacione usluge na njenoj teritoriji.

Član 28**Javna dostupnost kriterijuma za izdavanje ovlašćenja**

1. Kada je ovlašćenje zahtijevano, učiniće se javno dostupni:

- (a) svi kriterijumi za izdavanje ovlašćenja i period koji je uobičajeno potreban za donošenje odluke u vezi sa zahtjevom za izdavanje istog, i
- (b) rokovi i uslovi za pojedinačna ovlašćenja.

2. Podnosilac zahtjeva će se upoznati sa razlozima za odbijanje ovlašćenja na njegov zahtjev.

Član 29
Karakteristike operatora sa značajnom tržišnom snagom

Tretman operatora sa značajnom tržišnom snagom

1. Svaka strana će obezbijediti da operator sa značajnom tržišnom snagom na svojoj teritoriji pružaocu javnih telekomunikacionih usluga druge strane, pruži tretman koji nije nepovoljniji od onog kojeg taj pružalac usluga u sličnim okolnostima pruža svojim filijalama, povezanim kompanijama ili samostalnim kompanijama koje pružaju javne telekomunikacione usluge u pogledu:

- (a) dostupnosti, ponude, cijena ili kvaliteta mreža ili sličnih javnih telekomunikacionih usluga, i
- (b) dostupnosti tehničkih interfejsa neophodnih za interkonekciju.

Zaštita konkurencije

1. Svaka strana će sprovoditi odgovarajuće mjere u svrhu sprečavanja pružaoca usluga koji su, pojedinačno ili zajedno, operatori sa značajnom tržišnom snagom na njenoj teritoriji, da primijene ili nastave da primjenjuju anti-konkurentne aktivnosti.

2. Anti-konkurentne aktivnosti iz stava 1 uključuju:

- (a) sprovođenje anti-konkurentnog unakrsnog subvencionisanja;
- (b) korišćenje informacija dobijenih od konkurenata u cilju postizanja anti-konkurentskih rezultata; i
- (c) nepravovremeno obezbjeđivanje drugim pružaocima javnih telekomunikacionih usluga tehničkih informacija o ključnim elementima mreže i komercijalnim uslovima koje su tim pružaocima neophodne za pružanje javnih telekomunikacionih usluga.

Interkonekcione obaveze koje se tiču operatora sa značajnom tržišnom snagom

1. Svaka strana će obezbijediti da operator sa značajnom tržišnom snagom na njenoj teritoriji obezbijedi interkonekciju instalacija i opreme pružaocu javnih telekomunikacionih usluga druge strane:

- a) u bilo kojoj tehnički izvodljivoj tački mreže operatora sa značajnom tržišnom snagom koja je na raspolaganju ostalim pružaocima javnih telekomunikacionih usluga na njenoj teritoriji;
- b) pod nediskriminatornim uslovima (uključujući tehničke standarde i specifikacije) i cijenama;
- c) sa ne manjim kvalitetom od onog kojeg operator sa značajnom tržišnom snagom pruža za slične usluge sebi, drugim nepovezanim pružaocima telekomunikacionih usluga, svojim filijalama ili drugim povezanim kompanijama;
- d) blagovremeno, po troškovno orijentisanim cijenama (izuzev kada u skladu sa analizom tržišta, regulatorno tijelo utvrdi drukčiji model određivanja cijena) i u skladu sa rokovima i uslovima (uključujući tehničke standarde i specifikacije) koji su transparentni, razumni, ekonomski prihvatljivi i dovoljno raščlanjeni tako da pružaoci ne moraju plaćati one komponente mreže ili objekte koji im nijesu potrebni za pružanje konkretne usluge, i
- e) po zahtjevu, i na drugim tačkama u odnosu na terminalne tačke mreže ponuđene ostalim korisnicima, uz pravo nadoknade troškova vezanih za dodatne radove.

2. Svaka strana će obezbijediti da operator sa značajnom tržišnom snagom na svojoj teritoriji obezbijedi pružaocima javnih telekomunikacionih usluga druge strane, mogućnost interkonekcije njihovih instalacija i opreme sa instalacijama i opremom operatora sa značajnom tržišnom snagom pod uslovima navedenim u referentnoj interkonekcionoj ponudi ili nekoj drugoj standardnoj interkonekcionoj ponudi koja sadrži cijene, rokove i uslove koje operator sa značajnom tržišnom snagom nudi pružaocima javnih telekomunikacionih usluga. Pored toga, svaka strana će obezbijediti da, pregovorima o ugovoru o interkonekciji, pružaoci javnih telekomunikacionih usluga druge strane dobiju mogućnost interkonekcije svojih instalacija i opreme sa instalacijama i opremom operatora sa značajnom tržišnom snagom.

3. Svaka strana će obezbijediti neophodne uslove da pružaoci usluga druge strane budu upoznati sa cijenama, rokovima i uslovima neophodnim za interkonekciju koje je ponudio operator sa značajnom tržišnom snagom. Takvi uslovi minimalno podrazumijevaju:

- (a) javnu dostupnost cijena, rokova i uslova interkonekcije sa operatorom sa značajnom tržišnom snagom u skladu sa uslovima određenim od strane regulatornog tijela za telekomunikacije; ili
- (b) Javnu dostupnost referentne interkonekcione ponude.

4. Svaka strana će učiniti javno dostupnim važeće procedure za interkonekciju sa operatorom sa značajnom tržišnom snagom na svojoj teritoriji.

Član 30

Snabdijevanje i cijene iznajmljenih linija

1. Svaka strana će obezbijediti da operatori sa značajnom tržišnom snagom preduzećima i pružaocima javnih telekomunikacionih usluga druge strane, pružaju uslugu iznajmljenih linija na svojoj teritoriji, kao javnu telekomunikacionu uslugu, pod razumnim i nediskriminatornim rokovima, uslovima i cijenama.

2. U cilju primjene stava 1, svaka strana će ovlastiti svoje regulatorno tijelo za telekomunikacije da zahtjeva od operatora sa značajnom tržišnom snagom na njenoj teritoriji, da preduzećima i pružaocima javnih telekomunikacionih usluga druge strane ponudi iznajmljene linije, po cijenama određenim na fiksnoj stopi ili na bazi troškovno orjentisanih cijena srazmjerno korišćenim kapacitetima.

Član 31

Kolokacija

1. Svaka strana će obezbijediti da operatori sa značajnom tržišnom snagom na svojoj teritoriji pružaocima javnih telekomunikacionih usluga druge strane, pružaju uslugu fizičke kolokacije za neophodnu opremu za interkonekciju, ili da imaju pristup raščlanjenim mrežnim elementima pod razumnim, transparentnim i nediskriminatornim rokovima, uslovima i cijenama, koje su troškovno orijentisane gdje je to primjenljivo.

2. Svaka strana može definisati elemente iz stava 1 ovog člana u skladu sa nacionalnim zakonima i regulativom.

Član 32

Pristup stubovima, oknima, cijevima i pravo prolaza

Svaka strana će pružaocima javnih telekomunikacionih usluga druge strane obezbijediti pravo prolaza, kao i da operatori sa značajnom tržišnom snagom na svojoj teritoriji pružaju uslugu pristupa stubovima, oknima i cijevima, u skladu sa razumnim i nediskriminatornim rokovima, uslovima i cijenama.

Član 33

Preprodaja

Svaka strana će obezbijediti da operatori sa značajnom tržišnom snagom na svojoj teritoriji:

- (a) nude pružaocima javnih telekomunikacionih usluga druge strane mogućnost preprodaje javnih telekomunikacionih usluga koje operatori sa značajnom tržišnom snagom pružaju krajnjim korisnicima u maloprodaji, po razumnim⁵ cijenama, i
- (b) ne uvode diskriminatorne ili neopravdane uslove ili ograničenja u preprodaji takvih usluga⁶.

Član 34

Raščlanjivanje mrežnih elemenata

1. Svaka strana će ovlastiti svoje regulatorno tijelo za telekomunikacije da zahtjeva od operatora sa značajnom tržišnom snagom na svojoj teritoriji da pružaocima javnih telekomunikacionih usluga druge strane pružaju uslugu pristupa raščlanjenim elementima mreže u skladu sa razumnim i nediskriminatornim rokovima, uslovima i troškovno orjentisanim cijenama.

2. Svaka strana može definisati koji elementi mreže treba da budu dostupni na njenoj teritoriji i koji pružaoci mogu dobiti takve elemente, u skladu sa domaćim zakonima i regulativom.

Član 35

Interkonekcija

1. Svaka strana će obezbijediti da pružaoci javnih telekomunikacionih usluga na svojoj teritoriji omoguće, direktno ili indirektno, pregovaranje o interkonekciji sa pružaocima javnih telekomunikacionih usluga druge strane, u skladu sa nacionalnim zakonodavstvom.

2. U cilju primjene stava 1, svaka strana će obezbijediti da pružaoci javnih telekomunikacionih usluga na njenoj teritoriji preduzmu razumne aktivnosti u pravcu zaštite povjerljivosti komercijalno osjetljivih informacija, ili informacija u vezi sa pružaocima i krajnjim korisnicima javnih telekomunikacionih usluga, kao i da koriste takve informacije samo u svrhu pružanja predmetnih usluga.

⁵ Strana može odrediti razumne cijene kroz bilo koju metodologiju koju smatra odgovarajućom.

⁶ Kada to nacionalno zakonodavstvo ili regulativa propisuje, strana može zabraniti preprodavcu usluga da javnu telekomunikacionu uslugu koju je nabavio po veleprodajnim cijenama, a koja je na maloprodajnom nivou dostupna samo jednoj određenoj kategoriji korisnika, preprodaje drugoj kategoriji korisnika.

Član 36 Prenosivost brojeva

Svaka strana će obezbijediti da pružaoci javnih telekomunikacionih usluga na svojoj teritoriji pružaju uslugu prenosivosti brojeva, na odgovarajući način, u skladu sa razumnim i nediskriminatornim rokovima i uslovima.

Član 37 Fleksibilnost u izboru tehnologija

1. Nijedna strana ne može sprečavati pravo pružaocima javnih telekomunikacionih usluga da imaju fleksibilnost u izboru tehnologija koje koriste za pružanje svojih usluga, uključujući i mobilne bežične usluge, ukoliko iste zadovoljavaju važeće tehničke propise svake od strana.

2. Ukoliko pružalac usluga namjerava da pruža drukčiji pristup uslugama u odnosu na onaj za koji je dobio ovlašćenje, regulatorno tijelo može zahtijevati dodatnu licencu ili drugo odgovarajuće ovlašćenje za pružanje takve javne telekomunikacione usluge i to se neće tumačiti kao sprečavanje fleksibilnosti u smislu ovog člana.

Član 38 Univerzalne usluge

1. Svaka strana ima pravo da definiše kakvu obavezu po pitanju univerzalne usluge želi da donese ili primjeni.

2. Svaka strana će administrirati obaveze po pitanju pružanja univerzalne usluge koju je donijela ili primjenila na transparentan, nediskriminatoran i konkurentski neutralan način i osiguraće da bilo koja obaveza iz domena univerzalne usluge ne bude neproporcionalna, odnosno opterećujuća više nego što je to neophodno u skladu sa uslovima definisanim od strane.

Član 39 Raspodjela, dodjeljivanje i korišćenje ograničenih resursa

1. Svaka strana će upravljati procedurama za raspodjelu, dodjeljivanje i korišćenje ograničenih telekomunikacionih resursa na objektivnan, odgovarajući, transparentan i nediskriminatoran način, osim kada su u pitanju resursi koji su rezervisani za potrebe Vlade.

2. Mjere strane koje se odnose na raspodjelu i dodjeljivanje radio-frekvencijskog spektra na upravljanje ne predstavljaju nekompatibilne mjere, „per se“ sa članom 5 (Pristup tržištu).

3. Kao posljedica toga, svaka strana zadržava pravo utvrđivanja, implementacije i primjene politike upravljanja radio-frekvencijskim spektrom koja može uticati na ograničavanje broja pružalaca javnih telekomunikacionih usluga, sve dok se to sprovedi na kompatibilan način sa ostalim odredbama ovog protokola. Pored toga, svaka strana zadržava pravo da dodjeljuje frekvencijske opsege, uzimajući u obzir sadašnje i buduće potrebe, kao i raspoloživost spektra.

4. Svaka strana će učiniti dostupnim javnosti trenutno stanje dodijeljenih frekvencijskih opsega, ali od nje se ne zahtijeva da obezbijedi detaljnu identifikaciju dodijeljenih frekvencija koje se koriste za specifične potrebe Vlade.

5. Kada se radi o spektru koji nije opredijeljen za potrebe Vlade, procedure svake strane će biti zasnovane na principima otvorenosti i transparentnosti, uzimajući u obzir javni interes. Ove procedure će se zasnivati na nacionalnom zakonodavstvu i, generalno, biće tržišno orjentisane i/ili sprovedene u skladu sa procedurama javnog tendera.

Član 40 Regulatorno tijelo

1. Svaka strana će obezbijediti da je njeno regulatorno tijelo za telekomunikacije nezavisno i odvojeno od bilo kojeg pružaoca javnih telekomunikacionih usluga.

2. U tu svrhu, svaka strana će osigurati da njeno regulatorno tijelo za telekomunikacije nema finansijskog interesa ili operativnih nadležnosti kod bilo kojeg pružaoca javnih telekomunikacionih usluga.

3. Svaka strana će obezbijediti da odluke i procedure njenog regulatornog tijela budu nepristrasne u odnosu na sve učesnike na tržištu. U tu svrhu, svaka strana će osigurati da bilo koji finansijski interes koji strana ima kod nekog od pružaoca javnih telekomunikacionih usluga ne utiče na odluke i procedure regulatornog tijela za telekomunikacije.

4. Nijedna od strana neće omogućiti pružaocima javnih telekomunikacionih usluga tretman koji je povoljniji od onog koji je predviđen sličnom pružaocu druge strane, opravdavajući da je pružalac koji dobija povoljniji tretman u potpunosti ili djelimično u državnom vlasništvu bilo koje od strana.

Član 41 Rješavanje domaćih sporova u telekomunikacijama

Svaka strana će obezbijediti postojanje unutrašnjih mehanizama za rješavanje sporova, u skladu sa važećim nacionalnim zakonodavstvom.

Član 42 Transparentnost

Pored propisa iz člana 10 (Transparentnost), svaka strana će u skladu sa nacionalnim zakonodavstvom obezbijediti, u mjeri u kojoj je to moguće:

- (a) pravovremeno objavljivanje ili javnu dostupnost propisa regulatornog tijela za telekomunikacije, uključujući i osnove za donošenje takvih propisa;
- (b) odgovarajuće javno obavještenje zainteresovanim strankama o mogućnosti da daju komentare na propise koje predlaže regulatorno tijelo za telekomunikacije; i
- (c) javnu dostupnost mjera koje se tiču javnih telekomunikacionih mreža ili usluga, uključujući mjere koje se odnose na:
 - (i) cijene usluga, rokove i ostale uslove korišćenja usluga;
 - (ii) specifikacije tehničkih interfejsa;
 - (iii) uslove za priključenje terminalne i druge opreme na javnu telekomunikacionu mrežu;
 - (iv) zahtjeve za notifikaciju, licencu, dozvolu, registraciju ili drugo ovlašćenje, ukoliko postoje;
 - (v) informacije o tijelima nadležnim za izradu, izmjenu i usvajanje mjera u vezi standarda koji utiču na pristup i korišćenje; i
 - (vi) postupke u vezi rješavanja sporova u telekomunikacijama, propisanih članom 41 (Rješavanje domaćih sporova u telekomunikacijama)

Član 43 Odnos sa Protokolom

U slučaju bilo kakve neusklađenosti između ovog poglavlja i drugih djelova ovog protokola, ovo poglavlje će prevladati u granicama neusaglašenosti.

Član 44 Standardi i međunarodne organizacije

Strane prepoznaju važnost međunarodnih standarda za globalnu kompatibilnost i interoperabilnost mreža ili telekomunikacionih usluga i obavezuju se da promovišu takve standarde kroz učesće u nadležnim međunarodnim tijelima, uključujući i Međunarodnu uniju za telekomunikacije i Međunarodnu organizaciju za standardizaciju.

ODJELJAK IV FINANSIJSKE USLUGE

Član 45 Obuhvat i definicije

1. Ovaj odjeljak predstavlja principe regulatornog okvira za sve finansijske usluge za koje su preuzete određene obaveze u Aneksu I (Lista specifičnih obaveza).

2. Za potrebe ovog odjeljka:

„**finansijske usluge**“ predstavljaju svaku uslugu finansijskog karaktera koju ponudi pružalac finansijskih usluga jedne strane. Finansijske usluge uključuju sve usluge osiguranja i usluge povezane sa osiguranjem, kao i sve bankarske i ostale finansijske usluge (izuzev osiguranja). Finansijske usluge obuhvataju sljedeće aktivnosti:

- (a) *Usluge osiguranja i usluge povezane sa osiguranjem*
 - (i) direktno osiguranje (uključujući saosiguranje): životno osiguranje; neživotno osiguranje;
 - (ii) reosiguranje i retrocesija;
 - (iii) posredovanje u osiguranju, kao što su aktivnosti brokera i zastupnika; i
 - (iv) pomoćne usluge u osiguranju, kao što su konsultantske usluge, aktuarske usluge, usluge procjene rizika i usluge rješavanja šteta; i

(b) Bankarske i ostale finansijske usluge (osim osiguranja)

- (v) primanje depozita i ostalih povratnih sredstava od stanovništva;
- (vi) davanje kredita svih vrsta, uključujući potrošačke kredite, hipotekarne kredite, faktoring i finansiranje komercijalnih transakcija;
- (vii) finansijski lizing;
- (viii) sve usluge plaćanja i prenosa novca, uključujući kreditne, kartice za naplatu i debitne kartice, putničke čekove i bankarske mjenice;
- (ix) garancije i obaveze;
- (x) trgovanje za sopstveni račun ili za račun klijenta, ili na berzi ili na vanberzanskom tržištu ili na nekom drugom tržištu sljedećim stavkama:
 - (A) instrumentima tržišta novca (uključujući čekove, kratkoročne obveznice, depozitne potvrde);
 - (B) stranom valutom;
 - (C) derivativnim instrumentima uključujući, ali ne ograničavajući se na fjučerse i opcije;
 - (D) instrumentima deviznog kursa i kamatnih stopa, uključujući poslove kao što su svop, terminski ugovori;
 - (E) prenosivim hartijama od vrijednosti;
 - (F) ostalim prenosivim instrumentima i finansijskim sredstvima, uključujući poluge plemenitih metala.

- (xi) учествоvanje u emisijama svih vrsta hartija od vrijednosti, uključujući njihovo pokroviteljstvo i plasiranje u svojstvu zastupnika (javno ili privatno), i pružanje usluga koje se odnose na takve emisije;
- (xii) posredovanje na tržištu novca;
- (xiii) upravljanje aktivom, kao što je upravljanje gotovim novcem ili portfolijom, svi oblici upravljanja zajedničkim investicijama, upravljanje penzionim fondovima, usluge čuvanja, usluge deponovanja i usluge plasiranja;
- (xiv) usluge kliringa i saldiranja finansijskih sredstava, uključujući hartije od vrijednosti, derivativne i ostale prenosive instrumente;
- (xv) pružanje i prenos finansijskih informacija i obrada finansijskih podataka sa odgovarajućim softverom;
- (xvi) savjetodavne, posredničke i ostale pomoćne finansijske usluge u vezi sa svim poslovima navedenim u podstavovima (v) do (xv), uključujući reference o kreditnoj sposobnosti i analize, istraživanja i savjete u pogledu investicija i portfolija, savjetovanje o preuzimanju i prestrukturiranju i strategiji preduzeća.

„**Pružalac finansijske usluge**“ znači svako fizičko ili pravno lice strane koja želi da pruža ili već pruža finansijske usluge, ali ne obuhvata javni subjekat.

„**Nova finansijska usluga**“ podrazumijeva uslugu finansijskog karaktera, uključujući usluge vezane za postojeće i nove proizvode ili način na koji se proizvod isporučuje, a koji ne pruža nijedan pružalac usluge na teritoriji strane, ali koji se pruža na teritoriji druge strane;

„**Javni subjekat**“ znači:

- (a) vlada, centralna banka ili monetarna vlast strane, ili subjekat u vlasništvu ili pod kontrolom strane, koji je uglavnom angažovan u izvršavanju državnih funkcija ili aktivnosti za državne potrebe, ne uključujući subjekat koji je uglavnom angažovan na pružanju finansijskih usluga pod komercijalnim uslovima; ili
- (b) privatni subjekat koji obavlja funkcije koje normalno obavlja centralna banka ili monetarna vlast prilikom izvršavanja tih funkcija.

Član 46

Izuzetak u vezi sa preduzimanjem prudencijalnih mjera⁷

1. Svaka strana može usvajati ili održavati mjere u prudencijalne svrhe⁸, uključujući:

- (a) zaštitu investitora, deponenata, vlasnika polisa ili lica kojima pružalac finansijske usluge u obavezi da pruži fiducijarnu obavezu; i
- (b) osiguranje integriteta i stabilnosti finansijskog sistema strane.

2. Ove mjere neće biti opterećujuće više nego što je to potrebno za postizanje njihovog cilja, a tamo gdje nisu u skladu sa drugim odredbama ovog Sporazuma, one se neće koristiti kao sredstvo za izbjegavanje obaveza strana ili obaveza koje proizilaze iz tih odredbi.

3. Ništa u ovom sporazumu neće se tumačiti na način kojim se od strane zahtijeva otkrivanje informacija koje se odnose na aktivnosti i račune pojedinačnih korisnika ili bilo koje povjerljive ili vlasničke informacije kojima raspolaže javni subjekat.

4. Ne dovodeći u pitanje druga sredstva prudencijalnog regulisanja prekogranične trgovine finansijskim uslugama, strana može zahtijevati izdavanje dozvole odnosno registraciju pružaoca prekogranične finansijske usluge i finansijskih instrumenata druge strane.

Član 47

Transparentnost

1. Strane prepoznaju da su transparentni propisi i politike koje regulišu aktivnosti pružalaca finansijskih usluga značajni u olakšavanju pristupa inostranih pružaoca finansijskih usluga i njihovog poslovanja na tržištima druge strane. Svaka strana će promovisati regulatornu transparentnost vezano za finansijske usluge.

2. Nadležni organi svake strane će učiniti javno dostupnim zainteresovanim licima domaće zahtjeve i procedure koje se primjenjuju prilikom podnošenja zahtjeva za pružanje finansijskih usluga.

3. Kada je potrebna dozvola ili ovlašćenje za pružanje finansijske usluge, nadležni organi strane će uslove za dobijanje iste učiniti javno dostupnim.

4. Svaka strana će osigurati da se sve mjere opšte primjene na koje se primjenjuje ovaj odjeljak sprovode na razuman, objektivan i nepristrasan način.

⁷ Svaka mjera koja se primjenjuje na pružaoca finansijskih usluga osnovanih na teritoriji strane, a koja nije regulisana i nadgledana od strane organa finansijskog nadzora te strane, smatraće se mjerom u prudencijalne svrhe u smislu ovog Sporazuma. Radi veće sigurnosti, svaka takva mjera će biti preduzeta u skladu sa ovim članom.

⁸ Podrazumijeva se da izraz "prudencijalni razlozi" može uključiti održavanje sigurnosti, ispravnosti, integriteta ili finansijske odgovornosti pojedinačnih pružaoca finansijskih usluga, kao i očuvanje sigurnosti i finansijskog i operativnog integriteta sistema plaćanja i kliringa.

5. U mjeri u kojoj je to moguće, svaka strana treba da omogući razuman vremenski period između objavljivanja propisa opšte primjene i datuma njihovog stupanja na snagu.

6. Svaka strana će obezbijediti da se pravila opšte primjene koja su usvojena ili se održavaju od strane samoregulatornih organizacija strane odmah objavljuju ili na drugi način učine dostupnim zainteresovanim licima.

7. Svaka strana će zadržati ili uspostaviti odgovarajuće mehanizme za odgovor na upite zainteresovanih lica vezano za mjere opšte primjene obuhvaćene ovim odjeljkom.

Član 48 **Samoregulatorne organizacije**

Kada strana zahtijeva članstvo ili učešće ili pristup bilo kojim samoregulatornim organizacijama, tržištu hartijama od vrijednosti ili berzi ili tržištu fjučersa, klirinškoj agenciji ili bilo kojoj drugoj organizaciji ili udruženju, kako bi pružaoci finansijske usluge druge strane mogli pružati finansijske usluge na ravnopravnoj osnovi sa pružaocem finansijskih usluga strane, ili kada strana pruža direktno ili indirektno takvim subjektima privilegije ili prednost u pružanju finansijskih usluga, strana će osigurati da takvi subjekti odobravaju nacionalni tretman i MFN tretman za pružaocem finansijskih usluga druge strane koji borave na teritoriji strane.

Član 49 **Sistemi plaćanja i kliringa**

U skladu sa rokovima i uslovima kojima se odobrava nacionalni tretman, svaka strana će pružiti pružaocima finansijskih usluga druge strane koja je osnovana na njoj teritoriji pristup sistemima plaćanja i kliringa kojima upravljaju javni subjekti i službenim sredstvima za finansiranje i refinansiranje dostupnih u normalnom toku poslovanja. Ovaj član ne omogućava pristup sredstvima finansijske pomoći zajmodavca u krajnjoj instanci.

Član 50 **Nova finansijska usluga**

1. Svaka strana će omogućiti pružaocu finansijske usluge druge strane koja je osnovana na njoj teritoriji da pruži bilo kakvu novu finansijsku uslugu koju bi strana dozvolila svom pružaocu finansijske usluge, u sličnim okolnostima, u skladu sa domaćim zakonodavstvom, pod uslovom da uvođenje nove finansijske usluge ne zahtijeva donošenje novog zakona ili izmjenu postojećeg zakona.

2. Strana može odrediti institucionalni i pravni oblik preko kojeg se usluga može pružiti i može zahtijevati odobrenje za pružanje usluge. Kada je takvo odobrenje potrebno, odluka se donosi u razumnom vremenskom roku i odobrenje se može odbiti samo iz prudencijalnih razloga.

Član 51 **Prenošenje i obrada informacija**

U skladu sa domaćim zakonodavstvom, strane neće preduzimati mjere koje bi spriječile prenos informacija u ili iz teritorije strane ili obradu finansijskih informacija, uključujući prenos podataka elektronskim putem, ili koje bi, kao predmet značajnih pravila koja su konzistentna sa međunarodnim sporazumima, spriječile prenos opreme, gdje je takav prenos informacija, obrada finansijskih informacija ili prenos opreme neophodan za obavljanje redovnog poslovanja pružaoca finansijskih usluga druge strane. Ništa iz ovog člana ne ograničava pravo strane da zaštiti lične podatke, ličnu privatnost i povjerljivost pojedinačnih evidencija i računa dokle god se takvo pravo ne koristi radi zaobilazanja odredbi ovog odjeljka.

Član 52 **Posebna izuzeća**

1. Ništa u ovom protokolu neće se tumačiti tako da spriječi stranu, uključujući i njene javne subjekte, da isključivo oni sprovede ili pružaju na svojoj teritoriji aktivnosti ili usluge koje predstavljaju dio javnog penzionog programa ili zakonski sistem socijalne zaštite, osim kada te aktivnosti mogu biti sprovedene, u skladu sa domaćim zakonodavstvom, i od strane pružalaca finansijskih usluga ili drugih institucija.

2. Ništa u ovom protokolu se ne primjenjuje na aktivnosti koje sprovodi centralna banka ili monetarna vlast ili bilo koji drugi javni subjekat u vezi sa monetarnom ili politikom deviznog kursa.

3. Ništa u ovom protokolu neće se tumačiti tako da spriječi stranu, uključujući i njene javne subjekte, da oni isključivo sprovede ili pružaju na svojoj teritoriji aktivnosti ili usluge za račun ili sa garancijom ili korišćenjem finansijskih sredstava strane, uključujući i njene javne subjekte, osim kada te aktivnosti mogu biti sprovedene, u skladu sa domaćim zakonodavstvom, i od strane pružalaca finansijskih usluga ili drugih institucija.

Član 53 **Rješavanje sporova**

Za svako arbitražno vijeće koje je osnovano za sporove o prudencijalnim pitanjima i drugim finansijskim pitanjima u skladu sa ovim Sporazumom, arbitri moraju imati neophodno stručno znanje u oblasti konkretne finansijske usluge koja je predmet spora.

ODJELJAK V **ELEKTRONSKA TRGOVINA**

Član 54 **Definicije**

Za potrebe ovog odjeljka:

„**Digitalni proizvod**“ su računarski programi, tekst, video zapisi, snimci zvuka i drugi proizvodi koji su digitalno kodirani i proizvedeni za komercijalnu prodaju ili distribuciju i koji se elektronski prenose. Radi veće sigurnosti, digitalni proizvodi ne uključuju digitalizovane reprezentе finansijskih instrumenata, uključujući novac;

„**Elektronska autentifikacija**“ je elektronski postupak koji omogućava potvrđivanje elektronske identifikacije fizičkog ili pravnog lica ili porijekla i integriteta podataka u elektronskoj formi;

„**Elektronski potpis**“ podrazumijeva podatke u elektronskom obliku koji su pridruženi ili su logički povezani sa elektronskim dokumentom i koji se mogu koristiti za identifikaciju potpisnika u vezi sa elektronskim dokumentom i ukazuju na saglasnost potpisnika sa informacijama sadržanim u elektronskom dokumentu;

„**Elektronske tehnologije**“ su kombinacija softvera i hardvera koja obezbeđuje interakciju između lica strana koristeći elektronski dokument;

„**Elektronski prenos ili preneseno elektronski**“ je prenos napravljen korišćenjem bilo kojeg elektromagnetnog sredstva, uključujući i fotonska sredstva;

„**Lični podaci**“; su sve informacije koje se odnose na fizičko lice čiji je identitet utvrđen ili se može utvrditi;

„**Dokumenti o trgovinskoj administraciji**“ su obrasci koje izdaje ili kontroliše strana i koje mora da popunjava lice koje je uvoznik ili izvoznik u vezi sa uvozom ili izvozom robe; i

„**Neželjena komercijalna elektronska poruka**“ je elektronska poruka koja se u komercijalne i marketinške svrhe šalje, korišćenjem elektronske pošte, bez saglasnosti primaoca ili protiv eksplicitnog odbijanja primaoca koristeći uslugu davaoca pristupa internetu ili, u mjeri koja je predviđena domaćim zakonima i propisima svake strane, drugu telekomunikacionu uslugu.

Član 55 Obuhvat

1. Ovaj odjeljak primjenjuje se na mjere koje usvaja ili primjenjuje strana, a koje utiču na trgovinu elektronskim putem.
2. Ništa u ovom odjeljku neće se tumačiti kao ograničenje prava strana na regulisanje ili uvođenje novih propisa radi ispunjavanja legitimnih ciljeva politike.

Član 56 Opšte odredbe

1. Strane prepoznaju ekonomski rast i mogućnosti koje pruža sve veća upotreba elektronske trgovine, naročito za preduzeća i potrošače, kao i značaj potrebe za stvaranjem ambijenta povjerenja u njenu upotrebu.
2. Strane prepoznaju da elektronska trgovina može povećati trgovinske mogućnosti i doprinijeti ekonomskom rastu i naglašavaju važnost promovisanja korišćenja elektronskih tehnologija u trgovini kako bi se smanjili troškovi i olakšala trgovina.

Član 57 Carinske stope

1. Nijedna strana ne može uvesti carinske stope na elektronske prenose, u skladu sa STO Ministarskom odlukom od 13. decembra 2017. godine u vezi sa Programom rada o elektronskoj trgovini.
2. Svaka strana zadržava pravo da uskladi svoju praksu iz stava 1 sa budućim STO ministarskim odlukama u vezi sa Programom rada o elektronskoj trgovini.
3. U svrhu sigurnosti, odredba stava 1 ne sprečava stranu da uvede unutrašnji porez ili drugu unutrašnju naknadu za isporuku koja se prenosi elektronskim putem, pod uslovom da se porez ili naknada nametnu na način koji je u skladu sa ovim Sporazumom o slobodnoj trgovini.

Član 58 Nediskriminatorski tretman digitalnih proizvoda

1. Nijedna strana ne može dodijeliti manje povoljan tretman digitalnim proizvodima koji su stvoreni, proizvedeni, objavljeni, ugovoreni, naručeni ili prvobitno dostupni pod komercijalnim uslovima na teritoriji druge strane, ili digitalnim proizvodima čiji je autor, izvođač, proizvođač, programer ili vlasnik lice druge strane nego što dodjeljuje drugim sličnim digitalnim proizvodima⁹.
2. Strane razumiju da se ovaj član ne odnosi na subvencije ili grantove koje pruža strana, uključujući od strane Vlade podržane zajmove, garancije i osiguranja.
3. Ovaj član se ne primjenjuje na bilo koju mjeru koja utiče na emitovanje.

⁹ U svrhu veće sigurnosti, u mjeri u kojoj je digitalni proizvod treće zemlje "sličan digitalni proizvod", biće kvalifikovan kao "drugi sličan digitalni proizvod" u smislu ovog stava

Član 59 Elektronske usluge autentifikacije i certifikacije

1. Osim u okolnostima koje su drukčije predviđene njenim zakonodavstvom, strana neće poricati pravnu validnost potpisa isključivo na osnovu toga što je potpis u elektronskoj formi.
2. Nijedna od strana neće usvajati ili neće primjenjivati mjere za elektronsku potvrdu identiteta kojim bi:
 - a) zabranila stranama u elektronskoj transakciji da međusobno odrede odgovarajuće metode elektronske autentifikacije za tu transakciju;
 - b) sprečavala strane da imaju mogućnost da ustanove pred sudskim ili upravnim organima da njihova elektronska transakcija ispunjava bilo kakve zakonske uslove u pogledu elektronske autentifikacije.
3. Bez obzira na stav 2, strana može zahtijevati da, za određenu kategoriju elektronskih transakcija ili elektronskih komunikacija koje imaju značajnu važnost za te transakcije, način autentifikacije ispunjava određene standarde ili se zasniva na određenom elektronskom certifikatu izdatom od davaoca usluga certifikovanja akreditovanih ili priznatih u skladu sa zakonima i propisima strane pod uslovom da taj zahtjev služi legitimnom cilju politike.
4. Svaka strana će, u skladu sa svojim zakonodavstvom o elektronskoj autentifikaciji i uslugama certifikovanja, nastojati da olakša postupak akreditacije ili priznavanja usluga certifikovanja, koji su već dobili akreditaciju ili priznavanje u skladu sa zakonodavstvom druge strane.

Član 60 Zaštita ličnih podataka

1. Strane priznaju ekonomske i društvene koristi od zaštite ličnih podataka korisnika elektronske trgovine koja doprinosi povećanju povjerenja potrošača u elektronsku trgovinu.
2. Svaka strana će, na način koji smatra odgovarajućim, zaštititi lične podatke korisnika elektronske trgovine. Lični podaci korisnika elektronske trgovine mogu se dijeliti sa drugom stranom samo uz saglasnost korisnika ili u skladu sa uslovima predviđenim odgovarajućim zakonodavstvom strane.
3. Svaka strana će:
 - (a) usvojiti ili primijeniti domaći pravni okvir kojim se predviđa zaštita ličnih podataka korisnika elektronske trgovine; i
 - (b) obezbijediti da pružaoci usluga i pružaoci posrednih usluga preduzmu sve neophodne tehničke i administrativne mjere za zaštitu ličnih podataka.
4. Svaka strana će objaviti informacije o zaštiti ličnih podataka koje pruža korisnicima elektronske trgovine, uključujući informacije kako da:
 - (a) pojedinci mogu preduzimati pravne lijekove;
 - (b) poslovanje bude usklađeno sa bilo kojim zakonskim obavezama.
5. Prepoznajući da strane mogu primjenjivati različite pravne pristupe u zaštiti ličnih podataka, svaka strana treba da podstakne razvoj mehanizama za promovisanje kompatibilnosti između ovih različitih režima. Ovi mehanizmi mogu uključivati priznavanje regulatornih rezultata, bez obzira da li se autonomno dodjeljuju ili uzajamnim aranžmanom, ili širim međunarodnim okvirima. U tom cilju, strane će nastojati razmijeniti informacije o svim takvim mehanizmima koji se primjenjuju u njihovim nadležnostima i istraživati načine za proširenje ovih ili drugih odgovarajućih aranžmana radi promovisanja kompatibilnosti između njih.

Član 61 Trgovina bez papira

Strane će nastojati da:

- (a) dokumenta o trgovinskoj administraciji budu dostupna javnosti u elektronskoj formi;
- (b) prihvate dokumente trgovinske administracije koji se podnose elektronskim putem kao pravni ekvivalent papirnoj verziji tih dokumenata, u skladu sa domaćim zakonima i propisima.

Član 62 Saradnja u elektronskoj trgovini

1. Prepoznajući globalnu i međusobno povezanu prirodu elektronske trgovine, strane će nastojati da:
 - (a) zajednički rade u cilju pomoći malim i srednjim preduzećima za prevazilaženje svih prepreka pri korišćenju elektronske trgovine;
 - (b) priznaju certifikate elektronske autentifikacije izdate javnosti i olakšaju prekogranične usluge certifikovanja, u skladu sa svojim domaćim zakonima i propisima;
 - (c) razmjenjuju informacije i iskustva o propisima, politikama, izvršenju i usklađenosti u vezi sa elektronskom trgovinom, uključujući:

- (i) заштиту ličnih podataka;
 - (ii) заштиту potrošača, pravo potrošača na povlačenje i unapređenje povjerenja potrošača u elektronsku trgovinu;
 - (iii) odgovornost posrednika u pružanju usluga u pogledu prenosa ili čuvanja informacija;
 - (iv) tretman neželjenih komercijalnih elektronskih poruka;
 - (v) carinski model i prakse u elektronskoj trgovini; i
 - (vi) bilo koja druga pitanja relevantna za razvoj elektronske trgovine.
- (d) ohrabruju saradnju u oblasti saobraćajnih i logističkih usluga za ekspresnu isporuku roba dobijenih elektronskom trgovinom, uključujući i kroz;
- (i) promovisanje i olakšavanje partnerstva između prodavaca e-trgovine i logistike;
 - (ii) razmjenu informacija, gdje je to moguće, i praktično uključujući tarife, o uslugama ekspresne isporuke koji se pružaju na njenoj i sa njene teritorije.

Član 63 **Online zaštita potrošača**

1. Strane prepoznaju važnost usvajanja i primjene transparentnih i efikasnih mjera za zaštitu potrošača od lažnih i varljivih komercijalnih praksi, kao i mjere koje se sprovode za razvoj povjerenja potrošača kada se bave elektronskom trgovinom.
2. U tom cilju, svaka strana će usvojiti ili primijeniti odredbe u vezi sa zaštitom potrošača u domaćem zakonodavstvu kako bi zabranile lažne i varljive poslovne prakse koje štete potrošačima koji se bave elektronskom trgovinom.
3. Strane će obezbijediti da potrošači dobiju informacije o svojim pravima iz zakonodavstva o zaštiti potrošača, uključujući informacije o pravilima privatnosti i alternativnim mehanizmima za rešavanje sporova.
4. Strane će nastojati da promovišu saradnju između svojih nacionalnih tijela za zaštitu potrošača ili drugih relevantnih tijela o aktivnostima vezanim za prekograničnu elektronsku trgovinu, kako bi se poboljšala dobrobit i povjerenje potrošača.
5. Nacionalni organi za zaštitu potrošača svake strane će nastojati da saraduju sa onim organima druge strane, u odgovarajućim slučajevima uzajamne zabrinutosti, prilikom primjene svog zakonodavstva koje se odnosi na zaštitu potrošača kako bi se spriječile ili zabranile lažne i varljive poslovne prakse u elektronskoj trgovini.

Član 64 **Neželjene komercijalne elektronske poruke**

1. Svaka strana će usvajati ili primjenjivati mjere u vezi sa neželjenim komercijalnim elektronskim porukama:
 - (a) zahtijevajući od pružaoca neželjenih komercijalnih elektronskih poruka da olakša mogućnost primaoca da zaustavi takve poruke;
 - (b) zahtijevajući saglasnost, kako je navedeno u zakonima i propisima svake strane, primaoca da primaju komercijalne elektronske poruke; ili
 - (c) na drugi način obezbijedi minimiziranje neželjenih komercijalnih elektronskih poruka.
2. Svaka strana će obezbijediti naknadu od strane pružaoca neželjenih komercijalnih elektronskih poruka koji ne ispunjava obaveze u skladu sa mjerama iz stava 1 ovog člana.

Član 65 **Elektronsko pružanje usluga**

Strane potvrđuju da mjere koje utiču na isporuku ili izvršenje usluge u elektronskom obliku podliježu obavezama sadržanim u relevantnim odredbama Protokola III (Trgovina uslugama) koje podliježu izuzecima ili ograničenjima i ograničenjima koja su navedena u Aneksu I (Liste specifičnih obaveza) koje se primjenjuju na takve obaveze.

ODJELJAK VI **KOPRODUKCIJA NA FILMU ILI TV SERIJSKIM PROGRAMIMA**

Član 66 **Cilj**

Potvrđujući da koprodukcija može služiti razvoju produkcije filma ili TV serijskih programa i podstaći dalji razvoj kulturnih i tehnoloških veza između strana, ovaj odjeljak ima za cilj olakšavanje koprodukcije na filmu ili TV serijskim programima između stranaka utvrđivanjem pravila.

Član 67 **Obim i definicije**

1. Ovaj odjeljak se odnosi na mjere strana koje utiču na koprodukcije filmova ili TV serijskih programa.
2. U svrhu ovog odjeljka:

„**nadležni organi**“ označavaju i nadležne organe odgovorne za sprovođenje ovog odjeljka ili na bilo koji nadležni organ iz države strane, u zavisnosti od slučaja. Nadležni organi su:

Za Crnu Goru: Filmski centar Crne Gore,

Za Tursku: Ministarstvo kulture i turizma, Generalni direktorat za kinematografiju, ili njihovi nasljednici,

„**koproducent**“ označava fizičko ili pravno lice sa sjedištem na teritoriji strana koji stvaraju uslove i neophodni su za izradu i finansiranje kinematografskog djela i obezbjeđuju druge uslove, i koji su vezani ugovorom o koprodukciji;

„**koprodukcija**“ podrazumijeva kinematografsko djelo, sa ili bez pratećih zvukova bez obzira na dužinu ili žanr, uključujući igrane, animirane i dokumentarne filmove, koji će se prvo prikazati u bioskopima ili na televizijskim kanalima.

Član 68 **Odobrenje i procedure**

1. Koprodukciju filmova ili TV serijskih programa shodno ovom članu odobravaju nadležni organi u skladu sa nacionalnim zakonodavstvom strana u oblasti kinematografije.

2. Zahtjev za odobrenje koprodukcije prema ovom odjeljku mora da bude u skladu sa procedurama navedenim u Dodatku koji predstavlja sastavni dio ovog odjeljka. Međutim, nadležni organi mogu u datom slučaju zajednički dati ovlašćenje koproducentima da postupaju u skladu sa ad-hoc pravilima, koja zajednički odobre.

3. Odobrenje se ne daje za projekat u kojem su koproducenti povezani zajedničkim upravljanjem ili kontrolom, osim u onoj mjeri u kojoj je takvo udruženje osnovano posebno za svrhu samog koprodukcijanskog projekta.

4. Odobrenje predloga za koprodukciju filma ili TV serijskog programa od strane nadležnih organa ne podrazumijeva nikakvu dozvolu niti ovlašćenje za prikazivanje ili distribuciju proizvedenog filma ili TV serijskog programa.

5. Koprodukcija filmova ili TV serijskih programa mora biti pripremljena, obrađena, presnimljena ili titlovana, do prve objave prikazivanja u zemljama koproducenta koji učestvuju. Međutim, ako scenario ili predmet filma ili TV serijskih programa to zahtijevaju, za prikazivanje na lokaciji, vanjsko ili u zatvorenom, u zemlji koja ne učestvuje u koprodukciji može biti dato ovlašćenje od strane nadležnih organa. Slično tome, ukoliko u zemlji koja učestvuje u koprodukciji nijesu na raspolaganju usluge obrade, presnimavanja ili titlovanja zadovoljavajućeg kvaliteta, nadležni organi mogu dati ovlašćenje za nabavku takvih usluga od dobavljača iz treće zemlje.

Član 69 **Zahtjevi za koproducente**

1. Propust koproducenta jedne strane da ispuni uslove prema kojima je ta strana odobrila koprodukciju, ili materijalno kršenje Odjeljka koji se odnosi na koprodukciju od strane koproducenta jedne strane, mogu dovesti do slučaja da druga strana ukine koprodukcijanski status za produkciju i prateća prava i beneficije.

2. Da bi se kvalifikovali za beneficije koprodukcije, koproducenti će svojim odgovarajućim nadležnim organima dostaviti dokaze o posjedovanju odgovarajuće tehničke organizacije, adekvatne finansijske podrške i potrebne, priznate profesionalne sposobnosti za uspješno obavljanje produkcije.

3. Da bi ostvarili pravo na beneficije iz ovog odjeljka, koproducenti će postupati u skladu sa zakonima i propisima svake od uključenih strana.

Član 70 **Zahtjevi za fizička lica**

1. Producenti, koproducenti, autori, scenaristi, izvođači, režiseri, stručno osoblje i tehničari koji učestvuju u koprodukcijama moraju biti državljani strana u skladu sa primjenljivim nacionalnim zakonodavstvom tih strana.

2. Producenti, koproducenti, autori, scenaristi, glumci, režiseri, stručno osoblje i tehničari koji učestvuju u koprodukcijama mogu živjeti u trećim zemljama.

3. Ukoliko koprodukcija tako zahtijeva, učešće stručnog osoblja koje ne ispunjava uslove iz stava 1 može se dozvoliti samo u izuzetnim okolnostima i uz saglasnost nadležnih organa.

4. Svaka strana mora ispuniti obaveze koje se odnose na obaveze plaćanja socijalnog osiguranja članova tima na produkciji koji su državljani strana u skladu sa svojim zakonodavstvom koje uređuje socijalno osiguranje.

5. Korišćenje bilo kojih drugih jezika u koprodukciji, osim jezika dozvoljenih u skladu sa nacionalnim zakonodavstvom strana, može se dodati koprodukciji ukoliko to zahtijeva scenario.

Član 71 Nacionalni tretman

1. Svaku koprodukciju proizvedenu u skladu sa ovim odjeljkom nadležni organi smatraju nacionalnim filmskim ili nacionalnim TV serijskim programom, u skladu sa primjenljivim nacionalnim zakonodavstvom strana. Takve koprodukcije imaju pravo na beneficije na osnovu nacionalnog zakonodavstva svake strane ili onog koje može odrediti bilo koja od strana. Takve beneficije pripadaju isključivo koproducentu strane koja ih odobrava.

2. U svim pitanjima u vezi sa marketingom ili izvozom koprodukcijskog filma ili TV serijskog programa, svaka strana će koprodukcijskim filmskim ili TV serijskim programima dati isti status i tretman koji se daju domaćoj produkciji, u skladu sa primjenljivim nacionalnim zakonodavstvom te strane.

Član 72 Plasiranje u treće zemlje sa kvotom

1. Ako se koprodukcijski filmski ili TV serijski program plasira u zemlju koja ima regulativu koja uređuje kvote u odnosu na obje strane, isti se uključuje u kvotu zemlje koja je većinski koproducent. U slučaju da je učešće koproducenta jednako, koprodukcija će biti uključena u kvotu strane čiji je državljanin režiser koprodukcije.

2. Ako se koprodukcijski filmski ili TV serijski program plasira na tržište u zemlji koja ima regulativu koja uređuje kvote u odnosu na jednu od strana, koprodukcijski filmski ili TV serijski program će plasirati strana koja nije predmet kvote.

Član 73 Kredit i festivali koprodukcije

1. Svi koprodukcijski filmski ili TV serijski programi biće identifikovani kao „Crnogorsko-turska koprodukcija“ ili „Tursko-crnogorska Koprodukcija“.

2. Takva identifikacija će se pojavljivati u zasebnom kreditnom naslovu, u svim komercijalnim reklamnim i promotivnim materijalima, prilikom bilo kakvog javnog prikazivanja koprodukcijskih filmova ili TV serijskih programa.

3. Osim ako se nadležni organi drukčije ne dogovore, koproducentske filmove ili TV serijske programe na međunarodne festivale uvodi strana većinskog koproducenta.

4. Koproducentske filmove ili TV serijske programe proizvedene na osnovu jednakog učešća na međunarodne festivale uvodi strana čiji je državljanin režiser.

Član 74 Učešće u koprodukciji

1. Relevantno finansijsko učešće producenata strana može varirati od deset (10) do devedeset (90) procenata za svaku koprodukciju filma ili TV serijskog programa¹⁰. Pored toga, od koproducenta će se tražiti efikasno tehničko i kreativno učešće, proporcionalno njihovom finansijskom ulaganju u koprodukciju filma ili TV serijskog programa. Tehničko i kreativno učešće treba da obuhvata učešće autora, izvođača, tehničko-produkcijskog osoblja, laboratorija i objekata.

2. U slučaju da je crnogorski koproducent ili turski koproducent sastavljen od nekoliko produkcijskih kuća, finansijsko učešće svake od tih kuća ne smije biti manje od pet (5) procenata ukupnog budžeta za koprodukciju filma ili TV serijskog programa.

3. U slučaju da je producent iz treće države ovlašćen da učestvuje u koprodukciji, njegovo finansijsko učešće ne smije biti manje od deset (10) procenata. U slučaju da je koproducent iz treće države sastavljen od nekoliko produkcijskih kuća, finansijsko učešće svake od tih kuća ne smije biti manje od pet (5) procenata ukupnog budžeta za koprodukciju filma ili TV serijski program.

Član 75 Pojavljivanje i privremeni boravak fizičkih lica i opreme za filmske ili TV serijske programe

1. U zavisnosti od njihovog zakonodavstva, svaka strana će omogućiti pojavljivanje i privremeni boravak umjetničkog i tehničkog osoblja i izvođača koji su angažovani od strane koproducenta strana uključenih u svrhu koprodukcije.

2. Strane će olakšati ulazak i ponovni izvoz bilo koje opreme za filmski ili TV serijski program neophodne za produkciju koprodukcijskih filmova ili TV serijskih programa u skladu sa ovim odjeljkom, prema njihovom zakonodavstvu.

Član 76 Raspodjela dobiti

Raspodjela dobiti između koproducenta treba da bude srazmjerna učešću svakog koproducenta.

Član 77 Prava intelektualne svojine

1. Za svrhe ovog odjeljka i odredbi navedenih u stavu 3(a) Dodatka ovom odjeljku, koproducenti će obezbijediti da, u mjeri u kojoj se sva prava intelektualne svojine uključuju u bilo koji element kinematografskog rada, takva prava budu u okviru autorstva i/ili vlasništva prava u skladu sa državnim zakonima strana čija su lica učestvovala u stvaranju takvog rada.

2. Dodjeljivanje prava intelektualne svojine u koprodukcijskom filmu ili TV serijskom programu, uključujući autorstvo/vlasništvo prava i licenciranje istih vrši se ugovorom o koprodukciji.

¹⁰ Za Tursku, ako je minimalno finansijsko učešće manje od dvadeset (20) procenata, status koprodukcije može biti predmet ovlašćenja nadležnog organa Turske.

3. Svaki koproducent mora imati slobodan pristup svim izvornim koprodukcijskim materijalima i pravo na umnožavanje ili štampanje istih, ali ne i pravo na bilo kakvu upotrebu ili dodjeljivanje prava intelektualne svojine u odnosu na navedene materijale, osim ako to nije utvrđeno od strane koproducenta u ugovoru o koprodukciji.

4. Svaki koproducent će biti vlasnik zajedničke osnove fizičke kopije originalnog negativa ili drugog medija za snimanje na kojem je postavljena originalna koprodukcija, ne uključujući bilo koje pravo intelektualne svojine koje može biti uvršteno u pomenutu fizičku kopiju, izuzimajući odredbe koje su koproducenti usaglasili u ugovoru o koprodukciji.

5. Kada se koprodukcija izradi na filmskom negativu, negativ će se razviti u laboratoriji koju koproducenti zajednički odaberu, a biće u njoj deponovana, pod dogovorenim imenom.

6. Svaki koproducent ima pravo da zadrži kopiju originalnog prvog zapisa kinematografskog djela, pod uslovom da se u pogledu prava u njegovom stvaranju i upotrebi primjenjuju stavovi 1 i 2 ovog člana.

7. Ugovor o koprodukciji mora garantovati svakom koproducentu zajedničko vlasništvo nad originalnim negativom slike i zvuka. Ugovor će sadržati odredbu koja uređuje da se navedeni negativ čuva na lokaciji koju su međusobno dogovorili koproducenti i garantuje slobodan pristup istom.

8. Koproducenti moraju dostaviti titlovanu kopiju filma ili TV serijskog programa svakoj od strana nakon produkcije filma ili TV serijskog programa.

Član 78

Pododbor za koprodukciju filmskih ili TV serijskih programa

1. U cilju efikasne primjene i sprovođenja ovog odjeljka, Pododbor za koprodukciju filmskih ili TV serijskih programa sastavljen od predstavnika nadležnih organa svake strane kojim zajednički predsjedavaju svaka od strana (u daljem tekstu ovog Člana „Pododbor“). Funkcija Pododbora je sljedeća:

- (a) pregled i praćenje primjene i sprovođenja ovog odjeljka u vezi sa koprodukcijom filmskih ili TV serijskih programa;
- (b) razmatranje pitanja vezanih za koprodukciju filmskih ili TV serijskih programa u cilju unapređenja trgovinskih odnosa između strana i promovisanja efikasnog i transparentnog upravljanja njihovim procedurama za podnošenje prijave za koprodukciju iz ovog odjeljka i odobrenje iste;
- (c) predlaganje inicijativa za dalje promovisanje saradnje u oblasti produkcije filmskih ili TV serijskih programa;
- (d) izvještavanje o svojim nalazima i ishodu svojih razgovora Mješovitoj komisiji; i
- (e) izvršavanje drugih zadataka koje može odrediti Mješovita komisija.

2. Aktivnosti Pododbora ne dovode u pitanje postojeće ili buduće odnose između nadležnih organa strana u okviru njihove nadležnosti.

Dodatak Odjeljku za koprodukciju filmova ili TV serijskih programa

Naveden u Članu 68.2

Poslovnik o radu

1. Prijave za kvalifikaciju filma ili TV serijskog programa za koprodukcijske beneficije moraju se predati nadležnim organima najmanje šezdeset (60) dana prije početka snimanja ili ključne animacije filma ili TV serijskog programa. Prijave će pregledati nadležni organ u roku od trideset (30) dana nakon što strana sa najvećim udjelom finansijskog učešća iznese svoje mišljenje. Odluka će biti iskomunicirana podnosiocima prijava u roku od deset (10) dana. Ako strana sa najvećim udjelom finansijskog učešća, kao i nadležni organi, izraze pozitivno mišljenje, koprodukcija se smatra odobrenom.

2. Nadležni organi obavještavaju jedni druge o svojoj odluci o bilo kojoj takvoj prijavi za koprodukciju u roku od trideset (30) dana od dana podnošenja kompletne dokumentacije navedene u ovom Dodatku.

3. Uz prijave se mora priložiti sljedeća dokumentacija na engleskom jeziku:

- (a) Dokaz o licencnim aranžmanima u pogledu prava intelektualne svojine, bilo koje vrste, uključujući naročito autorsko i srodna prava („srodna prava“ podrazumijevaju, između ostalog, prava producenata filmskog ili TV serijskog programa, prava izvođača, prava producenata fonograma i prava emitera, komunikaciju sa javnim pravima), koja su sadržana ili proizašla iz koprodukcije, u mjeri koja je dovoljna da bi se ispunili ciljevi ugovora o koprodukciji, uključujući aktivnosti za odobrenje za javno izvođenje, distribuciju, emitovanje, stavljanje na raspolaganje putem interneta ili na drugi način, i prodaju ili iznajmljivanje fizičkih ili elektronskih kopija koprodukcije na teritoriji izvornih zemalja strana, kao i na teritoriji trećih zemalja, a uključujući i autorsko pravo i srodna prava u odnosu na bilo koji književni, dramski, muzički ili umjetnički rad koji je podnosilac zahtjeva prilagodio u svrhu koprodukcije;
- (b) Potpisani ugovor o koprodukciji, koji podliježe odobrenju nadležnih organa.

4. Ugovor o koprodukciji mora predviđeti sljedeća pitanja:

- (a) naslov koprodukcijskog filma ili TV serijskog programa, čak i ako je privremeni;
- (b) ime pisca ili lica odgovornog za adaptaciju sadržaja ako je isti preuzet iz književnog izvora;

- (c) ime režisera (ako je potrebno, dozvoljena je sigurnosna klauzula za njegovu/njenu zamjenu);
- (d) budžet za koprodukcijski film ili TV serijski program;
- (e) iznos finansijskog učešća koproducenta;
- (f) finansijski ulog svakog producenta u pogledu procentualne raspodjele troškova u vezi sa troškovima razvoja, elaboriranja, produkcije i post-produkcije do dobijanja kopije za prikazivanje;
- (g) raspodjela prihoda i dobiti, uključujući podjelu i okupljanje tržišta;
- (h) odgovarajuće učešće koproducenta u bilo kakvim troškovima koji premašuju budžet ili u beneficijama iz bilo kog ušteđenog iznosa u odnosu na troškove produkcije;
- (i) Dodjela prava intelektualne svojine u koprodukcijskom filmu ili TV serijskom programu, uključujući autorstvo ili vlasništvo prava i licenciranje;
- (j) Klauzula u ugovoru mora potvrditi da odobrenje za filmski ili TV serijski program, koje mu daje pravo na beneficije po osnovu ugovora, ne obavezuje nadležne organe bilo koje od strana da dozvole javno prikazivanje filmskog ili TV serijskog programa. Takođe, u ugovoru se moraju navesti uslovi finansijskog poravnjanja između koproducenta u slučaju da nadležni organi bilo koje od strana odbiju izdavanje dozvole za javno prikazivanje filmskog ili TV serijskog programa na teritoriji države te strane ili trećih zemalja;
- (k) Kršenje ugovora o koprodukciji;
- (l) Odredba koja od glavnog koproducenta zahtijeva podnošenje polise osiguranja koja pokriva sve rizike produkcije;
- (m) Približni datum početka snimanja;
- (n) Spisak potrebne opreme (tehničke, umjetničke ili druge) i osoblja, uključujući državljanstvo osoblja i uloge koje će glumci tumačiti;
- (o) Plan snimanja;
- (p) Sporazum o distribuciji, ako je zaključen;
- (q) Način na koji će se koprodukcija prijaviti na međunarodne festivale;
- (r) Druge odredbe koje zahtijevaju nadležni organi.

Pored sporazuma, nadležnom organu se moraju predati dokumenti u nastavku:

- (a) Sinopsis koprodukcijskog filma ili TV serijskog programa;
- (b) Tritment;
- (c) Kompletan tekst scenarija;
- (d) Spisak tehničkog i umjetničkog osoblja koji rade na proizvodnji koprodukcije;
- (e) Biografiju režisera;
- (f) Detaljan budžet i plan finansiranja;
- (g) Dokument o prenosu intelektualne svojine za komercijalnu upotrebu produkcije;
- (h) Plan snimanja za koprodukcijski film ili TV serijski program;
- (i) Državljanstvo osoblja i uloge koje će tumačiti glumci.

5. Koproducenti će obezbijediti svaku dodatnu dokumentaciju i informacije koje nadležni organi smatraju potrebnim za obradu prijave za koprodukciju ili za svrhu praćenja koprodukcije ili sprovođenje sporazuma o koprodukciji.

6. Svaka materijalna odredba u originalnom ugovoru o koprodukciji može se izmijeniti uz prethodno odobrenje nadležnih organa.

7. Zamjena koproducenta podleže prethodnoj saglasnosti nadležnih organa.

8. Nadležni organi moraju biti informisani o učešću producenata iz treće zemlje u koprodukciji.

**ODJELJAK VII
ZAVRŠNE ODREDBE****Član 79**

Stupanje na snagu

Ovaj protokol stupa na snagu prvog dana drugog mjeseca nakon prijema posljednjeg pisanog obavještenja, diplomatskim putem, kojim strane obavještavaju jedna drugu da su ispunjeni svi neophodni uslovi predviđeni njihovim nacionalnim zakonskim propisima za stupanje na snagu ovog protokola.

KAO POTVRDU TOGA, dolje potpisani, propisno ovlašćeni punomoćnici, potpisali su ovaj protokol.

Sačinjeno u Ankari, dana 17. jula 2019. godine, u dva originalna primjerka na crnogorskom, turskom i engleskom jeziku, pri čemu su svi tekstovi jednako vjerodostojni. U slučaju razlika u tumačenju ovog protokola, mjerodavan je tekst na engleskom jeziku.

Za Crnu Goru**Za Republiku Tursku**

Dragica SEKULIĆ, s.r.
Ministarka ekonomije

Ruhsar PEKCAN, s.r.
Ministarka trgovine

**ANEKS 1
LISTA SPECIFIČNIH OBAVEZA****NAPOMENE S OBJAŠNENJEM**

1. U niže navedenoj listi obaveza (u daljem tekstu „ova Lista“) naznačeni su uslužni sektori koji su liberalizovani u skladu sa članom 16 (Lista specifičnih obaveza) Protokola III (Trgovina uslugama), i, putem ograničenja koja se odnose na pristup tržištu i nacionalnom tretmanu koja se primjenjuju na usluge i pružaoce usluga iz Crne Gore u ovim sektorima. Ova Lista se sastoji od sljedećih elemenata:

- (a) u prvoj koloni naznačen je sektor ili podsektor u kojem Turska preuzima obavezu, kao i obim liberalizacije na koju se ograničenja primjenjuju;
- (b) u drugoj koloni opisana su ograničenja koje se primjenjuju u odnosu na član 5 (Pristup tržištu) Protokola III (Trgovina uslugama) u sektoru ili podsektoru naznačenom u prvoj koloni;
- (c) u trećoj koloni opisana su ograničenja koje se primjenjuju u odnosu na član 6 (Nacionalni tretman) Protokola III (Trgovina uslugama) u sektoru ili podsektoru naznačenom u prvoj koloni; i
- (d) u četvrtoj koloni opisane su dodatne obaveze u pogledu mjera koje utiču na pružanje usluga koje nisu predmet Liste u skladu sa članom 5 (Pristup tržištu) i 6 (Nacionalni tretman) Protokola III (Trgovina uslugama).

Ne preuzimaju se obaveze u pogledu pružanja usluga u sektorima i podsektorima koje su obuhvaćene ovim Sporazumom i koje nisu sastavni dio Liste.

2. U ovoj Listi naznačena su četiri načina pružanja usluga. Oni se tumače na sljedeći način:

- (a) Način pružanja u vidu „1) prekograničnog pružanja usluga“ se tumači kao pružanje usluge sa teritorije Crne Gore na teritoriju Turske, u skladu sa članom 3.(a).(i) (Definicije) Protokola III (Trgovina uslugama).
- (b) Način pružanja u vidu „2) korišćenja usluga u inostranstvu“ se tumači kao pružanje usluge na teritoriji Crne Gore korisniku usluge iz Turske, u skladu sa članom 3.(a).(i) (Definicije) Protokola III (Trgovina uslugama).
- (c) Način pružanja u vidu „3) komercijalnog prisustva“ se tumači kao pružanje usluge putem poslovnog nastana, u skladu sa članom 3.(a).(i) (Definicije) Protokola III (Trgovina uslugama).
- (d) Način pružanja u vidu „4) prisustva fizičkih osoba“ se tumači kao pružanje usluge kroz privremeno prisustvo fizičkih osoba u svrhu poslovanja, u skladu sa članom 3.(a).(i) (Definicije) Protokola III (Trgovina uslugama).

3. Bez obzira na član 5 (Pristup tržištu) Protokola III (Trgovina uslugama), nediskriminatorni zahtjevi u pogledu pravnog oblika privrednog društva ne moraju biti definisani u ovoj Listi kako bi ih primjenjivala ili usvojila Turska.

4. Turska ne preuzima nikakvu obavezu u pogledu ulaska i privremenog boravka kategorija fizičkih lica koja nisu navedena u ovoj Listi, kao i kod transfera između korporacija, pripravnika, poslovnih posjetioca i prodavaca usluga u privrednim djelatnostima koje nisu liberalizovane u skladu sa članom 16 (Lista specifičnih obaveza).

Obaveze Turske u pogledu Privremenog kretanja fizičkih lica sa ciljem pružanja usluga ne primjenjuju se u slučajevima kada je svrha ili posljedica njihovog privremenog prisustva intervenisanje ili na drugi način uticanje na ishod bilo kojeg radnog spora, spora u vezi s upravljanjem ili pregovora.

Transferi između korporacija, pripravnici, poslovni posjetioci i prodavci usluga kojima je odobren ulazak i privremeni boravak dužni su poštovati zakone o imigraciji i radu Turske.

Turska može preduzeti bilo koje mjere koje utiču na fizička lica koje traže pristup tržištu rada Turske i mjere u pogledu državljanstva, prebivališta ili zapošljavanja na stalnoj osnovi.

5. U označavanju pojedinih sektora i podsektora, CPC označava Centralnu klasifikaciju proizvoda koju je objavila Statistička kancelarija Ujedinjenih nacija, *Statistical Papers, Series M, No. 77, CPC Prov, 1991*. Poštanske/kurirske usluge su definisane u koloni odgovarajućeg sektora ili podsektora. Finansijske usluge su definisane u skladu s Dijelom o Finansijskim uslugama. CPC šifra uz koju je naznačena dvostruka zvjezdica „**“ označava da je obuhvaćen „dio sektora“. „Bez obaveze“ označava „tehničku neizvodljivost“.

Redosljed uslužnih sektora, podsektora i aktivnosti u ovoj Listi odražava Listu sektorske klasifikacije usluga iz dokumenta WTO-a MTN.GNS/W/120, od 10. jula 1991. godine.

6. Ova Lista ne obuhvata mjere koje se odnose na zahtjeve u pogledu kvalifikacija i procedure, tehničke standarde i zahtjeve u pogledu izdavanja dozvola ako one ne predstavljaju ograničenje u pristupu tržištu ili nacionalnom tretmanu u smislu člana 5 (Pristup tržištu) i člana 6 (Nacionalni tretman) Protokola III (Trgovina uslugama). Te mjere (npr. potreba za pribavljanjem dozvole, obaveze u pogledu univerzalne usluge, potreba za priznavanjem kvalifikacija za regulisane profesije i potreba polaganja posebnih ispita, uključujući ispit iz poznavanja jezika te potreba za zakonitim prebivalištem na teritoriji na kojoj se obavlja privredna djelatnost), čak i ako nisu navedene u listi, primjenjuju se u svakom slučaju na usluge i pružaoce usluga iz Crne Gore.

Uslovi i kriterijumi koji se zahtijevaju za dobijanje svih dozvola i ovlaštenja, a koji su navedeni u ovoj Listi, te oni koji se primjenjuju za članstvo u svim odgovarajućim komorama, ne ograničavaju pristup tržištu niti ograničavaju nacionalni tretman u smislu člana 5 (Pristup tržištu) i člana 6 (Nacionalni tretman) Protokola III (Trgovina uslugama).

7. Ništa u ovoj Listi neće se tumačiti na način da dovodi u pitanje sprovođenje bilo koje mjere u okviru spoljnotrgovinskog režima i odgovarajućih carinskih postupaka Turske koje se odnose na robe, u skladu sa međunarodnim sporazumima čija je potpisnica Turska. U tom smislu, kada se radi o uslužnim sektorima, podsektorima ili djelatnostima u kojima uvoz i/ili izvoz robe može predstavljati sastavni dio pružanja usluga, kao što su usluge distribucije, usluge održavanja i popravka i usluge tehničkog ispitivanja i analize, sve relevantne spoljnotrgovinske i/ili carinske mjere će se i dalje primjenjivati, čak i kad nisu navedene u listi, na usluge i pružaoce usluga iz Crne Gore.

8. U skladu sa članom 1 (Područje primjene) Protokola III (Trgovina uslugama), ova Lista ne obuhvata mjere koje se tiču subvencija ili grantova koje daje Turska, uključujući i zajmove, garancije i osiguranje uz podršku vlade niti na bilo koji uslov postavljen u pogledu primanja takvih subvencija ili grantova, bez obzira na to da li se subvencije ili grantovi nude isključivo za domaće usluge, domaće potrošače ili pružaoce usluga.

9. Prava i obaveze na osnovu ove Liste neće imati automatski efekat, te stoga fizičkim ili pravnim licima direktno ne dodjeljuju nikakva prava.

LISTA SPECIFIČNIH OBAVEZA REPUBLIKA TURSKA

Načini pružanja: 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
I. HORIZONTALNE OBAVEZE KOJE SE ODNOSI NA SVE SEKTORE NAVEDENE U DIJELU OBAVEZA PO POJEDINAČNIM SEKTORIMA			
SVI SEKTORI OBUHVAĆENI LISTOM	<p>3) „Nema ograničenja za akcionarska društva, društva s ograničenom odgovornošću, komanditna društva, „kolektivna društva“ kako su definisana u turskom Komercijalnom kodeksu i Zakonu o direktnim stranim ulaganjima.“ Ne obavezuje se za osnivanje ili kupovinu bilo koje druge vrste pravnog lica.</p> <p>Otvaranje predstavništva od strane društva osnovanog prema zakonima neke strane vlade podliježe odobrenju Ministarstva ekonomije, pod uslovom da ne obavljaju komercijalnu djelatnost u Turskoj.</p> <p><u>Kupovina nekretnina:</u></p> <p>3) Prema Zakonu o zemljišnim knjigama, društvima sa stranim kapitalom dozvoljena je kupovina nekretnina u Turskoj za obavljanje poslovnih djelatnosti navedenih u Statutu njihovog preduzeća. Međutim, za kupovinu u vojnim zonama (zabranjenim vojnim zonama, vojnim sigurnosnim</p>	<p>3) <u>Podružnice:</u></p> <p>Uspostavljanje podružnice društva od strane društva osnovanog prema zakonima neke strane vlade podliježe obavezni imenovanja fizičkog lica kao predstavnika sa prebivalištem u Turskoj, koju društvo propisno ovlasti da ga u potpunosti zastupa.</p>	

Načini pružanja: 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
	<p>zonama i strateškim zonama) i posebnim sigurnosnim zonama neophodno je odobrenje turskih vojnih vlasti, odnosno pokrajinskih vlasti.</p> <p>1,3,4) Ne obavezujemo se za kupovinu nekretnina od strane stranog fizičkog ili pravnog lica organizovanog u skladu sa zakonom o stranoj vladi.</p>		
	<p><u>Komunalne djelatnosti</u> Privredne djelatnosti koje se smatraju komunalnim djelatnostima na nacionalnom ili lokalnom nivou mogu biti predmet javnih monopola ili ekskluzivnih prava koja se dodjeljuju privatnom operateru.</p>		
	<p>4) Ne obavezujemo se osim za mjere koje se odnose na ulazak i privremeni boravak sljedećih kategorija fizičkih lica:</p> <p>I. <u>Transferi između korporacija</u> su fizička lica koja su zaposlena od strane pravnog lica iz Crne Gore najmanje jednu godinu i koja su privremeno premještena u jednoj od njenih supsidijarnih društava, povezanih društava ili podružnica na teritoriji Turske. Takva fizička lica pripadaju jednoj od sljedećih kategorija.</p> <p>Menadžeri-Direktori: Lica koje rade na visokim pozicijama zaposlena od strane pravnog lica, koja prvenstveno upravljaju društvom, koja su pod opštim nadzorom ili se usmjeravaju od strane upravnog odbora ili akcionara društva ili njima odgovarajućih lica, uključujući:</p> <p>(A) upravljanje društvom, dijelom društva ili odsjekom društva; (B) nadgledanje i nadzor nad radom ostalih nadzornih, stručnih i rukovodećih zaposlenih; i (C) imaju ovlašćenje da zapošljavaju i otpuštaju zaposlene ili predlažu zapošljavanje, otpuštanje zaposlenih ili obavljaju ostale kadrovske aktivnosti.</p> <p>Specijalisti: Fizička lica koje su zaposlena od strane pravnog lica i koje posjeduju neka neuobičajena znanja od značaja za pružanje usluga kompanije, istraživačku opremu, tehnike rada ili upravljanje. U procjeni takvog znanja, u obzir će se uzeti ne samo posebno znanje od značaja za kompaniju, već i to da li lice posjeduje visok nivo stručnosti za vrstu posla ili trgovine koja zahtijeva posebno stručno znanje, uključujući i članstvo u akreditovanim udruženjima te struke.</p>		
	<p>II. <u>Pripravnici:</u> označavaju fizička lica koje su zaposlena od strane pravnog lica iz Crne Gore najmanje jednu godinu, koja posjeduju univerzitetsku diplomu i koja su privremeno premještena</p>		

Načini pružanja: 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
	u jedno od njenih supsidijarnih društava, povezanih društava ili podružnica na teritoriji Turske u svrhu razvoja karijere ili radi usavršavanja tehnika ili metoda poslovanja. ¹¹		
	III. Poslovni posjetioci su fizička lica koje rade na nekoj višoj poziciji zaposleni od strane pravnog lica u Crnoj Gori i koji su zadužene za uspostavljanje supsidijarnog društva, povezanog društva ili podružnice na teritoriji Turske. Oni nisu uključeni u direktnu prodaju ili pružanje usluga; kada pružalac usluga nije komercijalno prisutan u Turskoj.		
	IV. Prodavci usluga: označavaju fizička lica koje su predstavnici pružaoca usluga iz Crne Gore i traže privremeni ulazak na teritoriju Turske s ciljem da pregovaraju i zaključe ugovor o prodaji usluga. Nisu uključena u direktnu prodaju korisnicima ili pružanje samih usluga, niti primaju naknadu od izvora koji se nalazi u Turskoj.		
	Transferi između korporacija i pripravnici trebaju pribaviti radnu dozvolu od Ministarstva porodice, rada i socijalnih usluga. Radne dozvole se, u skladu s odgovarajućim zakonima, propisima i zahtjevima Turske, mogu izdavati na period do jedne godine. Turska može odobriti produženje odobrenog perioda u skladu sa zakonima i propisima koji su na snazi na njenoj teritoriji. Poslovni posjetioci i prodavci usluga nisu obavezni pribaviti radnu dozvolu. Ulazak i privremeni boravak može biti odobren, u skladu s odgovarajućim zakonima, propisima i zahtjevima Turske, na period do 90 dana u okviru 180 dana. 3,4) Strani inženjeri i arhitekate se mogu baviti pružanjem inženjerskih i arhitektonskih usluga u Turskoj tek nakon što postanu privremeni članovi odgovarajuće strukovne komore u okviru Unije komora turskih inženjera i arhitekata.		

¹¹ Od kompanije koja ih prima može se zahtijevati da prethodno dostavi na odobrenje program obuke koji pokriva cijelo vrijeme trajanja boravka, koji pokazuje da je svrha boravka usavršavanje koje odgovara nivou univerzitetske diplome.

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
II. OBAVEZE PO POJEDINAČNIM SEKTORIMA			
1. POSLOVNE USLUGE			
A. Profesionalne usluge			
(a) Pravne usluge (samo usluge savjetovanja o stranom i međunarodnom pravu) (CPC 861**)	1) Nema ograničenja. 2) Nema ograničenja. 3) Obavezan je oblik „stranog partnerskog advokatskog društva (<i>yabancı avukatlık ortaklığı</i>)”. 4) Ne obavezuje se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Nema ograničenja. 2) Nema ograničenja. 3, 4) Zastupanjem fizičkih ili pravnih lica pred turskim sudovima, arbitrima, medijatorima ili drugim organima, kao i pripremom bilo kog relevantnog pravnog dokumenta, mogu se baviti samo turski advokati. Pravni stručnjaci angažovani od stranih advokatskih partnera, čak i ako su državljani Turske, ne mogu pružati pomenute pravne usluge. Korišćenje profesionalnog naziva "avukat (advokat)" rezervisano je za turske državljane upisane u Advokatske komore Turske.	
(b) Računovodstvene, revizorske i knjigovodstvene usluge (CPC 862)	1) Ne obavezuje se. 2) Nema ograničenja. 3) Ovlašćeni finansijski savjetnici ¹² mogu svoj rad udruživati u obliku „partnerskog društva (<i>adi ortaklık</i>)” ili „društvo kapitala” ¹³ (<i>sermaye şirketi</i>)” u skladu s turskim Komercijalnim kodeksom, nakon što postanu članom odgovarajuće komore. Strane revizorske kuće mogu obavljati nezavisne revizije u Turskoj pod uslovom da su za to ovlašćene od strane Uprave za javni nadzor, revizijske i računovodstvene standarde, u skladu s principom reciprociteta. Za revizorske kuće obavezan je oblik „društva kapitala” u skladu s turskim Komercijalnim kodeksom. Za revizorske kuće koje će obavljati reviziju institucija tržišta kapitala obavezan je oblik „akcionarskog društva”. Kako bi neka revizorska kuća bila ovlašćena: Revizori moraju biti vlasnici većinskog kapitala i glasačkih prava, a svi partneri firme će biti pripadnici profesije. ¹⁴	1) Ne obavezuje se. 2) Nema ograničenja. 3) Strani nazivi i imena se ne mogu koristiti u nazivima partnerstava ili društava među turskim i stranim finansijskim savjetnicima.	

¹² Izraz „finansijski savjetnik” korišćen u ovoj stavki odnosi se na „ovlašćenog javnog računovođu” (*Serbest Muhasebeci Mali Müşavir*)” prema „Zakonu br. 3568 o ovlašćenim javnim računovođama i javnim računovođama pod zakletvom”. Strani finansijski savjetnici mogu biti ovlašćeni, pod uslovom reciprociteta, odobrenjem Predsjednika.

¹³ Vrste društava kapitala su „akcionarsko društvo (*anonim şirket*)”, „društvo s ograničenom odgovornošću (*limited şirket*)” i „ograničeno partnerstvo (*sermayesi paylara bölünmüş komandit şirket*)”.

¹⁴ „Pripadnici profesije” su „ovlašćene javne računovođe (*serbest muhasebeci mali müşavir*)” ili „javne računovođe pod zakletvom (*yeminli mali müşavir*)” prema Zakonu br. 3568; i za njih postoji obaveza posjedovanja turskog državljanstva.

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
	Svi članovi njenog upravljačkog tijela moraju biti pripadnici profesije, s tim da većina njih moraju biti revizori koji su u njoj stalno zaposleni, pod uslovom da taj omjer ne prelazi sedamdeset pet posto. 4) Ne obavezujemo se.	4) Tursko državljanstvo je obavezno za računovođe i ovlašćene javne računovođe.	
(c) Usluge oporezivanja Poslovne usluge poreskog planiranja i savjetovanja (CPC 86301)	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(d) Arhitektonske usluge (CPC 8671)	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(e) Inženjerske usluge (CPC 8672)	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(f) Integrisane inženjering usluge (CPC 8673)	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(g) Urbanističko planiranje i usluge uređenja prostora (dio CPC 8674)	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(h) Veterinarske usluge (CPC 932) - samo za bolnice i laboratorije za životinje	1) Nema ograničenja. 2) Nema ograničenja. 3) Bolnice i laboratorije za životinje u potpunom stranom vlasništvu mogu se osnivati u Turskoj pod uslovom da su im svi zaposleni veterinari turski državljani. Odgovorni direktor bolnice ili laboratorije za životinje mora biti veterinar. Za veterinare postoji uslov državljanstva. Obavezna je dozvola za rad koju izdaje Ministarstvo poljoprivrede i šumarstva. 4) Ne obavezujemo se.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se.	
B. Kompjuterske i srodne usluge			
(a) Konsultantske usluge vezane za instaliranje kompjuterskog hardvera (CPC 841)	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(b) Usluge implementacije softvera (CPC 842)	1) Nema ograničenja. 2) Nema ograničenja.	1) Nema ograničenja. 2) Nema ograničenja.	

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
	3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(c) Usluge obrade podataka (CPC 843)	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(d) Usluge baza podataka uključujući skladištenje podataka, <i>data hosting i web hosting</i> usluge (CPC 844)	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(e) Ostale kompjuterske i srodne usluge - Usluge održavanja i popravka kancelarijskih aparata i opreme, uključujući kompjutere (CPC 845) - Usluge obuke osoblja klijenata (CPC 84990**)	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
C. Usluge istraživanja i razvoja (isključujući istraživanja i razvoj koji se u potpunosti ili djelimično finansiraju iz javnih sredstava)			
(a) Usluge istraživanja i razvoja u prirodnim naukama (CPC 851 osim dijela CPC 85102 ¹⁵) (b) Usluge istraživanja i razvoja u društvenim i humanističkim naukama (CPC 852) (c) Interdisciplinarne usluge istraživanja i razvoja (CPC 853)	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja, osim za pravna lica koje su propisno osnovana u Turskoj, ali koja nastupaju u ime stranih fizičkih ili pravnih lica koja nemaju komercijalno prisustvo u Turskoj, i obavezna su prethodno pribaviti dozvolu za sprovođenje naučnoistraživačkih aktivnosti na teritoriji Turske. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu. Pored toga, strana fizička lica su obavezna prethodno pribaviti dozvolu za sprovođenje naučnoistraživačkih aktivnosti na teritoriji Turske.	
D. Usluge iznajmljivanja/lizinga bez operatera			
(a) Koje se odnose na brodove ¹⁶ (CPC 83103) (b) Koje se odnose na avione ⁶ (CPC 83104)	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja, osim što Turska može primijeniti test	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja.	

¹⁵ Samo su usluge istraživanja i razvoja u području hemije obuhvaćena u okviru CPC 85102.

¹⁶ Ova obaveza ne obuhvata niti daje bilo kakvo pravo u pogledu isticanja turske zastave.

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
(c) Koje se odnose na transportnu opremu (CPC 83101+ 83105) 83105 (d) Koje se odnose na mašine i opremu (CPC 83106-83109) - Uključujući iznajmljivanje i davanje u zakup opreme za snimanje u studiju (dio CPC 83109) (e) Usluge davanja u zakup ili iznajmljivanja proizvoda za ličnu upotrebu i domaćinstvo (CPC 832)	ekonomskih potreba u pogledu usluga iznajmljivanja i davanja u zakup (bez operatera) vezanih za ostalu transportnu opremu. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
E. Ostale poslovne usluge			
(a) Usluge reklamiranja (CPC 871)	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(b) Usluge istraživanja tržišta i ispitivanja javnog mnjenja (CPC 864)	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(c) Usluge menadžment konsaltinga (CPC 865)	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(d) Usluge tehničkog ispitivanja i analize, isključujući usluge tehničkog ispitivanja, analiza i kontrole (inspekcije) vezane za izgradnju i građevinske materijale ¹⁷ , plovila i avione i aktivnosti istraživanja mora. - Usluge ispitivanja i analize sastava i čistoće (CPC 86761**) ¹⁸	1) Ne obavezujemo se. 2) Ne obavezujemo se. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Ne obavezujemo se. 2) Ne obavezujemo se. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
- Usluge ispitivanja i analize fizičkih svojstava (CPC 86762)	1) Ne obavezujemo se. 2) Ne obavezujemo se. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Ne obavezujemo se. 2) Ne obavezujemo se. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
- Usluge ispitivanja i analize ugrađenih mašinskih i električnih komponenti (CPC 86763)	1) Ne obavezujemo se. 2) Ne obavezujemo se. 3) Nema ograničenja, osim što uspostava komercijalnog prisustva za usluge ispitivanja i analize vezano za automobile i ostala motorna vozila podliježe testu ekonomskih potreba. Osnovni kriterijumi: broj i uticaj na domaće dobavljače, zaštita	1) Ne obavezujemo se. 2) Ne obavezujemo se. 3) Nema ograničenja.	

¹⁷ Turska ne preuzima nikakve obaveze u pogledu usluga tehničkog ispitivanja i analize vezane za sektor građevinarstva, uključujući aktivnosti na kontroli izgradnje i građevina koje se obavljaju kako bi se osiguralo da cjelokupan proces izgradnje, kao i građevinski materijali koji se koriste pri izgradnji budu u skladu s tehničkim specifikacijama i standardima utvrđenim odgovarajućim zakonima i propisima.

¹⁸ Samo usluge kontrole, ispitivanja i analize zraka, vode, nivoa buke i nivoa vibracija prema CPC 86761.

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
	<p>javnog zdravlja, sigurnosti i životne sredine.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
- Usluge tehničke kontrole (inspekcije) (CPC 86764)	<p>1) Ne obavezujemo se.</p> <p>2) Ne obavezujemo se.</p> <p>3) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>1) Ne obavezujemo se.</p> <p>2) Ne obavezujemo se.</p> <p>3) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
(e) Usluge koje se odnose na lov (CPC 881)	<p>1) Obavezno komercijalno prisustvo.</p> <p>2) Nema ograničenja.</p> <p>3) Samo putničke agencije s dozvolom Tipa A mogu posloovati u ovom području uz uslov pribavljanja dozvole za lov.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>1) Obavezno komercijalno prisustvo.</p> <p>2) Nema ograničenja.</p> <p>3) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
(f) Usluge koje se odnose na rudarstvo (CPC 883+5115)	<p>1) Obavezno komercijalno prisustvo.</p> <p>2) Nema ograničenja.</p> <p>3)¹⁹ Nema ograničenja.</p> <p>4) „Stalni nadzornici (<i>daimi nezaretçi</i>)” na rudarskim lokacijama moraju biti turski državljani. U pogledu ostalog: Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>1) Obavezno komercijalno prisustvo.</p> <p>2) Nema ograničenja.</p> <p>3) Nema ograničenja.</p> <p>4) „Tehnički nadzornici (<i>teknik nezaretçi</i>)” i „stalni nadzornici (<i>daimi nezaretçi</i>)” na rudarskim lokacijama moraju biti turski državljani.</p>	
(g) Održavanje i popravka opreme (isključujući morská plovila, avione i drugu transportnu opremu) (CPC 633+ 8861-8866)	<p>1) Nema ograničenja.</p> <p>2) Nema ograničenja.</p> <p>3) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>1) Nema ograničenja.</p> <p>2) Nema ograničenja.</p> <p>3) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
(h) Usluge čišćenja zgrada (CPC 874)	<p>1) Ne obavezujemo se*.</p> <p>2) Nema ograničenja.</p> <p>3) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>1) Ne obavezujemo se.</p> <p>2) Nema ograničenja.</p> <p>3) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
(i) Fotografске usluge (CPC 875) osim specijalističkih fotografskih usluga (CPC 87504)	<p>1) Nema ograničenja.</p> <p>2) Nema ograničenja.</p> <p>3) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>1) Nema ograničenja.</p> <p>2) Nema ograničenja.</p> <p>3) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
(j) Usluge pakovanja (CPC 876)	<p>1) Nema ograničenja.</p> <p>2) Nema ograničenja.</p> <p>3) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>1) Nema ograničenja.</p> <p>2) Nema ograničenja.</p> <p>3) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
(k) - Štampanje (CPC 88442**)	<p>1) Nema ograničenja.</p> <p>2) Nema ograničenja.</p>	<p>1) Nema ograničenja.</p> <p>2) Nema ograničenja.</p>	

¹⁹ Zakonima o nafti i rudarstvu predviđeno je da je za pružanje usluga vezanih za rudarstvo obavezno posjedovanje dozvole za rad.

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
	3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
- Izdavaštvo (CPC 88442**) [isključujući usluge izdavanja novina, časopisa i publikacija novinskih agencija]	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Nema ograničenja. 2) Nema ograničenja. 3) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(l) Kongresne usluge (CPC 87909**)	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(m) Ostalo - Usluge prevođenja i tumačenja (CPC 87905)	1,3) Nema ograničenja, osim usluga prevođenja i tumačenja koje pružaju tumači pod zakletvom/ovlašćeni tumači u vezi sa notarskim uslugama. - Usluge prevoda pod zakletvom/ovlašćenih prevodioca: Ne obavezujemo se. 2) Nema ograničenja. 4) Ne obavezujemo se za usluge prevoda pod zakletvom/ovlašćenih prevodioca. Inače, ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja, osim kao što je navedeno u koloni o pristupu tržištu. 4) Ne obavezujemo se za usluge prevoda pod zakletvom/ovlašćenih prevodioca. Inače, ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
2. KOMUNIKACIONE USLUGE			
A./B. Poštanske usluge (Poštanske usluge i kurirske usluge)			
Poštanske usluge obuhvataju prijem, prikupljanje, obradu, otpremu, distribuciju i isporuku „poštanskih pošiljki“, kako su definisane u Zakonu o poštanskim uslugama br. 6475 ²⁰	1,3) Obavezan je oblik „društva s vlastitim kapitalom (<i>sermaye şirketleri</i>)“ ²¹ . “ <i>Posta ve Telgraf Teşkilatı Anonim Şirketi (PTT A.Ş.)</i> “, preduzeće koje je u potpunosti u državnom vlasništvu, ovlašćeno je na osnovu Zakona o poštanskim uslugama za pružanje poštanskih usluga u skladu s obavezom pružanja univerzalne usluge i ima pravo na monopol u pružanju	1,3) Nema ograničenja.	

²⁰ U skladu sa Zakonom o poštanskim uslugama br. 6475, "poštanska pošiljka" označava pošiljku koju je pošiljalac poslao sam ili sa njegovim nalogom, prema vrsti pošiljke i specijalnoj službi, mjestu i adresi naznačenom u njemu; i knjige, katalogi, novine i časopisi, vizuelno oštećeni predmeti; poštanski materijal koji sadrži robu sa ili bez komercijalne vrijednosti i ima do pet kilograma težine ili pedeset decimetara zapremine i poštanski paketi ili teret. U skladu sa zakonom, "predmet korespondencije" podrazumijeva sve vrste pošiljki, uključujući telegraf, isključujući knjige, kataloge, novine i periodične publikacije, u pismenoj formi na bilo kojem fizičkom mediju ili pripremljene u obliku elektronske poruke, koje se moraju prenijeti i dostaviti na adresu koju je pošiljalac naznačio. U skladu sa zakonom, "poštanska parcela ili teret" označava sve vrste supstanci koje se šalju preko pružaoca usluge bez sadržaja komunikacije i do trideset kilograma težine ili trista decimetara zapremine.

²¹ U skladu sa članom 124 turskog Komercijalnog kodeksa (Zakon br. 6102), sljedeća društva se smatraju društvima s vlastitim kapitalom: „akcionarsko društvo (*anonim şirket*)“; „društvo s ograničenom odgovornošću (*limited şirket*)“; „ograničeno partnerstvo u kojem je kapital podijeljen na akcije (*sermayesi paylara bölünmüş komandit şirket*)“.

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
	<p>sljedećih usluga:</p> <ul style="list-style-type: none"> - prijem, prikupljanje, sortiranje, transport, distribuciju i isporuku domaćih i međunarodnih pismonosnih pošiljki čiju težinu ili ograničenje u pogledu naknade utvrđuje Predsjednik²²; - Ne dovodeći u pitanje odredbe o elektronskom obavještanju iz Zakona o postupku oporezivanja br. 213 od 4/1/1961. godine, prijem, prikupljanje, sortiranje, transport, distribuciju i isporuku bilo koje vrste službenih obavještenja, uključujući i ona putem elektronskih medija, u okviru Zakona br. 7201 i drugih zakona; - Poštanske usluge Oružanih snaga Turske u mirnodopskim uvjetima; - Štampanja i prodaje poštanskih markica na kojima je naznačena naknada koja se plaća za poštanske usluge, personalizovanih maraka, komemorativnih maraka, razglednica i FCD (koverte koje pošte izdaju na dan izdavanja poštanske marke. <p>2) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>2) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
C. Telekomunikacione (elektronske komunikacije) usluge²³			
<p>(a) Telefonske govorne usluge (b) Usluge prijenosa podataka komutacijom paketa (c) Usluge prijenosa podataka komutacijom linija (d) Usluge teleksa (e) Usluge telefaksa (f) Usluge privatnih zakupljenih linija (g) Elektronska pošta (h) Govorna pošta (i) Ponovno preuzimanje informacija s interneta i iz baza podataka (j) Elektronska razmjena podataka (k) Proširene telefaks usluge s dodatnom vrijednošću, uključujući pohranjivanje i prosjeđivanje, pohranjivanje i preuzimanje (l) Kod i protokol (m) On-line obrada informacija i/ili podataka (n) Ostale</p>	<p>1,3) Osim državnih javnih organizacija i preduzeća u državnom vlasništvu predviđenih zakonom, kako bi bilo ovlašćeno, obavezan je oblik akcionarskog društva ili društva s ograničenom odgovornošću koje se nalazi u Turskoj. Usluge elektronskih komunikacija (telekomunikacija) i infrastrukture za koje je potrebno ovlašćenje u vidu ograničenog broja prava korišćenja mogu pružati samo akcionarska društva.</p> <p>2) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>1) Nema ograničenja.</p> <p>2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	

²² Sve dok težinu i/ili ograničenje u pogledu prava monopola utvrđuje Predsjednik, PTT A.Ş. će i dalje imati pravo monopola na sva otvorena i zatvorena pisma i razglednice koje predstavljaju bilo kakvu vrstu korespondencije bez ikakvog ograničenja u pogledu težine.

²³ Obim osnovnih telekomunikacija u ovoj Listi ne obuhvata nijednu vrstu usluga (analognog/digitalnog) emitovanja radijskog i TV programa i medijskih usluga na zahtjev javnosti.

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
<ul style="list-style-type: none"> - Analogne/digitalne usluge mobilne telefonije - Usluge pejdžinga - Usluge kablovskog emitovanja²⁴ - Usluge satelitske komunikacije (VSAT, SCPC VSAT) - Usluge satelitske platforme - GMPCS usluge - Usluge infrastrukture - Mobilne radio usluge s privatnim/javnim pristupom - Usluge davanja informacija iz imenika 			
(e) Telegrafске usluge	<ol style="list-style-type: none"> 1) PTT A.Š., preduzeće koje je u potpunosti u državnom vlasništvu, je isključivi pružalac ovih usluga. 2) Nema ograničenja. 3) PTT A.Š., preduzeće koje je u potpunosti u državnom vlasništvu, je isključivi pružalac ovih usluga. 4) Ne obavezujemo se 	<ol style="list-style-type: none"> 1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se 	
D. Audiovizuelne usluge (isključujući emitovanje²⁵)			
(a) Usluge produkcije i distribucije kinematografskih djela i video zapisa (CPC 9611)	<ol style="list-style-type: none"> 1) Nema ograničenja., osim obaveze uspostavljanja komercijalnog prisustva za distribuciju kinematografskih djela putem fizičkih medija (CD, videotrake, itd.). 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu. 	<ol style="list-style-type: none"> 1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu. 	
(b) Usluge prikazivanja kinematografskih djela (CPC 9612) (samo od strane vlasnika bioskopa)	<ol style="list-style-type: none"> 1) Ne obavezujemo se* 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu. 	<ol style="list-style-type: none"> 1) Ne obavezujemo se 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu. 	
(c) Radio i televizijske usluge (CPC 96131, 96132)	<ol style="list-style-type: none"> 1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu. 	<ol style="list-style-type: none"> 1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu. 	

²⁴ Usluge kablovskog emitovanja obuhvataju samo prenos TV signala, ali ne obuhvataju uređivačke aktivnosti vezane za sadržaj..

²⁵ Emitovanje obuhvata prenos znakova ili signala putem bilo koje tehnologije za prijem i/ili prikazivanje signala audio i/ili vizuelnog programa od strane dijela ili cjelokupne javnosti.

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
(d) Usluge distribucije radio i televizijskog programa ²⁶ , isključujući prijenos	1) Nema ograničenja, osim što je obavezno uspostavljanje komercijalnog prisustva za distribuciju radio i TV programa putem fizičkih medija (CD, videotrake, itd.). 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(e) Usluge snimanja zvučnih zapisa (Za potrebe ove Liste, djelatnost usluga snimanja zvučnih zapisa se definiše kao snimanje niza muzičkih, govornih ili drugih zvukova u studiju, ali ne uključujući zvukove koji prate kinematografsko djelo, radio ili televizijski program ili drugo audiovizuelno djelo.)	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
3. GRAĐEVINSKE I SRODNE INŽENJERSKE USLUGE (CPC 51)			
Sve usluge koje potpadaju pod CPC 51	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
4. USLUGE DISTRIBUCIJE (Usluge distribucije ne obuhvataju usluge vezane za robu koja podliježe ograničenjima ili zabrani uvoza i izvoza; alkohol, duvan, elektronske cigarete i druge proizvode koji izazivaju zavisnost; farmaceutske proizvode; optičke proizvode; sjemena; đubriva i druge poboljšivače tla, pesticide i preparate one vrste koja se koristi u ishrani životinja; drvo i ugalj; instrumente i aparate za mjerenje električne energije, plina i tečnosti; taksimetre; vatreno oružje i vojnu opremu; plemenite metale; otpad i ostatke i materijale za recikliranje; toksične supstance; nuklearnu energiju i vodu.)			
A. Usluge agenata u posredovanju CPC 621	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja., osim što	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja.	
B. Usluge trgovine na veliko CPC 622, CPC 61111	Turska može na komercijalno prisustvo primijeniti test ekonomskih potreba.		
C. Usluge trgovine na malo	Za distribuciju energetskih		

²⁶ Radi veće sigurnosti, usluge distribucije u ovom kontekstu mogu uključivati dozvole radio i televizijskih programa izdate drugim pružaocima usluga za izlaganje, emitovanje ili prenošenje, iznajmljivanje, prodaju ili korišćenje. Usluge prenosa radio i televizijskog programa, uključujući i usluge na zahtjev, nisu obuhvaćene ovim Listom.

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
<p>CPC 631, CPC 632, CPC 61112, CPC 6113, CPC 6121</p> <p>D. Franšizing²⁷ Franšizing vezano za nefinansijsku nematerijalnu imovinu (CPC 8929*)</p> <p>E. Ostalo Usluge trgovine na malo motornim gorivom (CPC 613)</p>	<p>4) proizvođa, primjenjuje se i ograničenje na ukupnu vrijednost prometa usluga putem gornje granice udjela na tržištu.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu..</p>	<p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu..</p>	
5. USLUGE OBRAZOVANJA **28			
A,B,E. Usluge osnovnog i srednjoškolskog obrazovanja i ostale obrazovne usluge (CPC 921, 922, 929)	<p>1,3) Strana fizička i pravna lica, direktno ili uspostavljanje partnerstva sa turskim državljanima, mogu samo osnivati međunarodne obrazovne ustanove (uključujući strukovne i tehničke škole) i to samo za strane učenike.</p> <p>2) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.. Pored toga, strani nastavnici i stručnjaci mogu raditi u osnovnoškolskim i srednjoškolskim obrazovnim ustanovama, te u neformalnim obrazovnim ustanovama (tj. u centrima za učenje stranih jezika i centrima za strukovno osposobljavanje) nakon što od Ministarstva nacionalnog obrazovanja dobiju odobrenje za dobijanje radne dozvole koju izdaje Ministarstvo porodice, rada i socijalnih usluga. U međunarodnim obrazovnim ustanovama (uključujući i strukovne i tehničke škole) mora se postaviti nastavnik, turski državljanin, za pomoćnika direktora škole „Viši zamjenik direktora“ .</p>	<p>1,3) Nema ograničenja.</p> <p>2) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
C. Usluge visokog obrazovanja (CPC 923)	<p>1) Nema ograničenja.</p> <p>2) Nema ograničenja.</p> <p>3) Privatne univerzitete [„neprofitne fondacije ustanove visokog obrazovanja (<i>vakıf yükseköğretim kurumları</i>)“] mogu osnivati samo fondacije osnovane u skladu s turskim Građanskim zakonikom i to donošenjem posebnog zakona. Svi članovi upravnog odbora ustanove visokog obrazovanja [tj. Upravni odbor (<i>Mütevelli Heyeti</i>)], kao i predsjednik (rektor) moraju biti turski državljani.</p> <p>4) Svi članovi upravnog odbora ustanove visokog obrazovanja</p>	<p>1) Nema ograničenja.</p> <p>2) Nema ograničenja.</p> <p>3) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	

²⁷ Pod uslugama franšizinga u okviru usluga distribucije podrazumijeva se distribucija robe preko franšiza.

²⁸ Ova obaveza obuhvata samo privatne usluge obrazovanja.

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
	[tj. Upravni odbor (<i>Mütevelli Heyeti</i>)], kao i predsjednik (rektor) moraju biti turski državljani. Inače, Ne obavezuje se, izuzev onoga što je navedeno u horizontalnom dijelu.		
D. Obrazovanje odraslih (CPC 924)	1) Ne obavezuje se. 2) Nema ograničenja. 3) Strane lica, direktno ili uspostavljanjem partnerstva sa turskim državljanima, mogu samo osnivati međunarodne obrazovne ustanove i to samo za strane učenike. 4) Ne obavezuje se, izuzev onoga što je navedeno u horizontalnom dijelu. Pored toga, strani nastavnici i stručnjaci mogu raditi u obrazovnim ustanovama nakon što od Ministarstva nacionalnog obrazovanja dobiju prethodno odobrenje za sticanje radne dozvole koju izdaje Ministarstvo porodice, rada i socijalnih usluga.	1) Ne obavezuje se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezuje se, izuzev onoga što je navedeno u horizontalnom dijelu.	
6. USLUGE ZAŠTITE ŽIVOTNE SREDINE*²⁹			
A. Usluge kanalizacije (CPC 9401)	1) Ne obavezuje se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezuje se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Ne obavezuje se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezuje se, izuzev onoga što je navedeno u horizontalnom dijelu.	
B. Usluge odlaganja otpada (CPC 9402)	1) Ne obavezuje se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezuje se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Ne obavezuje se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezuje se, izuzev onoga što je navedeno u horizontalnom dijelu.	
C. Sanitarne i slične usluge (CPC 9403)	1) Ne obavezuje se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezuje se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Ne obavezuje se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezuje se izuzev onoga što je navedeno u horizontalnom dijelu.	
D. Ostale: - Usluge pročišćavanja ispusnih plinova (CPC 9404)	1) Ne obavezuje se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezuje se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Ne obavezuje se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezuje se, izuzev onoga što je navedeno u horizontalnom dijelu.	
- Usluge smanjenja buke (CPC 9405)	1) Ne obavezuje se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezuje se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Ne obavezuje se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezuje se, izuzev onoga što je navedeno u horizontalnom dijelu.	
7. FINANSIJSKE USLUGE HORIZONTALNE OBAVEZE			
Mjere koje se primjenjuju na pružanje usluga putem komercijalnog prisustva za sve sektore finansijskih usluga:			
Bankarske usluge	3) Dozvola za osnivanje banke,	3) Nema ograničenja.	

²⁹ Ponuda Turske u pogledu usluga zaštite okoliša isključuje pružanje usluga vode za ljudsku upotrebu, uključujući skupljanje, prečišćavanje i distribuciju vode kroz mrežu.

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
	koja mora biti osnovana u obliku akcionarskog društva, ili za otvaranje prve podružnice ili predstavništva strane banke u Turskoj izdaje se odlukom Odbora za regulisanje rada i nadzor banaka. Dozvola se takođe mora dobiti nakon okončanja postupka osnivanja ili otvaranja podružnice kako bi se moglo početi sa primanjem depozita i/ili obavljati bankarske transakcije. Ograničenja u kreditiranju za podružnice stranih banaka zasnovana su na kapitalu podružnice, a ne na globalnom kapitalu.		
Osiguranje	3) Osiguravajuća i reosiguravajuća društva moraju biti osnovana u obliku akcionarskog društva ili društva za uzajamno osiguranje. Kako bi mogle početi sa radom, osiguravajuća i reosiguravajuća društva moraju pribaviti dozvolu od Ministarstva za trezor i finansije za svaku vrstu osiguranja sa kojom žele raditi.	3) Nema ograničenja.	
Tržište hartija od vrijednosti	3) Za uspostavljanje i rad institucija tržišta kapitala ³⁰ obavezno je pribaviti dozvolu Odbora za tržište kapitala. Takođe, banke koje se bave aktivnostima tržišta kapitala (investicione usluge) obavezne su od Odbora za tržište kapitala pribaviti odgovarajuće certifikate o ovlašćenju za ove aktivnosti. Za osnivanje podružnica i agencija od strane institucija za posredovanje u trgovini hartijama od vrijednosti osnovanih u Turskoj takođe je obavezno pribaviti dozvolu Odbora za tržište kapitala. Institucije za posredovanje u trgovini hartijama od vrijednosti, investicijska društva i druge institucije tržišta kapitala, izuzimajući investicione fondove ³¹ mogu se osnivati jedino u obliku	3) Nema ograničenja.	

³⁰ Prema Zakonu o tržištu kapitala, utvrđene su sljedeće institucije tržišta kapitala:

- (a) Investiciona društva,
- (b) Šeme zajedničkog ulaganja,
- (c) Nezavisni revizori, društva za procjenu i agencije za rangiranje koje obavljaju aktivnosti na tržištu kapitala,
- (d) Društva za upravljanje portfoliom,
- (e) Društva za hipotekarno finansiranje,
- (f) Fondovi za stambeno finansiranje i finansiranje imovine,
- (g) Društva za zakup imovine,
- (h) Centralne klirinške institucije,
- (i) Centralne institucije za poravnanje,
- (j) Trgovinski repozitoriji,
- (k) Ostale institucije tržišta kapitala, čije osnivanje i rad reguliše Odbor za tržište kapitala.

³¹ Prema Zakonu o tržištu kapitala, mogu se osnivati investicioni fondovi ugovornog tipa u okviru pravila fonda i u skladu s principima fiducijarnog vlasništva.

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
	akcionarskog društva. Osnivanje podružnica i predstavništava stranih institucija za posredovanje u trgovini hartijama od vrijednosti nije dozvoljeno. Odbor za tržište kapitala može preduzeti bilo koju mjeru kako bi osigurao da osnivanje institucija tržišta kapitala ili njihovih podružnica bude korisno za ekonomski razvoj Turske, kao i za stabilnost, pouzdanost i razvoj tržišta kapitala.		
OSTALE FINANSIJSKE USLUGE			
A. Usluge finansijskog lizinga	3) Društva za finansijski lizing (davaoci lizinga) se mogu osnivati jedino u obliku akcionarskog društva. Za osnivanje društva za finansijski lizing potrebno je odobrenje Odbora za regulisanje rada i nadzor banaka. Takođe, potrebno je pribaviti dozvolu za rad nakon okončanja postupka osnivanja.	3) Nema ograničenja.	
B. Usluge faktoringa i potrošačkog finansiranja	3) Društva za faktoring i društva za finansiranje moraju biti osnovana u obliku akcionarskog društva. Za osnivanje društva za faktoring i društva za finansiranje potrebno je odobrenje Odbora za regulisanje rada i nadzor banaka. Takođe, potrebno je pribaviti dozvolu za rad nakon okončanja postupka osnivanja.	3) Nema ograničenja.	
C. Ovlašćene institucije (za trgovinu devizama)	3) Za obavljanje aktivnosti ovlašćene institucije obavezno je pribaviti dozvolu od Ministarstva za trezor i finansije. Ministarstvo može preduzeti bilo koju mjeru kako bi osigurao da osnivanje ovlašćenih institucija ili njihovih kasnijih podružnica i agencija bude korisno za ekonomski razvoj Turske, kao i za stabilnost, pouzdanost i razvoj finansijskih tržišta. Ovlašćene institucije moraju biti osnovane u obliku akcionarskog društva.	3) Nema ograničenja.	
D. Berza plemenitih metala	3) Za rad institucija za posredovanje u trgovini plemenitim metalima potrebno je pribaviti dozvolu od Ministarstva za trezor i finansije. Banke, ovlašćene institucije, akcionarska društva koja se bave trgovinom i proizvodnjom plemenitih metala, podružnice, koje se nalaze u Turskoj, društava s nastanom u inostranstvu koje se bave trgovinom i proizvodnjom plemenitih metala mogu se sa zahtjevom za rad obratiti Ministarstvu	3) Nema ograničenja.	

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Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
	trezora. Pored toga, Ministarstvu trezora se može obratiti i sa zahtjevom za odobrenje za rad isključivo kao institucije za posredovanje u trgovini plemenitim metalima za čiji rad je potreban oblik akcionarskog društva.		
FINANSIJSKE USLUGE (SPECIFIČNE OBAVEZE PO SEKTORIMA)			
Usluge osiguranja i usluge povezane s osiguranjem (i) Direktno osiguranje (A) Životno	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1,2) Od bruto dohotka se odbija određeni procenat premija osiguranja, koje poreski obveznik na dohodak i dobit kao poslodavac i/ili kao zaposleni za sebe plaća, radi utvrđivanja realnog oporezivog prihoda. Kako bi se ostvarila korist od ove pogodnosti, polise životnog osiguranja moraju biti zaključene sa osiguravajućim društvima ili podružnicama stranih osiguravajućih društava, osnovanih u Turskoj. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(B) Neživotno	1,2) Ne obavezujemo se, osim: (a) Kasko osiguranje aviona, helikoptera i brodova koji su kupljeni pomoću stranog zajma ili uzeti u zakup putem ugovora o finansijskom lizingu iz inostranstva, pod uslovom da je trajanje osiguranja ograničeno na period zajma ili ugovora o lizingu; (b) osiguranje od odgovornosti u pomorskom saobraćaju; (c) osiguranje transporta uvezene i izvezene robe; (d) osiguranje od povreda, bolesti, zdravstveno i osiguranje motornih vozila, ograničeno na period boravka ili privremenog boravka osoba u inostranstvu, (e) osiguranje brodova i jahti registrovanih u turskom Međunarodnom pomorskom registru. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1,2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(ii) Reosiguranje i retrocesija	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja.	

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
	4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(iii) Posredovanje u osiguranju, kao što je brokersko i agencijsko posredovanje	1,2) Ne obavezujemo se za posrednike (agente i posrednike) osim one koji se bave životnim osiguranjem i neživotnim kategorijama osiguranja navedenim u dijelu „(i)(B) Neživotno“ i posrednika u reosiguranju. 3) Agencije za osiguranje i reosiguranje kao pravne lica i posrednici moraju biti osnovani u Turskoj u obliku akcionarskog društva ili društva s ograničenom odgovornošću. Generalni direktor i zamjenici direktora odgovorni za tehničke odjele moraju imati prebivalište u Turskoj. Agencije za osiguranje i posrednici osnovani u stranim zemljama mogu se baviti djelatnošću posredovanja u osiguranju jedino putem otvaranja podružnica u Turskoj. Gore navedeni institucionalni oblik i uslov prebivališta odnose se i na podružnice. 4) Posrednici i agenti osiguranja i reosiguranja kao fizička lica moraju imati prebivalište u Turskoj. Inače, ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1,2) Nema ograničenja. 3) Nema ograničenja. 4) Nema ograničenja., osim što agenti kao fizička lica i posrednici u osiguranju i reosiguranju kao fizička lica moraju imati prebivalište u Turskoj.	
(iv) Pomoćne usluge u vezi s osiguranjem, kao što su konsultantske usluge, aktuarske usluge, usluge procjene rizika i usluge naplate odštetnih zahtjeva	1,2) Nema ograničenja., osim procjenitelja i aktuara. 3) Nema ograničenja. 4) Ne obavezujemo se za procjenitelje i aktuare. Inače, ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1,2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
Bankarske i ostale finansijske usluge (isključujući osiguranje)			
(v) Primanje depozita i drugih povratnih sredstava od pravnih subjekata	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nijedno fizičko ili pravno lice osim kreditnih institucija ili onih koje su za to ovlašćene posebnim propisima ne može od pravnih subjekata primati depozite niti druga novčana sredstva koja im se vraćaju. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(vi) Davanje zajmova svih vrsta, uključujući potrošačke kredite, hipotekarne kredite, faktoring i finansiranje komercijalnog poslovanja	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Banke i finansijska društva mogu odobravati potrošačke kredite 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
(A) Potrošački krediti			
(B) Faktoring	<ol style="list-style-type: none"> 1) Ne obavezujemo se. 2) Nema ograničenja. 3) Banke i društva za faktoring se mogu baviti aktivnostima faktoringa. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu. 	<ol style="list-style-type: none"> 1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu. 	
(C) Hipotekarni krediti	<ol style="list-style-type: none"> 1) Ne obavezujemo se. 2) Nema ograničenja. 3) Društva za finansijski lizing i finansijska društva za koja Agencija za regulisanje rada i nadzor banaka utvrdi da ispunjavaju uslove za rad na stambenom finansiranju mogu se baviti trgovanjem hipotekarnim kreditima. Takođe, banke se mogu baviti trgovanjem u pogledu ovih aktivnosti. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu. 	<ol style="list-style-type: none"> 1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu. 	
(D) Finansiranje komercijalnog poslovanja	<ol style="list-style-type: none"> 1) Ne obavezujemo se. 2) Nema ograničenja. 3) Banke, društva za finansijski lizing, društva za faktoring i finansijska društva se mogu baviti ovim aktivnostima. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu. 	<ol style="list-style-type: none"> 1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu. 	
(vii) Finansijski lizing	<ol style="list-style-type: none"> 1) Ne obavezujemo se. 2) Nema ograničenja. 3) Banke koje nisu ovlašćene za primanje depozita i društva za finansijski lizing mogu se baviti transakcijama finansijskog lizinga. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu. 	<ol style="list-style-type: none"> 1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu. 	
(viii) Sve usluge plaćanja i prenosa novca, uključujući kreditne i debitne kartice i putničke čekove	<ol style="list-style-type: none"> 1) Ne obavezujemo se. 2) Nema ograničenja. 3) Usluge plaćanja i prijenosa novca mogu obavljati jedino banke i institucije ovlašćene u skladu sa „Zakonom o plaćanju i hartijama od vrijednosti, sistemima poravnanja, uslugama plaćanja i institucijama za elektronski novac“. Institucije koje se bave pružanjem usluga plaćanja i prenosa novca moraju biti osnovane u Turskoj, u obliku akcionarskog društva. 	<ol style="list-style-type: none"> 1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 	

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
	Usluge kreditnih i debitnih kartica mogu pružati jedino banke. Prijenos deviza u inostranstvo mora se obavljati preko bankarskog sistema. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(ix) Garancije i obaveze	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(x) Trgovanje za svoj vlastiti ili za račun klijenata, bilo na berzi, ili na vanberzanskom tržištu ili na neki drugi način, sljedećim: (A) instrumentima tržišta novca (uključujući čekove i mjenice)	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Trgovanje instrumentima tržišta novca mogu obavljati i banke i institucije za posredovanje u trgovini hartijama od vrijednosti; međutim, institucije za posredovanje u trgovini hartijama od vrijednosti se ne mogu baviti trgovanjem čekovima i mjenicama. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Ne obavezujemo se, 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(B) devizama	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Banke, posrednici u trgovini devizama institucije za posredovanje u trgovini hartijama od vrijednosti (ograničene na usluge i aktivnosti investiranja), kao i nacionalna poštanska uprava (PTT A.Š.) mogu se baviti trgovinom devizama. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(C) derivativnim proizvodima	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Ovlašćene banke i institucije za posredovanje u trgovini hartijama od vrijednosti mogu se baviti trgovinom ovim proizvodima. Ovlašćene banke mogu izvršavati naloge za trgovinu derivativnim proizvodima osim onih zasnovanih na dioničkim indeksima i dionicama, te mogu u vlastito ime trgovati derivativnim instrumentima osim onih koji su zasnovani na dionicama. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(D) instrumentima deviznog tečaja i kamatnih stopa	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Ovlašćene banke i institucije za posredovanje u trgovini hartijama od vrijednosti mogu se baviti trgovinom instrumentima deviznog kursa i kamatnih stopa. Jedino	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja.	

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
	<p>institucije za posredovanje u trgovini hartijama od vrijednosti mogu se baviti „transakcijama s finansijskom polugom“, kako je definisana Zakonom o tržištu kapitala br. 6362 (tj. berzovno posredovanje u maloprodajnoj trgovini devizama).</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
(E) prenosivim hartijama od vrijednosti	<p>1) Ne obavezujemo se.</p> <p>2) Nema ograničenja.</p> <p>3) Banke i institucije za posredovanje u trgovini hartijama od vrijednosti mogu se baviti trgovinom ovim proizvodima. Međutim, jedino institucije za posredovanje u trgovini vrijednosnim papirima mogu pružati investicijske usluge kao što je izvršavanje naloga i trgovanje akcijama za vlastiti račun.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>1) Ne obavezujemo se.</p> <p>2) Nema ograničenja.</p> <p>3) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
(F) ostalim prenosivim instrumentima i finansijskim sredstvima, uključujući zlatne poluge	<p>1) Ne obavezujemo se.</p> <p>2) Nema ograničenja.</p> <p>3) Banke i povezane institucije za posredovanje se mogu baviti trgovinom ovim proizvodima.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>1) Ne obavezujemo se.</p> <p>2) Nema ograničenja.</p> <p>3) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
(xi) garancija otkupa i plasman	<p>1) Ne obavezujemo se.</p> <p>2) Nema ograničenja.</p> <p>3) Razvojne i investicione banke i institucije za posredovanje u trgovini hartijama od vrijednosti mogu pružati usluge garantiranja otkupa i plasmana hartija od vrijednosti koje izdaju nakon što ih registruje Odbor za tržište kapitala.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>1) Ne obavezujemo se.</p> <p>2) Nema ograničenja.</p> <p>3) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
(xii) novčano posredovanje	<p>1) Ne obavezujemo se.</p> <p>2) Nema ograničenja.</p> <p>3) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>1) Ne obavezujemo se.</p> <p>2) Nema ograničenja.</p> <p>3) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
(xiii) Upravljanje sredstvima, poput upravljanja [gotovinom] ili portfeljem, upravljanje svim oblicima zajedničkog ulaganja, upravljanje penzijskim fondovima, usluge skrbništva, usluge deponovanja i čuvanja	<p>1) Ne obavezujemo se.</p> <p>2) Nema ograničenja.</p> <p>3) Razvojne i investicijske banke i institucije za posredovanje u trgovini hartijama od vrijednosti (isključujući upravljanje zajedničkim ulaganjima) i društva za upravljanje portfeljem mogu pružati ove usluge.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>1) Ne obavezujemo se.</p> <p>2) Nema ograničenja.</p> <p>3) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
(A) Upravljanje portfeljem	<p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
(B) Upravljanje zajedničkim ulaganjima	<p>1) Ne obavezujemo se.</p> <p>2) Nema ograničenja.</p> <p>3) Društva za upravljanje</p>	<p>1) Ne obavezujemo se.</p> <p>2) Nema ograničenja.</p> <p>3) Nema ograničenja.</p>	

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Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
	<p>portfeljem mogu upravljati portfeljima zajedničkih ulaganja. Investiciona društva takođe mogu upravljati svojim vlastitim portfoliima.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
(C) Upravljanje penzijskim fondovima	<p>1) Ne obavezujemo se.</p> <p>2) Nema ograničenja.</p> <p>3) Društva za upravljanje portfoliom mogu pružati ove usluge.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>1) Ne obavezujemo se.</p> <p>2) Nema ograničenja.</p> <p>3) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
(D) Usluge starateljstva, deponovanja i čuvanja	<p>1) Ne obavezujemo se.</p> <p>2) Nema ograničenja.</p> <p>3) Ovlašćene banke i institucije za posredovanje u trgovini hartijama od vrijednosti koje djeluju na tržištu kapitala mogu svojim klijentima pružati usluge starateljstva. Depozitni računi vezani za instrumente tržišta kapitala, s izuzećem vladinih dužničkih instrumenata koji se drže u portfoliima banaka, mogu se čuvati samo u Agenciji za centralni registar.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>1) Ne obavezujemo se.</p> <p>2) Nema ograničenja.</p> <p>3) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
(xiv) Usluge poravnanja i kliringa za finansijska sredstva, uključujući hartije od vrijednosti, derivativne proizvode i čekove	<p>1) Ne obavezujemo se.</p> <p>2) Nema ograničenja.</p> <p>3) Istanbulska banka za kliring, poravnanje i skrbništvo (<i>Takasbank</i>) Inc., Centralna banka Republike Turske, Agencija za centralni registar Inc. (<i>MKK</i>) i drugi subjekti koje ovlaste Odbor za tržišta kapitala i Centralna banka Republike Turske (CBRT) mogu pružati usluge kliringa i poravnanja hartija od vrijednosti. Usluge kliringa čekova može pružati samo institucija osnovana i/ili ovlašćena od strane Centralne banke Republike Turske. Vođenje platnog sistema može obavljati jedino Centralna banka Republike Turske i drugi subjekti koje ovlasti Centralna banka Republike Turske. Subjekt koji posluje kao sistem za plaćanje i poravnanje hartija od vrijednosti mora biti osnovan u Turskoj u obliku akcionarskog društva.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>1) Ne obavezujemo se.</p> <p>2) Nema ograničenja.</p> <p>3) Nema ograničenja.</p> <p>4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
(xv) Pružanje i prenos finansijskih pružatelja drugih finansijskih	<p>1) Nema ograničenja.</p> <p>2) Nema ograničenja.</p>	<p>1) Nema ograničenja.</p> <p>2) Nema ograničenja.</p>	

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
usluga	3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
- Obrada finansijskih podataka i pružanje i prijenos odgovarajućeg softvera od pružaoca drugih finansijskih usluga	1,2) Ne obavezujemo se. 3) Finansijske institucije su obavezne uspostaviti i održavati svoje centre za obradu podataka (i primarne i sekundarne informacione sisteme ³²) u Turskoj za skladištenje i obradu finansijskih podataka. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1,2) Ne obavezujemo se. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(xvi) Savjetodavne, posredničke i druge pomoćne finansijske usluge za sve djelatnosti navedene u tačkama od (v) do (xv), uključujući kreditne preporuke i analizu, istraživanje i savjetovanje u području ulaganja i portfolia te savjetovanje u pogledu kupovine i restrukturiranja i strategije preduzeća	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
8. USLUGE ZDRAVSTVENE I SOCIJALNE ZAŠTITE			
A. Bolničke usluge (CPC 9311)	1) Ne obavezujemo se* 2) Nema ograničenja. 3) Strani državljani mogu osnivati privatne bolnice uz odobrenje Ministarstva zdravlja. Broj i vrsta bolnica, grana medicine kojom se svaka bolnica bavi, obavezan broj zdravstvenog osoblja, kapacitet bolnice (broj kreveta), kao i nabavka medicinskih proizvoda može biti ograničena u skladu s investicionim planovima zasnovanim na potrebama za uslugama zdravstvene zaštite. 4) Ne obavezujemo se.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se.	
9. USLUGE KOJE SE ODOSE NA TURIZAM I PUTOVANJA			
A. Hoteli i restorani (CPC 641-643)	1) Ne obavezujemo se* 2) Nema ograničenja. ³³ 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu. Pored toga, nakon dobijanja odobrenja od Ministarstva porodice, rada i socijalnih usluga, na osnovu pozitivnog mišljenja Ministarstva unutrašnjih poslova i Ministarstva kulture i turizma, hoteli i restorani koji imaju certifikat o podsticaju turizma, mogu zaposliti strano osoblje.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	

³² Primarni sistemi se sastoje od infrastrukture, hardvera, softvera i podataka koji osiguravaju obavljanje finansijskih aktivnosti, kao i evidentiranje i korišćenje informacija u elektronskim medijima na siguran način te moraju osigurati pristup po potrebi. Sekundarni sistemi su zamjena za primarne sisteme.

³³ Turski državljani mogu putovati u inostranstvo bez ikakvih ograničenja. Jedino su obavezni, uz određena izuzeća, platiti naknadu u TL u iznosu koji je ekvivalentan iznosu od 100 USD za svaki izlazak iz zemlje.

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
	Međutim, broj stranog osoblja koje će se zaposliti u jednom preduzeću ne smije prelaziti 10 posto od ukupnog osoblja. Ovaj broj se može povećati do 20 posto odlukom Ministarstva kulture i turizma u zavisnosti od slučaja do slučaja.		
B. Usluge turističkih agencija i turoperatora (CPC 7471)	1) Obavezno komercijalno prisustvo. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Turističke agencije osnovane prema zakonima stranih vlada ne mogu organizovati putovanja iz Turske u inostranstvo. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
10. REKREACIONE, KULTURNE I SPORTSKE USLUGE			
A. Usluge zabave (uključujući pozorište i muziku uživo) - Usluge zabave teatarskog producenta, pjevačke grupe, benda i orkestra (CPC 96191)	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	

Način pružanja fizičkih lica	1) Prekogranično pružanje usluga	2) Korišćenje usluga u inostranstvu	3) Komercijalno prisustvo	4) Prisustvo
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze	
B. Biblioteke, arhivi, muzeji i ostale kulturne usluge - Bibliotekarske usluge (CPC 96311)	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, kao što je navedeno u Horizontalnim obavezama. Pored toga, nakon dobijanja odobrenja od Ministarstva porodice, rada i socijalnih usluga, na osnovu pozitivnog mišljenja Ministarstva unutrašnjih poslova i Ministarstva kulture i turizma, pružaoci usluga ovlašćeni od strane Ministarstva kulture i turizma mogu zaposliti strano osoblje. Međutim, broj stranog osoblja koje će se zaposliti u jednom preduzeću ne smije prelaziti 10 posto od ukupnog osoblja. Ovaj broj se može povećati do 20 posto odlukom Ministarstva kulture i turizma u zavisnosti od slučaja do slučaja.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. osim što naziv biblioteke mora biti na turskom jeziku. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.		
-Usluge arhiva (CPC 96312)	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu. Pored toga, nakon dobijanja odobrenja od Ministarstva porodice, rada i socijalnih usluga, na osnovu pozitivnog mišljenja Ministarstva unutrašnjih poslova i Ministarstva kulture i turizma, pružaoci usluga ovlašćeni od strane Ministarstva kulture i turizma mogu zaposliti strano osoblje. Međutim, broj stranog osoblja koje će se zaposliti u jednom preduzeću ne smije prelaziti 10 posto od ukupnog osoblja. Ovaj broj se može povećati do 20 posto odlukom Ministarstva kulture i turizma u zavisnosti od slučaja do slučaja.	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.		
- Usluge muzeja osim istorijskih mjesta i građevina (Osim usluga muzeja vezanih za vojsku) (CPC 69321**) - Usluge očuvanja istorijskih mjesta i građevina (CPC 69322) - Usluge botaničkih i zooloških vrtova (CPC 96331) - Usluge prirodnih rezervata, uključujući usluge zaštite divljih životinja (CPC 96332)	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu. Pored toga, nakon dobijanja odobrenja od Ministarstva porodice, rada i socijalnih usluga, na osnovu pozitivnog mišljenja Ministarstva unutrašnjih poslova i Ministarstva kulture i turizma, pružaoci usluga ovlašćeni od strane Ministarstva kulture i turizma mogu zaposliti strano osoblje. Međutim, broj stranog osoblja koje će se zaposliti u jednom preduzeću ne smije	1) Nema ograničenja, osim u slučaju kada država inostranim pružaocima povjeri pružanje usluga u područjima koje država kontroliše, zainteresovani pružalac usluga treba da ima prebivalište u Turskoj kako bi mogao učestvovati na tenderu. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.		

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
	prelaziti 10 posto od ukupnog osoblja. Ovaj broj se može povećati do 20 posto odlukom Ministarstva kulture i turizma u zavisnosti od slučaja do slučaja.		
11. USLUGE TRANSPORTA			
A. Usluge pomorskog transporta osim kabotaže³⁴			
(a) Transport putnika (CPC 7211)	1) Nema ograničenja. 2) Nema ograničenja. 3) Kako bi plovila pod turskom zastavom, broderska preduzeća moraju imati većinu od 51% dioničara koji su turski državljani. ³⁵ 4) Kapetan i posada plovila pod turskom zastavom trebaju biti su turski državljani.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Obavezno je tursko državljanstvo za kapetana i posadu.	
b) Transport tereta (CPC 7212)	1) Nema ograničenja. 2) Nema ograničenja. 3) Kako bi plovila pod turskom zastavom, broderska preduzeća moraju imati većinu od 51% dioničara koji su turski državljani. 4) Kapetan i posada plovila pod turskom zastavom trebaju biti su turski državljani.	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Obavezno je tursko državljanstvo za kapetana i posadu.	
(c) Iznajmljivanje plovila s posadom ³⁶ (CPC 7213)	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Plovila koja unajme strani državljani ne mogu ploviti unutar turskih obalnih voda. Ova vrsta plovila se smatra stranim plovilima i ne može ploviti pod turskom zastavom. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
d) Održavanje i popravak plovila (CPC 8868)	1) Nema ograničenja. 2) Nema ograničenja.	1) Nema ograničenja. 2) Nema ograničenja.	

³⁴ Ne dovodeći u pitanje obim aktivnosti koje se mogu smatrati „kabotažom” prema relevantnom nacionalnom zakonodavstvu, ova Lista ne obuhvata „usluge pomorske kabotaže” za koje se smatra da obuhvataju prevoz putnika ili robe između dvije luke u Turskoj i promet s polazištem i odredištem u istoj luci u Turskoj pod uslovom da se taj promet uvijek odvija u teritorijalnim vodama Turske. Pored toga, prema „Zakonu o pomorskom prijevozu turskim obalnim vodama (kabotaži) i trgovini i poslovanju u turskim lukama i teritorijalnim vodama” (Zakon br. 815), pravo na prevoz robe i putnika s jedne do druge tačke duž turskih obala te obavljanje tegljenja i peljarenja, kao i svih drugih lučkih usluga bilo koje vrste unutar ili između turskih luka i obala pripada isključivo brodovima i plovilima pod turskom zastavom u skladu sa članom 940 turskog Komercijalnog kodeksa (Zakon br. 6102). Plovila pod turskom zastavom u skladu sa zakonom o turskom međunarodnom registru brodova (Zakon br. 4490) koja ne ispunjavaju uslove iz člana 940 turskog Komercijalnog kodeksa ne mogu obavljati gore navedene funkcije koje spadaju u djelokrug prava kabotaže. Radi daljeg pojašnjenja, ova Lista ne uspostavlja nikakvo pravo na sprovođenje aktivnosti koje spadaju u djelokrug prava kabotaže kako je propisano u „Zakonu o pomorskom prijevozu turskim obalnim vodama (kabotaži) i trgovini i poslovanju u turskim lukama i teritorijalnim vodama” (Zakon br. 815).

³⁵ Svi turski brodovi plove pod turskom zastavom. Brod se smatra turskim jedino ako je njegov vlasnik (ili vlasnici) turski državljani. Međutim, turskim se smatraju i sljedeći brodovi: i) Brodovi koji pripadaju pravnim licima, kao što su tijela, institucije, udruženja i fondacije formirane u skladu s turskim pravom, čija su većina članova Upravnog odbora turski državljani; ii) Brodovi koji pripadaju privrednim društvima čija su većina rukovodećeg osoblja i predstavnika turski državljani i koja su upisana u privredni registar Turske.

³⁶ Ova obaveza ne obuhvata niti dodjeljuje nikakvo pravo u pogledu usluga pomorskog prevoza.

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
	3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
B. Usluge avio transporta			
(a) Prodaja i marketing usluga avio transporta	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se izuzev onoga što je navedeno u horizontalnom dijelu..	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se izuzev onoga što je navedeno u horizontalnom dijelu.	
(b) Usluge kompjuterskog sistema rezervacija (CRS)	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se izuzev onoga što je navedeno u horizontalnom dijelu..	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se izuzev onoga što je navedeno u horizontalnom dijelu.	
(c) Usluge popravke i održavanja aviona	1) Nema ograničenja. 2) Nema ograničenja. 3) Za obavljanje funkcija održavanja i popravke aviona neophodno je odobrenje Ministarstva transporta i infrastrukture 4) Ne obavezujemo se izuzev onoga što je navedeno u horizontalnom dijelu..	1) Nema ograničenja. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se izuzev onoga što je navedeno u horizontalnom dijelu..	
C. Usluge željezničkog transporta			
(a) Transport putnika (CPC 7111) (b) Transport tereta (CPC 7112)	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Za dobijanje odobrenja, neophodan uslov je da preduzeće bude osnovano u skladu s turskim Komercijalnim kodeksom. TCDD A.Ş., preduzeće u potpunosti u državnom vlasništvu, ima pravo monopola na upravljanje prometom na domaćoj željezničkoj mreži, kao i korišćenje željezničke infrastrukture koja je u državnom vlasništvu. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
D. Usluge drumskog transporta			
(a) Transport putnika (CPC 7121 + 7122) (b) Transport tereta (CPC 7123)	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Uslov za dobijanje dozvole je tursko državljanstvo ili da je pravno lice osnovano u skladu sa nacionalnim zakonodavstvom. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(c) Pomoćne usluge u drumskom transportu (CPC 744 osim 7442)	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se izuzev onoga što je navedeno u horizontalnom dijelu..	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se izuzev onoga što je navedeno u horizontalnom dijelu.	

Način pružanja 1) Prekogranično pružanje usluga 2) Korišćenje usluga u inostranstvu 3) Komercijalno prisustvo 4) Prisustvo fizičkih lica			
Sektor ili podsektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
E. Pomoćne usluge za sve vrste transporta:			
(a) Usluge rukovanja teretom (CPC 741, osim usluga rukovanja pomorskim teretom)	1) Ne obavezujemo se, 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(b) Usluge skladištenja i spremanja osim „licenciranih skladišta“ (CPC 742).	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja, osim „carinskih skladišta“ i „objekata za privremeni smještaj robe na carini“. Za osnivanje i rad carinskih skladišta i objekata za privremeni smještaj robe na carini primjenjuje se test ekonomskih potreba. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja, osim što carinska skladišta i privremene objekte za smještaj robe na carini mogu otvarati samo preduzeća koja rade najmanje dvije godine. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
- Licencirana skladišta (dio CPC 742) Licencirana skladišta predstavljaju sistem u kojem su poljoprivredni proizvodi koje je prikladno skladištiti (kao što su žitarice, mahunarke, sjemenke uljarica, pamuk, orasi, masline i maslinovo ulje) klasifikovani u skladu sa postojećim standardima za proizvode skladište nakon što ovlašćeni klasifikatori odrede njihovu klasu, kvalitet i standarde.	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	1) Ne obavezujemo se. 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(c) Usluge agencije za prevoz tereta (CPC 748)	1) Ne obavezujemo se 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se izuzev onoga što je navedeno u horizontalnom dijelu..	1) Ne obavezujemo se 2) Nema ograničenja. 3) Nema ograničenja. 4) Ne obavezujemo se izuzev onoga što je navedeno u horizontalnom dijelu.	

ISTA MFN IZUZEĆA OD ČLANA 4 REPUBLIKE TURSKJE

Sektor ili pod-sektor	Opis mjera koje nisu u skladu sa članom 4	Zemlje na koje se mjera odnosi	Očekivano trajanje	Uslovi koji stvaraju potrebu za izuzećem
SVI SEKTORI	(a) Odobranje u potpunosti nacionalnog tretmana za investicije državljana ili preduzeća iz zemalja s kojima je zaključen Bilateralni sporazum o investicijama. (b) (i) Izvršenje transfera, u određenim periodima, državljana i preduzeća iz određenih zemalja koji su investirali u Turskoj.	Sve zemlje sa kojima su sporazumi na snazi ili će to biti. Belgija-Luksemburg, Kuvajt	Neodređeno	Želja za stvaranjem povoljnih uslova za veću ekonomsku saradnju između Turske i spomenutih zemalja te podsticanje investicija državljana i preduzeća iz jedne zemlje na teritoriji drugih zemalja.
	(ii) Odobranje garancije deviznog rizika za određene zemlje za transfere koji nisu realizovani zbog teškoća u bilansu plaćanja.			

	(c) Pokrivanje „rizika trgovanja“ kao subrogacija za neku zemlju.	Japan		
	(d) Sporazumi s tri zemlje, čiji članovi koji se odnose na status najpovlašćenije nacije (MFN) ne obuhvataju derogaciju stavova koji se tiču povlastica koje se odobravaju investitorima iz trećih zemalja kao rezultat njihovog članstva ili pridruživanja zoni slobodne trgovine, ekonomskoj saradnji, carinskoj uniji ili zajedničkom tržištu.	Japan, Bangladeš, Njemačka		
SVI SEKTORI	Ograničenje u transferu premija kod programa dugoročnog osiguranja i zapošljavanja radnika iz stranih zemalja u stranim preduzećima se izuzima za jednu zemlju.	Libija	Neodređeno	Osigurati socijalnu sigurnost i kontinuirano zapošljavanje turskih radnika u navedenoj zemlji.
SVI SEKTORI	Ako je iznos konzularnih naknada koje bilo koja zemlja prikupi od turskih državljana veći od iznosa navedenog u tarifnoj listi, iznos konzularnih naknada prikupljenih od državljana te zemlje bit će uvećan na recipročnoj osnovi.	Sve zemlje	Neodređeno	Želja za osiguranjem jednakog tretmana državljana Turske.
SVI SEKTORI	Pod uslovom da su zakonske odredbe rezervirane i uz uslov reciprociteta, strana fizička lica bi mogla posjedovati nekretnine u Turskoj na osnovu kupovine ili nasledstva.	Sve zemlje	Neodređeno	Osigurati pravo turskih državljana na kupovinu nekretnina u nekoj stranoj zemlji.
Profesionalne usluge	Ako bilo koja strana zemlja utvrdi zakonske i administrativne uslove protiv turskih državljana u pogledu umjetničkih izvedbi i pružanja tih usluga, slične aktivnosti državljana te zemlje bi mogle biti zabranjene u Turskoj.	Sve zemlje	Neodređeno	Želja za stvaranjem povoljnih uslova za turske državljanke da obavljaju svoje aktivnosti pod jednakim uslovima u drugim zemljama.
Usluge transporta	Stope poreza na dohodak i dobit pravnih lica za strana društva koja se bave drumskim, pomorskim i vazdušnim transportom se na recipročnoj osnovi mogu smanjiti na nulu ili povećati na novu stopu koja neće prelaziti dio postojeće stope koji može biti utvrđen u slučaju svake pojedinačne zemlje i posebno za svaku vrstu transporta ili za sve vrste.	Sve zemlje	Neodređeno	Želja za olakšanjem i smanjenjem troškova usluga transportnih između Turske i drugih zemalja.
Usluge transporta	Usluge tranzita ili bilateralne usluge transporta mogu se izuzeti od plaćanja PDV-a. Ovo izuzeće se odobrava, uz uslov reciprociteta, poreskim obveznicima iz odgovarajućih zemalja koji nemaju prebivalište, zakonsko ili poslovno sjedište u Turskoj.	Sve zemlje	Neodređeno	Želja za smanjenjem troškova i stvaranjem povoljnih uslova za pružanje usluga u ovom sektoru.
Usluge transporta	Primjena, na osnovu reciprociteta, ograničenja, zabrana, različitog tretmana i različitih tarifa za robu i transportna sredstva iz zemalja koje primjenjuju ograničenja, zabrane i drukčiji tretman prema turskim drumskim, zračnim i pomorskim transportnim sredstvima.	Sve zemlje	Neodređeno	Želja za osiguranjem nesmetanog funkcionisanja uzajamnih usluga transporta.
Usluge drumskog transporta	Odobranje, na osnovu reciprociteta, povlastica u pogledu	Sve zemlje s kojima su sporazumi na snazi ili će	Neodređeno	Želja za olakšanjem usluga drumskog

	kvota i naknada, oslobađanja od procedura odobravanja.	to biti.		transporta između Turske i drugih zemalja.
Usluge željezničkog transporta	Bilateralno smanjenje cijena zakupa željezničkih vagona iz zemalja navedenih u koloni pored (tačka a) i primjena nacionalnog tretmana za tarife recipročnog transporta robe sa zemljama navedenim u koloni pored (tačka b).	a) Sirija, Irak, Iran, Liban b) Zajednica nezavisnih država i baltičke republike.	Neodređeno	Želja za olakšanjem usluga željezničkog transporta između Turske i drugih zemalja.
Računovodstvene, revizorske i knjigovodstvene usluge	Za obavljanje usluga „finansijskog savjetnika“, državljanima zemalja koje su zvanično ozakonile principe u pogledu profesije finansijskog savjetovanja može biti odobreno, pod uslovom reciprociteta i pod uslovom da ta lica posjeduju karakteristike potrebne za profesiju finansijskog savjetovanja u Turskoj te da treba da imaju pravo na obavljanje sličnih usluga u svojoj zemlji.	Sve zemlje	Neograničeno	Želja za stvaranjem povoljnih uslova za turske finansijske savjetnike da obavljaju svoj posao pod jednakim uslovima u cijelom svijetu.

**LISTA SPECIFIČNIH OBAVEZA
CRNE GORE**

Načini pružanja usluga: (1) Prekogranično pružanje usluga (2) Korišćenje usluga u inostranstvu (3) Komercijalno prisustvo (4) Prisustvo fizičkih lica			
Sektor ili pod-sektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
I. HORIZONTALNE OBAVEZE			
Komunalne usluge	(3) Usluge koje se smatraju komunalnim uslugama na nacionalnom ili lokalnom nivou mogu biti predmet javnih monopola ili ekskluzivnih prava koja se dodjeljuju privatnom operateru. ³⁷		
Pravna lica Ograničenja koja se odnose na filijale, agencije i predstavništva		(3) Tretman dodijeljen podružnicama koje su registrovane, imaju centralnu upravu ili čije je glavno mjesto poslovanja na teritoriji Crne Gore se ne može proširiti na filijale ili agencije osnovane u Crnoj Gori. Manje pogodan tretman se može dodijeliti podružnicama koje su registrovane u Crnoj Gori, osim ukoliko se može dokazati da posjeduju efektivnu i stalnu vezu sa crnogorskom privredom.	
Nekretnine		(3) (4) Strano lice može sticati pravo svojine na nepokretnostima osim na obradivom zemljištu i na nepokretnostima koje se nalaze na određenim područjima, pod	

³⁷ Pojašnjenje: Komunalne usluge postoje u sektorima kao što su oni koji se odnose na naučne i tehničke konsultantske usluge, usluge istraživanja i razvoja vezano za društvene i humanističke nauke, tehničko testiranje i analize, usluge zaštite životne sredine, usluge u zdravstvu, transportne i pomoćne usluge u svim vidovima transporta. Ekskluzivna prava u ovim uslugama se često dodjeljuju privatnim operaterima, kao na primjer operaterima sa koncesijama datim od strane javnih vlasti, uz preuzimanje određenih obaveza prilikom pružanja odnosnih usluga. Iz razloga što su komunalne usluge često regulisane i na opštinskom nivou, nije praktično dati detaljnu i konačnu listu svih sektora. Ovo ograničenje se ne odnosi na telekomunikacione i kompjuterske i srodne usluge.

Načini pružanja usluga: (1) Prekogranično pružanje usluga (2) Korišćenje usluga u inostranstvu			
(3) Komercijalno prisustvo (4) Prisustvo fizičkih lica			
Sektor ili pod-sektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dotadne obaveze
Privremeni ulazak i boravak fizičkih lica	<p>(4) Ne obavezujemo se osim za mjere koje se odnose na ulazak i privremeni boravak u Crnoj Gori sljedećih kategorija fizičkih lica:</p> <p>(i) <u>Transferi između korporacija (ICT)</u> Ulazak i boravak od najviše tri godine će biti dodijeljen osobama koje prelaze između korporacije i njenih podružnica i filijala a koje:</p> <ul style="list-style-type: none"> - su bile zaposlene kod pravnog lica osnovanog u Republici Turskoj najmanje jednu godinu neposredno prije zaposlenja u Crnoj Gori; - su privremeno premješteni radi pružanja usluga u Crnoj Gori, u podružnici ili filijali koja pruža usluge; i su menadžeri, direktori ili specijalisti. 	<p>uslovom reciprociteta.</p> <p>4) Ne obavezujemo se osim za mjere koje se odnose na kategorije fizičkih lica iz kolone pristupa tržištu.</p>	
	<p><u>Menadžeri</u> su lica koja rade na višem položaju, a koja prvenstveno upravljaju kompanijom, uključujući (a) upravljanje osnivanjem kompanije, ili odjeljenja ili pod-odjeljka kompanije; (b) nadgledanje i kontrola rada drugih nadzornika, profesionalaca ili menadžera; i (c) posjedovanje ovlašćenja da zaposle i otpuste ili preporuče zaposlenje, otpuštanje zaposlenih ili druge povezane aktivnosti (kao što su unapređenja ili odobrenje odsustva), i imaju diskreciono pravo vođenja dnevnih aktivnosti. Menadžeri ne podrazumijevaju najviši nivo kontrole, osim ako zaposleni koji se kontrolišu nisu profesionalci, koji obavljaju zadatke u vezi sa direktnim pružanjem usluga. Test o ekonomskim potrebama neće se zahtijevati.</p> <p><u>Direktori</u> su lica u okviru organizacije, koja prvenstveno upravljaju organizacijom, definišu ciljeve i poslovnu politiku organizacije, uživaju široku slobodu u donošenju odluka, i odgovorni su višem nivou direktora, upravnom odboru ili akcionarima. Direktori ne obavljaju zadatke koji se odnose na konkretno pružanje usluga. Test o ekonomskim potrebama neće se zahtijevati.</p>		
	<p><u>Specijalisti</u> su lica koja posjeduju posebna znanja koja su od značaja za pružanje usluga kompanije, istraživačku opremu, tehnike rada ili upravljanje. U procjeni takvog znanja, u obzir će se uzeti ne samo posebno znanje od značaja za kompaniju, već i to da li lice posjeduje visok nivo stručnosti za vrstu posla ili trgovine koja zahtijeva posebno stručno znanje, uključujući i članstvo u akreditovanim udruženjima te struke. Test o ekonomskim potrebama neće se zahtijevati.</p>		

Načini pružanja usluga: (1) Prekogranično pružanje usluga (2) Korišćenje usluga u inostranstvu (3) Komercijalno prisustvo (4) Prisustvo fizičkih lica			
Sektor ili pod-sektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
	<p>(ii) <u>Poslovni posjetioci (BV)</u> Ulazak i privremeni boravak sljedećih kategorija se dozvoljava bez primjene testa o ekonomskim potrebama za period od najviše 90 dana u bilo kojem mjesecu u godini:</p> <p>(a) Prodavci usluga - lica koja nemaju boravište u Crnoj Gori a predstavnici su pružalaca usluga i traže privremeni ulazak s ciljem da pregovaraju i zaključe ugovor o prodaji usluga, ali nijesu uključena u direktnu prodaju korisnicima ili pružanje samih usluga; i</p> <p>(b) Lica odgovorna za osnivanje komercijalnog prisustva – menadžeri koji su odgovorni za osnivanje komercijalnog prisustva pružalaca usluga iz Turske u Crnoj Gori, a koja nijesu uključena u direktnu prodaju ili pružanje usluga; kada pružalac usluga nije komercijalno prisutan u Crnoj Gori.</p> <p>(iii) Pružaoci ugovornih usluga (CSS) Pristup će se dodijeliti fizičkim licima koja pružaju usluge na privremenoj osnovi kao zaposlenima kod pravnih lica koja nisu komercijalno prisutna u Crnoj Gori, shodno sljedećim uslovima:</p> <ul style="list-style-type: none"> - Pravno lice je sklopilo ugovor vezano za pružanje usluga za period ne duži od 12 mjeseci sa krajnjim korisnikom u Crnoj Gori, kroz proceduru koja garantuje bona fide karakter ugovora; - Ugovor o uslugama je u skladu sa zakonima u Crnoj Gori; - Fizičko lice koje traži pristup tržištu treba da bude zaposleno kod pravnog lica koje se bavi pružanjem te vrste usluga najmanje godinu dana prije sklapanja tog ugovora; - Privremeni ulazak i boravak će biti omogućen na period ne duži od tri mjeseca kumulativno u okviru 12 mjeseci ili za period trajanja ugovora, zavisno od toga koji je kraći; - Fizičko lice mora posjedovati (a) univerzitetsku diplomu ili stručnu kvalifikaciju koja dokazuje jednak nivo znanja, (b) stručne kvalifikacije gdje se to zahtijeva kako bi se obavile djelatnosti u odnosnom sektoru u skladu sa zakonima, regulativom i zahtjevima koji važe u Crnoj Gori i (c) najmanje tri godine stručnog iskustva u odnosnoj oblasti; - Obaveza se odnosi samo na uslužnu djelatnost koja je predmet ugovora njom se ne daje pravo za obavljanje svih djelatnosti u Crnoj Gori koje pripadaju tom stručnom zvanju; - Broj lica obuhvaćenih ugovorom o pružanju usluga neće biti veći od broja 		

Načini pružanja usluga: (1) Prekogranično pružanje usluga (2) Korišćenje usluga u inostranstvu		(3) Komercijalno prisustvo (4) Prisustvo fizičkih lica	
Sektor ili pod-sektor	Ograničenja koja se odnose na pristup tržištu	Ograničenja koja se odnose na nacionalni tretman	Dodatne obaveze
	<p>neophodnog za ispunjenje obaveza iz ugovora;</p> <ul style="list-style-type: none"> - Test o ekonomskim potrebama neće se zahtijevati; i - Ugovor o pružanju usluga mora biti vezan za neku od dolje navedenih oblasti: - Pravne usluge; - Računovodstvo i knjigovodstvo; - Arhitektonske usluge, urbanističko planiranje i usluge uređenja prostora; - Inženjering usluge, integrisane inženjering usluge; - Kompjuterske i srodne usluge; - Usluge reklamiranja; - Usluge menadžment konsaltinga; - Usluge srodne menadžment konsaltingu; - Usluge tehničkog ispitivanja i analiziranja; - Usluge koje se odnose na naučni i stručni konsalting; - Usluge prevođenja; Usluge zaštite životne sredine ; i - Instalacije i održavanje aparata i opreme. 		

II. OBAVEZE PO POJEDINAČNIM SEKTORIMA**1. POSLOVNE USLUGE****A. Profesionalne usluge**

(a) Pravne usluge - Konsultantske usluge vezano za pravo treće zemlje, međunarodno i domaće pravo (dio CPC 861)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezuje se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezuje se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(b) Računovodstvo, revizija i knjigovodstvo (CPC 862)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezuje se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezuje se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(c) Poreske usluge ³⁸ (CPC 863)	(1) Nema ograničenja. (2) Nema ograničenja.	(1) Nema ograničenja. (2) Nema ograničenja.	

³⁸ Pravni savjeti i pravno zastupanje u pitanjima oporezivanja nijesu uključeni, s obzirom na to da su obuhvaćeni pravnim uslugama (dio CPC 861).

	(3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(d) Arhitektonske usluge (CPC 8671)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(e) Inženjerske usluge (CPC 8672)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(f) Integrisane inženjering usluge (CPC 8673)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(g) Urbanističko planiranje i usluge uređenja prostora (CPC 8674)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(h) Medicinske i stomatološke usluge (CPC 9312)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(i) Veterinarske usluge (CPC 932)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(j) Usluge koje pružaju negovateljice, medicinske sestre, fizioterapeuti i ostalo nemedicinsko osoblje (CPC 93191)	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
B. Kompjuterske i srodne usluge			
- Kompjuterske i srodne usluge (CPC 84) Crna Gora se obavezuje na „Dogovor o obuhvatu kompjuterskih i srodnih usluga – (CPC 84)” priloženim u Dodatku I.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
C. Usluge istraživanja i razvoja			
(a) Usluge istraživanja i razvoja u prirodnim naukama (CPC 851)	(1) Nema ograničenja. (2) Nema ograničenja.	(1) Nema ograničenja. (2) Nema ograničenja.	
(b) Usluge istraživanja i razvoja u društvenim i humanističkim naukama (CPC 852)	(3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(c) Usluge interdisciplinarnog istraživanja i razvoja (CPC 853)			
D. Usluge vezane za nekretnine			
(a) Usluge koje se odnose na sopstvenu ili iznajmljenu imovinu (CPC 821)	(1) Nema ograničenja. (2) Nema ograničenja.	(1) Nema ograničenja. (2) Nema ograničenja.	
(b) Za naknadu ili po ugovoru (CPC 822)	(3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
E. Usluge iznajmljivanja/lizinga bez operatera			

(a) Koje se odnose na brodove (CPC 83103)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(b) Koje se odnose na avione (CPC 83104)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(c) Koje se odnose na ostalu transportnu opremu (CPC 83101, 83102, 83105)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(d) Koje se odnose na ostale mašine i opremu (CPC 83106 - 83109)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(e) Ostale: - Usluge iznajmljivanja presnimljenih video kaseti i optičkih diskova za kućnu razonodu (CPC 83202)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
F. Ostale poslovne usluge			
(a) Usluge reklamiranja (CPC 871)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(b) Usluge istraživanja tržišta i ispitivanja javnog mnjenja (CPC 864)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(c) Usluge menadžment konsaltinga (CPC 865)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(d) Usluge srodne menadžment konsaltingu (CPC 866)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(e) Usluge tehničkog ispitivanja i analiziranja (CPC 8676)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(f) Savjetodavne i konsalting usluge koje se odnose na poljoprivredu, lov i šumarstvo (dio CPC 881)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(g) Savjetodavne i konsalting usluge koje se odnose na ribolov (dio CPC 882)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	

(h) Usluge koje se odnose na rudarstvo (CPC 883, 5115)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(i) Savjetodavne i konsalting usluge koje se odnose na distribuciju energije (dio CPC 887)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(j) Usluge zapošljavanja i posredovanja u zapošljavanju (CPC 872)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(k) Detektivske usluge i usluge zaštite (CPC 873)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(l) Usluge koje se odnose na naučni i stručni konsalting (CPC 8675)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(m) Održavanje i opravka opreme (bez pomorskih plovila, aviona i druge transportne opreme) (CPC 633, 8861-8866)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(n) Usluge čišćenja zgrada (CPC 874)	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(o) Fotografске usluge (CPC 875)	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(p) Usluge pakovanja (CPC 876)	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(q) Štampanje i izdavanje (CPC 88442)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(r) Usluge vezano za organizaciju kongresa (dio CPC 87909)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(s) Ostalo: - Usluge prevođenja i tumačenja (CPC 87905)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	

2. KOMUNIKACIONE USLUGE

<p>A. Poštanske usluge³⁹ (CPC 7511) B. Kurirske usluge (CPC 7512)</p> <p>Usluge koje se odnose na rukovanje⁴⁰ poštanskim pošiljkama⁴¹ u skladu sa sljedećom listom pod-sektora, bilo za domaće ili strane destinacije.</p>			
<p>(a) Rukovanje adresiranom pisanom prepiskom u bilo kojem fizičkom obliku⁴², uključujući: - Usluge hibridne pošte; i - Direktnu poštu. (b) Rukovanje adresiranim pošiljkama i paketima⁴³ (c) Rukovanje adresiranom štampom⁴⁴ (d) Rukovanje pošiljkama o kojima je riječ od (a) do (c) kao registrovanom ili osiguranom poštom</p>	<p>(1) (2) (3) Sistem dozvola može biti uspostavljen za podsektore od (a) do (d) za koje postoji obaveza opšte univerzalne usluge. Ove dozvole mogu biti predmet posebne obaveze univerzalne usluge i/ili finansijskog doprinosa kompenzacionom fondu. Nema ograničenja za podsektore od (e) do (g). (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>(1) (2) (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>Crna Gora preuzima obaveze sadržane u Referentnom dokumentu o poštanskim i kurirskim uslugama u Dodatku 2. Privatni operateri imaju isti tretman kao Pošta Crne Gore u obezbjeđivanju usluga ekspresne pošiljke.</p>
<p>(e) Usluge brze isporuke⁴⁵ za pošiljke o kojima je riječ u stavkama (a) do (c) (f) Rukovanje ne-adresiranim pošiljkama (g) Razmjena dokumenata⁴⁶</p> <p>Pod-sektori (a), (d) i (e) se isključuju kada se radi o rezervisanim uslugama, a to podrazumijeva: sredstva korespondencije čija je cijena manja od petostruke vrijednosti osnovne javne tarife, pod uslovom da su teške manje od 350 grama⁴⁷, kao i za usluge registrovane pošte u toku sudskih ili upravnih postupaka.</p>			
C. Telekomunikacione usluge			
<p>Sve usluge koje se sastoje od prenosa i prijema signala putem elektromagnetnih uređaja bilo koje vrste⁴⁸, izuzev emitovanja.⁴⁹</p> <p>Telekomunikacione usluge ne uključuju ekonomske aktivnosti koje čini pružanje sadržaja same usluge za čiji prenos se koriste telekomunikacione usluge.</p>	<p>(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>Crna Gora preuzima obaveze sadržane u Referentnom dokumentu ovdje priloženom za sljedeće osnovne telekomunikacione usluge: a) Javna govorna usluga; b) Prenos podataka</p>

³⁹ Dok pregovori o klasifikaciji u ovom sektoru i dalje traju, obaveze su date u skladu sa predloženom klasifikacijom o kojoj je STO obaviještena od strane EU i njenih država članica 23. marta 2001. godine (STO dokument S/CSS/W/61) kao i u skladu sa uputstvima vezano za poštanske/kurirske usluge čiji je predlagatelj, između ostalog, i EU od 17. februara 2005 (STO dokument TN/S/W/30), bez uticanja na ishod pregovora o klasifikaciji poštanskih i kurirskih usluga.

⁴⁰ Izraz „rukovanje“ bi trebalo da obuhvata carinjenje, raspoređivanje, transport i isporuku.

⁴¹ „Poštanska pošiljka“ se odnosi na pošiljke kojima rukuje komercijalni operater, bilo javni ili privatni.

⁴² Npr. pisma, razglednice.

⁴³ Ovdje se podrazumijevaju knjige, katalogi.

⁴⁴ Časopisi, novine, periodična izdanja časopisa.

⁴⁵ Usluge brze isporuke obuhvataju prikupljanje, prevoz i dostavljanje dokumenata, štampanog materijala, paketa, robe ili drugih stavki po hitnom osnovu, dok se praćenje i održavanje kontrole ovih stavki odvija u toku pružanja usluga. Ova obaveza ne obuhvata usluge pomorskog transporta ili usluge na koje se odnosi Aneks o uslugama vazdušnog saobraćaja.

⁴⁶ Pružanje sredstava, uključujući i obezbjeđivanje ad hoc prostorija, kao i transport od strane treće strane, koje omogućava samo-ispоруka kroz uzajamnu razmjenu poštanskih pošiljki između korisnika koji su se pretplatili na takvu uslugu. Poštanska pošiljka se odnosi na pošiljke kojima rukuje komercijalni operater, bilo javni ili privatni.

⁴⁷ „Sredstva korespondencije“: prepiska u pismenoj formi u bilo kojem fizičkom obliku koju treba otpremiti i dostaviti na adresu koju je naveo pošiljalac na samoj pošiljci ili njenom omotu. Knjige, katalogi, novine i periodični časopisi se ne smatraju sredstvima korespondencije.

⁴⁸ Od podsektora 2.C.h) do 2.C.m) u Listi sektorske klasifikacije usluga sadržanoj u MTN,GNS/W/120(usluge sa dodatnom vrijednošću) i od podsektora 2.C.a) do 2.C.g) Liste su uključene ovdje. Podsektor 2.C.o) je takođe uključen ovdje i potpada pod ovu definiciju. Za potrebe ovog rasporeda, podsektor 2.C.n) Liste (Online informacije i-ili obrade podataka (uključujući i obradu transakcija) je kompjuterska i srodna usluga i kao takav reflektovan je u Listi obaveza u okviru podsektora 1.B.

⁴⁹ Emitovanje se definiše kao neprekidan lanac prenosa neophodan za distribuciju TV i radio signala javnosti, ali ne uključuje vezu između operatera.

Ove usluge se mogu pružati posredstvom sopstvene ili iznajmljene infrastrukture, u lokalnim, međugradskim ili međunarodnim okvirima, za javnu ili privatnu potrošnju i putem raznih tehnoloških sredstava.			komutacijom paketa; c) Prenos podataka komutacijom kanala; d) Teleks; e) Telegraf; f) Faksimil; g) Usluge putem iznajmljenih privatnih vodova; i h) Ostalo.
3. GRAĐEVINARSTVO I SRODNE INŽENJERSKE USLUGE			
A. Opšti građevinski radovi u stambenoj izgradnji (CPC 512) B. Opšti građevinski radovi u javnoj izgradnji (CPC 513) C. Instalacioni i montažni radovi (CPC 514, 516) D. Završni radovi (CPC 517) E. Ostale (CPC 511,515,518)	(1) Ne obavezujemo se iz razloga tehničke nemogućnosti. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
4. USLUGE DISTRIBUCIJE Podsektori ispod isključuje promet oružja, municije, ratnog materijala i ostale vojne opreme.			
A. Usluge agenata u posredovanju (CPC 621, 61111, 6113, 6121) B. Usluge trgovine na veliko (CPC 622, CPC 61111, 6113, 6121) C. Usluge trgovine na malo (CPC 631, 632, 61112, 6113, 6121, 6122, 613) D. Franšizing (CPC 8929)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
5. USLUGE OBRAZOVANJA (privatno finansirane usluge)			
A. Usluge osnovnog obrazovanja (CPC 921)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Privatna osnovna škola može biti osnovana jedino od strane domaćeg fizičkog ili pravnog lica. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
B. Usluge srednjoškolskog obrazovanja (CPC 922)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
C. Usluge visokoškolskog obrazovanja (CPC 923)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
D. Usluge obrazovanja odraslih (CPC 924)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
E. Ostale obrazovne usluge (CPC 929) Usluge obučavanja (npr. jezika, vožnje, menadžmenta, informacionih tehnologija) i usluge testiranja u obrazovanju	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
6. USLUGE ZAŠTITE ŽIVOTNE SREDINE			
A. Upravljanje otpadnim vodama (Usluge tretiranja otpadnih voda)	(1) Ne obavezujemo se, osim za savjetodavne usluge gdje	(1) Ne obavezujemo se, osim za savjetodavne usluge gdje	

<p>odnose se na odlaganje kanalizacionog otpada (CPC 9401)</p> <p>B. Upravljanje čvrstim/opasnim otpadom -Usluge odlaganja smeća (CPC 9402) -Sanitarne i slične usluge (CPC 9403)</p> <p>C. Zaštita atmosfere gradova i klime - Prečišćavanje izduvnih gasova (CPC 9404)</p> <p>D. Sanacija i prečišćavanje zemljišta i vode - Tretiranje, sanacija zaraženog/zagađenog zemljišta i vode (dio CPC 9406). Odgovara djelovima usluga zaštite prirode i okoline</p> <p>E. Smanjenje buke i vibracije (CPC 9405)</p> <p>F. Zaštita biološke raznolikosti i prirode - Zaštita prirode i okoline (dio CPC 9406 nije uključen pod D)</p>	<p>nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
<p>G. Ostale usluge zaštite životne sredine (CPC 9409)</p>	<p>(1) Ne obavezujemo se, osim za savjetodavne usluge gdje nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>(1) Ne obavezujemo se, osim za savjetodavne usluge gdje nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
<p>7. FINANSIJSKE USLUGE</p> <p>- Kao opšte pravilo koje se primjenjuje na nediskriminatoran način, finansijske institucije u Crnoj Gori moraju imati poseban pravni oblik⁵⁰.</p> <p>- Za ulazak novih finansijskih sredstava na tržište može se zahtijevati postojanje usklađenosti sa regulatornim okvirom kako bi se postigli ciljevi navedeni u članu 46, stav 1 i 2 Protokola III o trgovini uslugama.</p>			
<p>A. Osiguranje i usluge u vezi sa osiguranjem</p> <p>- Osiguravajuće kompanije ne mogu pružati usluge životnog i neživotnog osiguranja istovremeno. Izuzetno, osiguravajuće kompanije koje pružaju životno osiguranje mogu pružati i neživotno kao što je osiguranje od nezgoda kao i dobrovoljno zdravstveno osiguranje svojim osiguranicima do visine troškova liječenja.</p> <p>- Obavezno osiguranje mogu pružati samo kompanije (uključujući strane pružaoce usluga osiguranja) kojima je data dozvola za rad u Crnoj Gori i državni fondovi. Obavezno osiguranje obuhvata obavezno osiguranje putnika od nezgoda u javnom saobraćaju i osiguranje vlasnika motornih vozila, aviona i pomorskih plovila za odgovornost trećeg lica i kolektivno osiguranje zaposlenih od industrijskih nesreća. Državni fond pruža obavezno penzijsko i zdravstveno osiguranje. Deset godina nakon pristupanja Svjetskoj trgovinskoj organizaciji, obavezno osiguranje vlasnika pomorskih plovila za odgovornost trećeg lica, takođe se može pružati od strane osiguravajućih kompanija koje nemaju dozvolu u Crnoj Gori, pod istim uslovima koji se odnose na osiguravajuće kompanije koje imaju dozvolu za rad u Crnoj Gori.</p>			
<p>(i) Direktno osiguranje (uključujući saosiguranje)</p>			
<p>(A) Životno osiguranje</p>	<p>(1) Ne obavezujemo se, osim za pružanje usluga životnog osiguranja za strance, gdje nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	

- ⁵⁰ Strane osiguravajuće kompanije moraju osnovati podružnice koje moraju biti u formi akcionarskog društva. Osnivanje filijala će biti dozvoljeno od januara 2012.
- Kompanije za posredovanje u osiguranju i agencije za pružanje drugih usluga mogu biti osnovane kao akcionarsko društvo ili društvo sa ograničenom odgovornošću.
 - Strane banke mogu osnovati podružnice, filijale ili predstavništva na teritoriji Crne Gore. Predstavništva strane banke mogu pružati jedino pripreme aktivnosti kao što su istraživanje tržišta i ne mogu pružati bankarske usluge.
 - Brokerske i dilerske kuće, kreditno garantni fondovi, investicioni fondovi i berze moraju biti akcionarska društva.
 - Mikrofinansijske institucije i pravna lica koja pružaju savjete u oblasti investiranja moraju biti u formi društva sa ograničenom odgovornošću ili u formi akcionarskog društva.
 - Kompanije za upravljanje investicionim fondovima moraju biti u formi akcionarskog društva ili društva sa ograničenom odgovornošću, dok kompanije za upravljanje finansijskim sredstvima, koje obavljaju aktivnosti upravljanja i organizovanja penzionih fondova, moraju biti osnovane kao nejavna akcionarska društva.

(B) Neživotno osiguranje	<p>(1) Ne obavezujemo se, osim za osiguranje imovine stranaca kao i osiguranje od rizika pomorskih brodova i komercijalnog vazduhoplovstva i lansiranje u svemir i teret (uključujući satelite), sa takvim osiguranjem koje pokriva bilo koju ili obuhvata sve od sljedećeg: robu koja se prevozi, vozila koja prevoze robu i obaveze koje proizilaze iz gore navedenog kao i robu u međunarodnom tranzitu.</p> <p>(2) Nema ograničenja.</p> <p>(3) Nema ograničenja.</p> <p>(4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>(1) Nema ograničenja.</p> <p>(2) Nema ograničenja.</p> <p>(3) Nema ograničenja.</p> <p>(4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
(ii) Reosiguranje i retrocesija	<p>(1) Nema ograničenja.</p> <p>(2) Nema ograničenja.</p> <p>(3) Nema ograničenja.</p> <p>(4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>(1) Nema ograničenja.</p> <p>(2) Nema ograničenja.</p> <p>(3) Nema ograničenja.</p> <p>(4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
(iii) Usluge posredovanja u osiguranju, kao što su brokerske i agencijske usluge	<p>(1) Ne obavezujemo se, osim za odredbe životnog osiguranja za strance, osiguranje imovine stranaca kao i osiguranje od rizika pomorskih brodova i komercijalnog vazduhoplovstva i lansiranje u svemir i teret (uključujući satelite), sa takvim osiguranjem koje pokriva bilo koju ili obuhvata sve od sljedećeg: robu koja se prevozi, vozila koja prevoze robu i obaveze koje proizilaze iz gore navedenog, kao i robu u međunarodnom tranzitu.</p> <p>(2) Nema ograničenja.</p> <p>(3) Nema ograničenja.</p> <p>(4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>(1) Nema ograničenja.</p> <p>(2) Nema ograničenja.</p> <p>(3) Nema ograničenja.</p> <p>(4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
(iv) Pomoćne usluge u osiguranju, poput konsultantskih, aktuarskih, usluga procjene rizika i usluge naplate odštetnih zahtjeva	<p>(1) Ne obavezujemo se, osim za odredbe životnog osiguranja za strance, osiguranje imovine stranaca kao i osiguranje od rizika pomorskih brodova i komercijalnog vazduhoplovstva i lansiranje u svemir i teret (uključujući satelite), sa takvim osiguranjem koje pokriva bilo koju ili obuhvata sve od sljedećeg: robu koja se prevozi, vozila koja prevoze robu i obaveze koje proizilaze iz gore navedenog, kao i robu u međunarodnom tranzitu.</p> <p>(2) Nema ograničenja.</p> <p>(3) Nema ograničenja.</p> <p>(4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>(1) Nema ograničenja.</p> <p>(2) Nema ograničenja.</p> <p>(3) Nema ograničenja.</p> <p>(4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
B. Bankarstvo i ostale finansijske usluge Jedan od pet članova upravnog odbora banke i najmanje dva izvršna direktora moraju poznavati jezik koji je u službenoj upotrebi u Crnoj Gori i imati prebivalište u Crnoj Gori za vrijeme obavljanja svoje dužnosti.			
(v) Primanje depozita i ostalih povratnih sredstava od građana	<p>(1) Nema ograničenja.</p> <p>(2) Nema ograničenja.</p> <p>(3) Nema ograničenja.</p> <p>(4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>(1) Nema ograničenja.</p> <p>(2) Nema ograničenja.</p> <p>(3) Nema ograničenja.</p> <p>(4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
(vi) Davanje zajmova svih vrsta uključujući potrošačke kredite,	<p>(1) Nema ograničenja.</p> <p>(2) Nema ograničenja.</p>	<p>(1) Nema ograničenja.</p> <p>(2) Nema ograničenja.</p>	

<p>(vii) hipotekarne kredite, preuzimanje naplate dugova i finansiranje trgovinskog poslovanja Finansijski lizing</p> <p>(viii) Sve usluge plaćanja i prenosa novca, uključujući kreditne i debitne kartice, putne čekove i bankarske zapise</p> <p>(ix) Garancije i jemstva</p>	<p>(3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>(3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
<p>(x) Trgovina za sopstveni ili za račun trećeg lica na berzi, vanberzansko poslovanje, što se odnosi na: (A) hartije od vrijednosti (uključujući čekove, mjenice i potvrde o depozitu); (B) devize; (C) derivative (uključujući, ali ne ograničavajući se na rokovne ugovore i opcije) (D) instrumente deviznih kurseva i kamatnih stopa uključujući na primjer swap (razmjenu), terminski ugovor; (E) prenosive HOV; i (F) ostali prenosivi instrumenti i finansijska sredstva, uključujući i zlato.</p>	<p>(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
<p>(xi) Učešće u izdavanju svih vrsta HOV, pokroviteljstvo izdavanja i plasiranje kao agent (javnih ili privatnih) i usluge u vezi sa tim izdavanjem</p> <p>(xii) Brokerski poslovi novcem</p>	<p>(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
<p>(xiii) Upravljanje finansijskim sredstvima, kao što je upravljanje gotovinom ili portfeljima, svi oblici upravljanja zajedničkim ulaganjima, upravljanje penzionim fondovima, usluge deponovanja i povjeravanja</p>	<p>(1) Osnivanje specijalizovanih menadžment kompanija je neophodno za obavljanje aktivnosti upravljanja investicionim fondovima i kompanijama. Samo kompanije koje imaju registrovane kancelarije u Crnoj Gori mogu biti deponenti sredstava investicionih fondova. (2) Nema ograničenja. (3) Osnivanje specijalizovanih menadžment kompanija je neophodno za obavljanje aktivnosti upravljanja investicionim fondovima i kompanijama. Samo kompanije koje imaju registrovane kancelarije u Crnoj Gori mogu biti deponenti sredstava investicionih fondova. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
<p>(xiv) Usluge kliringa i saldiranja finansijskih sredstava, uključujući HOV, derivative i ostale prenosive instrumente</p>	<p>(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Ovu vrstu usluga pruža samo Centralna Depozitarna Agencija. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
<p>(xv) Pružanje i prenos finansijskih informacija i obrada finansijskih podataka i s tim vezanog softvera dobavljača ostalih finansijskih usluga</p>	<p>(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	<p>(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.</p>	
<p>(xvi) Savjetodavne, posredničke i ostale pomoćne finansijske usluge za sve aktivnosti naznačene u podsektorima od (v) do (xv), uključujući kreditne</p>	<p>(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev</p>	<p>(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev</p>	

preporuke i analize, istraživanje i savjetovanje o ulaganjima i portfelju, savjetovanje o kupovini i restrukturiranju preduzeća i strategiji	onoga što je navedeno u horizontalnom dijelu.	onoga što je navedeno u horizontalnom dijelu.	
8. ZDRAVSTVENE I DRUGE SOCIJALNE USLUGE (privatno finansirane usluge)			
A. Bolničke usluge (CPC 9311)	(1) Ne obavezujemo se. (2) Nema ograničenja.	(1) Ne obavezujemo se. (2) Nema ograničenja.	
B. Ostale zdravstvene usluge (CPC 9319)	(3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
9. USLUGE KOJE SE ODOSE NA TURIZAM I PUTOVANJA			
A. Hoteli i restorani (uključujući catering) (CPC 641- 643) (isključujući catering iz sektora usluga transporta)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
B. Putničke agencije i usluge tur-operatera (CPC 7471)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
C. Usluge turističkih vodiča (CPC 7472)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
10. REKREATIVNE, KULTURNE I SPORTSKE USLUGE (izuzev audiovizuelnih usluga)			
A. Usluge koje odnose na rad bioskopa i pozorišta (CPC 96199 **)	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Ne obavezujemo se. (2) Ne obavezujemo se. (3) Nema ograničenja, osim za pristup subvencijama: Ne obavezujemo se. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
B. Usluge novinskih agencija (CPC 962)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
C. Sportske i druge rekreativne usluge, isključujući kockanje, klađenje (dio CPC 964)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
11. USLUGE TRANSPORTA			
A. Usluge pomorskog transporta			

<p>(a) Prevoz lica (CPC 7211)</p> <p>(b) Prevoz tereta (CPC 7212) osim kabotaže⁵¹</p>	<p>(1) Nema ograničenja.</p> <p>(2) Nema ograničenja.</p> <p>(3) (a) Osnivanje registrovane kompanije koja će ploviti pod crnogorskom zastavom: Ne obavezujemo se.</p> <p>(b) Drugi oblici komercijalnog prisustva za pružanje usluga međunarodnog pomorskog transporta: nema ograničenja⁵².</p>	<p>(1) Nema ograničenja.</p> <p>(2) Nema ograničenja.</p> <p>(3) (a) Ne obavezujemo se.</p> <p>(b) Nema ograničenja.</p>	<p>Sljedeće lučke usluge su stavljene na raspolaganje za pružaoce usluga međunarodnog pomorskog transporta pod razumljivim i nediskriminatorskim uslovima.</p> <ol style="list-style-type: none"> 1. Pilotiranje; 2. Pomoć pri tegljenju brodova; 3. Snabdijevanje, nabavka goriva i vode; 4. Sakupljanje otpadaka i odlaganje otpada; 5. Usluge lučkog kapetana; 6. Pomoć pri navigaciji; 7. Operacione obalske usluge bitne za poslove na brodu, uključujući komunikacije i snabdijevanje vodom i strujom;
	<p>(4) (a) Posada broda: Ne obavezujemo se.</p> <p>(b) Ne obavezujemo se, izuzev onoga što je navedeno</p>	<p>(4) (a) Ne obavezujemo se.</p> <p>(b) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom</p>	<ol style="list-style-type: none"> 8. Objekti za hitne popravke; i 9. Sidrište, vez i usluge vezivanja.

⁵¹ Bez štete po obim aktivnosti koje mogu biti posmatrane kao "kabotaža" prema relevantnom domaćem zakonodavstvu, ovaj raspored ne podrazumijeva "usluge pomorske kabotaže", pod kojima se podrazumijeva transport putnika ili roba između jedne luke u Crnoj Gori i druge luke u Crnoj Gori, saobraćaj koji počinje i završava se u istoj luci u Crnoj Gori, s tim da ovaj saobraćaj ostane u okviru teritorijalnih voda Crne Gore, a transport putnika i roba između luke u Crnoj Gori i instalacija i struktura u kontinentalnom dijelu Crne Gore.

⁵² „Drugi oblici komercijalnog prisustva za pružanje usluga međunarodnog pomorskog transporta“ znači mogućnost pružaoce usluga međunarodnog pomorskog transporta drugih članica da preuzmu lokalno sve aktivnosti neophodne za pružanje djelimično ili potpuno integrisanih usluga transporta svojim potrošačima, u okviru kojih pomorski transport predstavlja bitan element (Ova obaveza se neće na nijedan način posmatrati kao ograničenje obavezama preuzetim shodno prekograničnom načinu isporuke). Ove usluge podrazumijevaju, ali nisu ograničene na: (a) marketing i prodaju usluga pomorskog transporta i sličnih usluga putem direktnog kontakta sa potrošačima, od kotacija do faktura, s tim da se ove usluge vrše i nude od strane samog pružaoce usluga ili od strane pružaoce usluga sa kojim je prodavac usluga uspostavio stalne poslovne aranžmane; (b) naručivanje, na njihov vlastiti račun ili u ime njihovih potrošača, (ponovna prodaja njihovim potrošačima) svih transportnih ili sličnih usluga, uključujući transportne usluge u unutrašnjosti na bilo koji način, naročito preko unutrašnjih vodenih puteva, puteva ili željeznice, što je neophodno za pružanje integrisanih usluga (c) priprema dokumentacije koja se odnosi na transportna, carinska dokumenta, ili na druga dokumenta vezana za porijeklo i vrstu robe koja se transportuje; (d) pružanje poslovnih informacija svim sredstvima, uključujući kompjuterizovane informacione sisteme i elektronsku razmjenu podataka (shodno odredbama Odjeljka III o telekomunikacijama); (e) uspostavljanje bilo kakvih poslovnih aranžmana (uključujući učešće u akcijama kompanije) i imenovanje kadra koje se zapošljava lokalno (ili, u slučaju kadra iz inostranstva, shodno horizontalnoj obavezi o kretanju kadra) u lokalnim pomorskim agencijama; (f) zastupanje kompanija, organizujući dolazak broda ili preuzimanje broskog tereta kada se to zahtijeva.

	u horizontalnom dijelu.	dijelu.	
(c) Iznajmljivanje plovila sa posadom (CPC 7213)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(d) Održavanje i popravka plovila (CPC 8868**)	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(e) Usluge tegljenja i guranja (CPC 7214), osim kabotaže	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
- Usluge rukovanja brodskim teretom ⁵³	(1) Ne obavezujemo se osim da nema ograničenja na pretovar (sa broda na brod ili preko pristaništa) ili na upotrebu opreme za upravljanje teretom na brodu. (2) Nema ograničenja. (3) Nema ograničenja ⁵⁴ . (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Ne obavezujemo se osim da nema ograničenja na pretovar (sa broda na brod ili preko pristaništa) ili na upotrebu opreme za upravljanje teretom na brodu. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
- Usluge čuvanja i skladištenja (CPC 742) - Usluge carinjenja ⁵⁵ - Kontejnerska stanica i usluge skladištenja ⁵⁶	(1) Ne obavezujemo se (2) Nema ograničenja. (3) Nema ograničenja ⁵⁷ . (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Ne obavezujemo se (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
- Usluge pomorske agencije ⁵⁸ - Usluge pomorske špedicije ⁵⁹	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
C. Usluge avio prevoza			
(a) Održavanje i popravka aviona (CPC 8868**)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja.	

⁵³ Pod „Usluge rukovanja brodskim teretom“ se podrazumijevaju aktivnosti lučkih kompanija, uključujući operatere na terminalima, ali ne uključujući direktne aktivnosti lučkih radnika kada se ova radna snaga organizuje nezavisno od lučkih kompanija ili navedenih operatera. Obuhvaćene aktivnosti podrazumijevaju organizovanje i praćenje (a) ukrcajanja/iskrcavanja brodskog tereta; (b) privezivanja/odvezivanja brodskog tereta; i (c) prijema/ispоруке i čuvanja brodskog tereta prije otpreme ili nakon iskrcavanja.

⁵⁴ Procedure dodjele koncesija ili izdavanja dozvola za komunalne usluge mogu biti primijenjene u slučaju zanimanja iz javnog domena.

⁵⁵ Pod „Usluge carinjenja“ se podrazumijevaju aktivnosti koje obuhvataju obavljanje, u ime druge strane, carinskih formalnosti vezanih za uvoz, izvoz ili kroz transport brodskog tereta bez obzira da li ova usluga predstavlja glavnu aktivnost pružaoca usluga ili predstavlja uobičajenu dopunu njegove/njene glavne aktivnosti.

⁵⁶ Pod „Kontejnerska stanica i usluge skladištenja“ se podrazumijevaju aktivnosti koje obuhvataju skladištenje kontejnera, u lukama ili u unutrašnjosti, sa ciljem njihovog punjenja/praznjenja, opravke i pripremanja za otpremanje.

⁵⁷ Procedure za izdavanje koncesija i licenci za komunalne usluge se mogu primijeniti u slučaju zauzimanja javnog posjeda.

⁵⁸ Pod „Usluge pomorske agencije“ se podrazumijevaju aktivnosti koje obuhvataju zastupanje u svojstvu agenta, u okviru date geografske oblasti, poslovnih interesa jedne ili više pomorskih linija ili pomorskih kompanija, u sljedeće svrhe: (a) marketing i prodaja pomorskog transporta i sličnih usluga putem direktnog kontakta sa potrošačima, od kotacija do faktura, i izdavanje brodskih tovarnih listova u ime kompanija, naručivanje i preprodaja neophodnih sličnih usluga, priprema dokumentacije, i pružanje poslovnih informacija; i (b) zastupanje kompanija, organizujući dolazak broda ili pružanje brodskog tereta kada se to zahtijeva.

⁵⁹ Pod „Usluge pomorske špedicije“ se podrazumijeva aktivnost koja obuhvata organizovanje i praćenje poslova otpremanja u ime otpremnika robe, kroz naručivanje transportnih i sličnih usluga, pripremu dokumentacije i pružanje poslovnih informacija.

	(4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(b) Pomoćne usluge u avio prevozu - Prodaja i marketing za usluge vazdušnog saobraćaja - Kompjuterski sistem rezervacija (CRS)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Nema ograničenja osim za distribuciju kroz CRS usluge vazdušnog saobraćaja pruženih od strane CRS matičnog špeditera: Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja osim za distribuciju kroz CRS usluge vazdušnog saobraćaja pruženih od strane CRS matičnog špeditera: Ne obavezujemo se. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
E. Usluge željezničkog transporta			
(a) Prevoz tereta (CPC 7112)	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(b) Održavanje i popravka željezničke opreme (CPC 8868**)	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(c) Pomoćne usluge u željezničkom transportu (CPC 7430)	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
F. Usluge drumskog transporta			
(a) Prevoz lica (CPC 7121, 7122)	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Uslov za dobijanje dozvole za prevoz lica je crnogorsko državljanstvo ili da je pravno lice osnovano u skladu sa nacionalnim zakonodavstvom. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Uslov za dobijanje dozvole za prevoz lica je crnogorsko državljanstvo ili da je pravno lice osnovano u skladu sa nacionalnim zakonodavstvom. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(b) Prevoz tereta (CPC 7123)	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	

(c) Iznajmljivanje komercijalnih vozila sa vozačem (CPC 7124)	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja.	(1) Nema ograničenja. (2) Nema ograničenja. (3) Nema ograničenja.	
(d) Usluge održavanja i popravke opreme za drumski transport (CPC 6112, 8867)	(4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(e) Pomoćne usluge u drumskom transportu (CPC 744)	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(1) Ne obavezujemo se. (2) Nema ograničenja. (3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	

G. Usluge cjevovodnog transporta			
(a) Transport goriva (CPC 7131)	(1) Ne obavezujemo se. (2) Ne obavezujemo se.	(1) Ne obavezujemo se. (2) Ne obavezujemo se.	<i>Crna Gora se obavezuje da obezbijedi punu transparentnost u formulisanju, usvajanju i primjeni mjera koje se odnose na pristup i trgovinu uslugama transporta putem cjevovoda. Crna Gora se obavezuje da će obezbijediti poštovanje principa nediskriminatornosti u pristupu i korišćenju mreža cjevovoda koji su u njenoj nadležnosti, u okviru tehničkih kapaciteta ovih mreža, uzimajući u obzir porijeklo, odredište i vlasništvo proizvoda koji se transportuju, bez nametanja bilo kakvih neopravdanih odlaganja, ograničenja ili taksi, kao i diskriminacije cijena na osnovu razlika u porijeklu, odredištu i vlasništvu.</i>
(b) Transport ostalih roba (CPC 7139)	(3) Ne obavezujemo se. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(3) Ne obavezujemo se. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	

H. Pomoćne usluge za sve vrste transporta			
(a) Usluge rukovanja teretom (CPC 741)	(1) Ne obavezujemo se. (2) Nema ograničenja.	(1) Ne obavezujemo se. (2) Nema ograničenja.	
(b) Usluge čuvanja i skladištenja (CPC 742)	(3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	
(c) Usluge agencije za prevoz tereta (CPC 748)	(1) Nema ograničenja. (2) Nema ograničenja.	(1) Nema ograničenja. (2) Nema ograničenja.	
(d) Ostale pomoćne usluge u transportu (CPC 749)	(3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	(3) Nema ograničenja. (4) Ne obavezujemo se, izuzev onoga što je navedeno u horizontalnom dijelu.	

DODATAK IDogovor o obuhvatu CPC 84 – Kompiuterske i srodne usluge

1. CPC 84 obuhvata sve kompiuterske i srodne usluge.
2. Tehnološki razvoj je doveo do veće ponude ovih usluga kao grupe ili paketa povezanih usluga koji uključuju neke ili sve ove osnovne funkcije navedene u stavu 3. Na primjer, usluge kao što je web ili domen hosting, usluge „data mining“ i umrežavanje računara, sastoje se od kombinacija osnovnih kompiuterskih funkcija.

3. Компјутерске и сродне услуге, без обзира на то да ли се пружају путем мреже, укључујући Интернет, подразумијевају све услуге које обухватају слjedeће или њихову комбинацију:

- Savjetovanje, strategiju, analizu, planiranje, specifikaciju, dizajn, razvoj, instalaciju, primjenu, integraciju, testiranje, ispravku greške, ažuriranje, podršku, tehničku pomoć, ili upravljanje kompjuterima ili za kompjutere i kompjuterske sisteme;
- Savjetovanje, strategiju, analizu, planiranje, specifikaciju, dizajn, razvoj, instalaciju, primjenu, integraciju, testiranje, ispravku greške, ažuriranje, podršku, tehničku pomoć, upravljanje ili upotrebu ili za softver⁶⁰;
- Obradu podataka, čuvanje podataka, postavljanje podataka ili usluge baze podataka;
- Usluge održavanja i popravke kancelarijske opreme i mašina, uključujući kompjutere; ili
- Obuku za osoblje koje je u kontaktu sa klijentima, vezano za kompjuterske programe, kompjutere ili kompjuterske sisteme, a koji nisu negdje drugo navedeni.

4. U mnogim slučajevima, kompjuterske i srodne usluge omogućavaju pružanje drugih vrsta usluga⁶¹ putem elektronskih ili drugih sredstava. Međutim u takvim situacijama, postoji važna razlika između kompjuterske i srodne usluge (kao npr. postavljanje na web, postavljanje aplikacije) i druge usluge omogućene kompjuterske i srodne usluge. Ta druga usluga, bez obzira što je omogućena putem kompjuterske i srodne usluge nije pokrivena CPC 84.

**PRILOG DOGOVORA O OBUHVATU CPC 84
KOMPJUTERSKE I SRODNE USLUGE
CPC 84- Kompjuterske i srodne usluge**

- 841 Konsultantske usluge vezano za instalacije kompjuterskih hardvera
- 8410 84100 Konsultantske usluge vezano za instalacije kompjuterskih hardvera
Pružanje podrške klijentima u instalaciji kompjuterskog hardvera (tj. fizičke opreme) i kompjuterskih mreža.
- 842 Usluge implementacije softvera
Sve usluge koje se tiču konsaltinga u vezi izrade i funkcionisanja softvera. Termin „softver“ se može definisati kao set uputstava za rad kompjutera i ostvarivanje komunikacije. Može se razviti veliki broj različitih programa za određene aplikacije (aplikacijski softver), i kupac ima na raspolaganju već gotove programe (packaged software), mogućnost izrade posebnih programa za određenu namjenu (prilagođeni softver) ili upotrebu kombinacije ova dva.
- 8421 84210 Konsalting usluge u vezi sistema i softvera
Opšte usluge koje se pružaju prije izrade sistema za obradu podataka i aplikacija. Mogu biti menadžment usluge, usluge planiranja projekta, itd.
- 8422 84220 Usluge analize sistema
Usluge analize obuhvataju analizu potreba klijenta, definisanje funkcionalne specifikacije, kao i stvaranje tima. Takođe su uključeni projektni menadžment, tehnička koordinacija I integracija, kao I definisanje strukture sistema.
- 8423 84230 Plan izrade sistema
Plan izrade obuhvata tehnička rješenja u pogledu metodologije, obezbjeđivanja kvaliteta, odabira opreme softverskih paketa ili novih tehnologija itd.
- 8424 84240 Usluge programiranja
Usluge programiranja obuhvataju fazu implementacije tj. upisivanje i ispravljanje programa, testiranje i obradu dokumentacije.
- 8425 84250 Usluge održavanja sistema
Usluge održavanja obuhvataju usluge konsaltinga i tehničke podrške softverskim proizvodima koji su u upotrebi, ponovno upisivanje ili izmjena postojećih programa ili sistema, i ažuriranje softverske dokumentacije i priručnika. Takođe uključen specijalistički rad, tj. konverzije.
- 843 Usluge obrade podataka
- 8431 84310 Usluge pripreme inputa
Usluge bilježenja podataka poput key punching-a, optičkog skeniranja ili drugih metoda za unos podataka.
- 8432 84320 Usluge obrade podataka i tabeliranja
Usluge poput obrade podataka i tabeliranja, usluge kompjuterskog računanja i usluge iznajmljivanja kompjuterskog vremena.
- 8433 84330 Usluge time-sharinga
Isti tip usluga kao 84320. Samo se kompjutersko vrijeme kupuje; ukoliko je kupljeno iz prostorija pretplatnika; telekomunikacione usluge se takođe kupuju. Usluge obrade podataka ili tabeliranja se takođe može kupiti od odjela za pružanje tih usluga. U oba slučaja usluge se mogu paralelno obaviti. Stoga, nema jasnog razgraničenja između 84320 i 84330.
- 8439 84390 Ostale usluge obrade podataka
Ugovorene usluge koje upravljaju svim operacijama u korisnikovim objektima: usluge kvaliteta kontrole zaštite životne sredine kompjuterske sale; menadžment usluge sastavljanja kompjuterske opreme; i usluge upravljanja tokovima i distribucijom kompjuterskih operacija.
- 844 Usluge baze podataka
- 8440 84400 Usluge baze podataka
Sve usluge obezbjeđene od naročito strukturirane baze podataka kroz komunikacionu mrežu.
Izuzeci: Usluge prenosa podataka i poruka (npr. usluge održavanja rada mreže, usluge mreže sa dodatnom vrijednošću) su klasifikovane pod 7523 (Usluge prenosa podataka i poruka).
Usluge dokumentovanja koje obuhvataju pronalaženje informacija iz baza podataka su klasifikovane u podgrupi 96311 (Bibliotekarske usluge).
- 845 Usluge održavanja i popravke kancelarijskih aparata i opreme uključujući kompjutere
- 8450 84500 Usluge održavanja i popravke kancelarijskih aparata i opreme uključujući kompjutere
Usluge održavanja i popravke kancelarijskih aparata, kompjutera i povezane opreme.
- 849 Ostale kompjuterske usluge

⁶⁰ Termin "sofver" može se definisati kao setovi instrukcija potrebnih za rad i komunikaciju. Različiti programi mogu biti razvijeni za specifične aplikacije (aplikacije za programe), I potrošač ima mogućnost izbora pripremljenih programa sa police (upakovanih programa), razvijanje posebnih programa za posebne zahtjeve (prilagođenih programa) ili korišćenje kombinacije njih dvoje.

⁶¹ E.g./120.1.A.b (računovodstvo, revizija i knjigovodstvo), W/120.1.A.d. (arhitektonske usluge), W/120.1.A.h. (medicinske i stomatološke usluge), W/120.2.D (audiovizuelne usluge), W/120.5. (usluge obrazovanja).

- 8491 84910 Usluge pripreme podataka
Usluge pripreme podataka za klijente koje ne obuhvataju usluge obrade podataka
- 8499 84990 Ostale kompjuterske usluge, koje nisu drugdje klasifikovane
Ostale usluge povezane sa kompjuterskim uslugama, koje nisu drugdje klasifikovane, npr. usluge obuke klijentovog osoblja i druge profesionalne kompjuterske usluge.

DODATAK II

Referentni dokument o Poštanskim i kurirskim uslugama

Obuhvat

U nastavku slijede definicije i principi vezano za regulatorni okvir u poštanskim i kurirskim uslugama.

Definicije

„Pojedinačna dozvola“ je ovlaštenje, dato nekom pružaocu usluge od strane regulatornih vlasti, što se zahtijeva prije pružanja same usluge.

„Univerzalna usluga“ je trajno pružanje poštanskih usluga po propisanom kvalitetu i u svim mjestima na teritoriji Crne Gore po cijeni koju mogu priuštiti svi korisnici.

1. Sprečavanje netržišnog ponašanja u poštanskim i kurirskim uslugama

Određene mjere će biti zadržane ili uvedene u cilju sprečavanja pružalaca usluga, koji, pojedinačno ili zajedno, imaju mogućnost da utiču na uslove učestvovanja (kada su u pitanju cijene i pružanje usluga) na odnosnom tržištu poštanskih i kurirskih usluga, kao rezultat korišćenja njihove pozicije na tržištu, da započnu ili nastave sa netržišnim ponašanjem.

2. Univerzalne usluge

Crna Gora ima pravo da definiše vrstu obaveza za univerzalne usluge koje želi da zadrži kao takve. Ove obaveze neće biti smatrane netržišnim same po sebi ukoliko su sprovedene na transparentan, nediskriminatoran i konkurentan način i nisu više opterećujuće nego što je neophodno za tu vrstu univerzalnih usluga definisanih od strane Crne Gore.

3. Pojedinačne dozvole

Pojedinačna dozvola se zahtijeva samo za usluge koje potpadaju pod univerzalne.

U slučajevima kada se zahtijeva pojedinačna dozvola, javno mora biti dostupno:

- (a) svi kriterijumi za izdavanje dozvole i vremenski period koji je pod normalnim okolnostima potreban da bi se donijela odluka vezano za podnijetu prijavu za dozvolu; i
- (b) rokovi i uslovi za pojedinačne dozvole.

Podnosiocu zahtjeva će biti dat na uvid razlog za odbijanje dozvole, kao i mogućnost žalbene procedure kroz neko nezavisno tijelo, što će biti organizovano na nivou zemlje. Ova procedura će biti transparentna, nediskriminatorna i bazirana na objektivnim kriterijumima.

4. Nezavisnost regulatornog tijela

Regulatorno tijelo je pravno nezavisno i ne odgovara za svoje aktivnosti nijednom pružaocu poštanskih i kurirskih usluga. Odluke i procedure regulatornog tijela su nepristrasne u odnosu na sve učesnike na tržištu.

REFERENTNI DOKUMENT

Djelokrug

U nastavku navodimo definicije i načela zakonskog okvira za osnovne telekomunikacijske usluge.

Definicije

Korisnici znače korisnike usluge i pružaoce usluge.

Osnovna sredstva znače sredstva javne telekomunikacione mreže ili usluge koje:

- a) pruža isključivo ili većim dijelom jedan ili ograničeni broj operatora; i
- a) nije moguće ekonomski ili tehnički nadomjestiti da bi se pružala usluga.

Operator sa značajnom tržišnom snagom je operater koji ima mogućnost da materijalno utiče na uslove učestvovanja (koji se odnose na cijenu i pružanje usluge) na relevantnom tržištu osnovnih telekomunikacionih usluga, putem:

- a) kontrole ključnih elemenata; ili
- b) korišćenjem svoje pozicije na tržištu.

1. Mjere zaštite slobodnog tržišnog ponašanja

1.1. Sprečavanje netržišnog ponašanja u telekomunikacijama

Odgovarajuće mjere će se sprovoditi u svrhu sprečavanja operatora koji su, pojedinačno ili zajedno, operatori sa značajnom tržišnom snagom, uključeni ili nastavljaju sa netržišnim ponašanjem.

1.2. Mjere zaštite

Gore navedeno netržišno ponašanje uključuje pogotovo:

- a) netržišno uzajamno subvencioniranje;
- b) korišćenje informacije dobijene od konkurencije s netržišnim učinkom; i
- c) ne pružanje, ostalim operaterima pravovremeno, tehničkih informacija o osnovnim sredstvima i komercijalno značajnih informacija koje su im neophodne kako bi pružali usluge.

2. Međusobno povezivanje

2.1. Ovaj se dio primjenjuje na povezivanje s operaterima javnih telekomunikacionih mreža ili pružiocima usluga kako bi se korisnicima jednog operatora omogućilo komuniciranje s korisnicima drugog operatora i pristup uslugama koje pruža drugi operater pri čemu su preuzete posebne obaveze.

2.2. Međusobno povezivanje koje se mora osigurati

Međusobno povezivanje između vodećih operatora će se osigurati na bilo kojoj tački mreže gdje je to tehnički izvodljivo. Takvo međusobno povezivanje će biti omogućeno:

- a) na nediskriminatornoj osnovi, uslovima (uključujući tehničke standarde i specifikacije) i po cijenama i kvalitetima koji nisu manje povoljni od onih za svoje vlastite slične usluge ili za slične usluge nepovezanih pružalaca usluga ili za svoje podružnice ili ostale afilijacije;
- b) pravovremeno, u rokovima, uslovima (uključujući tehničke standarde i specifikacije) i po cijenama zasnovanim na troškovima koji su transparentni, razumni, vodeći računa o ekonomskoj izvodljivosti, kao i dovoljno međusobno nevezani kako pružalac ne bi morao plaćati sastavne dijelove mreže ili sredstva koja mu nisu potrebna da bi mogao pružiti uslugu; i
- c) na zahtjev, na tačkama dodatnim u odnosu na završne tačke mreže koje nudi većini korisnika, te koje podliježu troškovima koji odražavaju troškove izgradnje neophodnih dodatnih sredstava.

2.3. Javna dostupnost postupaka za pregovore o međusobnom povezivanju

- Postupci koji se primjenjuju za međusobno povezivanje s vodećim operaterima će biti javno dostupni.
- 2.4. Transparentnost ugovora o međusobnom povezivanju
Operatori sa značajnom tržišnom snagom moraju osigurati da ugovori o međusobnom povezivanju i referentne ponude za međusobno povezivanje budu javno dostupni.
- 2.5. Međusobno povezivanje: rješavanje sporova
Operator koji zahtijeva međusobno povezivanje s operatorom sa značajnom tržišnom snagom, moći će se obratiti:
- u bilo koje vrijeme; ili
 - u razumnom vremenskom razdoblju koje će biti javno poznato nezavisnom domaćem tijelu, a to može biti regulatorno tijelo prema stavu 5, radi rješavanja sporova u vezi s odgovarajućim rokovima, uslovima i cijenama za međusobno povezivanje unutar razumnog razdoblja, u obimu u kojem one nisu bile ranije uspostavljene.
3. Univerzalne usluge
Crna Gora ima pravo definisati vrstu obaveze univerzalne usluge koju želi pružati. Takve obaveze se neće smatrati netržišnim ponašanjem *per se*, pod uslovom da se sprovode na transparentni, nediskriminatorni i konkurentno neutralan način te da nisu više opterećujuće nego što je to potrebno za takvu vrstu univerzalne usluge kako je definiše Crna Gora.
4. Javna dostupnost kriterijuma za dozvole
U slučaju kada je potrebna dozvola, sljedeće će biti javno dostupno:
- svi kriterijumi za dobijanje dozvole, te vremenski rok koji je normalno potreban kako bi se donijela odluka koji se odnosi na zahtjev za dobijanje dozvole.
 - rokovi i uslovi za individualne dozvole
Razlog odbijanja dozvole bit će saopšten podnosiocu zahtjeva na njegov zahtjev.
5. Nezavisno regulatorno tijelo
Regulatorno tijelo odvojeno je i nije odgovorno nijednom pružaocu osnovnih telekomunikacionih usluga. Odluke i postupci regulatornog tijela će biti nepristrasni u odnosu na sve tržišne učesnike.
6. Dodjela i korišćenje ograničenih dobara
Bilo koji postupak za dodjelu i korišćenje ograničenih dobara, uključujući frekvencije, brojeve i pravo na prolaz, će biti izvršeni na objektivni, pravovremen, transparentan i nediskriminatoran način. Tekuće stanje dodijeljenih frekvencija će biti javno dostupno, ali se neće zahtijevati detaljna informacija o frekvencijama dodijeljenim za specifične potrebe Vlade.

LISTA IZUZEĆA OD ČLANA 4 PROTOKOLA III (MFN) CRNE GORE

Sektor ili pod-sektor	Opis mjera koje nisu u skladu sa članom 4	Zemlje na koje se mjera odnosi	Očekivano trajanje	Uslovi koji stvaraju potrebu za izuzećem
Pravne usluge	Pored konsultantskih usluga, ostale pravne usluge koje pružaju advokati, odnosno advokati koji su članovi Advokatske komore Crne Gore i upisani u registar Komore mogu te usluge pružati pod uslovom reciprociteta.	Sve zemlje.	Neodređeno.	Uzajamna koordinacija pravne profesije koja obuhvata regionalni razvoj sudskih i administrativnih institucija.
Audiovizuelne usluge - Proizvodnja i distribucija audiovizuelnih djela putem emitovanja ili ostalim sredstvima prenosa javnosti	Mjere na osnovu kojih se definišu djela evropskog porijekla, tako da se jednako tretiraju domaća i strana audiovizuelna djela koja zadovoljavaju određene jezičke kriterijume i kriterijume porijekla u vezi sa pristupom emitovanju ili ostalim sredstvima prenosa javnosti.	Strane Konvencije Savjeta Evrope o prekograničnoj televiziji ili druge evropske zemlje sa kojima bi takav sporazum mogao biti zaključen	Neodređeno. Izuzeće je potrebno, za određene zemlje, jedino dok se sporazum o ekonomskoj integraciji ne zaključi ili sklopi.	Mjere imaju za cilj da, u okviru sektora, promovišu kulturne vrijednosti u Evropi, kao i dostizanje ciljeva lingvističke politike
- Proizvodnja i distribucija kinematografskih djela i televizijskih programa	Mjere zasnovane na međuvladinim i plurilateralnim sporazumima o koprodukciji audiovizuelnih djela kojima se daje nacionalni tretman audiovizuelnim djelima obuhvaćenim takvim sporazumima, naročito u pogledu njihove distribucije i finansiranja.	Sve zemlje sa kojima je poželjna kulturna kooperacija (sporazumi koji već postoje ili su u fazi pregovora sa sljedećim zemljama: Alžir, Angola, Argentina, Australija, Bolivijska Republika Venecuela, Brazil, Burkina Faso, Kanada, Kape Verde, Čile, Obala Slonovače, Kolumbija, Kuba, Egipat, Gvineja Bisao, Indija, Izrael, Mali, Meksiko, Maroko, Mozambik, Novi Zeland, Sao Tome i Principe, Senegal, zemlje centralne, istočne i jugoistočne Evrope, Švajcarska, Tunis, Turska).	Neodređeno.	Cilj ovih sporazuma je promocija kulturnih veza između zemalja potpisnica.
- Proizvodnja i distribucija televizijskih programa i kinematografskih djela	Mjere kojima se obezbjeđuje benefit od nekih programa podrške (kao što su Akcioni plan za napredne televizijske usluge, MEDIA ili Eurimaž) za audiovizuelna djela i njihove ponuđače koji ispunjavaju određene kriterijume o evropskom porijeklu.	Evropske zemlje.	Neodređeno. Izuzeće je potrebno, za određene zemlje, jedino dok se sporazum o ekonomskoj integraciji ne zaključi ili sklopi.	Cilj ovih programa je čuvanje i promocija regionalnog identiteta evropskih zemalja koje imaju dugotrajne kulturne veze.
Usluge drumskog transporta	Dozvole za drumski saobraćaj se izdaju pod uslovom reciprociteta.	Sve zemlje.	Neodređeno.	Međunarodna praksa.
- Prevoz lica i tereta	Mjere preduzete na osnovu odredbi postojećih i budućih sporazuma koji rezervišu i/ili ograničavaju usluge drumskog transporta i specifikuju rokove i uslove transporta, uključujući dozvole za tranzit i/ili povlašćene putarine na teritoriji Crne Gore i van teritorije Crne Gore.	Sve zemlje sa kojima su ovi sporazumi na snazi.	Neodređeno.	Potreba za izuzećem se vezuje za regionalne karakteristike usluga drumskog saobraćaja i potrebom za regulisanjem prava transporta preko teritorije Crne Gore kao i između Crne Gore i zemalja potpisnica.
Prodaja, marketing i kompjuterski rezervacioni sistem usluga avio prevoza	Obaveze crnogorskih prodavača CRS sistema odnosno obaveze crnogorskih matičnih avio špeditera i špeditera-učesnika se neće primjenjivati u pogledu	Sve zemlje u kojima je prisutan CRS sistem prodavača ili matični avio špediteri	Neodređeno.	Potreba za izuzećem je proističe iz nezadovoljavajućeg razvoja multilateralno dogovorenih pravila za funkcionisanje

Sektor ili pod-sektor	Opis mjera koje nisu u skladu sa članom 4	Zemlje na koje se mjera odnosi	Očekivano trajanje	Uslovi koji stvaraju potrebu za izuzećem
	stranih matičnih špeditera ili CRS koje kontrolišu strani avio špediteri u mjeri da njihov CRS izvan Crne Gore ne nudi nacionalni tretman crnogorskim matičnim avio špediterima ili crnogorskim matičnim avio špediterima i špediterima-učesnicima.			CRS-a.
Svi sektori	Mjere zasnovane na bilateralnim sporazumima zaključenim od strane Crne Gore sa ciljem obezbjeđenja kretanja svih fizičkih lica koja pružaju usluge.	Zemlje regiona.	Neodređeno.	Sporazumi odražavaju proces progresivne liberalizacije trgovine između Crne Gore i njenih trgovinskih partnera u regionu.

PROTOCOL I
(Referred to in Article 10)

ARTICLE 1

Protocol I to the Free Trade Agreement between Montenegro and the Republic of Turkey, signed on 26 November 2008 and entered into force on 1 March 2010 (hereinafter referred to as "the Agreement") shall be replaced by this Protocol.

ARTICLE 2

This Protocol shall apply to products that are specified in Article 9 of the Agreement.

ARTICLE 3

1. The agricultural products originating in the Republic of Turkey listed in Annex I to this Protocol shall be imported into Montenegro according to the conditions established in that Annex.

2. The agricultural products originating in Montenegro listed in Annex II to this Protocol shall be imported into the Republic of Turkey according to the conditions established in that Annex.

ARTICLE 4

The Parties shall grant preferential treatment to each other as regards the products listed in Annexes to this Protocol in compliance with the provisions of Protocol II of the Agreement, concerning the rules of origin.

ARTICLE 5

This Protocol shall enter into force on the first day of the second month, following the date of the receipt of the latter written notification through diplomatic channels, by which the Parties inform each other that all necessary requirements foreseen by their national legislation for the entry into force of this Protocol, have been fulfilled.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto, have signed this Protocol.

DONE at Ankara, on 17th of July, 2019, in two originals, each in the Montenegrin, Turkish and English languages, all texts being equally authentic. In case of any divergence in the interpretation of this Protocol, the English text shall prevail.

For Montenegro
Dragica SEKULIĆ
Minister of Economy

For the Republic of Turkey
Ruhsar PEKCAN
Minister of Trade

Annex I to Protocol I

Imports into Montenegro of the following products originating in the Republic of Turkey shall be subject to the concessions set out below:

HS Code	Product Description	Tariff Quota Volume (tonnes)	Preferential Customs Duty
0406 90 29	Kashkaval	65	100 % reduction

0406 90 32	Feta		from MFN
0406 90 99	Other cheese: other, other, other, other		
0406 90 29	Kashkaval		
0406 90 32	Feta	Unlimited	50 % reduction from MFN
0406 90 99	Other cheese: other, other, other, other		
0709 93 (1 January-31 December)	Pumpkins, squash and gourds (<i>Cucurbita</i> spp.), fresh or chilled	500	100 % reduction from MFN
0709 93 10 (1 November-31 March)	Courgettes, fresh or chilled		
0713 40	Lentils, shelled, whether or not skinned or split	Unlimited	100 % reduction from MFN
0804 20	Figs, fresh or dried	200	100 % reduction from MFN
0805 10	Oranges, fresh or dried	750	100 % reduction from MFN
0805 40	Grapefruit (including pomelos), fresh or dried	400	100 % reduction from MFN
0805 50	Lemons (<i>Citrus limon</i> , <i>Citrus limonum</i>) and limes (<i>Citrus aurantifolia</i> , <i>Citrus latifolia</i>), fresh or dried	3.000	100 % reduction from MFN
0806 20	Grapes, dried	100	100 % reduction from MFN
0808 10 80	Apples: other, fresh	200	100 % reduction from MFN
0813 10	Apricots, dried	100	100 % reduction from MFN
1704	Sugar confectionery (including white chocolate), not containing cocoa	800	100 % reduction from MFN
1806	Chocolate and other preparations containing cocoa	1.500	100 % reduction from MFN
1902	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared	1.300	100 % reduction from MFN
1905 31	Sweet biscuits		
1905 32	Waffles and wafers		
1905 90	Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products: other	2.000	100 % reduction from MFN
1905 10	Crispbread		
1905 20	Gingerbread and the like	1.000	100 % reduction from MFN
1905 40	Rusks, toasted bread and similar toasted products		
2008 19	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: other, including mixtures	200	100 % reduction from MFN
2102 10	Active yeasts	500	100 % reduction from MFN
2202 10	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavored	1.000	100 % reduction from MFN

Annex II to Protocol I

Imports into the Republic of Turkey of the following products originating in Montenegro shall be subject to the concessions set out below:

HS Code	Product Description	Tariff Quota Volume (tonnes)	Preferential Customs Duty
0201 ¹	Meat of bovine animals, fresh or chilled	1.700	100 % reduction from MFN

¹ Notwithstanding Protocol II of the Agreement, the products covered under the preferential tariff quota for tariff headings 0201, 0202, 0204 shall obtain originating status only if they are produced of animals wholly obtained in Montenegro or by application of bilateral cumulation.

HS Code	Product Description	Tariff Quota Volume (tonnes)	Preferential Customs Duty
0202 ¹	Meat of bovine animals, frozen		
0204 ¹	Meat of sheep or goats, fresh, chilled or frozen	1.000	100 % reduction from MFN
0210	Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal	150	100 % reduction from MFN
0709 51	Mushrooms of the genus <i>Agaricus</i> , fresh or chilled		
0709 59	Mushrooms and truffles: other, fresh or chilled		
0711 59 00	Mushrooms and truffles: other, provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption	150	100 % reduction from MFN
0712 39 00	Mushrooms, wood ears (<i>Auricularia</i> spp.), jelly fungi (<i>Tremella</i> spp.) and truffles: other, dried, whole, cut, sliced, broken or in powder, but not further prepared		
0809 30	Peaches, including nectarines, fresh	300	100 % reduction from MFN
0810 40	Cranberries, bilberries and other fruit of the genus <i>Vaccinium</i> , fresh	350	100 % reduction from MFN
0810 20 10	Raspberries, fresh		
0811 20 31	Raspberries, uncooked or cooked by steaming or boiling in water, frozen, containing added sugar or other sweetening matter	200	100 % reduction from MFN
1101 00	Wheat or meslin flour	5.000	100 % reduction from MFN
1211	Plants and parts of plants (including seeds and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes, fresh, chilled, frozen or dried, whether or not cut, crushed or powdered	150	100 % reduction from MFN
1902	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared	500	0 % for industrial component + T2 (agriculture component) will be applied
2007	Jams, fruit jellies, marmalades, fruit or nut purée and fruit or nut pastes, obtained by cooking, whether or not containing added sugar or other sweetening matter	300	30 %
2204	Wine of fresh grapes, including fortified wines; grape must other than that of heading 2009	2.500 hl	100 % reduction from MFN
3301	Essential oils (terpeneless or not), including concretes and absolutes; resinoids; extracted oleoresins; concentrates of essential oils in fats, in fixed oils, in waxes or the like, obtained by enfleurage or maceration; terpenic by-products of the deterpenation of essential oils; aqueous distillates and aqueous solutions of essential oils	Unlimited	100 % reduction from MFN

**PROTOCOL III
ON TRADE IN SERVICES
SECTION I
GENERAL PROVISIONS**

ARTICLE 1 Objective and Scope

1. Montenegro and the Republic of Turkey (hereinafter referred as Parties), reaffirming their respective commitments under the WTO Agreement and their commitment to create a better climate for the development of trade and investment between the Parties, hereby lay down the necessary arrangements for progressive and reciprocal liberalisation of trade in services.

2. This Protocol applies to measures by the Parties affecting trade in services.

3. This Protocol shall not apply:

(a) to domestic and international air transport services, whether scheduled or non-scheduled and services directly related to the exercise of traffic rights, other than:

- (i) aircraft repair and maintenance services;
- (ii) selling and marketing of air transport services;
- (iii) computer reservation system (CRS) services;

(b) cabotage in maritime transport services;

(c) subsidies or grants provided by a Party or a state enterprise thereof, including government-supported loans, guarantees and insurance.

4. Nothing in this Protocol shall be construed to require any Party to privatize public undertakings or to impose any obligation with respect to government procurement.

5. The provisions of this Protocol shall not apply to services supplied in the exercise of governmental authority within the respective territories of the Parties.

6. Each Party retains the right to exercise its powers and to regulate and introduce new regulations consistent with the provisions of this Protocol in order to meet legitimate public policy objectives.

ARTICLE 2 Incorporation of Provisions from the GATS

Wherever a provision of this Protocol provides that a provision of the GATS is incorporated into and made part of this Protocol, the meaning of the terms used in the GATS provision shall be understood as follows:

- (a) "Member" means Party;
- (b) "Schedule" means a Schedule referred to in Article 16 (Schedules of Specific Commitments) and contained in Annex I; and
- (c) "Specific commitment" means a specific commitment in a Schedule referred to in Article 16.

ARTICLE 3 Definitions

For the purpose of this Protocol, and with reference to Article 2:

(a) the following definitions and explanations of the Article I of the GATS are, *mutatis mutandis*, incorporated into and made part of this Protocol:

- (i) "trade in services";
- (ii) "services"; and
- (iii) "a service supplied in the exercise of governmental authority";

(b) "measures by Parties" means measures adopted or maintained by:

- (i) central, regional or local governments and authorities; and

- (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (c)** “measures by Parties affecting trade in services” include measures in respect of:
 - (i) the purchase, payment or use of a service;
 - (ii) the access to and use of, in connection with the supply of a service, services which are required by Parties to be offered to the public generally;
 - (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;
- (d)** “service supplier” means any person that supplies, or seeks to supply, a service;²
- (e)** “service of the other Party” means a service which is supplied,
 - (i) from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or
 - (ii) in the case of the supply of service through commercial presence or through presence of natural persons, by a service supplier of that other Party;
- (f)** “natural person of a Party” means a natural person who is a national of either party according to its respective legislation;
- (g)** the following definitions of Article XXVIII of the GATS are hereby incorporated into and made part of this Protocol:
- (h)** “juridical person” means any legal entity duly constituted or organized in accordance with the applicable laws of a Party, whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture or business association;
 - (i)** “juridical person of the other Party” means a juridical person which is either:
 - (a)** constituted or otherwise organized under the law of the other Party, and is engaged in substantive business operations in the territory of that Party; or
 - (b)** in the case of the supply of a service through commercial presence, owned or controlled by:
 - (i) natural persons of that Party; or
 - (ii) juridical persons of that Party identified under subparagraph (a);
 - (i) “measure”;
 - (ii) “supply of a service”;
 - (iii) “commercial presence”;
 - (iv) “sector” of a service;
 - (v) “monopoly supplier of a service”;
 - (vi) “service consumer”;
 - (vii) “person”;
 - (viii) “owned”, “controlled” and “affiliated”; and

² Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the Protocol. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

- (ix) "direct taxes";
- (j) "GATS" means the General Agreement on Trade in Services of 1994;
- (k) the "FTA" means the Free Trade Agreement between Montenegro and the Republic of Turkey;
- (l) The definitions of paragraph 6 of the GATS Annex on Air Transport Services are hereby incorporated into and made part of this Protocol, *mutatis mutandis*.

ARTICLE 4 Most-Favoured-Nation (MFN) Treatment

1. Without prejudice to measures taken in accordance with Article VII of the GATS, and except as provided for in its List of MFN Exemptions contained in Annex I, a Party shall accord immediately and unconditionally, to services and service suppliers of the other Party treatment no less favourable than the treatment it accords to like services and service suppliers of any non-party.

2. Treatment arising from an economic integration agreement concluded by one of the Parties and notified under Article V or Article V *bis* of the GATS shall be excluded from the obligation in paragraph 1.

3. If a Party enters into an agreement of the type referred to in paragraph 2, it shall upon request from the other Party afford adequate opportunity to that Party to negotiate the benefits granted therein.

4. The rights and obligations of the Parties in respect of advantages accorded to adjacent countries shall be governed by paragraph 3 of Article II of the GATS.

ARTICLE 5 Market Access

Commitments on market access shall be governed by Article XVI of the GATS, which is hereby incorporated into and made part of this Protocol.

ARTICLE 6 National Treatment

Commitments on national treatment shall be governed by Article XVII of the GATS, which is hereby incorporated into and made part of this Protocol.

ARTICLE 7 Additional Commitments

Additional commitments shall be governed by Article XVIII of the GATS, which is hereby incorporated into and made part of this Protocol.

ARTICLE 8 Domestic Regulation

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application covered by this Protocol affecting trade in services are administered in a reasonable, objective and impartial manner.

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall ensure, as appropriate for individual sectors where specific commitments are undertaken, that such measures are:

- a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- b) not more burdensome than necessary to ensure the quality of the service and;
- c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing applications relating to the supply of services.

4. Where a Party requires authorization for the supply of a service on which specific commitment has been made, it shall ensure that its competent authorities:

- a) within a reasonable period of time after the submission of an application considered complete under its domestic laws and regulations, inform the applicant of the decision concerning the application;

- b) to the extent practicable, establish an indicative timeframe for processing of an application;
- c) if an application is rejected, to the extent practicable inform the applicant of the reasons for the rejection, either directly or on request as appropriate;
- d) at the request of the applicant, provide, without undue delay, information concerning the status of the application;
- e) as far as practicable, provide applicants with the opportunity to correct minor errors and omissions in their applications and endeavour to provide guidance on the additional information required; and
- f) where they deem appropriate, accept copies of documents that are authenticated in accordance with its domestic law in place of original documents.

5. Each Party shall ensure that any authorization fee charged by the competent authority is reasonable, and does not, in itself, restrict the supply of the relevant service.

6. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of the other Party.

ARTICLE 9 Mutual Recognition

1. For the purpose of the fulfilment of its relevant standards or criteria for the authorisation, licensing or certification of service suppliers, each Party shall give due consideration to any requests by the other Party to recognise the education or experience obtained, requirements met, or licences or certifications granted in that other Party. Such recognition may be based upon an agreement or arrangement with that other Party, or otherwise be accorded autonomously.

2. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a third party, that Party shall afford the other Party adequate opportunity to negotiate its accession to such an agreement or arrangement, whether existing or future, or to negotiate a comparable agreement or arrangement with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that the education or experience obtained, requirements met, or licences or certifications granted, in the territory of that other Party should also be recognised.

3. The Parties shall encourage their relevant competent bodies to enter into negotiations on recognition of professional qualifications and/or registration procedures with a view to the achievement of early outcomes.

4. Any such agreement or arrangement or autonomous recognition shall be in conformity with the relevant provisions of the WTO Agreement, in particular paragraph 3 of Article VII of the GATS.

ARTICLE 10 Transparency and Disclosure of Confidential Information

The rights and obligations of the Parties in respect of transparency shall be governed by paragraphs 1 and 2 of Article III and by Article III *bis* of the GATS, which are hereby incorporated into and made part of this Protocol.

ARTICLE 11 Monopolies and Exclusive Service Suppliers

The rights and obligations of the Parties in respect of monopolies and exclusive service suppliers shall be governed by paragraphs 1, 2 and 5 of Article VIII of the GATS, which are hereby incorporated into and made part of this Protocol.

ARTICLE 12 Business Practices

The rights and obligations of the Parties in respect of business practices shall be governed by Article IX of the GATS, which is hereby incorporated into and made part of this Protocol.

ARTICLE 13 Payments and Transfers

1. Except under the circumstances envisaged in Article 14 (Restrictions to Safeguard the Balance of Payments) the Parties shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Protocol shall affect the rights and obligations of the Members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Member shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 14 (Restrictions to Safeguard the Balance of Payments) or at the request of the Fund.

ARTICLE 14
Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognised that particular pressures on the balance of payments of a Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.

2. The restrictions referred to in paragraph 1:

- (a) shall not be discriminatory;
- (b) shall be consistent with the Articles of Agreement of the International Monetary Fund;
- (c) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
- (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1;
- (e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, the Parties may give priority to the supply of services which are more essential to their economic or development programs. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.

4. The Party maintaining or having adopted such restrictive measures, or any changes thereto, shall promptly notify them to the Joint Committee and present, as soon as possible, a time schedule for their removal.

ARTICLE 15
Exceptions

The rights and obligations of the Parties in respect of general exceptions and security exceptions shall be governed by Article XIV and paragraph 1 of Article XIV *bis* of the GATS, mutatis mutandis, which are hereby incorporated into and made part of this Protocol.

ARTICLE 16
Schedules of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 5, 6 and 7. With respect to sectors where such specific commitments are undertaken, each Schedule shall specify the elements set forth in subparagraphs (a) to (e) of paragraph 1 of Article XX of the GATS.

2. Measures inconsistent with both Articles 5 and Article 6 shall be dealt with as provided for in paragraph 2 of Article XX of the GATS.

3. The Parties' Schedules of specific commitments are set out in Annex I.

4. Neither Party may adopt more discriminatory measures with regard to services or service suppliers of the other Party in comparison with treatment accorded pursuant to the specific commitments undertaken in conformity with paragraph 1.

ARTICLE 17
Modification of Schedules

1. The Parties shall, upon written request by a Party, hold consultations to consider any modification or withdrawal of a specific commitment in the requesting Party's Schedule of specific commitments.

2. The consultations shall be held within three months after the requesting Party made its request. In the consultations, the Parties shall aim to ensure that a general level of mutually advantageous commitments no less favourable to trade than that provided for in the Schedule of specific commitments prior to such consultations is maintained.

3. Modifications of Schedules are subject to the procedures set out in Articles 29 (Procedures of the Joint Committee) and Article 34 (Amendments) of the FTA.

ARTICLE 18
Relations with the Agreement

1. This Protocol shall be an integral part of the Free Trade Agreement between Montenegro and the Republic of Turkey, signed on 26 November 2008 and entered into force on 1 March 2010, as stipulated in Article 35 (Protocols and Annexes) of the FTA.

2. The provisions of the FTA shall not apply to this Protocol, with the exception of Article 28 (Establishment of the Joint Committee), Article 29 (Procedures of the Joint Committee), Article 32 (Fulfilment of Obligations), Article 34 (Amendments), Article 35 (Protocols and Annexes), Article 36 (Validity and Withdrawal), Article 37 (Entry into Force) of the FTA.

3. For the purposes of Article 32 (Fulfilment of Obligations) of the FTA, the procedures set in Article 21 (Notifications and Consultations Procedure for the Application of Measures) of the FTA shall apply, *mutatis mutandis*.

4. Unless otherwise specified, any consultations that will take place under this Protocol shall be subject to the provisions set in Article 21 (Notifications and Consultations Procedure for the Application of Measures) of the FTA, *mutatis mutandis*.

5. In the event of any inconsistency between this Protocol and the provisions of the FTA, the provisions of this Protocol shall prevail to the extent of the inconsistency.

ARTICLE 19 **Annexes, Appendixes and Footnotes**

The Annexes, Appendixes and footnotes to this Protocol are integral parts of this Protocol.

SECTION II **TEMPORARY PRESENCE OF NATURAL PERSONS FOR BUSINESS PURPOSES**

ARTICLE 20 **Scope**

1. This Section applies to measures affecting the entry and temporary stay of natural persons who are service suppliers of a Party, and natural persons of a Party who are employed by a service supplier of a Party, in respect of the supply of a service.

2. This Section shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

3. Nothing in this Section shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under this Protocol.³

ARTICLE 21 **General Principle**

Each Party shall apply its measures relating to the provisions of this Section as expeditiously as possible, so as to avoid unduly impairing or delaying trade in goods or services under this FTA.

ARTICLE 22 **Specific Commitments**

1. In scheduling commitments pursuant to Article 5 (Market Access) and Article 6 (National Treatment) of the Protocol, each Party shall set out in its schedule the commitments it undertakes for the entry and temporary stay in its territory of natural persons of the other Party. These schedules shall specify the terms, limitations and conditions governing those commitments for each category of service supplier, including the period of stay and any possibility for extension of stay, any numerical quotas and any requirement of an economic needs test.

2. Each Party shall grant entry and temporary stay to natural persons of the other Party in accordance with this Section including the terms and conditions for each category set out in Annex I (Schedule of Specific Commitments) provided that the natural persons comply with the relevant immigration laws and regulations applicable to entry and temporary stay such as those relating to public health and safety and national security.

3. The sole fact that a Party grants entry and temporary stay to a natural person of the other Party shall not be construed to exempt that person from meeting any applicable licensing or other requirements, including any mandatory codes of conduct, to practice a profession or otherwise engage in business activities.

ARTICLE 23 **Provision of Information**

1. For the purposes of this Section, each Party shall ensure that its competent authorities make publicly available the information necessary for an effective application of the grant of authorizations for the entry into and temporary stay in its territory.

³ The sole fact of requiring a visa for natural persons shall not be regarded as nullifying or impairing benefits under the terms of a specific commitment in Annex I (Schedule of Specific Commitments).

2. Information referred to in subparagraph (1) shall include descriptions of, in particular:

- (a) all categories of authorization and permits relevant to the entry and temporary stay for each category set out in Annex I (Schedule of Specific Commitments);
- (b) requirements and procedures for application for, and issuance of, first-time entry and temporary stay, including conditions to be met and method of filing; and
- (c) requirements and procedures for application for, and issuance of, renewal of entry and temporary stay authorization and permits.

3. Each Party shall provide the other Party with details of relevant publications or web-sites where information referred to in subparagraph (2) is made available.

ARTICLE 24 **Entry and Temporary Stay Related Requirements and Procedures**

1. Parties shall, in accordance with domestic laws and regulations, ensure transparency, efficiency, due and fair process in visa, work permits or any similar type of authorization regarding entry and temporary stay of natural persons supplying services.

2. Documents requested for granting visa, work permit and any similar type of document must be relevant and not excessive in relation to the purpose for which they are collected.

3. Fees for processing applications for entry and temporary stay and work for the service providers shall be reasonable and determined with regard to the administrative costs involved.

4. Complete applications shall be processed promptly and expeditiously. The competent authorities of each Party shall notify the applicant for entry, temporary stay or work permit of the outcome of its application promptly after a decision has been taken. The notification shall include, if applicable, the period of stay and any other terms and conditions.

5. The period for processing complete work permit applications may not exceed 30 days, except in cases where there are reasonable grounds.

6. Upon the applicant's request, the competent authorities of the Party concerned shall, without undue delay and to the extent possible, provide information concerning the status of the applicant's application.

7. In case of an incomplete application, the applicant shall be informed promptly of the information required to complete the application and shall be provided with the opportunity to correct any deficiencies within a reasonable period of time.

8. When the application is refused, the applicant shall be informed of the refusal and be provided information on available review procedures.

SECTION III **TELECOMMUNICATIONS**

ARTICLE 25 **Definitions**

For purposes of this Section:

authorization means licenses, concessions, permits, registrations or other authorizations that a Party may require to provide public telecommunications services;

co-location means the access and use of physical space in order to install, maintain or repair equipment on properties owned, or controlled and used, by another supplier for the provision of public telecommunications services;

cost-oriented means based on costs, and may include a reasonable profit and may involve different cost methodologies for different facilities or services;

end user means a final consumer of, or subscriber to, a public telecommunications service, which is not authorized to resell and/or provide public telecommunication services;

enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any company, corporation, trust, partnership, sole proprietorship, joint venture or other business association, and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organized under the law of a Party and carrying out business activities there;

essential elements are those elements of the network or public telecommunications service that:

- (a) are essential for the provision of public telecommunications services;
- (b) are exclusively or predominantly provided, by a single supplier or a limited number of suppliers; and
- (c) are not economically or technically feasible to replace in order to supply a service;

interconnection means the link between two or more public telecommunication networks within the territory of a Party, in order to allow users of one supplier to communicate with the users of another supplier and also be able to have access to the services provided by another supplier;

leased circuits means telecommunications facilities between two or more designated points that are destined for the dedicated use or for the availability of a particular client or for other users chosen by that client;

major supplier means a supplier of public telecommunications services which has the ability to importantly affect the terms of participation, from the point of view of price and supply in the relevant market of networks or public telecommunications services, as a result of:

- (a) control of the essential elements or,
- (b) the use of its position in the market;

network element means any facility or an equipment used for the provision of a public telecommunications service, its technical definition must include its characteristics, functions and capabilities that are provided by such facilities or equipment;

non-discriminatory means treatment no less favourable than that given to any other network or similar telecommunication services user, in like circumstances;

number portability means the right of end-users of public telecommunications services to maintain for fixed telephone numbers at the same location, for mobile numbers at any location, the same phone numbers when switching to a similar supplier of public telecommunications services in that Party's territory;

public telecommunications network means the infrastructure used for providing public telecommunications services;

public telecommunications services means any telecommunications service, offered to the general public. These services may include, among others, telephony and data transmission, without any end to end change in the form or content of the information, but excludes information services;

reference interconnection offer means an offer of interconnection offered by a major supplier and registered or approved by the telecommunication regulatory body, which is sufficiently detailed to allow suppliers of public telecommunications services willing to accept those rates, terms and conditions, to obtain interconnection without having to engage in negotiations with the supplier in question;

telecommunications means the emission, transmission and reception of signals by any physical, electromagnetic or optical means;

telecommunications regulatory authority means the body or bodies in the telecommunications services sector, in charge of any of the regulatory tasks assigned in accordance with the national legislation of each Party;

termination point of the network means the physical network connection point where a public telecommunications network connects with the facilities and equipment of end-users or, where applicable, the point where other telecommunication networks connect to this one; and

user means a natural or legal person, whether a subscriber or not, that uses telecommunications services, may be a supplier of public telecommunications services.

ARTICLE 26 Scope

1. This Section shall apply to:

(a) measures adopted or maintained by a Party, related to the access to, and the use of, the public telecommunications networks and services;

(b) measures adopted or maintained by a Party, related to the obligations of the providers of public telecommunications networks or services; and

(c) other measures adopted or maintained by a Party, related to the public telecommunications networks and services.

2. This Section shall not apply to measures adopted or maintained by a Party related to broadcasting⁴ and cable distribution of radio or television programming destined to the public, except to guarantee that the enterprises that provide these services have access and continuous use of public telecommunications networks and services as established in Article 27 (Public Telecommunications Networks and Services Access and Use).

3. Nothing in this Section shall be construed to require a Party, or require a Party to compel any enterprise, to establish, construct, acquire, lease, operate or supply public telecommunication networks or services, where such networks or services are not offered to the general public.

4. In addition, this Section shall not be construed as preventing a Party from prohibiting persons that operate private networks, the use of their networks to provide public telecommunication networks or services to third persons.

ARTICLE 27 **Public Telecommunications Networks and Services Access and Use**

1. Subject to the right of a Party to restrict the supply of a service in accordance with the reservations set out in their Schedules, a Party shall ensure that enterprises of the other Party have access to public telecommunications networks or services offered in its territory or across its borders and may use them on reasonable and non-discriminatory terms and conditions, including, among other forms, the provisions established in paragraphs 2 to 7.

2. Each Party shall ensure that such enterprises are permitted to:

(a) buy or lease and connect terminals or other equipment that interfaces with the public telecommunications networks;

(b) provide services to end-users, over owned or leased circuits;

(c) interconnect private, leased or owned, circuits with networks and public telecommunication services of that Party, or with circuits leased or owned by another enterprise; and

(d) perform switching, signalling, processing and conversion functions; and use operating protocols of their choice.

3. Each Party shall ensure that enterprises of the other Party may use public telecommunication networks and services to transmit information in its territory or across its borders, and to access information contained in databases or otherwise stored in a readable form by a machine in the territory of any Party. Any new or amended measures of a Party significantly affecting such use shall be notified. Upon the request of the other Party, each Party shall afford adequate opportunity for dialogue under the Joint Committee regarding such notification.

4. Notwithstanding paragraph 3, a Party may take necessary measures to:

(a) ensure the security and confidentiality of messages, and/or

(b) protect the privacy of personal data of telecommunications end users;

provided that such measures are in line with its relevant legislations and not applied in a way that would constitute a discriminatory, arbitrary or unjustifiable mean, or a disguised restriction on trade in services.

5. Each Party shall ensure that no conditions are imposed on access to and use of public telecommunications networks or services, except those deemed necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their networks or services available to the general public;

(b) protect the privacy of personal data, confidentiality of communications, technical integrity and security of public telecommunication networks or services; or

(c) ensure that service suppliers of the other Party do not provide services that are limited by the reservations listed by the Parties in their schedules of commitments.

6. Provided that they satisfy the criteria set out in paragraph 5, the conditions for access and use of public telecommunications networks or services may include:

⁴ Broadcasting shall be defined as provided for in the relevant legislation of each Party.

- (a) the requirement to use specific technical interfaces, including interface protocols, for interconnection with such networks and services;
- (b) requirements, where necessary, for interoperability of such services;
- (c) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to those networks; and
- (d) restrictions on the interconnection of private, leased or owned, circuits with such networks or services, or with circuits leased or owned by other enterprise.

7. Nothing in this Article shall prevent a Party to establish obligation of requiring notification, license, concession, permit, registration or other type of authorization for an enterprise to provide any kind of public telecommunications service in its territory.

ARTICLE 28 **Public availability of authorization criteria**

1. Where authorization is required, the following will be made publicly available:
 - (a) all the authorization criteria and the period of time normally required to reach a decision concerning an application for authorization; and
 - (b) the terms and conditions of individual authorization.
2. The reasons for the denial of an authorization will be made known to the applicant upon request.

ARTICLE 29 **Performance of Major Suppliers**

Treatment of Major Suppliers

1. Each Party shall ensure that major suppliers in its territory provide suppliers of public telecommunications services of the other Party, treatment no less favourable than that provided by such suppliers, in like circumstances, to its subsidiaries, to its affiliates or non-affiliated suppliers of public telecommunications services with respect to:

- (a) availability, supply, rates or quality of networks or similar public telecommunications services; and
- (b) the availability of technical interfaces necessary for interconnection.

Competitive Safeguards

1. Each Party shall maintain the appropriate measures to prevent suppliers that, in an individual or a conjunctive way, are major suppliers in its territory, apply or continue applying anti-competitive practices.

2. The anti-competitive practices referred to in paragraph 1 include:
 - (a) perform anti-competitive activities of cross-subsidization;
 - (b) use information obtained from competitors with anti-competitive results; and
 - (c) not making available to other suppliers of public telecommunications services, in a timely manner, technical information on the essential elements and commercially relevant information which those suppliers need to provide public telecommunications services.

Interconnection Obligations relating to Major Suppliers

1. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party

- (a) at any technically feasible point in the major supplier's network that is offered to other suppliers of public telecommunication services in its territory;
- (b) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;
- (c) of a quality no less favourable than that provided by the major supplier for its own like services, for like services of non-affiliated suppliers of public telecommunications services or for its subsidiaries or other affiliates;
- (d) in a timely fashion, and on terms and conditions (including technical standards and specifications), and at cost-oriented rates (except when following market review, the regulatory authority imposes different model for determining rates) that are transparent, reasonable,

having regard to economic feasibility, and sufficiently unbundled so that the suppliers need not pay for network components or facilities that they do not require for the service to be provided; and

(e) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2. Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications services of the other Party the opportunity to interconnect their facilities and equipment with those of the major supplier through a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services. In addition, each Party shall ensure that suppliers of public telecommunications services of the other Party have the opportunity to interconnect their facilities and equipment with those of the major supplier through negotiation of a new interconnection agreement.

3. Each Party shall provide a means for suppliers of the other Party to obtain the rates, terms, and conditions necessary for interconnection offered by a major supplier. Such means include, at a minimum, ensuring:

(a) the public availability of rates, terms, and conditions for interconnection with a major supplier set by the telecommunications regulatory body; or

(b) the public availability of a reference interconnection offer.

4. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.

ARTICLE 30 Supply and Pricing of Leased Circuits

1. Each Party shall ensure that major suppliers in its territory provide to enterprises and suppliers of public telecommunications services of the other Party leased circuits, which are public telecommunication services, in terms, conditions and rates that are reasonable and non-discriminatory.

2. For purposes of paragraph 1, each Party shall provide to its telecommunications regulatory body the authority to require major suppliers in its territory, offer to enterprises and suppliers of public telecommunications services of the other Party leased circuits, in a flat rate or in capacity-based and cost-oriented prices.

ARTICLE 31 Co-location

1. Each Party shall ensure that major suppliers in its territory provide suppliers of public telecommunication services of the other Party, the physical co-location of necessary equipment to interconnect or have access to unbundled network elements on terms and conditions, and at cost-oriented rates where applicable, that are reasonable, transparent and non-discriminatory.

2. Each Party may specify, in accordance with its domestic laws and regulations, the elements subject to paragraph 1.

ARTICLE 32 Access to Poles, Ducts, Conduits and Rights of Way

Each Party shall ensure that major suppliers in its territory provide access to poles, ducts, conduits and each Party shall ensure rights of way to suppliers of public telecommunications services of the other Party on terms and conditions and at rates that are reasonable and non-discriminatory.

ARTICLE 33 Resale

Each Party shall ensure that major suppliers in its territory:

(a) offer for resale, at reasonable⁵ rates, to suppliers of public telecommunications services of the other Party, public telecommunications services that such major suppliers provide retail to end users; and

(b) does not impose discriminatory or unjustified conditions or limitations in the resale of such services⁶.

ARTICLE 34 Unbundling of Network Elements

⁵ A Party may determine reasonable rates through any methodology it considers appropriate.

⁶ Where its domestic law or legislation so establishes it, one Party may prohibit the reseller to obtain, at wholesale rates, a public telecommunications service that is available at a retail level only to a limited category of users, to offer such service to a different category of users.

1. Each Party shall provide to its telecommunications regulatory body, the authority to require major suppliers in its territory provide to suppliers of public telecommunications services of the other Party, access to the network elements in an unbundled way on terms and conditions, and cost-oriented rates that are reasonable, non-discriminatory and transparent for the supply of public telecommunications services.

2. Each Party may determine which network elements should be available in its territory and which suppliers may obtain such elements, in accordance with its domestic laws and regulations.

ARTICLE 35 Interconnection

1. Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly, the possibility to negotiate interconnection to suppliers of public telecommunications services of the other Party, in accordance with the Party's domestic legislation.

2. For the purposes of paragraph 1, each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable actions to protect the confidentiality of commercially sensitive information, or related to, suppliers and end users of public telecommunications services, and only use such information to provide those services.

ARTICLE 36 Number Portability

Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability, in an opportune way, and in reasonable and non-discriminatory terms and conditions.

ARTICLE 37 Flexibility in the Choice of Technologies

1. Neither Party may prevent suppliers of public telecommunications services to have flexibility in choosing the technologies that they use to provide their services, including mobile wireless services, subject to the valid technical regulations in each Party.

2. Nothing in this Article shall be construed as preventing that, if a service supplier intends to provide a different approach to the service that was authorized, the regulatory body require additional license or other proper authorization to provide such public telecommunications service.

ARTICLE 38 Universal Service

1. Each Party has the right to define the kind of universal service obligations that it wishes to adopt or maintain.

2. Each Party shall administer any universal service obligation it adopts or maintains, in a transparent, non-discriminatory and competitively neutral way, and shall ensure that any universal service obligation is not more burdensome than necessary for the type of universal service defined by the Party.

ARTICLE 39 Attribution, Assignment and Use of Scarce Resources

1. Each Party shall administer its procedures for the attribution, assignment and use of scarce telecommunications resources, in an objective, opportune, transparent and non-discriminatory way, except those related to government use.

2. The measures of a Party related to the attribution and assignment of the spectrum and frequency management do not constitute incompatible measures, *per se* with Article 5 (Market Access).

3. In consequence, each Party shall retain the right to establish, implement and maintain spectrum and frequency management policies that may have the effect to limit the number of suppliers of public telecommunications services, as long as this is done in a compatible way with other provisions of this Protocol. In addition, each Party retains the right to attribute and assign frequency bands taking into account present and future needs and the availability of spectrum.

4. Each Party shall make available to the public the current state of attributed and assigned frequency bands but shall not be required to provide detailed identification of attributed and assigned frequencies for specific government uses.

5. Where the spectrum for non-government telecommunications services is attributed, each Party's procedures shall be based on open and transparent basis that considers the public interest. These procedures shall be based on domestic legislation and, in general, will be effectuated on market-based approaches and/or public tender procedures for the assignment of spectrum for terrestrial non-governmental telecommunications services.

ARTICLE 40
Regulatory Authority

1. Each Party shall ensure that its telecommunications regulatory authority is independent and is separate from and not accountable to, any supplier of public telecommunications services.

2. For this purpose, each Party shall ensure that its telecommunications regulatory authority has no financial interest or operational functions in any supplier of public telecommunications services.

3. Each Party shall ensure that the decisions and procedures of its regulatory authority are impartial with respect to all market participants. For this purpose, each Party shall ensure that any financial interest that the Party has in a supplier of public telecommunications services, does not influence the decisions and procedures of its telecommunications regulatory authority.

4. Neither Party shall provide to a supplier of public telecommunications services a treatment more favourable than that provided to a similar supplier of the other Party, justifying that the supplier that receives more favourable treatment is totally or partly owned by the national government of any of the Parties.

ARTICLE 41
Resolution of Domestic Telecommunications Disputes

Each Party shall ensure that there are internal mechanisms for dispute resolution, in accordance with its valid domestic legislation.

ARTICLE 42
Transparency

In addition to the regulations of Article 10 (Transparency and Disclosure of Confidential Information) of Section I (General Provisions), in accordance with domestic legislation of the Party, each Party shall ensure that to the extent possible:

(a) promptly publish or make available to the public the regulation that establishes the telecommunications regulatory authority, including the basis for such regulation;

(b) provide interested parties, as far as possible, with adequate public notice, of the opportunity to comment any regulation that the telecommunications regulatory authority proposes; and

(c) make available to the public the measures concerning public telecommunications networks or services, including measures relating to:

(i) rates and other terms and conditions of the service;

(ii) specifications of technical interfaces;

(iii) conditions for the connection of the terminal and other equipment to the public telecommunications network;

(iv) requirements of notification, license, permit, registration or other authorization, if they exist;

(v) information about the responsible bodies of the elaboration, modification and adoption of measures related to standards that affect the access and use; and

(vi) procedures related to resolution of telecommunications disputes, set out in Article 41 (Resolution of Domestic Telecommunications Disputes).

ARTICLE 43
Relation with the Protocol

In case of any incompatibility between this Section and other parts of this Protocol, this Section shall prevail to the extent of the incompatibility.

ARTICLE 44
Standards and International Organizations

The Parties recognize the importance of international standards for global compatibility and interoperability of networks or telecommunication services, and undertake to promote such standards through the work of competent international bodies, including the International Telecommunication Union and the International Organization for Standardization.

SECTION IV FINANCIAL SERVICES

ARTICLE 45 Scope and Definitions

1. This Section sets out the principles of the regulatory framework for all financial services on which specific commitments are undertaken in Annex I (Schedules of Specific Commitments).

2. For the purposes of this Section:

“**financial services**” means any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

(a) Insurance and insurance-related services:

(i) direct insurance (including co-insurance): life; non-life;

(ii) reinsurance and retrocession;

(iii) insurance inter-mediation, such as brokerage and agency; and

(iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services; and

(b) Banking and other financial services (excluding insurance):

(v) acceptance of deposits and other repayable funds from the public;

(vi) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;

(vii) financial leasing;

(viii) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(ix) guarantees and commitments;

(x) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

A. money market instruments (including cheques, bills and certificates of deposits);

B. foreign exchange;

C. derivative products including, but not limited to, futures and options;

D. exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

E. transferable securities; and

F. other negotiable instruments and financial assets, including bullion;

(xi) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(xii) money broking;

(xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(xiv) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;

(xv) provision and transfer of financial information, and financial data processing and related software; and

(xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

“**financial service supplier**” means any natural person or juridical person of a Party that seeks to provide or provides financial services and does not include a public entity;

“**new financial service**” means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party;

“**public entity**” means:

(a) a government, a central bank or a monetary authority of a Party or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(b) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

ARTICLE 46 Prudential Carve-out⁷

1. Each Party may adopt or maintain measures for prudential reasons⁸, including:

(a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; and

(b) ensuring the integrity and stability of the Party's financial system.

2. These measures shall not be more burdensome than necessary to achieve their aim, and where they do not conform to the other provisions of this Agreement, they shall not be used as a means of avoiding each Party's commitments or obligations under such provisions.

3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

4. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the licensing and/or registration of cross-border financial service suppliers of the other Party and of financial instruments.

ARTICLE 47 Transparency

1. The Parties recognise that transparent regulations and policies governing the activities of financial service suppliers are important in facilitating access of foreign financial service suppliers to, and their operations in, each other's markets. Each Party commits to promoting regulatory transparency in financial services.

2. The competent authorities of each Party shall make available to interested persons domestic requirements and applicable procedures for completing applications relating to the supply of financial services.

⁷ Any measure which is applied to financial service suppliers established in a Party's territory, that are not regulated and supervised by the financial supervisory authority of that Party would be deemed to be a prudential measure for the purposes of this Agreement. For greater certainty any such measure shall be taken in line with this Article.

⁸ It is understood that the term “prudential reasons” may include the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial service suppliers as well as the maintenance of the safety and financial and operational integrity of payment and clearing systems.

3. Where a licence or an authorisation is required for the supply of a financial service, the competent authorities of a Party shall make the requirements for such a licence or an authorisation publicly available.

4. Each Party shall ensure that all measures of general application to which this Section applies are administered in a reasonable, objective, and impartial manner.

5. To the extent practicable, each Party should allow reasonable time between publication of final regulations of general application and their effective date.

6. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organizations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

7. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application covered by this Section.

ARTICLE 48 Self-Regulatory Organizations

When a Party requires membership or participation in, or access to, any self-regulatory organizations, securities or futures exchange or market, clearing agency or any other organization or association, in order for financial service suppliers of the other Party to supply financial services on an equal basis to financial service suppliers of the Party, or when the Party provides directly or indirectly such entities with privileges or advantages in supplying financial services, the Party shall ensure that such entities accord national treatment and MFN treatment to financial service suppliers of the other Party resident in the territory of the Party.

ARTICLE 49 Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in its territory access to payment and clearing systems operated by public entities and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to a Party's lender of last resort facilities.

ARTICLE 50 New Financial Services

1. Each Party shall permit a financial service supplier of the other Party established in its territory to provide any new financial service that the Party would permit its own financial service suppliers to supply, in like circumstances, under its domestic law, provided that the introduction of the new financial service does not require a new law or modification of an existing law.

2. A Party may determine the institutional and juridical form through which the service may be provided and may require authorization for the provision of the service. Where such authorization is required, a decision shall be made within a reasonable period of time and the authorization may be refused only for prudential reasons.

ARTICLE 51 Transfers and Processing of Information

Subject to its domestic legislation, no Party shall take measures that prevent transfers of information into or out of the Party's territory or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier of the other Party. Nothing in this Article restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of this Section.

ARTICLE 52 Specific Exceptions

1. Nothing in this Protocol shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by its domestic regulations, by financial service suppliers in competition with public entities or private institutions.

2. Nothing in this Protocol shall apply to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.

3. Nothing in this Protocol shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, including its public entities except when those activities may be carried out, as provided by its domestic regulations, by financial service suppliers in competition with public entities or private institutions.

ARTICLE 53 Dispute Settlement

For any arbitration panel that is established for disputes on prudential issues and other financial matters under this Agreement, the arbitrators shall have the necessary expertise relevant to the specific financial service under dispute.

SECTION V ELECTRONIC COMMERCE

ARTICLE 54 Definitions

For purposes of this Section:

“**digital products**” means computer programs, text, video, images, sound recordings, and other products that are digitally encoded and produced for commercial sale or distribution, and transmitted electronically. For greater certainty, digital products do not include digitised representations of financial instruments, including money;

“**electronic authentication**” means an electronic procedure that enables the confirmation of electronic identification of a physical or legal entity or verification of the origin and integrity of data in electronic form;

“**electronic signature**” means data in electronic form that is in, affixed to, or logically associated with, an electronic document, and that may be used to identify the signatory in relation to the electronic document and indicate the signatory's approval of the information contained in the electronic document;

“**electronic technologies**” means a combination of software and hardware that provides interaction between the persons of the Parties using an electronic document;

“**electronic transmission or transmitted electronically**” means transmissions made using any electromagnetic means, including by photonic means;

“**personal data**” means any data, including information, about an identified or identifiable natural person;

“**trade administration documents**” means forms a Party issues or controls that must be completed by or for an importer or exporter in connection with the import or export of goods; and

“**unsolicited commercial electronic message**” means an electronic message which is sent for commercial and marketing purposes to an electronic address without the consent of the recipient or against the explicit rejection of the recipient, using an internet access service supplier and, to the extent provided for under the domestic laws and regulations of each Party, other telecommunications service.

ARTICLE 55 Scope

1. This Section shall apply to measures adopted or maintained by a Party affecting trade by electronic means.
2. Nothing in this Section shall be construed to limit the Parties' right to regulate or to introduce new regulations to meet legitimate policy objectives.

ARTICLE 56 General Provisions

1. The Parties recognize the economic growth and opportunity provided by the increasing use of electronic commerce in trade, in particular for businesses and consumers, the importance of the need to create an environment of trust and confidence in its use.

2. The Parties recognize that electronic commerce may increase trade opportunities and contribute to economic growth, and underscore the importance of promoting the use of electronic technologies in trade in order to minimize the costs and facilitate trade.

ARTICLE 57
Customs Duties

1. No Party may impose a customs duty on electronic transmissions, consistent with the WTO Ministerial Decision of 13 December 2017 in relation to the Work Programme on Electronic Commerce.
2. Each Party reserves the right to adjust its practice referred to in paragraph 1 in accordance with any further WTO Ministerial Decisions in relation to the Work Programme on Electronic Commerce.
3. For greater certainty, the provision of paragraph 1 does not prevent a Party from imposing an internal tax or other internal charge on a delivery transmitted by electronic means, provided that the tax or charge is imposed in a manner consistent with this FTA.

ARTICLE 58
Non-discriminatory Treatment of Digital Products

1. No Party may accord less favourable treatment to digital products created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of the other Party, or to digital products of which the author, performer, producer, developer, or owner is a person of the other Party than it accords to other like digital products.⁹
2. The Parties understand that this Article does not apply to subsidies or grants provided by a Party including government-supported loans, guarantees, and insurances.
3. This Article does not apply to any measure affecting broadcasting.

ARTICLE 59
Electronic Authentication and Certification Services

1. Except in circumstances otherwise provided for under its law, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.
2. Neither Party shall adopt or maintain measures for electronic authentication that would:
 - (a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic authentication methods for that transaction;
 - (b) prevent parties from having the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to electronic authentication.
3. Notwithstanding paragraph 2, a Party may require that, for a particular category of electronic transactions or electronic communications that have significant relevance to those transactions, the method of authentication meets certain performance standards or is based on a specific electronic certificate issued by a supplier of certification services accredited or recognized in accordance with the Party's laws and regulations provided that the requirement serves a legitimate policy objective.
4. Each Party shall, in accordance with its legislation on electronic authentication and certification services, endeavour to facilitate the procedure of accreditation or recognition of suppliers of certification services, which have already obtained accreditation or recognition under the legislation of the other Party.

ARTICLE 60
Personal Data Protection

1. The Parties recognize the economic and social benefits of protecting the personal data of users of electronic commerce that contributes to enhancing consumer confidence in electronic commerce.
2. Each Party shall, in a manner it considers appropriate, protect the personal data of the users of electronic commerce. Personal data of the users of electronic commerce can only be shared with the other Party with the consent of the users or in accordance with the conditions provided under Parties' respective domestic legislation.
3. Each Party shall:

⁹ For greater certainty, to the extent that a digital product of a non-Party is a "like digital product", it will qualify as an "other like digital product" for the purposes of this paragra

- (a) adopt or maintain a domestic legal framework that provides for the protection of the personal data of the users of electronic commerce;
- (b) ensure that service providers and intermediary service providers take all necessary technical and administrative measures for the protection of personal data.

4. Each Party shall publish information on the personal data protections it provides to users of electronic commerce, including how:

- (a) individuals can pursue remedies; and
- (b) business can comply with any legal requirements.

5. Recognising that the Parties may take different legal approaches to protecting personal data, each Party should encourage the development of mechanisms to promote compatibility between these different regimes. These mechanisms may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, or broader international frameworks. To this end, the Parties shall endeavour to exchange information on any such mechanisms applied in their jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility between them.

ARTICLE 61 Paperless Trading

The Parties shall endeavour to:

- (a) make trade administration documents available to the public in electronic form; and
- (b) accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents, in accordance with its domestic laws and regulations.

ARTICLE 62 Cooperation on Electronic Commerce

Recognising the global and inter-connected nature of electronic commerce, the Parties shall endeavour to:

- (a) work together to assist small and medium enterprises to overcome obstacles encountered in the use of electronic commerce;
- (b) recognise the certificates of electronic authentication issued to the public and facilitate cross-border certification services, in accordance with its domestic laws and regulations;
- (c) exchange information and share experiences on regulations, policies, enforcement and compliance regarding electronic commerce, including:
 - (i) personal data protection;
 - (ii) consumer protection, consumers' right of withdrawal and improvement of consumer confidence in electronic commerce;
 - (iii) the liability of intermediary service providers with respect to the transmission or storage of information;
 - (iv) the treatment of unsolicited commercial electronic messages;
 - (v) customs model and practices in electronic commerce; and
 - (vi) any other issues relevant for the development of electronic commerce.
- (d) encourage cooperation in the area of transport and logistics services for the express delivery of goods supplied by e-commerce, including through:
 - (i) promoting and facilitating partnerships among e-retailers and logistics players;
 - (ii) exchanging information, where possible and practicable including rates, on express delivery services provided in and from its territory.

ARTICLE 63

Online Consumer Protection

1. The Parties recognize the importance of adopting and maintaining transparent and effective measures to protect consumers from fraudulent and deceptive commercial practices as well as measures conducive to the development of consumer confidence when they engage in electronic commerce.
2. To this end, each Party shall adopt or maintain provisions regarding consumer protection in their domestic laws to proscribe fraudulent and deceptive commercial practices that cause harm to consumers engaged in electronic commerce.
3. The Parties shall ensure that consumers are provided with the information regarding their rights stemming from the consumer protection legislation, including the information regarding privacy rules and alternative dispute resolution mechanisms.
4. The Parties shall endeavour to promote the cooperation between their respective national consumer protection bodies or other relevant bodies on activities related to cross-border electronic commerce in order to enhance consumer welfare and confidence.
5. Each Party's national consumer protection enforcement bodies shall endeavour to cooperate with those of the other Party, in appropriate cases of mutual concern, in the enforcement of their respective laws related to consumer protection in order to prevent or detain fraudulent and deceptive commercial practices in electronic commerce.

ARTICLE 64 Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:
 - (a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to stop such messages;
 - (b) require the consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages; or
 - (c) otherwise provide for the minimization of unsolicited commercial electronic messages.
2. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages who do not comply with its measures implemented pursuant to paragraph 1.

ARTICLE 65 Electronic Supply of Services

The Parties affirm that measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of Protocol III (Trade in services) which are subject to any exceptions or limitations and restrictions set out in Annex I (Schedules of Specific Commitments) that are applicable to such obligations.

SECTION VI CO-PRODUCTION ON FILM OR TV SERIES

ARTICLE 66 Objective

Recognising that co-production may serve the development of film or TV series production and encourage further development of the cultural and technological ties between the Parties, this Section aims at facilitating the co-production on film or TV series between the Parties by establishing the rules.

ARTICLE 67 Scope and Definitions

1. This Section applies to measures by the Parties affecting co-productions of films or TV series.
2. For the purpose of this Section:

“**competent authorities**” means both competent authorities responsible for the implementation of this Section or either competent authority in regard to its own country, as the case may be. The competent authorities are:

For Montenegro: Film Center of Montenegro, or its successor,

For Turkey: Ministry of Culture and Tourism, General Directorate of Cinema, or its successor;

“**co-producer**” means a person or an entity established in the territory of the Parties by whom the arrangements necessary for the making and financing of the cinematographic work and providing other conditions are undertaken, and which are bound by a co-production contract;

“**co-production**” means a cinematographic work, with or without accompanying sounds, regardless of length or genre, including fiction, animation and documentaries, which is intended to be shown first in cinemas or on TV channels.

ARTICLE 68 **Approval and Procedures**

1. Co-production of films or TV series pursuant to this Section shall be approved by the competent authorities of the Parties in accordance with their internal laws and regulations.

2. The application for the approval of a co-production under this Section shall follow the procedures set out in Appendix, which constitutes an integral part of this Section. However, competent authorities may, in a given case, jointly authorize co-producers to act in accordance with ad-hoc rules, which they jointly approve.

3. Approval shall not be given to a project where the co-producers are linked by common management or control, except to the extent that such an association has been established specifically for the purpose of the co-production project itself.

4. Approval of a proposal for the co-production of a film or TV series by the competent authorities does not imply any permission or authorization to show or distribute the film or TV series thus produced.

5. Co-production of films or TV series shall be made, processed, dubbed or subtitled, up to creation of the first release print in the countries of the participating co-producers. However, if a scenario or the subject of the film or TV series so requires, location shooting, exterior or interior, in a country not participating in the co-production may be authorized by the competent authorities. Similarly, if processing, dubbing or subtitling services of satisfactory quality are not available in a country participating in the co-production, the competent authorities may authorize the procurement of such services from a supplier in a third country.

ARTICLE 69
Requirements to Co-producers

1. Failure of a Party's co-producer to fulfil the conditions according to which that Party has approved a co-production or a material breach of the co-production Section by a Party's co-producer may result in the other Party revoking the co-production status of the production and the attendant rights and benefits.
2. In order to qualify for the benefits of co-production, the co-producers shall provide evidence to their respective competent authority that they have the proper technical organization, adequate financial support and necessary professional qualifications to bring the production to a successful conclusion.
3. To be entitled to the benefits under this Section, co-producers shall comply with the legislation and regulations of each of the Parties involved.

ARTICLE 70
Requirements for Natural Persons

1. The producers, co-producers, authors, scriptwriters, performers, directors, professionals and technicians participating in co-productions, must be citizens of the Parties in accordance with the national legislation in force of those Parties.
2. The producers, co-producers, authors, scriptwriters, performers, directors, professionals and technicians participating in co-productions, may live in third countries.
3. Should the co-production so require, the participation of professionals who do not fulfil the conditions provided by paragraph 1 may be permitted, only in exceptional circumstances, and with the approval of the competent authorities.
4. Each Party must fulfil the obligations concerning social security liabilities of the production crew who are citizens of the Parties in accordance with their respective social security legislation.
5. Use of any other languages in a co-production other than the languages permitted according to the national legislation of the Parties may be added to the co-production if the screenplay requires it.

ARTICLE 71
National Treatment

1. Any co-production produced in accordance with this Section shall be considered by the competent authorities as a national film or national TV series, subject to national legislation in force of the Parties. Such co-productions shall be entitled to the benefits by virtue of each Party's national legislation or by those which may be decreed by each Party. These benefits accrue solely to the co-producer of a Party that grants them.
2. In all matters concerning the marketing or export of a co-produced film or TV series, each Party will accord the co-produced film or TV series the same status and treatment as a domestic production, subject to national legislation in force of that Party.

ARTICLE 72
Marketing in Third Countries with Quota

1. If a co-produced film or TV series is marketed in a country that has quota regulations with regard to both Parties, it shall be included in the quota of the country which is the majority co-producer. In the event that the contributions of the co-producers are equal, the co-production shall be included in the quota of the Party of which the director of the co-production is a citizen.
2. If a co-produced film or TV series is marketed in a country that has quota regulations with regard to one of the Parties, the co-produced film or TV series shall be marketed by the Party which is not subject to the quota.

ARTICLE 73
Co-production Credits and Festivals

1. All co-produced films or TV series shall be identified as "Montenegrin-Turkish co-production" or "Turkish-Montenegrin co-production".
2. Such identification shall appear in a separate credit title, in all commercial advertising and promotional material, whenever co-produced films or TV series are shown at any public performance.
3. Unless otherwise agreed upon by the competent authorities, co-produced films or TV series shall be entered in international festivals by the Party of the majority co-producer.
4. Co-produced films or TV series produced on the basis of equal contributions shall be entered in international festivals by the Party of which the director is a citizen.

ARTICLE 74
Contribution in Co-Productions

1. The respective financial contribution of the producers of the Parties may vary from ten (10) to ninety (90) per cent for each co-produced film or TV series.¹⁰ In addition, the co-producers shall be required to make an effective technical and creative contribution, proportional to their financial investment in the co-produced film or TV series. The technical and creative contribution should be comprised of the combined share of authors, performers, technical-production personnel, laboratories and facilities.

2. In the event that the Montenegrin co-producer or the Turkish co-producer is composed of several production companies, the financial contribution of each company shall not be less than five (5) percent of the total budget of the co-produced film or TV series.

3. In the event that a producer from a third country is authorized to participate in the co-production its financial contribution shall not be less than ten (10) percent. In the event that the co-producer from a third country is composed of several production companies, the financial contribution of each company shall not be less than five (5) percent of the total budget of the co-produced film or TV series.

ARTICLE 75
Entry and Temporary Stay of Natural Persons and Film or TV Series Equipment

1. Subject to their legislation, each Party shall facilitate the entry and temporary stay of the artistic and technical personnel and the performers engaged by a co-producer of the Parties involved for the purpose of the co-production.

2. The Parties shall facilitate the entry and re-export of any film or TV series equipment necessary for the production of co-produced films or TV series under this Section, subject to their legislation.

ARTICLE 76
Profit Distribution

The distribution of profits between co-producers should be proportionate to the contribution of each co-producer.

ARTICLE 77
Intellectual Property Rights

1. For the purposes of this Section and the provisions set forth in paragraph 3 (a) of the Appendix hereto, the co-producers shall ensure that, to the extent any intellectual property rights are embodied in any element of the cinematographic work, these rights will be within the authorship and/or rightholdership according to the domestic laws of the Parties of persons who participated in its creation.

2. Allocation of intellectual property rights in a co-produced film or TV series, including authorship/rightholdership and licensing thereof, shall be made in the co-production contract.

3. Each co-producer shall have free access to all the original co-production materials and the right to duplicate or print there from, but not the right to any use or assignment of intellectual property rights in the said materials, except as determined by the co-producers in the co-production contract.

4. Each co-producer shall be an owner on a joint basis of the physical copy of the original negative or other recording media in which the master co-production is made, not including any intellectual property rights that may be embodied in the said physical copy, except as determined by the co-producers in the co-production contract.

5. Where the co-production is made on film negative, the negative will be developed in a laboratory chosen mutually by the co-producers, and will be deposited therein, on an agreed name.

6. Each co-producer shall be entitled to retain a copy of the original of initial record of the cinematographic work, provided that in respect of the rights in its creation and use paragraph 1 and 2 of this Article shall apply.

7. The co-production contract must guarantee to each co-producer joint ownership of the original picture and sound negative. The contract shall include the provision that this negative shall be kept in a place mutually agreed by the co-producers, and shall guarantee them free access to it.

8. Co-producers must give a subtitled copy of the film or TV series to each Party following the production of the film or TV series.

¹⁰ For Turkey, if the minimum contribution is less than twenty (20) per cent, the status of the co-production may be subject to the authorization of the competent authority of Turkey.

ARTICLE 78
Sub-committee on Film or TV Series Co-production

1. For the purpose of the effective implementation and operation of this Section, the Sub-committee on film or TV series co-productions comprised from the representatives of the competent authorities of each Party and co-chaired by the Parties (hereafter referred to in this Article as "the Sub-committee") is hereby established. The function of the Sub-committee shall be:

- (a) reviewing and monitoring the implementation and operation of this Section with respect to films or TV series co-production;
- (b) discussing issues related to film or TV series co-productions with a view to enhancing trade relations between the Parties and promoting efficient and transparent administration of their procedures for application for, and approval of, a co-production under this Section;
- (c) proposing initiatives to further promote the cooperation in the area of film or TV series production;
- (d) reporting its findings and outcome of its discussions to the Joint Committee; and
- (e) carrying out other tasks as may be assigned by the Joint Committee.

2. The activities of the Sub-committee are without prejudice to existing or future relations between the competent authorities of the Parties within the scope of their competence.

Appendix to Section on Film or TV Series Co-Production
Referred to in Article 68.2
Rules of Procedures

1. Applications for qualification of a film or TV series for co-production benefits must be conveyed to the competent authorities at least sixty (60) days prior to the commencement of shooting or key animation of the film or TV series. The applications shall be reviewed by the competent authority within thirty (30) days after the Party with the highest proportion of financial contribution expresses its opinion. The decision shall be notified to the applicants within ten (10) days. If the Party with the highest proportion of financial contribution as well as the competent authority give their affirmation, the co-production shall be considered as approved.

2. The competent authorities shall notify each other of their decision regarding any such application for co-production within thirty (30) days from the date of submitting the complete documentation listed in this Appendix.

3. Applications must be accompanied by the following documents in English language:

(a) A proof of license arrangements with respect to intellectual property rights, of any sort, including in particular copyright and related rights ("related rights" shall be understood as including, inter alia, film or TV series producers' rights, performers' rights, phonogram producers' rights and broadcasters' rights, communication to public rights), embodied in, or arising from, a co-production, to an extent sufficient for purposes of fulfilling the objectives of the co-production contract, including clearance arrangements for public performance, distribution, broadcast, making available by internet or otherwise, and sale or rental of physical or electronic copies of the co-production in the territories of the Parties' home countries as well as in third countries, and including copyright and related rights clearance with respect to any literary, dramatic, musical or artistic work which has been adapted by the applicant for purposes of the co-production;

(b) The signed co-production contract, which is subject to the approval of the competent authorities.

4. The co-production contract must make provision for the following issues:

- (a) The title of the co-produced film or TV series, even if provisional;
- (b) The name of the writer or the person responsible for adapting the subject if it is drawn from a literary source;
- (c) The name of the director (a safety clause is permitted for his/her replacement, if necessary);
- (d) The budget of the co-produced film or TV series;
- (e) The amount of the financial contributions of the co-producers;
- (f) The financial undertakings of each producer in respect of the percentage apportionment of expenditures with regard to development, elaboration, production and post-production costs up to the creation of the answer print;
- (g) The distribution of revenue and profits including the sharing or pooling of markets;
- (h) The respective participation of the co-producers in any costs which exceed the budget or in the benefits from any savings in the production cost;
- (i) Allocation of intellectual property rights in a co-produced film or TV series, including authorship or rightholdership and licensing thereof;

(j) A clause in the contract must recognise that the approval of the film or TV series, entitling it to benefits under the agreement, does not obligate the competent authorities of each Party to permit the public screening of the film or TV series. Likewise, the contract must set out the conditions of a financial settlement between the co-producers in the event that the competent authorities of each Party refuse to permit the public screening of the film or TV series in that Party or in third countries;

(k) Breach of the co-production contract;

(l) A clause which requires the major co-producer to take out an insurance policy covering all production risks;

(m) The approximate starting date of shooting;

(n) The list of required equipment (technical, artistic or other) and personnel, including nationality of personnel and the roles to be played by the performers;

(o) The production schedule;

(p) A distribution agreement, if one has been concluded;

(q) The manner in which the co-production shall be entered in international festivals;

(r) Other provisions required by the competent authorities.

In addition to the agreement, the following documents must be sent to the competent authority.

(a) A synopsis of the co-produced film or TV series;

(b) Treatment;

(c) The full text of screenplay;

(d) The list of technical and artistic personnel that produce the co-production;

(e) Curriculum vitae of the director;

(f) A detailed budget and financing plan;

(g) The document of intellectual property transfer for commercial use of the production;

(h) Production schedule of the co-produced film or TV series;

(i) Nationality of personnel and the roles to be played the performers.

5. The co-producers will provide any further documentation and information, which the competent authorities deem necessary in order to process the co-production application or in order to monitor the co-production or the execution of the co-production agreement.

6. Any material provisions in the original co-production contract may be amended subject to prior approval by the competent authorities.

7. The replacement of a co-producer is subject to the prior approval by the competent authorities.

8. Competent authorities have to be informed about the participation of a producer from a third country in the co-production.

**SECTION VII
FINAL PROVISIONS**

**ARTICLE 79
Entry into Force**

This Protocol shall enter into force on the first day of the second month, following the date of the receipt of the latter written notification through diplomatic channels, by which the Parties inform each other that all necessary requirements foreseen by their national legislation for the entry into force of this Protocol, have been fulfilled.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto, have signed this Protocol.

DONE at Ankara on 17th of July, 2019, in two originals, each in the Montenegrin, Turkish and English languages, all texts being equally authentic. In case of any divergence in the interpretation of this Protocol, the English text shall prevail.

**For Montenegro
Dragica SEKULIĆ
Minister of Economy**

**For the Republic of Turkey
Ruhsar PEKCAN
Minister of Trade**

ANNEX I

SCHEDULE OF SPECIFIC COMMITMENTS

EXPLANATORY NOTES

1. The list of commitments below (hereinafter referred to as "this Schedule") indicates the service sectors liberalised pursuant to Article 16 (Schedules of specific commitments) of Protocol III (Trade in services), and, by means of reservations, the market access and national treatment limitations that apply to services and service suppliers of Montenegro in those sectors. This Schedule is composed of the following elements:

- (a) the first column indicates the sector or subsector in which the commitment is undertaken by Turkey, and the scope of liberalisation to which the reservations apply;
- (b) the second column describes the applicable reservations to Article 5 (Market access) of Protocol III (Trade in services) in the sector or subsector indicated in the first column;
- (c) the third column describes the applicable reservations to Article 6 (National treatment) of Protocol III (Trade in services) in the sector or subsector indicated in the first column; and
- (d) the fourth column describes additional commitments on the measures affecting supply of services that are not subject to scheduling under Articles 5 (Market access) and 6 (National treatment) of Protocol III (Trade in services).

Supply of services in sectors or subsectors covered by this Agreement and not mentioned in this Schedule is not committed.

2. Four different modes of supply are indicated in this Schedule. These shall be understood as follows:

- (a) The mode of supply "1) the cross-border supply" is understood as the supply of a service from the territory of Montenegro into the territory of Turkey, in accordance with Article 3.(a).(i) (Definitions) of Protocol III (Trade in services).
- (b) The mode of supply "2) the consumption abroad" is understood as the supply of a service in the territory of Montenegro to the service consumer of Turkey, in accordance with Article 3.(a).(i) (Definitions) of Protocol III (Trade in services).
- (c) The mode of supply "3) the commercial presence" is understood as the supply of a service by a service supplier of Montenegro, through commercial presence in the territory of Turkey, in accordance with Article 3.(a).(i) (Definitions) of Protocol III (Trade in services).
- (d) The mode of supply "4) the presence of natural persons" is understood as the supply of a service by a service supplier of Montenegro, through the temporary presence of natural persons in the territory of Turkey for business purposes, in accordance with Article 3.(a).(i) (Definitions) of Protocol III (Trade in services).

3. Notwithstanding Article 5 (Market access) of Protocol III (Trade in services), non-discriminatory requirements as regards the types of legal form of an establishment do not need to be specified in this Schedule in order to be maintained or adopted by Turkey.

4. Turkey does not undertake any commitment on the entry and temporary stay of natural person categories not indicated in this schedule as well as with regard to intra-corporate transferees, graduate trainees, business visitors and business service sellers in economic activities which are not liberalised pursuant to Article 16 (Schedule of Specific Commitments).

Turkey's commitments on Temporary Movement of Natural Persons for the Purpose of Supplying Services do not apply in cases where the intent or effect of their temporary presence is to interfere with, or otherwise affect the outcome of, any labour/management dispute or negotiation.

Intra-corporate transferees, graduate trainees, business visitors and business service sellers whose entries and temporary stay are permitted shall observe the immigration and labour laws of Turkey.

Turkey may take any measures affecting natural persons seeking access to the employment market of Turkey and measures regarding citizenship, residence or employment on a permanent basis.

5. In identifying individual sectors and sub-sectors, CPC means the Central Products Classification as set out in Statistical Office of the United Nations, Statistical Papers, Series M, No. 77, CPC Prov, 1991. Postal/courier services are defined in the related sector or sub-sector column. Financial services are defined according to the Financial Services Section. A CPC code accompanied with double asterisks "**" indicate that "part of" the sector is covered. "Unbound*" indicate "lack of technical feasibility".

The ordering of the service sectors, sub-sectors and activities in this Schedule reflects the Services Sectoral Classification List contained in the WTO document MTN.GNS/W/120, dated 10 July 1991.

6. This Schedule does not include measures relating to qualification requirements and procedures, technical standards and licensing requirements when they do not constitute a market access or a national treatment limitation within the meaning of Article 5 (Market access) and Article 6 (National treatment) of Protocol III (Trade in services). Those measures (e.g. need to obtain a license, universal service obligations, need to obtain recognition of qualifications in regulated sectors, and need to pass specific examinations, including language examinations and need to have a legal domicile in the territory where the economic activity is performed), even if not listed, apply in any case to services and service suppliers of Montenegro.

The conditions and criteria, required for obtaining all the permissions and authorisations which are indicated in this schedule and those which are applied for becoming a member of all the related chambers, do not limit market access or qualify national treatment within the scope of Article 5 (Market access) and Article 6 (National treatment) of Protocol III (Trade in services).

7. Nothing in this Schedule shall be construed to prejudice the enforcement of any measure under the foreign trade regime and related customs procedures of Turkey with regard to goods, in compliance with international agreements Turkey is a party to. In this respect, with regard to service sectors, sub-sectors or activities where importation and/or exportation of goods might be an integral part of the supply of services, such as distribution services, maintenance and repair services, and technical testing and analysis services, any relevant foreign trade and/or customs measure shall continue to apply, even if not listed, to services and services suppliers of Montenegro.

8. In accordance with Article 1 (Objective and Scope) of Protocol III (Trade in services), this Schedule does not include measures concerning subsidies or grants provided by Turkey, including government-supported loans, guarantees and insurance or to any conditions attached to the receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers.

9. The rights and obligations arising from this Schedule shall have no self-executing effect and thus confer no rights directly on natural or juridical persons.

**THE REPUBLIC OF TURKEY
SCHEDULE OF SPECIFIC COMMITMENTS**

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
I. HORIZONTAL COMMITMENTS APPLICABLE TO SECTORS LISTED IN THE SECTORAL PART OF THE SCHEDULE			
ALL SECTORS INCLUDED IN THIS SCHEDULE	3) "None for Joint Stock Companies, Limited Liability Companies, Commandite Companies, Collective Companies as defined in Turkish Commercial Code and Foreign Direct Investment Law". Unbound for the establishment or acquisition of any other type of legal entity. Opening of a liaison office by a company organised under the laws of a foreign government is subject to permission of the Ministry of Industry and Technology, provided that they do not engage in commercial activities in Turkey.	3) <u>Branching:</u> The establishment of a branch by a company organised under the laws of a foreign government requires the appointment of a natural person representative with domicile in Turkey who is duly authorised by the company to fully represent it.	
	<u>Real Estate Acquisition:</u> 3) According to Land Registry Law, companies with foreign capital are permitted to acquire real estate in Turkey to conduct business activities listed in the articles of association of their enterprise. However, acquisitions in military zones (military forbidden zones, military security zones and strategic zones) and special security zones require permissions from the Turkish military		

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	<p>authorities and province governorship respectively.</p> <p>1,3,4) Unbound for real estate acquisition by foreign natural persons and juridical persons organised under the laws of a foreign government.</p>		
	<p><u>Public utilities:</u></p> <p>Economic activities considered as public utilities at the national or local level may be subject to public monopolies or to exclusive rights granted to private operators.</p>		
	<p>4) Unbound except for measures concerning the entry and temporary stay of natural persons in the following categories:</p> <p>I. <u>Intra-corporate transferees</u> are natural persons who have been employed by a juridical person of Montenegro for at least one year and who are temporarily transferred to one of its subsidiaries, affiliates or branches in the territory of Turkey. The natural person concerned shall belong to one of the following categories.</p> <p><i>Executives-Managers:</i></p> <p>Natural persons working in a senior position within a juridical person, who primarily direct the management of the company, receiving general supervision or direction principally from the board of directors or shareholders of the business or their equivalents, including:</p> <p>(A) directing the company or a department or sub-division thereof;</p> <p>(B) supervising and controlling the work of other supervisory, professional or managerial employees; and</p> <p>(C) having the authority</p>		

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	<p>personally to recruit and dismiss or recommend recruiting, dismissing or other personnel actions.</p> <p>Specialists:</p> <p>Natural persons working within a juridical person, and who possess uncommon knowledge essential to the company's production, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of knowledge specific to the company, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession.</p>		
	<p>II. <u>Trainees:</u> means natural persons who have been employed by a juridical person of Montenegro for at least one year, who possess a university degree and who are temporarily transferred to one of its subsidiaries, affiliates, or branches in the territory of Turkey for career development purposes or to obtain training in business techniques or methods.¹¹</p>		
	<p>III. <u>Business visitors</u> are natural persons working in a senior position within a juridical person of Montenegro and who are responsible for setting up a subsidiary, affiliate or branch in the territory of Turkey. They do not engage in direct transactions with the general public and do</p>		

¹¹ The recipient company may be required to submit a training programme covering the duration of stay for prior approval, demonstrating that the purpose of the stay is for training corresponding to the level of a university degree.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	not receive remuneration from a source located in Turkey.		
	<p>IV. Business Service Sellers: means natural persons who are representatives of a service supplier of Montenegro seeking temporary entry into the territory of Turkey for the purpose of negotiating the sale of services or entering into agreements to sell services for that service supplier. They do not engage in making direct sales to the general public and do not receive remuneration from a source located within Turkey.</p>		
	<p>Intra-corporate transferees and trainees need to obtain a work permit from the Ministry of Family, Labour and Social Services. The work permits may be issued, in accordance with respective laws, regulations and requirements of Turkey, for a period of up to one year. Turkey may authorise an extension for the period allowed in conformity with the laws and regulations in force in its territory.</p> <p>Business visitors and business service sellers are not required to obtain work permits. The entry and temporary stay of business visitors and business service sellers may be permitted, in accordance with respective laws, regulations and requirements of Turkey, for a period of up to 90 days within 180 days.</p> <p>3,4) Foreign engineers and architects may engage in the provision of engineering and architecture services in Turkey only after becoming a temporary member of the related professional chamber under the Union of Chambers of Turkish</p>		

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	Engineers and Architects.		

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
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II. SECTOR SPECIFIC COMMITMENTS

1. BUSINESS SERVICES

A. Professional Services

(a) Legal services (only advisory services on foreign and International Law) (CPC 861**)	1) None 2) None 3) Establishment in the form of a "foreign attorney partnership (yabancı avukatlık ortaklığı)" is required. 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3, 4) Litigation and representation of natural or legal persons before Turkish Courts, arbitrators, conciliators or other bodies empowered with jurisdictional functions, and preparation of any relevant legal document thereof are assigned only to Turkish national attorneys at law. Legal professionals hired by foreign attorney partnerships, even if they are Turkish nationals, cannot provide the aforementioned legal services. Use of the professional title "avukat (attorney at law)" is reserved for the Turkish nationals enrolled with Turkish Bar Associations.	
(b) Accounting, auditing and bookkeeping services (CPC 862)	1) Unbound 2) None 3) Authorised financial advisers ¹² may associate their works in the form of a "partnership office (adi ortaklık)" or an "equity company ¹³ (sermaye şirketi)" in accordance with the Turkish Commercial Code after becoming a member of the related Chamber. Foreign auditing firms may carry out independent audit in Turkey on the condition that they are authorised by Public Oversight, Auditing and Accounting Standards Authority, in accordance with the principle of	1) Unbound 2) None 3) Foreign titles and names cannot be used in the titles of partnerships or corporations among Turkish and Foreign Financial Advisers.	

¹² The term "financial adviser" used in this entry refers to a "Certified Public Accountant (Serbest Muhasebeci Mali Müşavir)" pursuant to the "Law No. 3568 on Certified Public Accountants and Sworn-In Public Accountants". Foreign financial advisers can be authorised, under reciprocity condition, by the approval of the President.

¹³ Equity company types are "joint-stock corporation (anonim şirket)", "limited liability company (limited şirket)" and "partnership limited by shares (sermayesi paylara bölünmüş komandit şirket)".

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	<p>reciprocity. Auditing firms are required to be established as "equity companies" in accordance with the Turkish Commercial Code. Auditing firms that will perform the audits of capital market institutions are required to be established as "joint-stock corporations".</p> <p>For an audit firm to be authorised: Majority of its capital and voting rights shall be owned by auditors, and all the partners of the firm shall be members of profession.¹⁴ The members of its managing body shall be entirely composed of the members of profession; and majority of them, but provided that this ratio does not exceed seventy-five percent, shall be the auditors permanently employed by it.</p> <p>4) Unbound</p>	<p>4) Turkish citizenship is required for Accountants and Certified Public Accountants</p>	
(c) Taxation Services Business tax planning and consulting services (CPC 86301)	<p>1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section</p>	<p>1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section</p>	
(d) Architectural Services (CPC 8671)	<p>1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section</p>	<p>1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section</p>	
(e) Engineering Services (CPC 8672)	<p>1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section</p>	<p>1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section</p>	
(f) Integrated Engineering (CPC 8673)	<p>1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section</p>	<p>1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section</p>	
(g) Landscape architecture services (CPC 8674**)	<p>1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section</p>	<p>1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section</p>	
(h) Veterinary Services	<p>1) None</p>	<p>1) None</p>	

¹⁴ "Members of profession" are "certified public accountants (serbest muhasebeci mali müşavir)" or "sworn-in public accountants (yeminli mali müşavir)" pursuant to the Law No. 3568; and Turkish nationality requirement exists for members of profession.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
(CPC 932) - Only for animal hospitals and laboratories	2) None 3) Wholly foreign owned animal hospitals and laboratories can be established in Turkey on the condition that all the veterinaries employed are Turkish citizens. Responsible director of an animal hospital or a laboratory must be a veterinary. Nationality requirement exists for veterinaries. Obtaining an operation license from the Ministry of Agriculture and Forest is required. 4) Unbound	2) None 3) None 4) Unbound	
B. Computer and Related Services			
(a) Consultancy services related to the installation of computer hardware (CPC 841)	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(b) Software implementation services (CPC 842)	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(c) Data processing services (CPC 843)	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(d) Database services including data storage, data hosting and web hosting services (CPC 844)	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(e) Other CRS - Maintenance and repair services of office machinery and equipment including computers (CPC 845) - Training services for staff of clients (CPC 84990**)	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section	
C. Research and Development Services (excluding R&D financed in whole or in part by public funds)			
(a) R&D services on natural sciences (CPC 851 except part of CPC 85102 ¹⁵)	1) None 2) None 3) None	1) None 2) None 3) None, except juridical persons duly established in Turkey, but which are acting on behalf of foreign natural	
(b) R&D services on social sciences and humanities			

¹⁵ Only R&D services on chemistry are covered under CPC 85102.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
(c) Interdisciplinary R&D services (CPC 852) (CPC 853)	4) Unbound, except as indicated in the horizontal section	persons or juridical persons that have no commercial presence in Turkey, are required to obtain prior permission to conduct scientific research activities in the Turkish territory. 4) Unbound, except as indicated in the horizontal section. In addition, to conduct scientific research activities in the Turkish territory, foreign natural persons are required to obtain prior permission.	
D. Rental/Leasing Services without Operators			
(a) Relating to ships ¹⁶ (CPC 83103) (b) Relating to aircraft ⁶ (CPC 83104) (c) Relating to other transport equipment (CPC 83101+ 83105) (d) Relating to other machinery and equipment (CPC 83106-83109) - Including rental or leasing of studio recording equipment (part of CPC 83109) (e) Leasing or rental services concerning personal and household goods (CPC 832)	1) Unbound 2) None 3) None except Turkey may apply economic needs tests with respect to rental/leasing services (without operators) relating to other transport equipment. 4) Unbound except indicated in the horizontal section	1) Unbound 2) None 3) None 4) Unbound except indicated in the horizontal section	
E. Other Business Services			
(a) Advertising services (CPC 871)	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(b) Market research services (CPC 864)	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(c) Management consulting services (CPC 865)	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(d) Technical Testing and Analysis Services, excluding technical testing, analysis and control (inspection) services relating to		1) Unbound	

¹⁶ This commitment does not include or confer any right with regard to carrying the Turkish flag.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
construction and construction materials ¹⁷ , vessels and aircrafts, and marine survey activities. - Composition and purity testing and analysis services (CPC 86761**) ¹⁸	1) Unbound 2) Unbound 3) None 4) Unbound, except as indicated in the horizontal section	2) Unbound 3) None 4) Unbound, except as indicated in the horizontal section	
- Testing and analysis services of physical properties (CPC 86762)	1) Unbound 2) Unbound 3) None 4) Unbound, except as indicated in the horizontal section	1) Unbound 2) Unbound 3) None 4) Unbound, except as indicated in the horizontal section	
- Testing and analysis services of integrated mechanical and electrical components (CPC 86763)	1) Unbound 2) Unbound 3) None, except establishment of a commercial presence for testing and analysis services regarding automobiles and other motor vehicles is subject to an economic needs test. Main criteria: the number of and impact on existing domestic suppliers, protection of public health, safety, and the environment. 4) Unbound, except as indicated in the horizontal section	1) Unbound 2) Unbound 3) None 4) Unbound, except as indicated in the horizontal section	
- Technical inspection services (CPC 86764)	1) Unbound 2) Unbound 3) None 4) Unbound, except as indicated in the horizontal section	1) Unbound 2) Unbound 3) None 4) Unbound, except as indicated in the horizontal section	
(e) Services incidental to hunting (CPC 881)	1) Commercial presence is required. 2) None 3) Only Group A travel agencies may operate in this field with the condition of obtaining a hunting licence. 4) Unbound, except as indicated in the horizontal section	1) Commercial presence is required 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(f) Services incidental to mining (CPC 883+5115)	1) Commercial presence is required. 2) None 3) ¹⁹ None 4) "Technical supervisors (teknik nezaretçi)" and "permanent supervisors (daimi nezaretçi)" in mining sites are required to be	1) Commercial presence is required. 2) None 3) None 4) "Technical supervisors (teknik nezaretçi)" and "permanent supervisors (daimi nezaretçi)" in mining sites are required to be	

¹⁷ Turkey does not assume any commitments regarding technical testing and analysis services relating to the construction sector, including construction and building control activities performed to ensure that the whole construction process, as well as the construction materials used as inputs in the construction, are in conformity with the technical specifications and standards specified by relevant laws and regulations.

¹⁸ Only inspection, testing and analysis services of air, water, noise level and vibration level under CPC 86761.

¹⁹ Petroleum and Mining Laws specify that services incidental to mining require an operating licence.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons				
Sector or Sub-sector	Limitations on Market Access		Limitations on National Treatment	Additional Commitments
	Turkish nationals. Otherwise, unbound, except as indicated in the horizontal section.		Turkish nationals.	
(g) Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment) (CPC 633+ 8861-8866)	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section		1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(h) Building-cleaning services (CPC 874)	1) Unbound* 2) None 3) None 4) Unbound, except as indicated in the horizontal section		1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(i) Photographic services (CPC 875) except specialty photography services (CPC 87504)	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section		1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(j) Packaging services (CPC 876)	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section		1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(k) - Printing (CPC 88442**)	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section		1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
- Publishing (CPC 88442**) [Excluding publishing services of newspapers, magazines and publications of news agencies]	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section		1) None 2) None 3) Unbound 4) Unbound, except as indicated in the horizontal section	
(l) Convention services (CPC 87909**)	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section		1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(m) Other - Translation and interpretation services (CPC 87905**)	1,3) None, except for translation and interpretation services supplied by sworn/certified interpreters in relation with notary services. - Sworn/certified translation services: unbound 2) None 4) Unbound for sworn/certified translation services. Otherwise, unbound, except as indicated in the horizontal section		1) Unbound 2) None 3) None, except as indicated in the MA column. 4) Unbound for sworn/certified translation services. Otherwise, unbound, except as indicated in the horizontal section	
2. COMMUNICATION SERVICES				
A./B. Postal Services (Postal and Courier Services)				

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
Postal services cover the acceptance, collection, processing, shipment, distribution and delivery of "postal items" as defined in the Law on Postal Services No. 6475. ²⁰	<p>1,3) Establishment in the form of an "equity capital company (sermaye şirketi)"²¹ is required.</p> <p>"Posta ve Telgraf Teşkilatı Anonim Şirketi (PTT A.Ş.)", a wholly state owned enterprise, is authorised by the Law on Postal Services to supply postal services under a universal service obligation and has the monopoly right to supply the following services:</p> <ul style="list-style-type: none"> - acceptance, collection, sorting, transport, distribution and delivery of domestic and international items of correspondence whose weight or fee limits are determined by the President²²; - Without prejudice to the provisions related with electronic notification of the Tax Procedural Law no. 213 dated 4/1/1961, acceptance, collection, sorting, transport, distribution and delivery of any type of official notice, including through electronic media, within the scope of the Law numbered 7201 and other laws; - Postal services of Turkish Armed Forces in peacetime; - Printing and sale of postal stamps that show the fees to be collected in postal 	<p>1,3) None</p> <p>2) None</p> <p>4) Unbound, except as indicated in the horizontal section</p>	

²⁰ In accordance with the Law on Postal Services No. 6475, "postal item" means the item of correspondence delivered by the shipper himself or with his order, according to the type of shipment and the special service, to the place and address indicated on it; and the books, catalogues, newspapers and periodicals, visually-impaired articles; postal material which is containing merchandise with or without commercial value and having up to five kilograms of weight or fifty decimeters of volume and postal parcel or cargo.

In accordance with the Law, "item of correspondence" means all kinds of shipments, including the telegraph, excluding books, catalogues, newspapers and periodicals, in written form on any physical medium or prepared in the form of electronic message, that must be conveyed and delivered to the address indicated by the sender on the item.

In accordance with the Law, "postal parcel or cargo" means all kinds of substances, sent through the service provider, with no content of communication and having up to thirty kilograms of weight or three hundred decimeters of volume.

²¹ In accordance with Article 124 of the Turkish Commercial Code (Law No. 6102), the following are considered equity capital companies: "joint-stock company (anonim şirket)"; "limited liability company (limited şirket)"; "limited partnership in which the capital is divided into shares (sermayesi paylara bölünmüş komandit şirket)".

²² Until the weight and/or fee limits of monopoly right is determined by the President, the PTT A.Ş. shall continue to exercise its monopoly right over all the open and closed letters and postcards bearing any kind of correspondence without any weight limit.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	<p>services, personal stamps, commemorative stamps, postcards and first day covers.</p> <p>2) None</p> <p>4) Unbound, except as indicated in the horizontal section</p>		
C. Telecommunication (Electronic Communications) Services²³			
<p>(a) Voice telephone services</p> <p>(b) Packet-switched data transmission services</p> <p>(c) Circuit-switched data transmission services</p> <p>(d) Telex services</p> <p>(e) Facsimile services</p> <p>(f) Private leased circuit services</p> <p>(g) Electronic mail</p> <p>(h) Voice mail</p> <p>(i) On-line information and data-base retrieval</p> <p>(j) Electronic data interchange</p> <p>(k) Enhanced/value-added facsimile services, incl. store and forward, store and retrieve</p> <p>(l) Code and protocol</p> <p>(m) On-line information and/or data processing</p> <p>n) Others</p> <ul style="list-style-type: none"> - Mobile services analog/digital cellular - Paging services - Cable broadcasting²⁴ services - Satellite Communications Services (VSAT, SCPC VSAT) - Satellite Platform Services - GMPCS services - Infrastructure services - Private/Public Access Mobile Radio Services - Directory Information Services 	<p>1,3) Other than national public organizations and state-owned enterprises foreseen by law, in order to be authorised, commercial presence is required in the form of a joint-stock or limited liability company locating in Turkey.</p> <p>Electronic communications (telecommunications) services and infrastructure requiring authorisation in the form of limited number of rights of use can be provided only by joint stock companies.</p> <p>2) None</p> <p>4) Unbound, except as indicated in the horizontal section</p>	<p>1) None</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound, except as indicated in the horizontal section</p>	
(e) Telegraph services	<p>1) PTT A.Ş., a wholly state owned enterprise, is the exclusive service provider.</p> <p>2) None</p> <p>3) PTT A.Ş., a wholly state owned enterprise, is the exclusive service provider.</p> <p>4) Unbound</p>	<p>1) None</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound</p>	

²³ The scope of basic telecommunications in this Schedule does not cover any kind of (analog-digital) radio and TV programme broadcasting services and on-demand media services to the public.

²⁴ Cable broadcasting services include only the transmission of broadcasting signals but do not include editorial activities relating to content.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
D. Audio-visual Services (Excluding Broadcasting²⁵)			
(a) Motion picture and video-tape production and distribution services (CPC 9611)	1) None, except establishment of a commercial presence is required for the distribution of motion pictures in physical media (CD, video-tape, etc.). 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(b) Motion picture projection services (CPC 9612) (by Cinema theatre owners only)	1) Unbound* 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section.	

²⁵ Broadcasting covers the transmission of signs or signals via any technology for the reception and/or display of aural and/or visual programme signals by all or part of the public.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons				
Sector or Sub-sector	Limitations on Market Access		Limitations on National Treatment	Additional Commitments
(c) Radio and television services (CPC 96131, 96132)	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section		1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(d) Radio and television programme distribution ²⁶ services, excluding transmission	1) None, except establishment of a commercial presence is required for the distribution of radio and TV programmes in physical media (CD, video-tape, etc.). 2) None 3) None 4) Unbound, except as indicated in the horizontal section		1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(e) Sound recording services (For the purposes of this Schedule, sound recording service activities are defined as fixation of a series of musical, spoken, or other sounds in a studio, but not including the sounds accompanying a motion picture, radio or television programme or other audio-visual work.)	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section		1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
3. CONSTRUCTION AND RELATED ENGINEERING SERVICES (CPC 51)				
All services falling within CPC 51	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section		1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
4. DISTRIBUTION SERVICES (Distribution services do not include services related to the goods subject to import and export restriction or prohibition; alcohol, tobacco, electronic cigarettes and other addictive products; pharmaceuticals; optical goods; seeds; fertilizers and other soil enhancers, pesticides and preparations of a kind used in animal feeding; wood and coal; instruments and appliances for measuring electricity, gas and liquid; taximeters; firearms and military equipment; precious metals; waste and scrap and materials for recycling; toxic substances; nuclear energy and water.)				
A. Commission agents' Services CPC 621	1) Unbound 2) None 3) None, except Turkey may apply economic needs tests on commercial presence.		1) Unbound 2) None 3) None	
B. Wholesale trade services CPC 622, CPC 61111	For distribution of energy products, limitation on the total value of service transactions through market share cap applies too.			
C. Retailing services CPC 631, CPC 632, CPC 61112, CPC 6113, CPC 6121	4) Unbound, except as indicated in the horizontal section.		4) Unbound, except as indicated in the horizontal section.	
D. Franchising ²⁷ Franchising related to non-financial intangible assets				

²⁶ For greater certainty, distribution services in this context may include the licensing of radio and television programmes to other service providers for exhibition, broadcast or the transmission, rental, sale or use. Transmission services for radio and television programmes, including on-demand services, are not covered by this schedule.

²⁷ Franchising services under the heading of distribution services are assumed to be the distribution of goods through franchises.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector (CPC 8929*)	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
E. Other Retail sales of motor fuel (CPC 613)			
5. EDUCATION SERVICES**²⁸			
A,B,E. Primary, Secondary and Other Educational Services (CPC 921, 922, 929)	1,3) Natural and legal foreign persons directly or by establishing partnership with Turkish citizens may only establish international educational institutions (including vocational and technical schools) and only for foreign students. 2) None 4) Unbound, except as indicated in the horizontal section. In addition, foreign teachers and experts may work in primary and secondary educational institutions and in non- formal educational institutions (i.e. in language teaching and vocational training centres) after getting permission from the Ministry of National Education to obtain a work permit from the Ministry of Family, Labour and Social Services. A Turkish national teacher must be assigned to the international educational institutions (including vocational and technical schools) as head assistant of school "Senior Deputy Principal".	1,3) None 2) None 4) Unbound, except as indicated in the horizontal section	
C. Higher Education Services (CPC 923)	1) None 2) None 3) Private universities ["non- profit foundation higher education institutions (vakıf yükseköğretim kurumları)"] can only be established by foundations constituted under Turkish Civil Code, and through the enactment of a specific Law. All members of the administrative board of higher education institution [i.e. the Board of Trustees (Mütevelli Heyeti)], as well as the president (rector) must be Turkish nationals. 4) All members of the administrative board of	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	

²⁸ This commitment covers private education services only.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	higher education institution i.e. the Board of Trustees (Mütevelli Heyeti)], as well as the president (rector) must be Turkish nationals. Otherwise, unbound, except as indicated in the horizontal section		
D. Adult Education (CPC 924)	1) Unbound 2) None 3) Foreign persons directly or by establishing partnership with Turkish persons may only establish international educational institutions, and only for foreign students. 4) Unbound, except as indicated in the horizontal section. In addition, foreign teachers and experts may work in educational institutions after getting a prior permission from the Ministry of National Education to obtain a work permit from the Ministry of Family, Labour and Social Services.	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
6. ENVIRONMENTAL SERVICES²⁹			
A. Sewage Services (CPC 9401)	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
B. Refuse Disposal Services (CPC 9402)	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
C. Sanitation and Similar Services (CPC 9403)	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) Unbound 2) None 3) None 4) Unbound except as indicated in the horizontal section	
D. Other: - Cleaning services of exhaust gases (CPC 9404)	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
- Noise abatement services (CPC 9405)	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	

²⁹ Turkey's offer on environmental services excludes the provision of water for human use, including water collection, purification and distribution through mains.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
7. FINANCIAL SERVICES HORIZONTAL COMMITMENTS			
Measures applicable to supply of services through commercial presence for all sectors in Financial Services:			
Banking	3) Permission to establish a bank which has to be established in the form of a joint-stock company or to open the first branch or representative office of a foreign bank in Turkey, shall be given by a decision taken by the Banking Regulation and Supervision Board. A permission to operate should also be received following the consummation of establishment or branch opening transactions, in order to start receiving deposits and/or conducting banking transactions. Lending limits for the branches of foreign banks are based on branch capital rather than worldwide capital.	3) None	
Insurance	3) Insurance and reinsurance companies have to be established in the form of a joint-stock or a mutual company. For the purpose of commencing their operation, insurance and reinsurance companies have to obtain a license from the Ministry of Treasury and Finance for each insurance branch in which they would like to operate.	3) None	
Securities market	3) For the establishment and operations of capital market institutions ³⁰ permission of the Capital Markets Board is required. Also, banks engaging in capital market activities (investment services) are required to obtain from the Capital	3) None	

³⁰ According to the Capital Market Law, capital market institutions are specified as follows:

- (a) Investment firms,
- (b) Collective investment schemes,
- (c) Independent auditors, appraisal companies and rating agencies performing activities in capital market,
- (d) Portfolio management firms
- (e) Mortgage finance corporations,
- (f) Housing finance and asset finance funds,
- (g) Asset lease companies,
- (h) Central clearing institutions,
- (i) Central settlement institutions,
- (j) Trade repositories,
- (k) Other capital market institutions, the establishment and operation of which are regulated by the Capital Markets Board.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	<p>Markets Board appropriate authorisation certificates for these activities.</p> <p>Establishment of branches and agencies by securities intermediary institutions established in Turkey also requires the Capital Markets Board's permission.</p> <p>Securities intermediary institutions, investment companies, and other capital market institutions with the exception of investment funds³¹ can only be established in the form of a joint-stock company.</p> <p>Establishment of branches and representative offices of foreign securities intermediary institutions is not permitted.</p> <p>The Capital Markets Board may take any measure to ensure that the establishment of capital market institutions or their branches and agencies are beneficial to the economic development of Turkey, as well as to the stability, soundness and development of capital markets.</p>		
OTHER FINANCIAL SERVICES			
A. Financial leasing service	3) Financial leasing companies (lessors) can only be established in the form of a joint-stock company. Establishing a financial leasing company is subject to permission of the Banking Regulation and Supervision Board. A permission to operate should also be received following the consummation of establishment transactions.	3) None	
B. Factoring and consumer financing services	3) Factoring companies and financing companies must be established in the form of a joint-stock company. Establishing a factoring company or a financing company is subject to permission of the Banking Regulation and Supervision Board. A permission to operate should also be	3) None	

³¹ According to Capital Market Law, investment funds can be established in contractual type within the fund rules in conformity with the fiduciary ownership principles.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	received following the consummation of establishment transactions.		
C. Authorised institutions (foreign exchange dealers)	3) In order to engage in activities as an authorised institution, the permission of the Ministry of Treasury and Finance must be obtained. The Ministry may take any measure to ensure that the establishment of authorised institutions or their subsequent branches and agencies is beneficial to the economic development of Turkey as well as to the stability, soundness and development of financial markets. Authorised institutions must be established in the form of a joint-stock company.	3) None	
D. Precious metals exchange	3) To operate as a Precious Metal Intermediary Institution (PMII) one should obtain permission from Ministry of Treasury and Finance. Banks, authorised institutions, joint-stock companies engaging in trade and production of precious metals, branches, which are located in Turkey, of the companies resident abroad engaging in trade and production of precious metals may apply to the Ministry to operate as a PMII. Moreover, it is also possible to apply for permission to the Ministry to operate solely as a precious metal brokerage institution and to be established as a joint stock company to operate as such.	3) None	
FINANCIAL SERVICES (SECTOR-SPECIFIC COMMITMENTS)			
Insurance and Insurance-related Services (i) Direct insurance (A) Life	1) None 2) None	1),2) A certain per cent of insurance premiums paid by the income and corporate taxpayer as an employer or/and by wage earners for themselves is deducted from gross income in order to determine real taxable income. In order to benefit from this facility, life insurance policies must be concluded with the insurance companies, or the	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	<p>responsible for technical departments must reside in Turkey. Insurance agencies and brokers that are established in foreign countries may engage in insurance intermediation activities only by means of opening branches in Turkey. Institutional form and residency requirements stipulated above apply for branches, as well.</p> <p>4) Natural person insurance and reinsurance brokers and agents have to reside in Turkey. Otherwise, unbound, except as indicated in the horizontal section</p>	<p>4) None, except natural person agents, and natural person insurance and reinsurance brokers have to reside in Turkey.</p>	
(iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services	<p>1,2) None, except adjusters and actuaries.</p> <p>3) None</p> <p>4) Unbound for adjusters and actuaries. Otherwise, unbound, except as indicated in the horizontal section</p>	<p>1,2) None</p> <p>3) None</p> <p>4) Unbound, except as indicated in the horizontal section</p>	
Banking and Other Financial Services (excluding insurance)			
(v) Acceptance of deposits and other repayable funds from the public	<p>1) Unbound</p> <p>2) None</p> <p>3) No natural person or legal entity other than credit institutions or those authorised under specific regulations can accept deposits or other repayable funds from the public.</p> <p>4) Unbound, except as indicated in the horizontal section</p>	<p>1) Unbound</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound, except as indicated in the horizontal section</p>	
(vi) Lending of all types including consumer credit, mortgage credit, factoring and financing of commercial transaction	<p>1) Unbound</p> <p>2) None</p> <p>3) Banks and financing companies can lend consumer credits.</p> <p>4) Unbound, except as indicated in the horizontal section</p>	<p>1) Unbound</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound, except as indicated in the horizontal section</p>	
(A) Consumer credit			
(B) Factoring	<p>1) Unbound</p> <p>2) None</p> <p>3) Banks and factoring companies can engage in factoring activities.</p> <p>4) Unbound, except as indicated in the horizontal section</p>	<p>1) Unbound</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound, except as indicated in the horizontal section</p>	
(C) Mortgage credit	<p>1) Unbound</p> <p>2) None</p> <p>3) Financial leasing companies and financing companies which are found eligible to operate in housing finance</p>	<p>1) Unbound</p> <p>2) None</p> <p>3) None</p>	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	<p>by the Banking Regulation and Supervision Agency can engage in trading of mortgage credits. Also banks can engage in trading of these activities.</p> <p>4) Unbound, except as indicated in the horizontal section</p>	<p>4) Unbound, except as indicated in the horizontal section</p>	
(D) Financing of commercial transactions	<p>1) Unbound</p> <p>2) None</p> <p>4) Banks, financial leasing companies, factoring companies, and financing companies can engage in these activities.</p> <p>4) Unbound, except as indicated in the horizontal section</p>	<p>1) Unbound</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound, except as indicated in the horizontal section</p>	
(vii) Financial leasing	<p>1) Unbound</p> <p>2) None</p> <p>3) Banks which are not authorised to accept deposits and financial leasing companies can engage in financial leasing transactions.</p> <p>4) Unbound, except as indicated in the horizontal section</p>	<p>1) Unbound</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound, except as indicated in the horizontal section</p>	
(viii) All payment and money transmission services, including credit and debit cards and travellers cheques	<p>1) Unbound</p> <p>2) None</p> <p>3) Payment and money transmission services can only be conducted by banks and institutions authorised in accordance with the "Law on Payments and Securities Settlement Systems, Payment Services and Electronic Money Institutions". The institutions engaging in the provision of payment and money transmission services are required to be established in Turkey, in the form of a joint-stock company. Credit and debit cards services can only be provided by banks and other financial institutions which are authorised to do so according to their related legislations. Transfers of foreign exchange abroad must be carried out through the banking system.</p> <p>4) Unbound, except as indicated in the horizontal section</p>	<p>1) Unbound</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound, except as indicated in the horizontal section</p>	
(ix) Guarantees and commitments	<p>1) Unbound</p> <p>2) None</p> <p>3) None</p>	<p>1) Unbound</p> <p>2) None</p> <p>3) None</p>	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons					
Sector or Sub-sector	Limitations on Market Access		Limitations on National Treatment	Additional Commitments	
	4)	Unbound, except as indicated in the horizontal section	4)	Unbound, except as indicated in the horizontal section	
(x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following: (A) Money market instruments (including cheques and bills)	1) 2) 3) 4)	Unbound None The trading of money market instruments can be performed by both banks and securities intermediary institutions; however, securities intermediary institutions cannot engage in the trading of cheques and bills. Unbound, except as indicated in the horizontal section	1) 2) 3) 4)	Unbound None None Unbound, except as indicated in the horizontal section	
(B) Foreign exchange	1) 2) 3) 4)	Unbound None Banks, foreign exchange dealers, securities intermediary institutions (limited to investment services and activities), as well as national postal administration (PTT A.Ş.) can engage in foreign exchange trading. Unbound, except as indicated in the horizontal section	1) 2) 3) 4)	Unbound None None Unbound, except as indicated in the horizontal section	
(C) Derivative products	1) 2) 3) 4)	Unbound None Authorised banks and securities intermediary institutions can engage in trading of these products. Authorised banks can execute orders in derivative instruments except for those based on stock indices and stocks, and deal on own account in derivative instruments except for those based on stocks. Unbound, except as indicated in the horizontal section	1) 2) 3) 4)	Unbound None None Unbound, except as indicated in the horizontal section	
(D) Exchange rate and interest rate instruments	1) 2) 3) 4)	Unbound None Authorised banks and securities intermediary institutions can engage in trading of exchange rate and interest rate instruments. Only securities intermediary institutions can provide "leveraged transactions" as defined in Capital Market Law no. 6362 (i.e. retail forex brokerage). Unbound, except as indicated in the horizontal	1) 2) 3) 4)	Unbound None None Unbound, except as indicated in the horizontal section	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access section	Limitations on National Treatment	Additional Commitments
(E) Transferable securities	1) Unbound 2) None 3) Banks and securities intermediary institutions can engage in trading of these products. However, only securities intermediary institutions can provide such investment services with regard to execution of orders and dealing on own account in shares. 4) Unbound, except as indicated in the horizontal section	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(F) Other negotiable instruments and financial assets, including bullion	1) Unbound 2) None 3) Banks and related intermediary institutions can engage in trading of these products. 4) Unbound, except as indicated in the horizontal section	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(xi) Underwriting and placement	1) Unbound 2) None 3) Development and Investment Banks, and securities intermediary institutions can provide underwriting and placement services for the securities to be issued after being registered by the Capital Markets Board. 4) Unbound, except as indicated in the horizontal section	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(xii) Money broking	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(xiii) Asset management such as [cash] or portfolio management, all forms of collective investment management, pension fund management, custodial depository and trust services (A) Portfolio management	1) Unbound 2) None 3) Development and Investment Banks, securities intermediary institutions (excluding collective investment management) and portfolio management companies can provide these services. 4) Unbound, except as indicated in the horizontal section	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(B) Collective investment management	1) Unbound 2) None 3) Collective investment portfolios can be managed by portfolio management companies. Investment	1) Unbound 2) None 3) None	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	4) companies can also manage their own portfolios. Unbound, except as indicated in the horizontal section	4) Unbound, except as indicated in the horizontal section	
(C) Pension fund management	1) Unbound 2) None 3) Portfolio management companies can provide these services. 4) Unbound, except as indicated in the horizontal section	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(D) Custodial, depository and trust services	1) Unbound 2) None 3) Authorised banks and securities intermediary institutions operating in capital market can provide custodial services for their customers. Depository accounts related with capital market instruments, with the exception of government debt instruments held in bank portfolios, can only be kept by Central Registry Agency. 4) Unbound, except as indicated in the horizontal section	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
(xiv) Settlement and clearing services for financial assets, including securities, derivative products, and cheques	1) Unbound 2) None 3) İstanbul Clearing, Settlement and Custody Bank (Takasbank) Inc., The Central Bank of the Republic of Turkey, Central Registry Agency Inc. (MKK) and other entities authorised by the Capital Markets Board and the Central Bank of the Republic of Turkey (CBRT) can provide securities clearing and settlement services. Only the institution established and/or authorised by the Central Bank of the Republic of Turkey can provide cheque clearing services. Payment systems can only be operated by the Central Bank of the Republic of Turkey and other entities authorised by The Central Bank of the Republic of Turkey. An entity that operates as a payment and securities settlement system is required to be established in Turkey, in the form of a joint-stock company.	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	4) Unbound, except as indicated in the horizontal section		
(xv) Provision and transfer of financial information by suppliers of other financial services	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
- Financial data processing and provision and transfer of related software by suppliers of other financial services	1,2) Unbound 3) Financial institutions are obliged to establish and maintain their data processing centres (both primary and secondary information systems ³²) in Turkey for the storage and processing of financial data. 4) Unbound, except as indicated in the horizontal section	1,2) Unbound 3) None 4) Unbound, except as indicated in the horizontal section	
(xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice on acquisitions and on corporate restructuring and strategy	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
8. HEALTH RELATED AND SOCIAL SERVICES			
A. Hospital Services (CPC 9311)	1) Unbound* 2) None 3) Foreigners may establish private hospitals with the permission of Ministry of Health. The number and type of hospitals, medical branches in each hospital, number of required health personnel, bed capacity as well as procurement of medical devices may be limited in accordance with investment plans based on health service needs of residential areas. 4) Unbound	1) None 2) None 3) None 4) Unbound	
9. TOURISM AND TRAVEL RELATED SERVICES			
A. Hotels and restaurants (CPC 641-643)	1) Unbound* 2) None ³³	1) None 2) None	

³² Primary systems are comprised of infrastructure, hardware, software and data which ensure the execution of financial activities as well as the recording and use of information in electronic media in a secure manner and as to be accessed when needed. Secondary systems are primary system substitutes.

³³ Turkish citizens may travel abroad without any restriction. Only, they are required to pay, with certain exceptions, a TL amount equivalent of up to \$US 100 fee for each exit.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	3) None 4) Unbound, except as indicated in the horizontal section. In addition, after receiving the permission of the Ministry of Family, Labour and Social Services based on the affirmative opinions of the Ministry of Interior and the Ministry of Culture and Tourism, the hotels and restaurants establishments with the tourism encouragement certificate, may employ foreign personnel. But the quantity of foreign personnel that would be employed in an enterprise should not exceed 10 per cent of the total personnel. This ratio could be increased up to 20 per cent by the decision of the Ministry of Culture and Tourism on a case by case basis.	3) None 4) Unbound, except as indicated in the horizontal section	
B. Travel Agencies and Tour Operators Services (CPC 7471)	1) Commercial presence is required. 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) Travel agencies established under the laws of a foreign government cannot organize tours originating from Turkey abroad. 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
10. RECREATIONAL, CULTURAL AND SPORTING SERVICES			
A. Entertainment services (including theatre and live bands) - Theatrical producer, singer group, band and orchestra entertainment services (CPC 96191)	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
B. Libraries, archives, museums and other cultural services - Library Services (CPC 96311)	<ol style="list-style-type: none"> 1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section. In addition, after receiving the permission of the Ministry of Family, Labour and Social Services, based on the affirmative opinions of the Ministry of Interior and the Ministry of Culture and Tourism, the service providers authorised by the Ministry of Culture and Tourism may employ foreign personnel. But the quantity of foreign personnel that would be employed in an enterprise shall not exceed 10 per cent of the total personnel. This ratio could be increased up to 20 per cent by the approval of the Ministry of Culture and Tourism on a case by case basis. 	<ol style="list-style-type: none"> 1) None 2) None 3) None except the name of the library has to be Turkish. 4) Unbound, except as indicated in the horizontal section 	
-Archive Services (CPC 96312)	<ol style="list-style-type: none"> 1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section. In addition, after receiving the permission of the Ministry of Family, Labour and Social Services, based on the affirmative opinions of the Ministry of Interior and the Ministry of Culture and Tourism, the service providers authorised by the Ministry of Culture and Tourism may employ foreign personnel. But the quantity of foreign personnel that would be employed in an enterprise shall not exceed 10 per cent of the total personnel. This ratio could be increased up to 20 per cent by the approval of the Ministry of Culture and Tourism on a case by case basis. 	<ol style="list-style-type: none"> 1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section 	
- Museum Services except for Historical Sites and Buildings (Except military related museum services) (CPC 69321**)	<ol style="list-style-type: none"> 1) None 	<ol style="list-style-type: none"> 1) None except in case the state outsources the services in state controlled areas, the interested service supplier should have residency in Turkey in order 	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
- Preservation Services of Historical Sites and Buildings (CPC 69322)	2) None 3) None 4) Unbound, except as indicated in the horizontal section. In addition, after receiving the permission of the Ministry of Family, Labour and Social Services, based on the affirmative opinions of the Ministry of Interior and the Ministry of Culture and Tourism, the service providers authorised by the Ministry of Culture and Tourism may employ foreign personnel. But the quantity of foreign personnel that would be employed in an enterprise shall not exceed 10 per cent of the total personnel. This ratio could be increased up to 20 per cent by the approval of the Ministry of Culture and Tourism on a case by case basis.	to be able to attend the tender. 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
- Botanical and Zoological Garden Services (CPC 96331)			
- Nature reserve services including wildlife preservation services (CPC 96332)			
11. TRANSPORT SERVICES			
A. Maritime Transport Services except Cabotage³⁴			
(a) Passenger transportation (CPC 7211)	2) None 2) None 3) In order to fly the Turkish flag, the shipping companies must have the majority of 51 per cent Turkish shareholders. ³⁵ 4) Captain and crew of the Turkish flag vessels should be Turkish citizens.	1) None 2) None 3) None 4) Turkish nationality is required for captain and crew.	
b) Freight transportation (CPC 7212)	1) None 2) None	2) None 2) None	

³⁴ Without prejudice to the scope of activities which may be considered as "cabotage" under the relevant national legislation, this schedule does not include "maritime cabotage services", which are assumed to cover transportation of passengers or goods between a port located in Turkey and another port located in Turkey, and traffic originating and terminating in the same port located in Turkey provided that this traffic remains within Turkey's territorial waters. In addition, according to the "Law Concerning Coastal Shipping (Cabotage) along Turkish Shores and Performance of Trade and Business in Turkish Ports and Territorial Waters" (Law No: 815), the right to transport goods and passengers from one point to another along Turkish shores and to perform towing and piloting, and all other port services of any type, whatsoever, within or between Turkish ports and shores shall belong exclusively to ships and vessels that fly the Turkish flag in accordance with Article 940 of the Turkish Commercial Code (Law No. 6102). Vessels carrying the Turkish flag in accordance with the Law on Turkish International Ship Registry (Law No. 4490) but not fulfilling the requirements of Article 940 of Turkish Commercial Code cannot perform the aforementioned functions falling within the scope of cabotage rights. For further clarification, this Schedule does not establish any right for the conduct of activities falling under cabotage rights as stipulated in the "Law Concerning Coastal Shipping (Cabotage) along Turkish Shores and Performance of Trade and Business in Turkish Ports and Territorial Waters" (Law No: 815).

³⁵ All Turkish ships shall fly the Turkish flag. A ship shall be regarded as Turkish only if its owner (or owners) is/are Turkish. However, the following ships shall also be considered as Turkish: i) Ships which belong to legal persons such as bodies, institutions, associations and foundations set up in accordance with Turkish Law, the majority of whose Board of Directors are of Turkish nationality; ii) Ships which belong to the trading companies, the majority of whose managerial staff and representatives are of Turkish nationality and are registered on the Turkish Trade Register.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	3) In order to fly the Turkish flag, the shipping companies must have the majority of 51 per cent Turkish shareholders. 4) Captain and crew of the Turkish flag vessels should be Turkish citizens.	3) None 4) Turkish nationality is required for captain and crew.	
(c) Rental of vessels with crew ³⁶ (CPC 7213)	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) Vessels rented by foreigners may not operate inside the Turkish coastal waters. These kinds of vessels are considered as foreign vessels and cannot fly the Turkish flag. 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
d) Maintenance and repair of vessels (CPC 8868**)	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	
B. Air Transport Services			
(a) Selling and marketing of air transport services	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section.	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section.	
(b) Computer reservation system (CRS) services	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section.	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section.	
(c) Aircraft repair and maintenance services	1) None 2) None 3) Authorization from the Ministry of Transport and Infrastructure is necessary to perform functions for the maintenance and repair of aircraft. 4) Unbound except as indicated in the horizontal section.	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section.	
C. Rail Transport Services			
(a) Passenger transportation (CPC 7111)	1) Unbound 2) None 3) Establishment as a commercial company in accordance with the Turkish Commercial Code is required for obtaining authorisation. TCDD has the	1) Unbound 2) None 3) None	
(b) Freight transportation (CPC 7112)			

³⁶ This commitment does not include or confer any right with regard to maritime transportation services.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	<p>monopoly right for the management of traffic over the domestic railway network as well as the operation of railway infrastructure owned by the State.</p> <p>4) Unbound, except as indicated in the horizontal section</p>	<p>4) Unbound, except as indicated in the horizontal section</p>	
D. Road transport services			
(a) Passenger transportation (CPC 7121 + 7122)	<p>1) Unbound</p> <p>2) None</p>	<p>1) Unbound</p> <p>2) None</p>	
(b) Freight transportation (CPC 7123)	<p>3) Turkish nationality or being a legal entity established under the relevant Turkish laws are required for obtaining a carrier licence.</p> <p>4) Unbound, except as indicated in the horizontal section</p>	<p>3) None</p> <p>4) Unbound, except as indicated in the horizontal section</p>	
(c) Supporting services for road transport services (CPC 744 except 7442)	<p>1) Unbound</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound except as indicated in the horizontal section.</p>	<p>1) Unbound</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound except as indicated in the horizontal section.</p>	
E. Services auxiliary to all modes of transport:			
(a) Cargo handling services (CPC 741 except maritime cargo handling services)	<p>1) Unbound</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound, except as indicated in the horizontal section</p>	<p>1) Unbound</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound, except as indicated in the horizontal section</p>	
(b) Storage and warehousing Services except "licensed warehousing" (CPC 742).	<p>1) Unbound</p> <p>2) None</p> <p>3) None except for "customs warehouses" and "temporary storage facilities at customs". For establishment and operation of customs warehouses and temporary storage facilities at customs economic needs test applies.</p> <p>4) Unbound, except as indicated in the horizontal section.</p>	<p>1) Unbound</p> <p>2) None</p> <p>3) None except customs warehouses and temporary storage facilities at customs can only be established by companies that are in operation for at least two years.</p> <p>4) Unbound, except as indicated in the horizontal section.</p>	
- Licensed warehousing (part of CPC 742) Licensed warehousing is a system in which agricultural products that are convenient to storage (like cereals, legumes, oil seeds, cotton, nuts, olive and olive oil) and classified in compliance with the current product standards are warehoused after their classes, qualities and standards are determined by authorized classifiers.	<p>1) Unbound</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound, except as indicated in the horizontal section</p>	<p>1) Unbound</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound, except as indicated in the horizontal section.</p>	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
(c) Freight transport agency services (CPC 748)	1) Unbound 2) None 3) None 4) Unbound except as indicated in the horizontal section.	1) Unbound 2) None 3) None 4) Unbound except as indicated in the horizontal section.	

LIST OF ARTICLE 4 MFN EXEMPTIONS OF THE REPUBLIC OF TURKEY

Sector or Sub sector	Description of measure indicating its inconsistency with Article 4	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
ALL SECTORS	(a) Extending full national treatment for the investments of the nationals or companies of countries with which a Bilateral Investment Treaty is concluded. (b) (i) Executing the transfers, in specific periods, of the nationals and companies of certain countries which made investments in Turkey.	All countries with which agreements are or will be in force. Belgium-Luxembourg, Kuwait	Indefinite	Desire to create favourable conditions for a greater economic cooperation between Turkey and mentioned countries and to encourage investments by nationals and companies of one country in the territory of the other countries.
	(ii) Granting foreign exchange risk guarantee for certain countries for the transfers which are not realized due to the difficulties in balance of payments.			
	(c) Covering "trade risk" in subrogation for one country.	Japan		
	(d) The agreements with three countries, the MFN Articles of which do not include the derogation paragraphs relating to the privileges which are accorded to the investors of the third countries resulting from its membership in or associated with a free trade zone, an economic cooperation, a customs union or a common market.	Japan, Bangladesh, Germany		
ALL SECTORS	The restriction in the transfer of the premiums for long-term insurance schemes and the employment of the foreign country workers by foreign companies is waived for one country.	Libya	Indefinite	To ensure social security and continuous employment of Turkish workers in the mentioned country.
ALL SECTORS	If the amount of the consulate duties collected from the Turkish nationals by any country is higher than the amounts written in the tariff list, the amounts of consulate duties which are collected from the nationals of that country will be increased reciprocally.	All countries	Indefinite	Desire to ensure equal treatment to Turkish nationals.
ALL SECTORS	On the condition that the legal provisions are reserved and with the condition of reciprocity, the foreign real persons could own real estates in Turkey by acquisition or by inheritance.	All countries	Indefinite	To secure the right of Turkish nationals to acquire real estates in a foreign country.
Professional Services	If any foreign country lays down legal and administrative conditions against Turkish citizens for performing arts and supplying services, the similar activities of the citizens of that country could be prohibited in Turkey.	All countries	Indefinite	Desire to create favourable circumstances for Turkish citizens to perform their activities under equal conditions in the other countries.

Sector or Sub sector	Description of measure indicating its inconsistency with Article 4	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
Transportation Services	The income and corporate tax rates for the foreign road, maritime and air transport companies can reciprocally be decreased down to zero or increased to a new rate not exceeding one fold of the existing rate can be determined, as a country by country basis either for each transportation type separately or for all types of them.	All countries	Indefinite	Desire to facilitate and to lower the costs of transportation services between Turkey and other countries.
Transportation Services	Transit or bilateral transportation services, can be excluded from VAT. This exception is granted, with the condition of reciprocity, to the related countries' tax payers who do not have the residence, legal and business centre in Turkey.	All countries	Indefinite	Desire to lower costs and to create favourable conditions for the provision of services in this sector.
Transportation Services	To apply, on the basis of reciprocity, restrictions, prohibitions, different treatments and different tariffs to the goods and transportation vehicles of the countries which apply restrictions, prohibitions and different treatments to the Turkish road, air and maritime transportation vehicles.	All countries	Indefinite	Desire to secure the smooth functioning of mutual transportation services.
Road Transport Services	To grant, on the basis of reciprocity, the privileges about the quotas and fees, the exemptions from the permission procedures.	All countries with which agreements are or will be in force.	Indefinite	Desire to facilitate road transport services between Turkey and other countries.
Rail Transport Services	The bilateral reduction in the renting fees of railway wagons of countries mentioned aside (paragraph a) and the application of national treatment to tariff rates on the reciprocal transportation of goods with the countries mentioned aside (paragraph b).	a) Syria, Iraq, Iran, Lebanon b) Commonwealth of Independent States and the Baltic Republics.	Indefinite	Desire to facilitate rail transport services between Turkey and other countries.
Accounting, Auditing and Book-keeping Services	In order to perform the services under the title of "financial advisor", the citizens of the countries which have officially codified the principles for the profession of financial advisory may be authorised, under reciprocal conditions, provided that these persons should have the characteristics required for the professional of financial advisory in Turkey and should have rights to perform similar services in their own countries.	All countries	Indefinite	Desire to create favourable conditions for Turkish financial advisors to perform their jobs under equal conditions all over the world.

**MONTENEGRO
SCHEDULE OF SPECIFIC COMMITMENTS**

Modes of supply: (1) Cross border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons			
Sector or sub-Sector	Limitations on market access	Limitations on national treatment	Additional commitments

Modes of supply: (1) Cross border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons			
Sector or sub-Sector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
Public Utilities	(3) Services considered as public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators ³⁷ .		
Legal Entities Limitations on branches, agencies and representative offices		(3) Treatment accorded to subsidiaries having their registered office, central administration or principal place of business within Montenegro may not be extended to branches or agencies established in Montenegro. Treatment less favourable may be accorded to subsidiaries with a registered office in Montenegro that cannot show an effective and continuous link with Montenegro's economy.	
Real Estate		(3)(4) Foreign persons may own real estate other than arable land and real estate within restricted areas subject to reciprocity.	

³⁷ Explanatory Note: Public utilities exist in sectors such as related scientific and technical consulting services, R&D services on social sciences and humanities, technical testing and analysis services, environmental services, health services, transport services and services auxiliary to all modes of transport. Exclusive rights on such services are often granted to private operators, for instance operators with concessions from public authorities, subject to specific service obligations. Given that public utilities often also exist at the sub-central level, detailed and exhaustive sector-specific scheduling is not practical. This limitation does not apply to telecommunications and to computer and related services.

Modes of supply: (1) Cross border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons			
Sector or sub-Sector	Limitations on market access	Limitations on national treatment	Additional commitments
Temporary Entry and Stay of Natural Persons	<p>(4) Unbound except for measures concerning the entry into and temporary stay in Montenegro of the following categories of natural persons providing services:</p> <p>(i) <u>Intra-corporate transfers (ICT)</u></p> <p>Entry and stay for a maximum of 3 years will be granted to persons transferred within a corporation and its subsidiaries and branches who:</p> <ul style="list-style-type: none"> - Have been employed by a juridical person established in the territory of Turkey for at least one year immediately preceding the date of admission; - Are temporarily transferred in the context of the provision of a service in Montenegro to a subsidiary or branch that is 	<p>(4) Unbound except for measures concerning the categories of natural persons referred to in the Market Access column.</p>	

Modes of supply: (1) Cross border supply Presence of natural persons			
	(2) Consumption abroad	(3) Commercial presence	(4)
Sector or sub-Sector	Limitations on market access	Limitations on national treatment	Additional commitments
	<p>providing services in Montenegro; and</p> <p>- Are Managers, Executives or Specialists.</p> <p><u>Managers:</u> are persons working in a senior position who primarily direct the organization, including (a) directing the establishment or a department or sub-division of the establishment; (b) supervising and controlling the work of other supervisory, professional or managerial employees; and (c) having the authority personally to hire and fire or recommend hiring, firing or other personnel actions (such as promotion or leave authorization), and exercise discretionary authority over day-to-day operations. Does not include first-line supervisors, unless the employees</p>		
	<p>supervised are professionals, nor does it include employees who primarily perform tasks necessary for the provision of the service. An economic needs test will not be required.</p> <p><u>Executives:</u> are persons within the organization, who primarily direct the management of the organization, establish the goals and policies of the organization, exercise wide latitude in decision-making, and receive only general supervision or direction from higher-level executives, the board of directors, or stockholders of the business. Executives would not directly perform tasks related to the actual provision of a service or services. An economic needs test will not be required.</p> <p><u>Specialists:</u> are persons who possess uncommon knowledge essential to an establishment's service, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of knowledge specific to the establishment, but also of whether the person has a high level of qualification referring to a type of work or trade</p>		

Modes of supply: (1) Cross border supply (2) Consumption abroad (3) Commercial presence (4)			
Presence of natural persons			
Sector or sub-Sector	Limitations on market access	Limitations on national treatment	Additional commitments
	requiring specific technical knowledge, including membership of an accredited profession. An economic needs test will not be required.		
	<p>(ii) <u>Business Visitors (BV)</u></p> <p>Entry and temporary stay of the following categories is permitted without application of an economic needs test for a period of up to 90 days in any twelve months:</p> <p>(a) Service sellers - persons not residing in Montenegro who are representatives of a service supplier and are seeking temporary entry for the purpose of negotiating and contracting for the sale of services but are not engaged in making direct sales to the general public or in supplying services themselves; and</p> <p>(b) Persons responsible for setting up a commercial presence - managers who are responsible for setting up in Montenegro a commercial presence of a service provider of Turkey and who is not engaged in making direct sales or in supplying services; when the service provider has no other commercial presence in Montenegro.</p>		
	<p>(iii) <u>Contractual Service Suppliers (CSS)</u></p> <p>Access will be granted to natural persons engaged in the supply of a service on a temporary basis as employees of a legal person with no commercial presence in Montenegro, subject to the following conditions:</p> <p>- The legal person has obtained a service contract, for a period not exceeding 12 months from a final consumer in Montenegro, through a procedure which guarantees the bona fide character of the contract;</p> <p>- The service</p>		

Modes of supply: (1) Cross border supply (2) Consumption abroad (3) Commercial presence (4)			
Presence of natural persons			
Sector or sub-Sector	Limitations on market access	Limitations on national treatment	Additional commitments
	<p>contract complies with the laws of Montenegro;</p> <p>- The natural person seeking access should be offering such services as an employee of the legal person supplying the service for at least a year immediately preceding such movement;</p> <p>- The temporary entry and stay shall be for a cumulative period of not more than 3 months in any 12 month period or for the duration of the contract, whatever is less;</p> <p>- The natural person must possess (a) a university degree or a technical qualification demonstrating knowledge of an equivalent level³⁸; (b) professional qualifications where this is required to exercise an activity in the sector concerned pursuant to the laws, regulations or requirements of Montenegro; and (c) at least three years professional experience in the sector;</p>		

³⁸ Where the degree or qualification has not been obtained in Montenegro, it may be evaluated whether this is equivalent to a university degree acquired in Montenegro.

Modes of supply: (1) Cross border supply Presence of natural persons		(2) Consumption abroad	(3) Commercial presence	(4)
Sector or sub-Sector	Limitations on market access	Limitations on national treatment	Additional commitments	
	<ul style="list-style-type: none"> - The commitment relates only to the service activity which is the subject of the contract; it does not confer entitlement to exercise a professional title in Montenegro; - The number of the persons covered by the service contract shall not be larger than necessary to fulfil the contract; - An economic needs test will not be required; and - The service contract has to be obtained in one of the activities mentioned below: <ul style="list-style-type: none"> - Legal services; - Accounting and bookkeeping services; - Architectural services, urban planning and landscape architectural services; - Engineering services, integrated engineering services; - Computer and related services; - Advertising; - Management consulting services; - Services related to management consulting; - Technical testing and analysis services; - Related scientific and technical consulting services; - Translation services; - Environmental services; and - Installations and maintenance of machinery or equipment. 			

Modes of supply: (1) Cross border supply		(2) Consumption abroad	(3) Commercial presence	(4)
Presence of natural persons				
Sector or sub-Sector	Limitations on market access	Limitations on national treatment	Additional commitments	
II. SECTOR SPECIFIC COMMITMENTS				
1. BUSINESS SERVICES				
A. Professional Services				
(a) Legal services - Consultancy on foreign, international law and domestic law (part of CPC 861)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.		
(b) Accounting, auditing and bookkeeping services (CPC 862)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.		
(c) Taxation services ³⁹ (CPC 863)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.		
(d) Architectural services (CPC 8671)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.		
(e) Engineering services (CPC 8672)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.		
(f) Integrated engineering services (CPC 8673)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.		
(g) Urban planning and landscape architectural services (CPC 8674)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.		
(h) Medical and dental services (CPC 9312)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.		
(i) Veterinary services (CPC 932)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.		

³⁹ Legal advice and legal representation in taxation matters are not included, since committed under legal services (part of CPC 861).

Modes of supply: (1) Cross border supply Presence of natural persons		(2) Consumption abroad	(3) Commercial presence	(4)
Sector or sub-Sector	Limitations on market access	Limitations on national treatment	Additional commitments	
(j) Services provided by midwives, nurses, physiotherapists and para-medical personnel (CPC 93191)	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.		
B. Computer and Related Services				
- Computer and related services (CPC 84) Montenegro subscribes to the "Understanding on the scope of coverage of Computer and Related Services - (CPC 84)" attached in Appendix I.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.		
C. Research and Development Services				
(a) R&D services on natural sciences (CPC 851)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.		
(b) R&D services on social sciences and humanities (CPC 852)				
(c) Interdisciplinary R&D services (CPC 853)				
D. Real Estate Services				
(a) Involving own or leased property (CPC 821)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.		
(b) On a fee or contract basis (CPC 822)				
E. Rental/Leasing Services Without Operators				
(a) Relating to ships (CPC 83103)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.		
(b) Relating to aircraft (CPC 83104)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.		
(c) Relating to other transport equipment (CPC 83101, 83102, 83105)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.		
(d) Relating to other machinery and equipment (CPC 83106 - 83109)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.		

(e) Other: - Rental services relating to pre-recorded video cassettes and optical discs for use in home entertainment equipment (CPC 83202)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
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F. Other Business Services			
(a) Advertising services (CPC 871)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(b) Market research and public opinion polling services (CPC 864)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(c) Management consulting services (CPC 865)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(d) Services related to management consulting (CPC 866)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(e) Technical testing and analysis services (CPC 8676)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(f) Advisory and consulting services incidental to agriculture, hunting and forestry (part of CPC 881)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(g) Advisory and consulting services incidental to fishing (part of CPC 882)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(h) Services incidental to mining (CPC 883, 5115)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(i) Advisory and consulting services incidental to energy distribution (part of CPC 887)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	

(j) Placement and supply services of personnel (CPC 872)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(k) Investigation and security (CPC 873)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(l) Related scientific and technical consulting services (CPC 8675)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(m) Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment) (CPC 633, 8861-8866)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(n) Building-cleaning services (CPC 874)	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(o) Photographic services (CPC 875)	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(p) Packaging services (CPC 876)	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(q) Printing, publishing (CPC 88442)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(r) Convention services (part of CPC 87909)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(s) Other: - Translation and interpretation services (CPC 87905)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
2. COMMUNICATION SERVICES			
A. Postal services ⁴⁰ (CPC 7511)			
B. Courier service (CPC 7512)			

⁴⁰ While discussions on classification in this sector are still ongoing, the commitment is listed according to the proposed classification that has been notified to WTO by the EU and its Member States on 23 March 2001 (WTO document S/CSS/W/61) and of the scheduling guidelines on postal/courier co-sponsored by the EU on 17 February 2005 (WTO document TN/SW/30), without prejudice to the outcome of the discussion on the classification of postal and courier services.

<p>Services relating to the handling⁴¹ of postal items⁴² according to the following list of sub-sectors, whether for domestic or foreign destinations.</p> <p>(a) Handling of addressed written communications on any kind of physical medium⁴³, including:</p> <ul style="list-style-type: none"> - Hybrid mail service; and - Direct mail. <p>(b) Handling of addressed parcels and packages⁴⁴</p> <p>(c) Handling of addressed press products⁴⁵</p> <p>(d) Handling of items referred to in (a) to (c) above as registered or insured mail</p> <p>(e) Express delivery services⁴⁶ for items referred to in (a) to (c) above</p> <p>(f) Handling of non-addressed items</p> <p>(g) Document exchange⁴⁷</p> <p>Sub-sectors (a), (d) and (e) are excluded when they fall into the scope of the services which may be reserved, which is: for items of correspondence the price of which is less than five times the public basic tariff, provided that they weigh less than 350 grams⁴⁸, plus the registered mail service used in the course of judicial or administrative procedures.</p>	<p>(1) (2) (3) Licensing systems may be established for sub-sectors (a) to (d), for which a general Universal Service Obligations exists. These licenses may be subject to particular universal service obligations and/or financial contribution to a compensation fund. None for sub-sectors (e) to (g).</p> <p>(4) Unbound except as indicated in the horizontal section.</p>	<p>(1) (2) (3) None.</p> <p>(4) Unbound except as indicated in the horizontal section.</p>	<p>Montenegro undertakes the commitments in the Reference paper on postal and courier services in the Appendix II. Private operators cannot be treated less favourably than the National Post Office of Montenegro in providing express delivery services.</p>
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C. Telecommunication Services			
<p>All services consisting of the transmission and reception of signals by any electromagnetic means⁴⁹, excluding broadcasting⁵⁰</p> <p>Telecommunications services do not cover the economic activity consisting of the provision of content which require telecommunications services for their transport. These services may be provided on a facilities basis or non-facilities basis, and encompass local, long-distance, or international services, for public or non-public use, and may be provided through any means of technology.</p>	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in horizontal commitments.</p>	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in horizontal commitments.</p>	<p>Montenegro undertakes the obligations contained in the reference paper attached hereto for the following basic telecommunications services:</p> <ul style="list-style-type: none"> a) Voice telephone services; b) Packet-switched data transmission services; c) Circuit-switched data transmission services; d) Telex services; e) Telegraph services; f) Facsimile services; g) Private leased circuit services; and h) Other.
3. CONSTRUCTION AND RELATED ENGINEERING SERVICES			

⁴¹ The term "handling" should be taken to include clearance, sorting, transport and delivery.

⁴² "Postal item" refers to items handled by any type of commercial operator, whether public or private.

⁴³ E.g. letter, postcards.

⁴⁴ Books, catalogues are included hereunder.

⁴⁵ Journals, newspapers, periodicals.

⁴⁶ Express delivery services include the collection, transport, and delivery of documents, printed matter, parcels, goods or other items on an expedited basis, while tracking and maintaining control of these items throughout the supply of the service. This commitment does not include maritime transport services, or services to which the Annex on Air Transport Services applies.

⁴⁷ Provision of means, including the supply of ad hoc premises as well as transportation by a third party, allowing self-delivery by mutual exchange of postal items between users subscribing to this service. Postal item refers to items handled by any type of commercial operator, whether public or private.

⁴⁸ "Items of correspondence": a communication in written form on any kind of physical medium to be conveyed and delivered at the address indicated by the sender on the item itself or on its wrapping. Books, catalogues, newspapers and periodicals are not regarded as items of correspondence.

⁴⁹ Sub-sectors 2.C.h) to 2.C.m) of the Services Sectoral Classification List contained in MTN.GNS/W/120 (value-added services) and Sub-sectors 2.C.a) to 2.C.g) of that List are included here. Sub-sector 2.C.o) of that List is also included here to the extent that it falls under this definition. For the purpose of this Schedule, sub-sector 2.C.n) of that List ('On-line information and/or data processing (including transaction processing)') is a computer and related service and, as such, is reflected in this Schedule of Commitments under 1.B.

⁵⁰ Broadcasting is defined as the uninterrupted chain of transmission required for the distribution of TV and radio programme signals to the general public, but does not cover contribution links between operators.

A.	General construction work for buildings (CPC 512)	(1) Unbound due to lack of technical feasibility.	(1) Unbound.	
B.	General construction work for civil engineering (CPC 513)	(2) None.	(2) None.	
C.	Installation and assembly work (CPC 514, 516)	(3) None.	(3) None.	
D.	Building completion and finishing work (CPC 517)	(4) Unbound, except as indicated in the horizontal section.	(4) Unbound, except as indicated in the horizontal section.	
E.	Other (CPC 511, 515, 518)			
4. DISTRIBUTION SERVICES				
Sub-sectors below exclude trade in arms, munitions, war material and other military equipment.				
A.	Commission agents' services (CPC 621, 61111, 6113, 6121)	(1) None.	(1) None.	
B.	Wholesale trade services (CPC 622, CPC 61111, 6113, 6121)	(2) None.	(2) None.	
C.	Retailing services (CPC 631, 632, 61112, 6113, 6121, 6122, 613)	(3) None.	(3) None.	
D.	Franchising (CPC 8929)	(4) Unbound, except as indicated in the horizontal section.	(4) Unbound, except as indicated in the horizontal section.	
5. EDUCATIONAL SERVICES (only privately funded services)				
A.	Primary education services (CPC 921)	(1) None. (2) None. (3) None.	(1) None. (2) None. (3) A private elementary school may be established only by a domestic natural or legal person.	
		(4) Unbound, except as indicated in the horizontal section.	(4) Unbound, except as indicated in the horizontal section.	
B.	Secondary education services (CPC 922)	(1) None. (2) None. (3) None.	(1) None. (2) None. (3) None.	
		(4) Unbound, except as indicated in the horizontal section.	(4) Unbound, except as indicated in the horizontal section.	
C.	Higher education services (CPC 923)	(1) None. (2) None. (3) None.	(1) None. (2) None. (3) None.	
		(4) Unbound, except as indicated in the horizontal section.	(4) Unbound, except as indicated in the horizontal section.	
D.	Adult education (CPC 924)	(1) None. (2) None. (3) None.	(1) None. (2) None. (3) None.	
		(4) Unbound, except as indicated in the horizontal section.	(4) Unbound, except as indicated in the horizontal section.	
E.	Other education services (CPC 929) Training services (e.g. language training; driver's education; executive/management training; information technology training) and education testing services	(1) None. (2) None. (3) None.	(1) None. (2) None. (3) None.	
		(4) Unbound, except as indicated in the horizontal section.	(4) Unbound, except as indicated in the horizontal section.	
6. ENVIRONMENTAL SERVICES				

<p>A. Wastewater management (wastewater services corresponds to sewage services) (CPC 9401)</p> <p>B. Solid/Hazardous waste management - Refuse disposal services (CPC 9402) - Sanitation and similar services (CPC 9403)</p> <p>C. Protection of ambient air and climate - Cleaning services of exhaust gases (CPC 9404)</p> <p>D. Remediation and clean up of soil and waters - Treatment, remediation of contaminated/polluted soil and water (part of CPC 9406) Corresponds to parts of Nature and landscape protection services</p> <p>E. Noise and vibration abatement (CPC 9405)</p> <p>F. Protection of biodiversity and landscape - Nature and landscape protection services (parts of CPC 9406 not covered under D)</p>	<p>(1) Unbound, except for advisory services where None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) Unbound except for advisory services where None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	
<p>G. Other Environmental Services (CPC 9409)</p>	<p>(1) Unbound, except for advisory services where None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) Unbound, except for advisory services where None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	
<p>7. FINANCIAL SERVICES</p> <ul style="list-style-type: none"> - As a general rule and in a non-discriminatory manner, financial institutions incorporated in Montenegro must adopt a specific legal form⁵¹. - The admission to the market of new financial products may be subject to existence of, and consistency with, a regulatory framework aimed at achieving the objectives indicated in Article 46, paragraphs 1 and 2 of the Protocol III on Trade in Services. 			
<p>A. All insurance and insurance - related services</p> <ul style="list-style-type: none"> - Insurance company may not offer services of life and non-life insurance simultaneously. Exceptionally insurance company providing life insurance services may provide non-life insurance such as insurance against accidents as well as voluntary health insurance to its customers up to the level of treatment costs. - Compulsory insurance can be provided only by insurance companies (including foreign insurance suppliers) licensed in Montenegro and State funds. Compulsory insurance implies obligatory insurance of passengers in public transportation against accidents and insurance of owners of motor vehicles, aircrafts and maritime vessels for third party liability and collective insurance of employees against industrial accidents. State funds provide compulsory pension and health insurance. Ten years after the date of accession to the WTO, compulsory insurance of owners or users of maritime vessels for third party liability may also be supplied by insurance companies not licensed in Montenegro under the same conditions that applies to insurance companies licensed in Montenegro. 			
<p>(i) Direct insurance (including co-insurance)</p>			

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- Foreign insurance companies are required to establish subsidiaries which must be incorporated as joint stock companies. Branching will be allowed as of January 2012;

- Company for intermediation in insurance and agency for provision of other services may be established as a joint stock or limited liability company;
- Foreign banks may establish subsidiaries, branch offices or representative offices in the territory of Montenegro. Representative offices of foreign banks may provide only preparatory activities such as market research and may not provide banking services;
- Broker and dealer companies, credit guarantee funds investment funds and a stock exchange must be incorporated as joint stock companies;
- Micro finance institutions and legal entities for provision of investment advisory services must be incorporated as limited liability companies or joint stock companies, Company for investment fund management company must be incorporated as a joint stock or limited liability company, while asset management company performing activity of managing and organizing voluntary pension funds must be established as a non-public joint stock company.

(A) Life insurance	<p>(1) Unbound, except for provision of life insurance to foreign nationals where None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	
(B) Non-life insurance	<p>(1) Unbound, except none for insuring property of foreign nationals as well as insurance of risks relating to maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicles transporting the goods and any liability arising therefrom, and goods in international transit.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	
(ii) Reinsurance and retrocession	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	
(iii) Insurance intermediation, such as brokerage and agency	<p>(1) Unbound, except none for provision of life insurance to foreign nationals, insuring property of foreign nationals, as well as insurance of risks relating to maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicles transporting the goods and any liability arising therefrom, and goods in international transit.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	

(iv) Services auxiliary to insurance such as consultancy, actuarial, risk assessment and claim settlement services	(1) Unbound, except none for provision of life insurance to foreign nationals, insuring property of foreign nationals, as well as insurance of risks relating to maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicles transporting the goods and any liability arising therefrom, and goods in international transit. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
B. Banking and other financial services One out of five members of the bank's management board and at least two executive directors must be familiar with the official language of Montenegro and be resident in Montenegro for the duration of the engagement.			
(v) Acceptance of deposits and other repayable funds from the public	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(vi) Lending of all types, consumer credit, mortgage credit, factoring and financing of commercial transaction (vii) Financial leasing (viii) All payment and money transmission services, including credit, charge and debit cards, traveller's cheques and bankers drafts (ix) Guarantees and commitments	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(x) Trading for own account or for account of customers, whether on an exchange market, in and over-the-counter market or otherwise, the following: (A) Money market instruments (cheques, bills, certificate of deposits, etc.); (B) Foreign exchange; (C) Derivative products (including, but not limited to, futures and options); (D) Exchange rate and interest rate instruments, such as swaps and forward rate agreements; (E) Transferable securities; and (F) Other negotiable instruments and financial assets, such as bullion.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(xi) Participation in issues of all kinds of securities, under-writing and placement as agent (whether publicly or privately) and provision of service related to such issues (xii) Money broking	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(xiii) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services	(1) The establishment of a specialised management company is required to perform the activities of management of unit	(1) None.	

	<p>trusts and investment companies. Only firms having their registered office in Montenegro can act as depositories of the assets of investment funds.</p> <p>(2) None.</p> <p>(3) The establishment of a specialised management company is required to perform the activities of management of unit trusts and investment companies. Only firms having their registered office in Montenegro can act as depositories of the assets of investment funds.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	
(xiv) Settlement and clearing services for financial assets: securities, derivative products, and other negotiable instruments	<p>(1) Unbound.</p> <p>(2) None.</p> <p>(3) This type of services may be provided by Central Depository of Securities only.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	
(xv) Provision and transfer of financial information, and financial data processing and related software by providers of other financial services	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	
(xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in sub-paragraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	
8. HEALTH RELATED AND SOCIAL SERVICES (only privately funded services)			
A. Hospital services (CPC 9311)	<p>(1) Unbound.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) Unbound.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	
B. Other human health services (CPC 9319)	<p>(1) Unbound.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) Unbound.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	
9. TOURISM AND TRAVEL RELATED SERVICES			
A. Hotels and restaurants (incl. catering) (CPC 641- 643) (excluding catering in transport services sector)	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	
B. Travel agencies and tour operators services (CPC 7471)	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	
C. Tourist guide services (CPC 7472)	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	

10. RECREATIONAL, CULTURAL AND SPORTING SERVICES (other than audiovisual services)			
A. Cinema theatre operation services (CPC 96199 **)	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) Unbound. (2) Unbound. (3) None, except for access to subsidies: Unbound. (4) Unbound, except as indicated in the horizontal section.	
B. News agency services (CPC 962)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
C. Sporting and other recreational activities, excluding gambling and betting services (part of CPC 964)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
11. TRANSPORT SERVICES			
A. Maritime Transport Services			

<p>(a) Passenger transportation (CPC 7211)</p> <p>(b) Freight transportation (CPC 7212) except cabotage⁵²</p>	<p>(1) None.</p> <p>(2) None.</p> <p>(3) (a) Establishment of a registered company for the purpose of operating a fleet under the Montenegrin flag: Unbound.</p> <p>(b) Other forms of commercial presence for the supply of international maritime transport</p>	<p>(1) None.</p> <p>(2) None.</p> <p>(3) (a) Unbound.</p> <p>(b) None.</p>	<p>The following services at the port are made available to international maritime transport suppliers on reasonable and no discriminatory terms and conditions:</p> <ol style="list-style-type: none"> 1. Pilotage; 2. Towing and tug assistance; 3. Provisioning, fuelling and watering; 4. Garbage collecting and ballast waste disposal; <p>Port Captain's services;</p> <ol style="list-style-type: none"> 6. Navigation aids; 7. Shore-based operational services essential to ship operations, including communications, water and electrical supplies;
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⁵² Without prejudice to the scope of activities which may be considered as "cabotage" under the relevant national legislation, this schedule does not include "maritime cabotage services", which are assumed to cover transportation of passengers or goods between a port located in Montenegro and another port located in Montenegro, traffic originating and terminating in the same port located in Montenegro provided that this traffic remains within Montenegro's territorial waters, and transportation of passengers and goods between a port located in Montenegro and installations or structures situated on the continental shelf of Montenegro.

	services: None ⁵³ . (4) (a) Ship's crews: Unbound. (b) Unbound, except as indicated in the horizontal section.	(4) (a) Unbound. (b) Unbound, except as indicated in the horizontal section.	8. Emergency repair facilities; and 9. Anchorage, berth and berthing services.
(c) Rental of vessels with crew (CPC 7213)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(d) Maintenance and repair of vessels (CPC 8868**)	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(e) Pushing and towing services (CPC 7214), except cabotage	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
- Maritime cargo handling services ⁵⁴	(1) Unbound except no limitation on transshipment (board to board or via the quay) or on the use of on-board cargo handling equipment. (2) None. (3) None ⁵⁵ . (4) Unbound, except as indicated in the horizontal section.	(1) Unbound except no limitation on transshipment (board to board or via the quay) or on the use of on-board cargo handling equipment. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
- Storage and warehousing services (CPC 742) - Customs clearance services ⁵⁶ - Container station and depot services ⁵⁷	(1) Unbound. (2) None. (3) None ⁵⁸ . (4) Unbound, except as	(1) Unbound. (2) None. (3) None. (4) Unbound, except as	

⁵³ "Other forms of commercial presence for the supply of international maritime transport services" means the ability for international maritime transport service suppliers of other Members to undertake locally all activities which are necessary for the supply to their customers of a partially or fully integrated transport service, within which the maritime transport constitutes a substantial element. (This commitment shall however not be construed as limiting in any manner the commitments undertaken under the cross-border mode of delivery). These activities include, but are not limited to:

- Marketing and sales of maritime transport and related services through direct contact with customers, from quotation to invoicing, these services being those operated or offered by the service supplier itself or by service suppliers with which the service seller has established standing business arrangements;
- The acquisition, on their own account or on behalf of their customers (and the resale to their customers) of any transport and related services, including inward transport services by any mode, particularly inland waterways, road and rail, necessary for the supply of the integrated services;
- The preparation of documentation concerning transport documents, customs documents, or other documents related to the origin and character of the goods transported;
- The provision of business information by any means, including computerised information systems and electronic data interchange (subject to the provisions of the Section III-Telecommunications);
- The setting up of any business arrangements (including participation in the stock of a company) and the appointment of personnel recruited locally (or, in the case of foreign personnel, subject to the horizontal commitment on movement of personnel) with any locally established shipping agency; and
- Acting on behalf of the companies, organising the call of the ship or taking over cargoes when required.

⁵⁴ "Maritime cargo handling services" means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of (a) the loading/discharging of cargo to/from a ship; (b) the lashing/unlashing of cargo; and (c) the reception/delivery and safekeeping of cargoes before shipment or after discharge.

⁵⁵ Public utility concession or licensing procedures may apply in case of occupation of the public domain.

⁵⁶ "Customs clearance services" means activities consisting in carrying out, on behalf of another party, customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity.

	indicated in the horizontal section.	indicated in the horizontal section.	
- Maritime agency services ⁵⁹ - Maritime freight forwarding services ⁶⁰	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
B. Air Transport Services			
(a) Maintenance and repair of aircrafts (CPC 8868**)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(b) Supporting services for air transport - Selling and marketing of air transport services - Computer reservation system (CRS)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None, except for distribution through CRS of air transport services provided by CRS parent carrier: Unbound. (2) None. (3) None, except for distribution through CRS of air transport services provided by CRS parent carrier: Unbound. (4) Unbound, except as indicated in the horizontal section.	
C. Rail Transport Services			
(a) Freight transportation (CPC 7112)	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(b) Maintenance and repair of rail transport equipment (CPC 8868**)	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(c) Supporting services for railway transport (CPC 7430)	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
D. Road Transport Services			
(a) Passenger transportation (CPC 7121, 7122)	(1) Unbound. (2) None. (3) Montenegrin nationality or being a legal entity established under the relevant Montenegrin laws are required for	(1) Unbound. (2) None. (3) Montenegrin nationality or being a legal entity established under the relevant Montenegrin laws are required for	

⁵⁷ "Container station and depot services" means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipments.

⁵⁸ Public utility concession or licensing procedures may apply in case of occupation of the public domain.

⁵⁹ "Maritime agency services" means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes: (a) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information; and (b) acting on behalf of the companies organising the call of the ship or taking over cargoes when required.

⁶⁰ "Freight forwarding services" means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information.

	(4) obtaining a carrier licence. Unbound, except as indicated in the horizontal section.	(4) obtaining a carrier licence. Unbound, except as indicated in the horizontal section.	
(b) Freight transportation (CPC 7123)	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(c) Rental of commercial vehicles with operator (CPC 7124)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(d) Maintenance and repair of road transport equipment (CPC 6112, 8867)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(e) Supporting services for road transport services (CPC 744)	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
E. Pipeline Transport			
(a) Transportation of fuels (CPC 7131) (b) Transportation of other goods (CPC 7139)	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound, except as indicated in the horizontal section.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound, except as indicated in the horizontal section.	<i>Montenegro commits itself to provide full transparency in the formulation, adoption and application of measures affecting access to and trade in services of pipeline transportation. Montenegro undertakes to ensure adherence to the principles of non-discriminatory treatment in access to and use of pipeline networks under its jurisdiction, within the technical capacities of these networks, with regard to the origin, destination or ownership of product transported, without imposing any unjustified delays, restrictions or charges, as well as without discriminatory pricing based on the differences in origin, destination or ownership.</i>
F. Services auxiliary to all modes of transport			
(a) Cargo handling services (CPC 741) (b) Storage and warehousing services (CPC 742)	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(c) Freight transport agency services (CPC 748) (d) Other supporting and auxiliary transport services (CPC 749)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	

APPENDIX I**Understanding on the Scope of Coverage of CPC 84 - Computer and Related Services**

1. CPC 84 covers all computer and related services.
2. Technological developments have led to the increased offering of these services as a bundle or package of related services that can include some or all of the basic functions listed in paragraph 3. For example, services such as web or domain hosting, data mining services and grid computing each consist of a combination of basic computer services functions.
3. Computer and related services, regardless of whether they are delivered via a network, including the Internet, include all services that provide any of the following or any combination thereof:
 - Consulting, adaptation, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance, or management of or for computers or computer systems;

- Consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, management or use of or for software⁶¹;

- Data processing, data storage, data hosting or database services;

- Maintenance and repair services for office machinery and equipment, including computers; and

- Training services for staff of clients, related to software, computers or computer systems, and not elsewhere classified.

4. In many cases, computer and related services enable the provision of other services⁶² by both electronic and other means. However, in such cases, there is an important distinction between the computer and related service (e.g., web-hosting or application hosting) and the other service enabled by the computer and related service. The other service, regardless of whether it is enabled by a computer and related service, is not covered by CPC 84.

APPENDICE TO THE UNDERSTANDING ON THE SCOPE OF COVERAGE OF CPC 84 COMPUTER AND RELATED SERVICES

CPC Division 84 – Computer and Related Services

841	<u>Consultancy services related to the installation of computer hardware.</u>
8410	<u>84100 Consultancy services related to the installation of computer hardware:</u> Assistance services to the clients in the installation of computer hardware (i.e. physical equipment) and computer networks.
842	<u>Software implementation services:</u> All services involving consultancy services on development and implementation of software. The term "software" may be defined as the sets of instructions required to make computers work and communicate. A number of different programmes may be developed for specific applications (application software), and the customer may have a choice of using ready-made programmes off the shelf (packaged software), developing specific programmes for particular requirements (customized software) or using a combination of the two.
8421	<u>84210 Systems and software consulting services:</u> Services of a general nature prior to the development of data processing systems and applications. It might be management services, project planning services, etc.
8422	<u>84220 Systems analysis services:</u> Analysis services include analysis of the clients' needs, defining functional specification, and setting up the team. Also involved are project management, technical coordination and integration and definition of the systems architecture.
8423	<u>84230 Systems design services:</u> Design services include technical solutions, with respect to methodology, quality-assurance, choice of equipment software packages or new technologies, etc.
8424	<u>84240 Programming services:</u> Programming services include the implementation phase, i.e. writing and debugging programmes, conducting tests, and editing documentation.
8425	<u>84250 Systems maintenance services:</u> Maintenance services include consulting and technical assistance services of software products in use, rewriting or changing existing programmes or systems, and maintaining up-to-date software documentation and manuals. Also included are specialist work, e.g. conversions.
843	<u>Data processing services.</u>
8431	<u>84310 Input preparation services:</u> Data recording services such as key punching, optical scanning or other methods for data entry.
8432	<u>84320 Data-processing and tabulation services:</u> Services such as data processing and tabulation services, computer calculating services, and rental services of computer time.
8433	<u>84330 Time-sharing services:</u> This seems to be the same type of services as 84320. Computer time only is bought; if it is bought from the customer's premises, telecommunications services are also bought. Data processing or tabulation services may also be bought from a service bureau. In both cases the services might be time sharing processed. Thus, there is no clear distinction between 84320 and 84330.
8439	<u>84390 Other data processing services:</u> Services which manage the full operations of a customer's facilities under contract: computer-room environmental quality control services; management services of in-place computer equipment combinations; and management services of computer work flows and distributions.
844	<u>Database services.</u>
8440	<u>84400 Database services:</u> All services provided from primarily structured databases through a communication network. <u>Exclusions:</u> Data and message transmission services (e.g. network operation services, value-added network services) are classified in class 7523 (Data and message transmission services). Documentation services consisting in information retrieval from databases are classified in subclass 96311 (Library services).
845	<u>Maintenance and repair services of office machinery and equipment including computers.</u>
8450	<u>84500 Maintenance and repair services of office machinery and equipment including computers:</u>

⁶¹ The term "software" may be defined as the sets of instructions required to make computers work and communicate. A number of different programmes may be developed for specific applications (application software), and the customer may have a choice of using ready-made programmes off the shelf (packaged software), developing specific programmes for particular requirements (customized software) or using a combination of the two.

⁶² E.g., W/120.1.A.b. (accounting, auditing and bookkeeping services), W/120.1.A.d. (architectural services), W/120.1.A.h. (medical and dental services), W/120.2.D (audiovisual services), W/120.5. (educational services).

	Repair and maintenance services of office machinery, computers and related equipment.
849	<u>Other computer services.</u>
8491	84910 <u>Data preparation services:</u>
	Data preparation services for clients not involving data processing services.
8499	84990 <u>Other computer services n.e.c.:</u>
	Other computer related services, not elsewhere classified, e.g. training services for staff of clients, and other professional computer services.

APPENDIX II

Reference Paper on the Postal and Courier Sector

Scope

The following are definitions and principles on the regulatory framework for all postal and courier services.

Definitions

"Individual licence" is an authorisation, granted to an individual supplier by a regulatory authority, which is required before supplying a given service.

"Universal service" is the permanent provision of a postal service of specified quality at all points in the territory of Montenegro at affordable prices for all users.

1. **Prevention of anti-competitive practices in the postal and courier sector**

Appropriate measures will be maintained or introduced for the purpose of preventing suppliers who, alone or together, have the ability to affect materially the terms of participation (having regard to price and supply) in the relevant markets for postal and courier services as a result of use of their position in the market, from engaging in or continuing anti-competitive practices.

2. **Universal service**

Montenegro has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive per se, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by Montenegro.

3. **Individual licenses**

An individual licence may only be required for services which are within the scope of the universal service.

Where an individual licence is required, the following will be made publicly available:

- (a) All the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and
- (b) The terms and conditions of individual licenses.

The reasons for the denial of an individual licence will be made known to the applicant upon request and an appeal procedure through an independent body will be established. Such a procedure will be transparent, non-discriminatory, and based on objective criteria.

4. **Independence of the regulatory body**

The regulatory body is legally separate from, and not accountable to, any supplier of postal and courier services. The decisions of and the procedures used by the regulatory body will be impartial with respect to all market participants.

REFERENCE PAPER

Scope

The following are definitions and principles on the regulatory framework for the basic telecommunications services.

Definitions

Users mean service consumers and service suppliers.

Essential facilities mean facilities of a public telecommunications transport network or service that:

- (a) Are exclusively or predominantly provided by a single or limited number of suppliers; and
 - (b) Cannot feasibly be economically or technically substituted in order to provide a service.
- A major supplier is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in relevant market for basic telecommunications services as a result of:
- (a) Control over essential facilities; or
 - (b) Use of its position in the market.

1. **Competitive safeguards**

1.1. Prevention of anti-competitive practices in telecommunications

Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

1.2. Safeguards

The anti-competitive practices referred to above shall include in particular:

- (a) Engaging in anti-competitive cross-subsidization;
- (b) Using information obtained from competitors with anti-competitive results; and
- (c) Not making available to other services suppliers on timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

2. **Interconnection**

2.1. This section applies to linking with suppliers, providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken.

2.2. Interconnection to be ensured

Interconnection with a major supplier will be ensured at any technically feasible point in the network. Such interconnection is provided.

- (a) Under not-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;
- (b) In a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and

- (c) Upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.
- 2.3. Public availability of the procedures for interconnection negotiations
The procedures applicable for interconnection to a major supplier will be made publicly available.
- 2.4. Transparency of interconnection arrangements
It is ensured that a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.
- 2.5. Interconnection: dispute settlement
A service supplier requesting interconnection with a major supplier will have recourse, either:
- (a) At any time; or
- (b) After a reasonable period of time which has been made publicly known to an independent domestic body, which may be a regulatory body as referred to in paragraph 5 below, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.
3. Universal services
Montenegro has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive per se, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by Montenegro.
4. Public availability of licensing criteria
Where a licence is required, the following will be made publicly available:
- (a) All the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and
- (b) the terms and conditions of individual licences.
The reasons for the denial of a licence will be made known to the applicant upon request.
5. Independent regulators
The regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.
6. Allocation and use of scarce resources
Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands will be made publicly available, but detailed identification of frequencies allocated for specific Government uses is not required.

LIST OF ARTICLE 4 MFN EXEMPTIONS OF MONTENEGRO

Sector or sub-sector	Description of measure indicating its inconsistency with Article 4	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
Legal services	Apart from consultancy services, other legal services provided by advocates, i.e. attorneys who are members of the Montenegrin Bar Association and registered in the Association's Register may be provided subject to reciprocity.	All countries.	Indefinite.	Reciprocal coordination of the legal profession within the overall regional development of judicial and administrative institutions.
Audiovisual services - Production and distribution of audiovisual works through broadcasting or other forms of transmission to the public	Measures which define works of European origin, in such a way as to extend national treatment to audiovisual works which meet certain linguistic and origin criteria regarding access to broadcasting or similar forms of transmission.	Parties to the Council of Europe Convention on Transfrontier Television or other European countries with whom an agreement may be concluded.	Indefinite. Exemption needed, for certain countries, only until an economic integration agreement is concluded or completed.	The measures aim, within the sector, to promote cultural values in Europe, as well as achieving linguistic policy objectives.
- Production and distribution of cinematographic works and television programmes	Measures based upon Government-to-Government framework agreements, and plurilateral agreements, on co-production of audiovisual works, which confer National Treatment to audiovisual works covered by these agreements, in particular in relation to distribution and access to funding.	All countries with whom cultural cooperation may be desirable (agreements already exist, or are being negotiated, with the following countries: Algeria, Angola, Argentina, Australia, Bolivarian Republic of Venezuela, Brazil, Burkina Faso, Canada, Cape Verde, Chile, Côte d'Ivoire, Colombia, Cuba, Egypt, Guinea Bissau, India, Israel, Mali, Mexico, Morocco, Mozambique, New Zealand, São Tomé e Príncipe, Senegal, States in Central,	Indefinite.	The aim of these agreements is to promote cultural links between the countries concerned.

Sector or sub-sector	Description of measure indicating its inconsistency with Article 4	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
		Eastern and South-Eastern Europe, Switzerland, Tunisia, Turkey).		
- Production and distribution of television programmes and cinematographic works	Measures granting the benefit of any support programmes (such as Action Plan for Advanced Television Services, MEDIA or EURIMAGES) to audiovisual works, and suppliers of such works, meeting certain European origin criteria.	European countries.	Indefinite. Exemption needed, for certain countries, only until an economic integration agreement is concluded or completed.	These programmes aim at preserving and promoting the regional identity of countries within Europe which have long-standing cultural links.
Road transport services	Road transport licenses are issued subject to reciprocity.	All countries.	Indefinite.	International practice.
- Passenger and freight transportation	Measures taken under existing or future agreements which reserve and/or restrict the provision of road transportation services and specify the terms and conditions of this provision, including transit permits and/or preferential road taxes, in the territory of Montenegro or across the borders of Montenegro.	All countries with which agreements are or will be in force.	Indefinite.	The need for exemption is linked to the regional characteristics of the road transport services and to the necessity to regulate traffic rights in the territory of Montenegro and between Montenegro and the countries concerned.
Selling marketing and computer reservations systems of air transport services	The obligations of Montenegrin CRS system vendors or of Montenegrin parent and participating air carriers shall not apply, respectively, in respect of foreign parent carriers or of CRS controlled by foreign air carriers to the extent that their CRS outside Montenegro does not offer national treatment to Montenegrin air carriers or to Montenegrin parent and participating air carriers.	All countries where a CRS system vendor or a parent air carrier is located.	Indefinite.	The need for the exemption results from the insufficient development of multilaterally agreed rules for the operation of CRS.
All sectors	Measures based on bilateral agreements concluded by Montenegro with the objective of providing for the movement of all categories of natural persons supplying services.	Regional countries.	Indefinite.	The agreements reflect a process of progressive trade liberalisation between Montenegro and its regional trading partners.

Član 3

Ovaj zakon stupa na snagu osmog dana od dana objavljivanja u „Službenom listu Crne Gore – Međunarodni ugovori“.

Broj: 30-1/21-2/5
EPA 233 XXVII
Podgorica, 29. decembar 2021. godine

Skupština Crne Gore 27. Saziva
Predsjednik,
Aleksa Bečić, s.r.

21.

Na osnovu člana 95 tačka 3 Ustava Crne Gore donosim

U K A Z
O PROGLAŠENJU ZAKONA O POTVRĐIVANJU MARAKEŠKOG UGOVORA ZA OLAKŠANJE PRISTUPA OBJAVLJENIM DJELIMA ZA OSOBE KOJE SU SLIJEPE, SLABOVIDE ILI IMAJU DRUGE POTEŠKOĆE U KORIŠĆENJU ŠTAMPANIH MATERIJALA

Proglašavam ZAKON O POTVRĐIVANJU MARAKEŠKOG UGOVORA ZA OLAKŠANJE PRISTUPA OBJAVLJENIM DJELIMA ZA OSOBE KOJE SU SLIJEPE, SLABOVIDE ILI IMAJU DRUGE POTEŠKOĆE U KORIŠĆENJU ŠTAMPANIH MATERIJALA, koji je donijela Skupština Crne Gore 27. saziva na Petoj sjednici Drugog redovnog (jesenjeg) zasjedanja u 2021. godini, dana 29. decembra 2021. godine.

Broj: 01-1311/2
Podgorica, 30. decembar 2021. godine

Predsjednik Crne Gore,
Milo Đukanović, s.r.

Na osnovu člana 82 stav 1 tačka 17 i člana 91 stav 1 Ustava Crne Gore, Skupština Crne Gore 27. saziva na Petoj sjednici Drugog redovnog (jesenjeg) zasijedanja u 2021. godini, dana 29. decembra 2021. godine, donijela je

**ZAKON
O POTVRĐIVANJU MARAKEŠKOG UGOVORA ZA OLAKŠANJE PRISTUPA OBJAVLJENIM DJELIMA ZA
OSOBE KOJE SU SLIJEPE, SLABOVIDE ILI IMAJU
DRUGE POTEŠKOĆE U KORIŠĆENJU ŠTAMPANIH MATERIJALA**

Član 1

Potvrđuje se Marakeški ugovor za olakšanje pristupa objavljenim djelima za osobe koje su slijepa, slabovide ili imaju druge poteškoće u korišćenju štampanih materijala, sačinjen u Marakešu, 27. juna 2013. godine, u originalu na engleskom, arapskom, kineskom, francuskom, ruskom i španskom jeziku.

Član 2

Tekst Ugovora iz člana 1 ovog zakona, u originalu na engleskom jeziku i prevodu na crnogorski jezik glasi:

**Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or
Otherwise Print Disabled**

**adopted by the Diplomatic Conference to Conclude a Treaty to Facilitate Access to Published Works by
Visually Impaired Persons and Persons with Print Disabilities in Marrakesh, on June 27, 2013**

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Preamble

The Contracting Parties,

Recalling the principles of non-discrimination, equal opportunity, accessibility and full and effective participation and inclusion in society, proclaimed in the Universal Declaration of Human Rights and the United Nations Convention on the Rights of Persons with Disabilities,

Mindful of the challenges that are prejudicial to the complete development of persons with visual impairments or with other print disabilities, which limit their freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds on an equal basis with others, including through all forms of communication of their choice, their enjoyment of the right to education, and the opportunity to conduct research,

Emphasizing the importance of copyright protection as an incentive and reward for literary and artistic creations and of enhancing opportunities for everyone, including persons with visual impairments or with other print disabilities, to participate in the cultural life of the community, to enjoy the arts and to share scientific progress and its benefits,

Aware of the barriers of persons with visual impairments or with other print disabilities to access published works in achieving equal opportunities in society, and the need to both expand the number of works in accessible formats and to improve the circulation of such works,

Taking into account that the majority of persons with visual impairments or with other print disabilities live in developing and least-developed countries,

Recognizing that, despite the differences in national copyright laws, the positive impact of new information and communication technologies on the lives of persons with visual impairments or with other print disabilities may be reinforced by an enhanced legal framework at the international level,

Recognizing that many Member States have established limitations and exceptions in their national copyright laws for persons with visual impairments or with other print disabilities, yet there is a continuing shortage of available works in accessible format copies for such persons, and that considerable resources are required for their effort of making works accessible to these persons, and that the lack of possibilities of cross-border exchange of accessible format copies has necessitated duplication of these efforts,

Recognizing both the importance of rightholders' role in making their works accessible to persons with visual impairments or with other print disabilities and the importance of appropriate limitations and exceptions to make works accessible to these persons, particularly when the market is unable to provide such access,

Recognizing the need to maintain a balance between the effective protection of the rights of authors and the larger public interest, particularly education, research and access to information, and that such a balance must facilitate effective and timely access to works for the benefit of persons with visual impairments or with other print disabilities,

Reaffirming the obligations of Contracting Parties under the existing international treaties on the protection of copyright and the importance and flexibility of the three-step test for limitations and exceptions established in Article 9(2) of the Berne Convention for the Protection of Literary and Artistic Works and other international instruments,

Recalling the importance of the Development Agenda recommendations, adopted in 2007 by the General Assembly of the World Intellectual Property Organization (WIPO), which aim to ensure that development considerations form an integral part of the Organization's work,

Recognizing the importance of the international copyright system and desiring to harmonize limitations and exceptions with a view to facilitating access to and use of works by persons with visual impairments or with other print disabilities, Have agreed as follows:

Article 1 Relation to Other Conventions and Treaties

Nothing in this Treaty shall derogate from any obligations that Contracting Parties have to each other under any other treaties, nor shall it prejudice any rights that a Contracting Party has under any other treaties.

Article 2 Definitions

For the purposes of this Treaty:

(a) "works" means literary and artistic works within the meaning of Article 2(1) of the Berne Convention for the Protection of Literary and Artistic Works, in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media¹;

(b) "accessible format copy" means a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including to permit the person to have access as feasibly and comfortably as a person without visual impairment or other print disability. The accessible format copy is used exclusively by beneficiary persons and it must respect the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of the beneficiary persons;

(c) "authorized entity" means an entity that is authorized or recognized by the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis. It also includes a government institution or non-profit organization that provides the same services to beneficiary persons as one of its primary activities or institutional obligations².

An authorized entity establishes and follows its own practices:

- (i) to establish that the persons it serves are beneficiary persons;
- (ii) to limit to beneficiary persons and/or authorized entities its distribution and making available of accessible format copies;
- (iii) to discourage the reproduction, distribution and making available of unauthorized copies; and

¹ **Agreed statement concerning Article 2(a):** For the purposes of this Treaty, it is understood that this definition includes such works in audio form, such as audiobooks.

² **Agreed statement concerning Article 2(c):** For the purposes of this Treaty, it is understood that "entities recognized by the government" may include entities receiving financial support from the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis.

(iv) to maintain due care in, and records of, its handling of copies of works, while respecting the privacy of beneficiary persons in accordance with Article 8.

Article 3 Beneficiary Persons

A beneficiary person is a person who:

- (a) is blind;
- (b) has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or³
- (c) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading;

regardless of any other disabilities.

Article 4 National Law Limitations and Exceptions Regarding Accessible Format Copies

1.(a) Contracting Parties shall provide in their national copyright laws for a limitation or exception to the right of reproduction, the right of distribution, and the right of making available to the public as provided by the WIPO Copyright Treaty (WCT), to facilitate the availability of works in accessible format copies for beneficiary persons. The limitation or exception provided in national law should permit changes needed to make the work accessible in the alternative format.

(b) Contracting Parties may also provide a limitation or exception to the right of public performance to facilitate access to works for beneficiary persons.

2. A Contracting Party may fulfill Article 4(1) for all rights identified therein by providing a limitation or exception in its national copyright law such that:

(a) Authorized entities shall be permitted, without the authorization of the copyright rightholder, to make an accessible format copy of a work, obtain from another authorized entity an accessible format copy, and supply those copies to beneficiary persons by any means, including by non-commercial lending or by electronic communication by wire or wireless means, and undertake any intermediate steps to achieve those objectives, when all of the following conditions are met:

- (i) the authorized entity wishing to undertake said activity has lawful access to that work or a copy of that work;
- (ii) the work is converted to an accessible format copy, which may include any means needed to navigate information in the accessible format, but does not introduce changes other than those needed to make the work accessible to the beneficiary person;
- (iii) such accessible format copies are supplied exclusively to be used by beneficiary persons; and
- (iv) the activity is undertaken on a non-profit basis;

and

(b) A beneficiary person, or someone acting on his or her behalf including a primary caretaker or caregiver, may make an accessible format copy of a work for the personal use of the beneficiary person or otherwise may assist the beneficiary person to make and use accessible format copies where the beneficiary person has lawful access to that work or a copy of that work.

3. A Contracting Party may fulfill Article 4(1) by providing other limitations or exceptions in its national copyright law pursuant to Articles 10 and 11⁴.

4. A Contracting Party may confine limitations or exceptions under this Article to works which, in the particular accessible format, cannot be obtained commercially under reasonable terms for beneficiary persons in that market. Any Contracting Party availing itself of this possibility shall so declare in a notification deposited with the Director General of WIPO at the time of ratification of, acceptance of or accession to this Treaty or at any time thereafter⁵.

5. It shall be a matter for national law to determine whether limitations or exceptions under this Article are subject to remuneration.

³ **Agreed statement concerning Article 3(b):** Nothing in this language implies that "cannot be improved" requires the use of all possible medical diagnostic procedures and treatments.

⁴ **Agreed statement concerning Article 4(3):** It is understood that this paragraph neither reduces nor extends the scope of applicability of limitations and exceptions permitted under the Berne Convention, as regards the right of translation, with respect to persons with visual impairments or with other print disabilities.

⁵ **Agreed statement concerning Article 4(4):** It is understood that a commercial availability requirement does not prejudge whether or not a limitation or exception under this Article is consistent with the three-step test.

Article 5 Cross-Border Exchange of Accessible Format Copies

1. Contracting Parties shall provide that if an accessible format copy is made under a limitation or exception or pursuant to operation of law, that accessible format copy may be distributed or made available by an authorized entity to a beneficiary person or an authorized entity in another Contracting Party⁶.
2. A Contracting Party may fulfill Article 5(1) by providing a limitation or exception in its national copyright law such that:
 - (a) authorized entities shall be permitted, without the authorization of the rightholder, to distribute or make available for the exclusive use of beneficiary persons accessible format copies to an authorized entity in another Contracting Party; and
 - (b) authorized entities shall be permitted, without the authorization of the rightholder and pursuant to Article 2(c), to distribute or make available accessible format copies to a beneficiary person in another Contracting Party; provided that prior to the distribution or making available the originating authorized entity did not know or have reasonable grounds to know that the accessible format copy would be used for other than beneficiary persons⁷.
3. A Contracting Party may fulfill Article 5(1) by providing other limitations or exceptions in its national copyright law pursuant to Articles 5(4), 10 and 11.
4. (a) When an authorized entity in a Contracting Party receives accessible format copies pursuant to Article 5(1) and that Contracting Party does not have obligations under Article 9 of the Berne Convention, it will ensure, consistent with its own legal system and practices, that the accessible format copies are only reproduced, distributed or made available for the benefit of beneficiary persons in that Contracting Party's jurisdiction.
 - (b) The distribution and making available of accessible format copies by an authorized entity pursuant to Article 5(1) shall be limited to that jurisdiction unless the Contracting Party is a Party to the WIPO Copyright Treaty or otherwise limits limitations and exceptions implementing this Treaty to the right of distribution and the right of making available to the public to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightholder^{8,9}.
 - (c) Nothing in this Article affects the determination of what constitutes an act of distribution or an act of making available to the public.
5. Nothing in this Treaty shall be used to address the issue of exhaustion of rights.

Article 6 Importation of Accessible Format Copies

To the extent that the national law of a Contracting Party would permit a beneficiary person, someone acting on his or her behalf, or an authorized entity, to make an accessible format copy of a work, the national law of that Contracting Party shall also permit them to import an accessible format copy for the benefit of beneficiary persons, without the authorization of the rightholder¹⁰.

Article 7 Obligations Concerning Technological Measures

⁶ **Agreed statement concerning Article 5(1):** It is further understood that nothing in this Treaty reduces or extends the scope of exclusive rights under any other treaty.

⁷ **Agreed statement concerning Article 5(2):** It is understood that, to distribute or make available accessible format copies directly to a beneficiary person in another Contracting Party, it may be appropriate for an authorized entity to apply further measures to confirm that the person it is serving is a beneficiary person and to follow its own practices as described in Article 2(c).

⁸ **Agreed statement concerning Article 5(4)(b):** It is understood that nothing in this Treaty requires or implies that a Contracting Party adopt or apply the three-step test beyond its obligations under this instrument or under other international treaties.

⁹ **Agreed statement concerning Article 5(4)(b):** It is understood that nothing in this Treaty creates any obligations for a Contracting Party to ratify or accede to the WCT or to comply with any of its provisions and nothing in this Treaty prejudices any rights, limitations and exceptions contained in the WCT.

¹⁰ **Agreed statement concerning Article 6:** It is understood that the Contracting Parties have the same flexibilities set out in Article 4 when implementing their obligations under Article 6.

Contracting Parties shall take appropriate measures, as necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in this Treaty¹¹.

Article 8 Respect for Privacy

In the implementation of the limitations and exceptions provided for in this Treaty, Contracting Parties shall endeavor to protect the privacy of beneficiary persons on an equal basis with others.

Article 9 Cooperation to Facilitate Cross-Border Exchange

1. Contracting Parties shall endeavor to foster the cross-border exchange of accessible format copies by encouraging the voluntary sharing of information to assist authorized entities in identifying one another. The International Bureau of WIPO shall establish an information access point for this purpose.
2. Contracting Parties undertake to assist their authorized entities engaged in activities under Article 5 to make information available regarding their practices pursuant to Article 2(c), both through the sharing of information among authorized entities, and through making available information on their policies and practices, including related to cross-border exchange of accessible format copies, to interested parties and members of the public as appropriate.
3. The International Bureau of WIPO is invited to share information, where available, about the functioning of this Treaty.
4. Contracting Parties recognize the importance of international cooperation and its promotion, in support of national efforts for realization of the purpose and objectives of this Treaty¹².

Article 10 General Principles on Implementation

1. Contracting Parties undertake to adopt the measures necessary to ensure the application of this Treaty.
2. Nothing shall prevent Contracting Parties from determining the appropriate method of implementing the provisions of this Treaty within their own legal system and practice¹³.
3. Contracting Parties may fulfill their rights and obligations under this Treaty through limitations or exceptions specifically for the benefit of beneficiary persons, other limitations or exceptions, or a combination thereof, within their national legal system and practice. These may include judicial, administrative or regulatory determinations for the benefit of beneficiary persons as to fair practices, dealings or uses to meet their needs consistent with the Contracting Parties' rights and obligations under the Berne Convention, other international treaties, and Article 11.

Article 11 General Obligations on Limitations and Exceptions

In adopting measures necessary to ensure the application of this Treaty, a Contracting Party may exercise the rights and shall comply with the obligations that that Contracting Party has under the Berne Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, including their interpretative agreements so that:

- (a) in accordance with Article 9(2) of the Berne Convention, a Contracting Party may permit the reproduction of works in certain special cases provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author;
- (b) in accordance with Article 13 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, a Contracting Party shall confine limitations or exceptions to exclusive rights to certain special cases which do not

¹¹ **Agreed statement concerning Article 7:** It is understood that authorized entities, in various circumstances, choose to apply technological measures in the making, distribution and making available of accessible format copies and nothing herein disturbs such practices when in accordance with national law.

¹² **Agreed statement concerning Article 9:** It is understood that Article 9 does not imply mandatory registration for authorized entities nor does it constitute a precondition for authorized entities to engage in activities recognized under this Treaty; but it provides for a possibility for sharing information to facilitate the cross-border exchange of accessible format copies.

¹³ **Agreed statement concerning Article 10(2):** It is understood that when a work qualifies as a work under Article 2(a), including such works in audio form, the limitations and exceptions provided for by this Treaty apply *mutatis mutandis* to related rights as necessary to make the accessible format copy, to distribute it and to make it available to beneficiary persons.

conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightholder;

(c) in accordance with Article 10(1) of the WIPO Copyright Treaty, a Contracting Party may provide for limitations of or exceptions to the rights granted to authors under the WCT in certain special cases, that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author;

(d) in accordance with Article 10(2) of the WIPO Copyright Treaty, a Contracting Party shall confine, when applying the Berne Convention, any limitations of or exceptions to rights to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

Article 12 **Other Limitations and Exceptions**

1. Contracting Parties recognize that a Contracting Party may implement in its national law other copyright limitations and exceptions for the benefit of beneficiary persons than are provided by this Treaty having regard to that Contracting Party's economic situation, and its social and cultural needs, in conformity with that Contracting Party's international rights and obligations, and in the case of a least-developed country taking into account its special needs and its particular international rights and obligations and flexibilities thereof.

2. This Treaty is without prejudice to other limitations and exceptions for persons with disabilities provided by national law.

Article 13 **Assembly**

1.(a) The Contracting Parties shall have an Assembly.

(b) Each Contracting Party shall be represented in the Assembly by one delegate who may be assisted by alternate delegates, advisors and experts.

(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.

2. (a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.

(b) The Assembly shall perform the function allocated to it under Article 15 in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

(c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.

3.(a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.

4. The Assembly shall meet upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of WIPO.

5. The Assembly shall endeavor to take its decisions by consensus and shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

Article 14 **International Bureau**

The International Bureau of WIPO shall perform the administrative tasks concerning this Treaty.

Article 15 **Eligibility for Becoming Party to the Treaty**

1. Any Member State of WIPO may become party to this Treaty.

2. The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

3. The European Union, having made the declaration referred to in the preceding paragraph at the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

Article 16
Rights and Obligations Under the Treaty

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

Article 17
Signature of the Treaty

This Treaty shall be open for signature at the Diplomatic Conference in Marrakesh, and thereafter at the headquarters of WIPO by any eligible party for one year after its adoption.

Article 18
Entry into Force of the Treaty

This Treaty shall enter into force three months after 20 eligible parties referred to in Article 15 have deposited their instruments of ratification or accession.

Article 19
Effective Date of Becoming Party to the Treaty

This Treaty shall bind:

- (a) the 20 eligible parties referred to in Article 18, from the date on which this Treaty has entered into force;
- (b) each other eligible party referred to in Article 15, from the expiration of three months from the date on which it has deposited its instrument of ratification or accession with the Director General of WIPO.

Article 20
Denunciation of the Treaty

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

Article 21
Languages of the Treaty

1. This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.

2. An official text in any language other than those referred to in Article 21(1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, "interested party" means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Union, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

Article 22
Depositary

The Director General of WIPO is the depositary of this Treaty.

Done in Marrakesh on the 27th day of June, 2013.

Marakeški ugovor za olakšanje pristupa objavljenim djelima za osobe koje su slijepe, slabovide ili imaju druge poteškoće u korišćenju štampanih materijala usvojen na Diplomatskoj konferenciji sazvanoj radi zaključivanja Ugovora za olakšanje pristupa objavljenim djelima za osobe koje su slijepe, slabovide ili imaju druge poteškoće u korišćenju štampanih materijala, u Marakešu, 27. juna 2013. godine

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Ugovorne strane,

Pozivajući se na principe nediskriminacije, jednakih mogućnosti, pristupačnosti i potpunog i efikasnog učešća i uklapanja u društvo, koji su proklamovani u Univerzalnoj deklaraciji o ljudskim pravima i Konvenciji Ujedinjenih nacija o pravima osoba sa invaliditetom,

Svjesni izazova koji su štetni za ukupan razvoj slabovidih osoba ili osoba sa poteškoćama u korišćenju štampanih materijala, koji ograničavaju njihovu slobodu izražavanja, uključujući slobodu da traže, primaju i dijele informacije i ideje svih vrsta na jednakoj osnovi sa drugima, uključujući sve oblike komunikacije koje izaberu, njihovo uživanje prava na obrazovanje i mogućnosti da vrše istraživanje,

Naglašavajući značaj zaštite autorskog prava kao podsticaja i nagrade za književne i umjetničke kreacije i unapređenje mogućnosti za svakoga, uključujući i slabovide osobe ili osobe sa poteškoćama u korišćenju štampanih materijala, da učestvuju u kulturnom životu zajednice, da uživaju u umjetnosti i imaju udio u naučnom napretku i koristima koje on donosi,

Svjesni prepreka sa kojima se susrijeću slabovide osobe ili osobe sa poteškoćama u korišćenju štampanih materijala da pristupe objavljenim djelima da bi postigli jednake mogućnosti u društvu i svjesni potrebe da se proširi broj djela u pristupačnom formatu, kao i da se unaprijedi promet takvih djela,

Uzimajući u obzir da većina slabovidih osoba ili osoba sa poteškoćama u korišćenju štampanih materijala živi u zemljama u razvoju i u najmanje razvijenim zemljama,

Uzimajući u obzir da, uprkos razlikama u nacionalnim zakonima o autorskom pravu, pozitivan uticaj novih informacionih i komunikacionih tehnologija na živote slabovidih osoba ili osoba sa poteškoćama u korišćenju štampanih materijala može biti pojačan unapređenjem pravnog okvira na međunarodnom nivou,

Uzimajući u obzir da su mnoge države članice predvidjele ograničenja i izuzetke u njihovim nacionalnim zakonima o autorskom pravu za slabovide osobe ili osobe sa poteškoćama u korišćenju štampanih materijala, ali da i dalje postoji nedostatak dostupnih djela u pristupačnom formatu za takve osobe, zbog čega su neophodni značajni resursi da se djela učine dostupnim tim osobama, a zbog nedostatka mogućnosti prekogranične razmjene primjeraka djela u pristupačnom formatu, neophodno je duplirati ove napore,

Uzimajući u obzir kako značaj uloge nosilaca prava u činjenju njihovih djela pristupačnim za slabovide osobe ili osobe sa poteškoćama u korišćenju štampanih materijala, tako i značaj odgovarajućih ograničenja i izuzetaka neophodnih da se ta djela učine pristupačnim ovim osobama, posebno u slučaju kada tržište nije u stanju da omogući takvu pristupačnost,

Priznajući potrebu da se održi balans između efikasne zaštite prava autora i još važnijeg javnog interesa, posebno u obrazovanju, istraživanju i pristupu informacijama, kao i to da takav balans mora da olakša efikasan i blagovremen pristup djelima koja koriste slabovide osobe ili osobe sa poteškoćama u korišćenju štampanih materijala,

Ponovo potvrđujući obaveze Ugovornih strana na osnovu postojećih međunarodnih ugovora o zaštiti autorskog prava i značaju i fleksibilnosti trostepenog testa za ograničenja i izuzetke utvrđene članom 9(2) Bernske konvencije o zaštiti književnih i umjetničkih djela i drugim međunarodnim instrumentima,

Imajući u vidu značaj preporuka iz Razvojne agende, koje su usvojene 2007. godine od strane Generalne skupštine Svjetske organizacije za intelektualnu svojinu (WIPO), sa ciljem da se obezbijedi da pretpostavke o razvoju postanu integralni dio rada Organizacije,

Priznajući značaj međunarodnog sistema o autorskom pravu i težeći harmonizaciji ograničenja i izuzetaka sa ciljem da se olakša pristup i korišćenje djela od strane slabovidih osoba ili osoba sa poteškoćama u korišćenju štampanih materijala,

Saglasne su u sljedećem:

Član 1 Odnos prema drugim konvencijama i ugovorima

Ništa u ovom Ugovoru neće umanjiti bilo koju obavezu koju Ugovorna strana ima prema drugoj Ugovornoj strani na osnovu drugih ugovora, niti će štetiti pravima koja Ugovorna strana ima na osnovu drugih ugovora.

Član 2 Definicije

Za potrebe ovog Ugovora:

- (a) „djelo“ znači književno i umjetničko djelo u smislu člana 2(1) Bernske konvencije o zaštiti književnih i umjetničkih djela, u formi teksta, notacije i/ili povezanih slika, bilo da je objavljeno ili na drugi način stavljeno na uvid javnosti na bilo kom mediju¹;
- (b) „primjerak u pristupačnom formatu“ znači primjerak djela koji na alternativan način ili u alternativnom formatu omogućava da korisnik pristupi djelu, uključujući i to da omogućava osobi da ima pristup djelu na izvodljiv i udoban način kao i osoba koja nije slabovidna niti ima poteškoće u korišćenju štampanih materijala. Primjerak u pristupačnom formatu se koristi isključivo od strane korisnika i mora biti takav da se njime poštuje integritet originalnog djela, s tim da su prihvatljive samo one izmjene koje su neophodne da se djelo učini pristupačnim u alternativnom formatu, kao i one koje su uslovljene potrebama korisnika da pristupi takvom djelu;
- (c) „ovlašćeni organ“ znači organ koji je ovlašćen ili priznat od strane vlade da na neprofitnoj osnovi obezbijedi obrazovanje, nastavnu obuku, prilagođeno čitanje ili pristup informacijama licima koja su korisnici. To takođe uključuje vladine institucije ili neprofitne organizacije koje pružaju iste usluge korisnicima kao svoje osnovne aktivnosti ili institucionalne obaveze².

Ovlašćeni organ ustanovljava i sprovodi svoje poslove sa ciljem:

- (i) da utvrdi da su lica kojima pruža usluge korisnici;
- (ii) da distribuciju i stavljanje na raspolaganje primjeraka djela u pristupačnom formatu ograniči na korisnike i/ili ovlašćene organe;
- (iii) da obeshrabri umnožavanje, stavljanje u promet i činjenje dostupnim neovlašćeno sačinjenih primjeraka djela; i
- (iv) da vodi brigu o upotrebi primjeraka djela, kao i da vodi njihov registar, uz poštovanje privatnosti korisnika u skladu sa članom 8.

Član 3 Korisnici

Korisnik je osoba koja:

- (a) je slijepa;
- (b) ima oštećenje vida ili ima invaliditet u pogledu svojih opažajnih moći ili mogućnosti čitanja, što se ne može unaprijediti do mjere da njen vid bude suštinski isti kao vid osobe koja nema takvo oštećenje ili invaliditet, zbog čega nije u stanju da čita štampane materijale u istom obimu u kojem bi to mogla osoba bez oštećenja vida ili invaliditeta; ili³
- (c) iz drugih razloga nije u stanju, zbog fizičkog invaliditeta, da drži ili koristi knjigu ili da fokusira pogled ili da pokreće oči u mjeri koja bi bila normalno potrebna za čitanje;

bez obzira na bilo koje druge invaliditete.

Član 4 Ograničenja i izuzeci u nacionalnim zakonima koja se odnose na djela u pristupačnom formatu

1. (a) Ugovorne strane predviđaju u svom nacionalnom zakonu o autorskom pravu ograničenja ili izuzetke na pravo umnožavanja, pravo stavljanja u promet i pravo činjenja djela dostupnim javnosti onako kako je definisano u WIPO

¹ **Dogovorena izjava u vezi sa članom 2(a):** Za potrebe ovog Ugovora podrazumijeva se da ova definicija uključuje takva djela i u audio formatu, kao što su audio knjige.

² **Dogovorena izjava u vezi sa članom 2(c):** Za potrebe ovog Ugovora podrazumijeva se da „organi priznati od Vlade“ mogu podrazumijevati one koji primaju finansijsku podršku Vlade radi obezbjeđivanja obrazovanja, nastavne obuke, prilagođenog čitanja ili pristupa informacijama korisnicima na neprofitnoj osnovi.

³ **Dogovorena izjava u vezi sa članom 3(b):** Formulacija „ne može unaprijediti do mjere“ ne znači da korisnik mora da iskoristi sve moguće medicinske dijagnostičke procedure i tretmane.

Уговору о ауторском праву (WCT), како би обезбједиле да корисницима буду доступни примјerci djela u pristupačnom formatu. Ograničenja ili izuzeci predviđeni u nacionalnom zakonu trebalo bi da omoguće izmjene koje su neophodne da bi se djelo učinilo pristupačnim u alternativnom formatu.

(b) Ugovorne strane mogu takođe da predvide izuzetak ili ograničenje prava na javno izvođenje da bi olakšale pristup djelima od strane korisnika.

2. Ugovorna strana može da ispuni član 4(1) za sva prava koja su tu propisana, predviđajući izuzetke ili ograničenja u nacionalnom zakonu o ауторском праву kao što su:

(a) Ovlašćenim organima biće dozvoljeno da bez dozvole nosioca ауторског прava načine primjerak djela u pristupačnom formatu, da pribave od drugог овлашćenог органа primjerak djela u pristupačnom formatu i da snabdiju takvim primjercima korisnike na bilo koji način, uključujući i putem nekomercijalnog davanja na posluđu ili putem elektronskog саопštavanja djela žičним или бежиčним путем, kao i da preduzmu svaki други корак како би оvi ciljevi bili postignuti, пошто претходно буду испуњени слjedeći услови:

(i) овлашćени орган који жели да предузме поменуте активности има законит приступ том djelu или примјerku tog djela;

(ii) djelo је конвертовано u примјerak u pristupačnom formatu, што укључује било које средство потребно да се уреде информације u pristupačnom formatu, али не подразумева друге измјене djela, осим оних које су потребне да се djelo učini доступним кориснику;

(iii) примјerci djela u pristupačnom formatu су начинјени искључиво да их користе корисници; i

(iv) активност је предузета на непрофитној основи;

(b) Корисник или неко ко поступа u његово или њено име, укључујући i staratelja или његователја, може да направи копије djela u pristupačnom formatu за личну употребу од стране корисника, или може на други начин да помогне кориснику да направи i користи примјerke djela u pristupačnom formatu, u случају кад корисник има законит приступ том djelu или примјerku tog djela.

3. Ugovorna strana može da ispuni član 4(1) tako što će predvidjeti druga ograničenja ili izuzetke u nacionalnom zakonu o ауторском праву на основу чланова 10. i 11⁴.

4. Ugovorna strana može da svede ograničenja ili izuzetke на основу овог члана на djela која се u посебно pristupačnom formatu не могу на тржишту набавити под комерцијално разумним условима за кориснике. Ugovorna strana која буде користила ову погодност дужна је то да саопшти кроз обавјештење депоновано код Генералног директора WIPO-a u вјеме ратификације, приhvatanja или pristupanja овом Уговору, или u било које друго вјеме након тога⁵.

5. Nacionalnim zakonom će се одредити да ли су оградњена или изузети наведени u овом члану предмет накнаде.

Члан 5

Прекоранична разmjена примјerака u pristupačnom formatu

1. Ugovorne strane će обезбједити да ако примјerak djela u pristupačnom formatu буде направљен на основу оградњена или изузетакa или по сили закона, такав примјerak u pristupačnom formatu може да буде дистрибуиран или стављен на располaгање од стране овлашćenог органа кориснику или овлашćenом органу u другој Уговорној страни⁶.

2. Ugovorna strana može da ispuni član 5(1) predviđajući ograničenja ili izuzetke u nacionalnom zakonu o ауторском праву тако што ће:

(a) Ovlašćenim organima бити допуштено да, без дозволе носиоца прava, дистрибуирају или учине доступним djela овлашćenом органу u другој Уговорној страни u pristupačnom formatu за искључиву употребу корисника; i

(b) Ovlašćenim organima бити допуштено да, без дозволе носиоца прava, на основу члана 2(c), дистрибуирају или учине доступним djela u pristupačnom formatu кориснику u другој Уговорној страни;

под условом да прије стављања u промет или чинjenja djela доступним јавности овлашćени орган од кога то потиче није знао нити је имао разумног основа да зна да ће djelo u pristupačnom formatu бити коришćено u било које друге сврхе изузев за кориснике⁷.

⁴ **Договорена изјава u vezi са чланом 4(3):** Подразумијева се да овај став нити уманjuje нити проширује обим примјене оградњена i изузетакa дозвољених Бернском конвенцијом u погледу прava преводенја, уз поштовање особа са оштећенјем вида или другим потеškoćама u читанју.

⁵ **Договорена изјава u vezi са чланом 4(4):** Подразумијева се да доступност по комерцијалним условима не прејудира да ли су оградњена i изузети u смислу овог члана сагласни са тростепеним тестом.

⁶ **Договорена изјава u vezi са чланом 5(1):** Nadalje се подразумевијева да ништа u овом уговору не уманjuje нити увећава обим искључивих прava признатих било којим другим уговором.

⁷ **Договорена изјава u vezi са чланом 5(2):** Подразумијева се да би при дистрибуцији или чинjenju доступним примјerка djela u pristupačnom formatu кориснику друге Уговорне стране, било примјерено да овлашćени орган примјени i друге мјере како би се увјерјо да је особа којој обезбјеђује услуге корисник, као i да слиједи сопствену праксу описану u члану 2(c).

3. Ugovorna strana može da ispuni član 5(1) predviđajući i druga ograničenja ili izuzetke u svom nacionalnom zakonu o autorskom pravu saglasno članovima 5(4), 10 i 11.
4. (a) Kada ovlašćeni organ u Ugovornoj strani primi primjerak djela u pristupačnom formatu u skladu sa članom 5(1), a ta Ugovorna strana nema obaveze saglasno članu 9 Bernske konvencije, obezbijediće, saglasno svom pravnom sistemu i praksi, da primjerci djela u pristupačnom formatu budu umnoženi, stavljeni u promet ili učinjeni dostupnim samo u interesu korisnika u pravnom sistemu te Ugovorne strane.
(b) Stavljanje u promet i činjenje dostupnim primjeraka djela u pristupačnom formatu od strane ovlašćenog organa u skladu sa članom 5(1) biće ograničeno na pravni sistem te Ugovorne strane, osim ako je ta Ugovorna strana takođe i članica WIPO Ugovora o autorskom pravu, ili na neki drugi način ograničava ograničenja i izuzetke koje primjenjuje na osnovu ovog Ugovora na pravo na stavljanje u promet i pravo na činjenje djela dostupnim javnosti u određenim specijalnim slučajevima koji nisu u sukobu sa normalnim korišćenjem autorskog djela niti na nerazuman način vrijeđaju legitimne interese nosioca prava^{8,9}.
(c) Ništa u ovom članu ne utiče na određenje šta čini akt stavljanja u promet ili akt činjenja dostupnim javnosti.
5. Ništa se u ovom Ugovoru ne odnosi na pitanje iscrpljenja prava.

Član 6

Uvoz primjeraka djela u pristupačnom formatu

U mjeri u kojoj nacionalni zakon Ugovorne strane dopušta korisniku, nekome ko nastupa u njegovo ili njeno ime, ili ovlašćenom organu, da napravi primjerak djela u pristupačnom formatu, nacionalni zakon te Ugovorne strane će takođe i dopustiti tim licima da uvezu primjerak djela u pristupačnom formatu u interesu korisnika, bez dozvole nosioca prava¹⁰.

Član 7

Obaveze u vezi sa tehnološkim mjerama

Ugovorne strane će preduzeti odgovarajuće mjere, kada to bude neophodno, da osiguraju da kada one obezbijede adekvatnu pravnu zaštitu i efikasne pravne lijekove protiv zaobilaženja efikasnih tehnoloških mjera, ova zakonska zaštita ne sprečava korisnike da uživaju ograničenja i izuzetke predviđene ovim Ugovorom¹¹.

Član 8

Poštovanje privatnosti

U primjeni ograničenja i izuzetaka predviđenih ovim Ugovorom, Ugovorne strane će nastojati da zaštite privatnost korisnika jednako kao i svih drugih lica.

Član 9

Saradnja u cilju olakšanja prekogranične razmjene

1. Ugovorne strane će preduzeti svaki napor da podstiču prekograničnu razmjenu primjeraka djela u pristupačnom formatu, ohrabrujući dobrovoljnu razmjenu informacija radi pomoći ovlašćenim organima da identifikuju jedni druge. Međunarodni biro WIPO-a će osnovati organizacionu jedinicu sa tim ciljem.
2. Ugovorne strane se obavezuju da pomažu svojim ovlašćenim organima koji su uključeni u aktivnosti koje uređuje član 5 da učine dostupnim informacije koje se odnose na njihovu praksu u skladu sa članom 2(c), kako kroz razmjenu tih informacija između ovlašćenih organa, tako i kroz činjenje dostupnim informacija o njihovim politikama i praksi,

⁸ **Dogovorena izjava u vezi sa članom 5(4)(b):** Podrazumijeva se da ništa u ovom Ugovoru ne zahtijeva niti podrazumijeva da Ugovorna strana prihvata ili primjenjuje trostepeni test izvan svojih obaveza u okviru ovog instrumenta ili u okviru drugih međunarodnih sporazuma.

⁹ **Dogovorena izjava u vezi sa članom 5(4)(b):** Podrazumijeva se da ništa u ovom Ugovoru ne stvara bilo kakve obaveze Ugovornim stranama da ratifikuju ili pristaju na Ugovor o autorskom pravu Svjetske organizacije za intelektualnu svojinu ili da se pridržavaju bilo koje od njegovih odredbi i ništa u ovom Ugovoru ne podrazumijeva bilo kakva prava, ograničenja ili izuzetke sadržane u Ugovoru o autorskim pravima.

¹⁰ **Dogovorena izjava u vezi sa članom 6:** Podrazumijeva se da pri primjeni obaveza utvrđenih članom 6, Ugovorna strana ima iste fleksibilnosti predviđene članom 4.

¹¹ **Dogovorena izjava u vezi sa članom 7:** Podrazumijeva se da ovlašćeni organi, u različitim okolnostima, izaberu da primjene tehnološke mjere u stvaranju, stavljanju u promet i činjenju dostupnim primjeraka djela u pristupačnom formatu i ništa ovdje ne sprečava takvu praksu onda kada je usaglašena sa nacionalnim zakonom.

uključujući i one koje se odnose na prekograničnu razmjenu primjeraka djela u pristupačnom formatu, zainteresovanim licima i članovima javnosti na primjeren način.

3. Međunarodni biro WIPO-a je pozvan da razmjenjuje informacije, tamo gdje su dostupne, koje se odnose na sprovođenje ovog Ugovora.

4. Ugovorne strane razumiju značaj međunarodne saradnje i njenog unapređivanja u podršci nacionalnim naporima za ostvarivanje svrhe i ciljeva ovog Ugovora¹².

Član 10 Opšti principi primjene

1. Ugovorne strane preuzimaju obavezu da usvoje mjere neophodne da se obezbijedi primjena ovog Ugovora.
2. Ništa neće sprečavati Ugovorne strane da odrede odgovarajući metod primjene odredaba ovog Ugovora u okviru svog sopstvenog pravnog sistema i prakse.¹³
3. Ugovorne strane mogu da ostvare prava i ispune svoje obaveze na osnovu ovog Ugovora kroz ograničenja ili izuzetke koji se odnose isključivo na korisnike, kroz druga ograničenja i izuzetke, njihovu kombinaciju, sve u okviru njihovog pravnog sistema ili prakse. To može da obuhvati sudske, administrativne ili zakonodavne akte donijete u korist korisnika, kao što su pravično postupanje, poslovi i korišćenja sa ciljem da zadovolje njihove potrebe koje su u skladu sa pravima i obavezama ugovorne strane preuzetim na osnovu Bernske konvencije, drugih međunarodnih ugovora i člana 11.

Član 11 Opšte obaveze koje se odnose na ograničenja i izuzetke

U usvajanju mjera koje su neophodne da se obezbijedi primjena ovog Ugovora, Ugovorna strana može da ostvaruje prava, dok će svoje obaveze preuzete na osnovu Bernske konvencije, Sporazuma o trgovinskim aspektima prava intelektualne svojine i WIPO Ugovora o autorskom pravu, uključujući tu i sve sporazume kojima se tumače ti ugovori, ispunjavati tako što:

- (a) u skladu sa članom 9(2) Bernske konvencije, Ugovorna strana može da dozvoli umnožavanje djela u posebnim specijalnim slučajevima, pod uslovom da takvo umnožavanje nije u sukobu sa normalnim iskorišćavanjem djela i ne šteti na nerazuman način legitimnim interesima autora.
- (b) u skladu sa članom 13 Sporazuma o trgovinskim aspektima prava intelektualne svojine, Ugovorna strana može da svede ograničenja ili izuzetke isključivih prava na određene posebne slučajeve koji nisu u sukobu sa normalnim iskorišćavanjem djela i ne vrijeđaju na nerazuman način legitimne interese autora;
- (c) u skladu sa članom 10(1) WIPO Ugovora o autorskom pravu, Ugovorna strana može da predvidi izuzetke i ograničenja onih prava koja su priznata autorima na osnovu WIPO Ugovora o autorskom pravu u određenim specijalnim slučajevima, koji nisu u sukobu sa normalnim iskorišćavanjem djela i ne vrijeđaju na nerazuman način legitimne interese autora;
- (d) u skladu sa članom 10(2) WIPO Ugovora o autorskom pravu, Ugovorna strana će ograničiti, kada primjenjuje Bernsku konvenciju, svako ograničenje i svaki izuzetak u odnosu na određena prava, na određene specijalne slučajeve koji nijesu u suprotnosti sa normalnim iskorišćavanjem autorskog djela i koji ne vrijeđaju na nerazuman način legitimne interese autora.

Član 12 Druga ograničenja i izuzeci

1. Ugovorne strane prihvataju da svaka od njih može da primijeni u svom nacionalnom zakonu druga ograničenja i izuzetke autorskog prava u korist korisnika, različita od onih koja su priznata u ovom Ugovoru, uzimajući u obzir ekonomsku situaciju te Ugovorne strane, njene društvene i kulturne potrebe, u skladu sa međunarodnim pravima i obavezama te Ugovorne strane, i u slučaju najmanje razvijenih zemalja, uzimajući u obzir njihove posebne potrebe i međunarodna prava i obaveze i fleksibilnosti koje se na njih odnose.
2. Ovaj Ugovor nema uticaja na druga ograničenja i izuzetke koja se odnose na osobe sa invaliditetom i koja su predviđena u nacionalnom zakonu.

¹² **Dogovorena izjava u vezi sa članom 9:** Podrazumijeva se da član 9 ne nameće obaveznu registraciju ovlašćenih organa, niti predstavlja uslov da ovlašćeni organi budu uključeni u aktivnosti priznate ovim Ugovorom; ali obezbjeđuje mogućnost razmjene informacija radi lakše prekogranične razmjene primjeraka djela u pristupačnom formatu.

¹³ **Dogovorena izjava u vezi sa članom 10(2):** Podrazumijeva se da se, kada je djelo određeno u smislu člana 2(a), uključujući takva djela u zvučnom formatu, ograničenja i izuzeci obezbijedjeni ovim Sporazumom primjenjuju se *matatis mutandis* sa srodnim pravima neophodnim za stvaranje primjerka u pristupačnom formatu, njegove distribucije i činjenja dostupnim korisnicima.

Član 13 Skupština

1. (a) Ugovorne strane će imati Skupštinu;
(b) Svaka Ugovorna strana biće predstavljena u Skupštini preko jednog delegata koji može da bude pomognut od strane drugih delegata, savjetnika i eksperata.
(c) Troškovi svake delegacije biće na teret Ugovorne strane koja je imenovala delegaciju. Skupština može da postavi pitanje WIPO-u da pruži finansijsku pomoć da bi se omogućilo učešće na zasjedanju delegacija Ugovornih strana koje dolaze iz zemalja koje se smatraju za zemlje u razvoju, u skladu sa usvojenom praksom Generalne skupštine Ujedinjenih nacija, ili ako dolaze iz zemalja u tranziciji prema tržišnoj privredi.
2. (a) Skupština će se baviti pitanjima koja se odnose na očuvanje i razvoj ovog Ugovora i primjenu i funkcionisanje ovog Ugovora.
(b) Skupština će obavljati nadležnosti koje su joj dodijeljene članom 15 u odnosu na prijem određenih međuvladinih organizacija da postanu strane ovog Ugovora.
(c) Skupština će odlučivati o održavanju diplomatskih konferencija za reviziju ovog Ugovora i davati neophodne instrukcije Generalnom direktoru WIPO-a za pripremu takve konferencije.
3. (a) Svaka Ugovorna strana koja je država će imati jedan glas i glasače u svoje ime.
(b) Svaka Ugovorna strana koja je međuvladina organizacija može da učestvuje u glasanju, umjesto svojih država članica, sa brojem glasova koji su jednaki broju njenih država članica koje su strane ovog Ugovora. Nijedna takva međuvladina organizacija neće učestvovati u glasanju ako bilo koja njena država članica ostvari svoje pravo glasa i obrnuto.
4. Skupština će se sastati na poziv Generalnog direktora i, u odsustvu izuzetnih okolnosti, u istom periodu i na istom mjestu na kojem se sastaje i Generalna skupština WIPO.
5. Skupština će uložiti napor da donese svoje odluke putem konsenzusa i ustanoviće svoja sopstvena pravila i procedure, uključujući održavanje vanrednih zasjedanja, zahtjev za kvorumom i, u skladu sa odredbama ovog Ugovora, neophodnu većinu za različite vrste odluka.

Član 14 Međunarodni biro

Međunarodni biro WIPO-a će obavljati administrativne poslove koji se odnose na ovaj Ugovor.

Član 15 Uslovi da se postane Ugovorna strana

1. Svaka država članica WIPO može da postane Ugovorna strana ovog Ugovora.
2. Skupština može da odluči da prihvati bilo koju međuvladinu organizaciju da postane strana ovog Ugovora, koja izjavi da je kompetentna i da ima svoje sopstveno zakonodavstvo, koje je obavezujuće za sve njene države članice, u pogledu pitanja pokrivenih ovim Ugovorom, i da je ovlašćena, u skladu sa svojim internim procedurama, da postane strana ovog Ugovora.
3. Evropska unija, pošto je dala izjavu na koju upućuje prethodni stav na Diplomatskoj konferenciji na kojoj je usvojen ovaj Ugovor, može da postane strana ovog Ugovora.

Član 16 Prava i obaveze na osnovu Ugovora

Ukoliko određene odredbe ovog Ugovora ne propisuju suprotno, svaka Ugovorna strana će uživati sva prava i preuzeti sve obaveze na osnovu ovog Ugovora.

Član 17 Potpis Ugovora

Ovaj Ugovor biće otvoren za potpis na Diplomatskoj konferenciji u Marakešu i nakon toga u sjedištu WIPO-a za svaku stranu koja može da postane ugovornica, u roku od jedne godine od dana njegovog usvajanja.

Član 18 Stupanje na snagu Ugovora

Ovaj Ugovor će stupiti na snagu tri mjeseca nakon što 20 strana koje mogu da postanu ugovornice saglasno članu 15 deponuje njihove instrumente ratifikacije ili pristupanja.

Član 19
Datum kada se postaje Ugovorna strana ovog Ugovora

Ovaj Ugovor će obavezivati:

- (a) 20 Ugovornih strana na koje upućuje član 18, od datuma kada ovaj Ugovor stupi na snagu;
- (b) Svaku drugu ugovornicu na koju upućuje član 15, od isteka tri mjeseca od dana kada je ta ugovornica deponovala svoj instrument ratifikacije ili pristupanja kod Generalnog direktora WIPO-a.

Član 20
Otkaz Ugovora

Ovaj Ugovor može da bude otkazan od strane bilo koje Ugovorne strane putem obavještenja upućenog Generalnom direktoru WIPO-a. Svako otkazivanje Ugovora imaće pravni efekat jednu godinu od datuma kada je Generalni direktor WIPO-a primio obavještenje.

Član 21
Jezici Ugovora

1. Ovaj Ugovor je potpisan u jednom originalnom primjerku na engleskom, arapskom, kineskom, francuskom, ruskom i španskom jeziku, čije su verzije jednako autentične.
2. Zvaničan tekst na bilo kom jeziku različitih od jezika koji su navedeni u članu 21(1) biće ustanovljen od strane Generalnog direktora WIPO-a na zahtjev zainteresovane strane, nakon konsultacija sa svim zainteresovanim stranama. Za potrebe ovog stava, „zainteresovana strana“ znači bilo koju državu članicu WIPOa čiji je zvanični jezik, ili jedan od zvaničnih jezika, uključen i Evropska unija, i bilo koja druga međuvladina organizacija koja može da postane strana ovog Ugovora, ako je jedan od njenih zvaničnih jezika uključen.

Član 22
Depozitar

Generalni direktor WIPO-a je depozitar ovog Ugovora.

Sačinjen u Marakešu, 27. juna 2013. godine.

Član 3

Ovaj zakon stupa na snagu osmog dana od dana objavljivanja u „Službenom listu Crne Gore - Međunarodni ugovori“.

Broj: 07-3/21-2/4
EPA 250 XXVII
Podgorica, 29. decembar 2021. godine

Skupština Crne Gore 27. saziva
Predsjednik,
Aleksa Bečić, s.r.

22.

Na osnovu člana 95 tačka 3 Ustava Crne Gore donosim

U K A Z
O PROGLAŠENJU ZAKONA O POTVRĐIVANJU KONVENCIJE O PRIZNAVANJU
EVROPSKIH PATENATA (KONVENCIJA O EVROPSKOM PATENTU) OD
5. OKTOBRA 1973. GODINE, SA IZMJENAMA ČLANA 63 KONVENCIJE O
EVROPSKOM PATENTU OD 17. DECEMBRA 1991. GODINE I IZMJENAMA OD
29. NOVEMBRA 2000. GODINE

Proglašavam ZAKON O POTVRĐIVANJU KONVENCIJE O PRIZNAVANJU EVROPSKIH PATENATA (KONVENCIJA O EVROPSKOM PATENTU) OD 5. OKTOBRA 1973. GODINE, SA IZMJENAMA ČLANA 63 KONVENCIJE O EVROPSKOM PATENTU OD 17. DECEMBRA 1991. GODINE I IZMJENAMA OD 29. NOVEMBRA 2000. GODINE, koji je donijela Skupština Crne Gore 27. saziva na Petoj sjednici Drugog redovnog (jesenjeg) zasjedanja u 2021. godini, dana 29. decembra 2021. godine.

Broj: 01-1315/2
Podgorica, 30. decembar 2021. godine

Predsjednik Crne Gore
Milo Đukanović, s.r.

Na osnovu člana 82 stav 1 tačka 17 i člana 91 stav 1 Ustava Crne Gore, Skupština Crne Gore 27. saziva, na Petoj sjednici Drugog redovnog (jesenjeg) zasijedanja u 2021. godini, dana 29. decembra 2021. godine, donijela je

**ZAKON
O POTVRĐIVANJU KONVENCIJE O PRIZNAVANJU EVROPSKIH PATENATA (KONVENCIJA O EVROPSKOM
PATENTU) OD 5. OKTOBRA 1973. GODINE, SA IZMJENAMA ČLANA 63 KONVENCIJE O EVROPSKOM
PATENTU OD 17. DECEMBRA 1991. GODINE I IZMJENAMA OD 29. NOVEMBRA 2000. GODINE**

Član 1

Potvrđuje se Konvencija o priznavanju evropskih патената (Konvencija o evropskom patentu) od 5. oktobra 1973. godine, sa izmjenama člana 63 Konvencije o evropskom patentu od 17. decembra 1991. godine i izmjenama od 29. novembra 2000. godine, sačinjena u originalu na engleskom, francuskom i njemačkom jeziku.

Član 2

Tekst Konvencije iz Člana 1 ovog zakona, u originalu na engleskom jeziku i prevodu na crnogorski jezik glasi:

**Convention on the Grant of European Patents (European Patent Convention) of 5 October 1973 as revised by
the Act revising Article 63 EPC of 17 December 1991 and the Act revising the EPC of 29 November 2000**

PREAMBLE

The Contracting States,
DESIRING to strengthen co-operation between the States of Europe in respect of the protection of inventions,
DESIRING that such protection may be obtained in those States by a single procedure for the grant of patents and by the establishment of certain standard rules governing patents so granted,
DESIRING, for this purpose, to conclude a Convention which establishes a European Patent Organisation and which constitutes a special agreement within the meaning of Article 19 of the Convention for the Protection of Industrial Property, signed in Paris on 20 March 1883 and last revised on 14 July 1967, and a regional patent treaty within the meaning of Article 45, paragraph 1, of the Patent Cooperation Treaty of 19 June 1970,
HAVE AGREED on the following provisions:

**PART I
GENERAL AND INSTITUTIONAL PROVISIONS**

**Chapter I
General provisions**

**Article 1
European law for the grant of patents**

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

**Article 2
European patent**

- (1) Patents granted under this Convention shall be called European patents.
- (2) The European patent shall, in each of the Contracting States for which it is granted, have the effect of and be subject to the same conditions as a national patent granted by that State, unless this Convention provides otherwise.

**Article 3
Territorial effect**

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

**Article 4
European Patent Organisation**

- (1) A European Patent Organisation, hereinafter referred to as the Organisation, is established by this Convention. It shall have administrative and financial autonomy.
- (2) The organs of the Organisation shall be:
 - (a) the European Patent Office;
 - (b) the Administrative Council.
- (3) The task of the Organisation shall be to grant European patents. This shall be carried out by the European Patent Office supervised by the Administrative Council.

Article 4a
Conference of ministers of the Contracting States

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.

Chapter II
The European Patent Organisation

Article 5
Legal status

- (1) The Organisation shall have legal personality.
- (2) In each of the Contracting States, the Organisation shall enjoy the most extensive legal capacity accorded to legal persons under the national law of that State; it may in particular acquire or dispose of movable and immovable property and may be a party to legal proceedings.
- (3) The President of the European Patent Office shall represent the Organisation.

Article 6
Headquarters

- (1) The Organisation shall have its headquarters in Munich.
- (2) The European Patent Office shall be located in Munich. It shall have a branch at The Hague.

Article 7
Sub-offices of the European Patent Office

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

Article 8
Privileges and immunities

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

Article 9
Liability

- (1) The contractual liability of the Organisation shall be governed by the law applicable to the contract in question.
- (2) The non-contractual liability of the Organisation in respect of any damage caused by it or by the employees of the European Patent Office in the performance of their duties shall be governed by the law of the Federal Republic of Germany. Where the damage is caused by the branch at The Hague or a sub-office or employees attached thereto, the law of the Contracting State in which such branch or sub-office is located shall apply.
- (3) The personal liability of the employees of the European Patent Office towards the Organisation shall be governed by their Service Regulations or conditions of employment.
- (4) The courts with jurisdiction to settle disputes under paragraphs 1 and 2 shall be:
 - (a) for disputes under paragraph 1, the courts of the Federal Republic of Germany, unless the contract concluded between the parties designates a court of another State;
 - (b) for disputes under paragraph 2, the courts of the Federal Republic of Germany, or of the State in which the branch or sub-office is located.

Chapter III
The European Patent Office

Article 10
Management

- (1) The European Patent Office shall be managed by the President, who shall be responsible for its activities to the Administrative Council.
- (2) To this end, the President shall have in particular the following functions and powers:
 - (a) he shall take all necessary steps to ensure the functioning of the European Patent Office, including the adoption of internal administrative instructions and information to the public;
 - (b) unless this Convention provides otherwise, he shall prescribe which acts are to be performed at the European Patent Office in Munich and its branch at The Hague respectively;
 - (c) he may submit to the Administrative Council any proposal for amending this Convention, for general regulations, or for decisions which come within the competence of the Administrative Council;
 - (d) he shall prepare and implement the budget and any amending or supplementary budget;
 - (e) he shall submit a management report to the Administrative Council each year;
 - (f) he shall exercise supervisory authority over the staff;
 - (g) subject to Article 11, he shall appoint the employees and decide on their promotion;
 - (h) he shall exercise disciplinary authority over the employees other than those referred to in Article 11, and may propose disciplinary action to the Administrative Council with regard to employees referred to in Article 11, paragraphs 2 and 3;
 - (i) he may delegate his functions and powers.
- (3) The President shall be assisted by a number of Vice-Presidents. If the President is absent or indisposed, one of the Vice-Presidents shall take his place in accordance with the procedure laid down by the Administrative Council.

Article 11 **Appointment of senior employees**

- (1) The President of the European Patent Office shall be appointed by the Administrative Council.
- (2) The Vice-Presidents shall be appointed by the Administrative Council after the President of the European Patent Office has been consulted.
- (3) The members, including the Chairmen, of the Boards of Appeal and of the Enlarged Board of Appeal shall be appointed by the Administrative Council on a proposal from the President of the European Patent Office. They may be re-appointed by the Administrative Council after the President of the European Patent Office has been consulted.
- (4) The Administrative Council shall exercise disciplinary authority over the employees referred to in paragraphs 1 to 3.
- (5) The Administrative Council, after consulting the President of the European Patent Office, may also appoint as members of the Enlarged Board of Appeal legally qualified members of the national courts or quasi-judicial authorities of the Contracting States, who may continue their judicial activities at the national level. They shall be appointed for a term of three years and may be re-appointed.

Article 12 **Duties of office**

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

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

- (1) Employees and former employees of the European Patent Office or their successors in title may apply to the Administrative Tribunal of the International Labour Organization in the case of disputes with the European Patent Organisation, in accordance with the Statute of the Tribunal and within the limits and subject to the conditions laid down in the Service Regulations for permanent employees or the Pension Scheme Regulations or arising from the conditions of employment of other employees.
- (2) An appeal shall only be admissible if the person concerned has exhausted such other means of appeal as are available to him under the Service Regulations, the Pension Scheme Regulations or the conditions of employment.

Article 14 **Languages of the European Patent Office, European patent applications and other documents**

- (1) The official languages of the European Patent Office shall be English, French and German.
- (2) A European patent application shall be filed in one of the official languages or, if filed in any other language, translated into one of the official languages in accordance with the Implementing Regulations. Throughout the proceedings before the European Patent Office, such translation may be brought into conformity with the application as filed. If a required translation is not filed in due time, the application shall be deemed to be withdrawn.
- (3) The official language of the European Patent Office in which the European patent application is filed or into which it is translated shall be used as the language of the proceedings in all proceedings before the European Patent Office, unless the Implementing Regulations provide otherwise.

(4) Natural or legal persons having their residence or principal place of business within a Contracting State having a language other than English, French or German as an official language, and nationals of that State who are resident abroad, may file documents which have to be filed within a time limit in an official language of that State. They shall, however, file a translation in an official language of the European Patent Office in accordance with the Implementing Regulations. If any document, other than those documents making up the European patent application, is not filed in the prescribed language, or if any required translation is not filed in due time, the document shall be deemed not to have been filed.

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

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

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

(a) the European Patent Bulletin;

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

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

Article 15

Departments entrusted with the procedure

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

(a) a Receiving Section;

(b) Search Divisions;

(c) Examining Divisions;

(d) Opposition Divisions;

(e) a Legal Division;

(f) Boards of Appeal;

(g) an Enlarged Board of Appeal.

Article 16

Receiving Section

The Receiving Section shall be responsible for the examination on filing and the examination as to formal requirements of European patent applications.

Article 17

Search Divisions

The Search Divisions shall be responsible for drawing up European search reports.

Article 18

Examining Divisions

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

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

Article 19

Opposition Divisions

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

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

Article 20 Legal Division

- (1) The Legal Division shall be responsible for decisions in respect of entries in the Register of European Patents and in respect of registration on, and deletion from, the list of professional representatives.
- (2) Decisions of the Legal Division shall be taken by one legally qualified member.

Article 21 Boards of Appeal

- (1) The Boards of Appeal shall be responsible for the examination of appeals from decisions of the Receiving Section, the Examining Divisions and Opposition Divisions, and the Legal Division.
- (2) For appeals from decisions of the Receiving Section or the Legal Division, a Board of Appeal shall consist of three legally qualified members.
- (3) For appeals from a decision of an Examining Division, a Board of Appeal shall consist of:
 - (a) two technically qualified members and one legally qualified member, when the decision concerns the refusal of a European patent application or the grant, limitation or revocation of a European patent, and was taken by an Examining Division consisting of less than four members;
 - (b) three technically and two legally qualified members, when the decision was taken by an Examining Division consisting of four members, or when the Board of Appeal considers that the nature of the appeal so requires;
 - (c) three legally qualified members in all other cases.
- (4) For appeals from a decision of an Opposition Division, a Board of Appeal shall consist of:
 - (a) two technically qualified members and one legally qualified member, when the decision was taken by an Opposition Division consisting of three members;
 - (b) three technically and two legally qualified members, when the decision was taken by an Opposition Division consisting of four members, or when the Board of Appeal considers that the nature of the appeal so requires.

Article 22 Enlarged Board of Appeal

- (1) The Enlarged Board of Appeal shall be responsible for:
 - (a) deciding on points of law referred to it by Boards of Appeal under Article 112;
 - (b) giving opinions on points of law referred to it by the President of the European Patent Office under Article 112;
 - (c) deciding on petitions for review of decisions of the Boards of Appeal under Article 112a.
- (2) In proceedings under paragraph 1(a) and (b), the Enlarged Board of Appeal shall consist of five legally and two technically qualified members. In proceedings under paragraph 1(c), the Enlarged Board of Appeal shall consist of three or five members as laid down in the Implementing Regulations. In all proceedings, a legally qualified member shall be the Chairman.

Article 23 Independence of the members of the Boards

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

Article 24 Exclusion and objection

- (1) Members of the Boards of Appeal or of the Enlarged Board of Appeal may not take part in a case in which they have any personal interest, or if they have previously been involved as representatives of one of the parties, or if they participated in the decision under appeal.
- (2) If, for one of the reasons mentioned in paragraph 1, or for any other reason, a member of a Board of Appeal or of the Enlarged Board of Appeal considers that he should not take part in any appeal, he shall inform the Board accordingly.
- (3) Members of a Board of Appeal or of the Enlarged Board of Appeal may be objected to by any party for one of the reasons mentioned in paragraph 1, or if suspected of partiality. An objection shall not be admissible if, while being aware

of a reason for objection, the party has taken a procedural step. An objection may not be based upon the nationality of members.

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

Article 25 **Technical opinion**

At the request of the competent national court 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.

Chapter IV **The Administrative Council**

Article 26 **Membership**

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

(2) The members of the Administrative Council may, in accordance with the Rules of Procedure of the Administrative Council, be assisted by advisers or experts.

Article 27 **Chairmanship**

(1) The Administrative Council shall elect a Chairman and a Deputy Chairman from among the Representatives and alternate Representatives of the Contracting States. The Deputy Chairman shall ex officio replace the Chairman if he is prevented from carrying out his duties.

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

Article 28 **Board**

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

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

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

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

Article 29 **Meetings**

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

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

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

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

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

Article 30 **Attendance of observers**

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

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

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

Article 31 **Languages of the Administrative Council**

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

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

Article 32 **Staff, premises and equipment**

The European Patent Office shall place at the disposal of the Administrative Council, and of any committee established by it, such staff, premises and equipment as may be necessary for the performance of their duties.

Article 33 **Competence of the Administrative Council in certain cases**

(1) The Administrative Council shall be competent to amend:

(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.

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

(a) the Financial Regulations;

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

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

(d) the Rules relating to Fees;

(e) its Rules of Procedure.

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

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

(5) The Administrative Council may not take a decision under paragraph 1(b):

- concerning an international treaty, before its entry into force;

- concerning European Community legislation, before its entry into force or, where that legislation lays down a period for its implementation, before the expiry of that period.

Article 34 **Voting rights**

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

(2) Each Contracting State shall have one vote, except where Article 36 applies.

Article 35 **Voting rules**

(1) The Administrative Council shall take its decisions, other than those referred to in paragraphs 2 and 3, by a simple majority of the Contracting States represented and voting.

(2) A majority of three-quarters of the votes of the Contracting States represented and voting shall be required for the decisions which the Administrative Council is empowered to take under Article 7, Article 11, paragraph 1, Article 33, paragraphs 1(a) and (c), and 2 to 4, Article 39, paragraph 1, Article 40, paragraphs 2 and 4, Article 46, Article 134a, Article 149a, paragraph 2, Article 152, Article 153, paragraph 7, Article 166 and Article 172.

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

(4) Abstentions shall not be considered as votes.

Article 36 **Weighting of votes**

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

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

- (a) the percentage obtained for each Contracting State in respect of the scale for the special financial contributions, pursuant to Article 40, paragraphs 3 and 4, shall be multiplied by the number of Contracting States and divided by five;
- (b) the number of votes thus given shall be rounded upwards to the next whole number;
- (c) five additional votes shall be added to this number;
- (d) nevertheless, no Contracting State shall have more than 30 votes.

Chapter V **Financial provisions**

Article 37 **Budgetary funding**

The budget of the Organisation shall be financed:

- (a) by the Organisation's own resources;
- (b) by payments made by the Contracting States in respect of renewal fees for European patents levied in these States;
- (c) where necessary, by special financial contributions made by the Contracting States;
- (d) where appropriate, by the revenue provided for in Article 146;
- (e) where appropriate, and for tangible assets only, by third-party borrowings secured on land or buildings;
- (f) where appropriate, by third-party funding for specific projects.

Article 38 **The Organisation's own resources**

The Organisation's own resources shall comprise:

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

Article 39 **Payments by the Contracting States in respect of renewal fees for European patents**

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

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

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

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

Article 40 **Level of fees and payments – Special financial contributions**

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

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

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

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

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

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

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

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

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

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

Article 41 Advances

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

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

Article 42 Budget

(1) The budget of the Organisation shall be balanced. It shall be drawn up in accordance with the generally accepted accounting principles laid down in the Financial Regulations. If necessary, there may be amending or supplementary budgets.

(2) The budget shall be drawn up in the unit of account fixed in the Financial Regulations.

Article 43 Authorisation for expenditure

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

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

(3) Appropriations shall be set out under different headings according to type and purpose of the expenditure and subdivided, as far as necessary, in accordance with the Financial Regulations.

Article 44 Appropriations for unforeseeable expenditure

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

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

Article 45 Accounting period

The accounting period shall commence on 1 January and end on 31 December.

Article 46 Preparation and adoption of the budget

- (1) The President of the European Patent Office shall submit the draft budget to the Administrative Council no later than the date prescribed in the Financial Regulations.
- (2) The budget and any amending or supplementary budget shall be adopted by the Administrative Council.

Article 47 **Provisional budget**

- (1) If, at the beginning of the accounting period, the budget has not been adopted by the Administrative Council, expenditures may be effected on a monthly basis per heading or other division of the budget, in accordance with the Financial Regulations, up to one-twelfth of the budget appropriations for the preceding accounting period, provided that the appropriations thus made available to the President of the European Patent Office shall not exceed one-twelfth of those provided for in the draft budget.
- (2) The Administrative Council may, subject to the observance of the other provisions laid down in paragraph 1, authorise expenditure in excess of one-twelfth of the appropriations.
- (3) The payments referred to in Article 37(b) shall continue to be made, on a provisional basis, under the conditions determined under Article 39 for the year preceding that to which the draft budget relates.
- (4) The Contracting States shall pay each month, on a provisional basis and in accordance with the scale referred to in Article 40, paragraphs 3 and 4, any special financial contributions necessary to ensure implementation of paragraphs 1 and 2. Article 39, paragraph 4, shall apply mutatis mutandis to these contributions.

Article 48 **Budget implementation**

- (1) The President of the European Patent Office shall implement the budget and any amending or supplementary budget on his own responsibility and within the limits of the allocated appropriations.
- (2) Within the budget, the President of the European Patent Office may, in accordance with the Financial Regulations, transfer funds between the various headings or sub-headings.

Article 49 **Auditing of accounts**

- (1) The income and expenditure account and a balance sheet of the Organisation shall be examined by auditors whose independence is beyond doubt, appointed by the Administrative Council for a period of five years, which shall be renewable or extensible.
- (2) The audit shall be based on vouchers and shall take place, if necessary, in situ. The audit shall ascertain whether all income has been received and all expenditure effected in a lawful and proper manner and whether the financial management is sound. The auditors shall draw up a report containing a signed audit opinion after the end of each accounting period.
- (3) The President of the European Patent Office shall annually submit to the Administrative Council the accounts of the preceding accounting period in respect of the budget and the balance sheet showing the assets and liabilities of the Organisation together with the report of the auditors.
- (4) The Administrative Council shall approve the annual accounts together with the report of the auditors and shall discharge the President of the European Patent Office in respect of the implementation of the budget.

Article 50 **Financial Regulations**

The Financial Regulations shall lay down in particular:

- (a) the arrangements relating to the establishment and implementation of the budget and for the rendering and auditing of accounts;
- (b) the method and procedure whereby the payments and contributions provided for in Article 37 and the advances provided for in Article 41 are to be made available to the Organisation by the Contracting States;
- (c) the rules concerning the responsibilities of authorising and accounting officers and the arrangements for their supervision;
- (d) the rates of interest provided for in Articles 39, 40 and 47;
- (e) the method of calculating the contributions payable by virtue of Article 146;
- (f) the composition of and duties to be assigned to a Budget and Finance Committee which should be set up by the Administrative Council;
- (g) the generally accepted accounting principles on which the budget and the annual financial statements shall be based.

Article 51 **Fees**

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

PART II SUBSTANTIVE PATENT LAW

Chapter I Patentability

Article 52 Patentable inventions

- (1) European patents shall be granted for any inventions, in all fields of technology, provided that they are new, involve an inventive step and are susceptible of industrial application.
- (2) The following in particular shall not be regarded as inventions within the meaning of paragraph 1:
 - (a) discoveries, scientific theories and mathematical methods;
 - (b) aesthetic creations;
 - (c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;
 - (d) presentations of information.
- (3) Paragraph 2 shall exclude the patentability of the subject-matter or activities referred to therein only to the extent to which a European patent application or European patent relates to such subject-matter or activities as such.

Article 53 Exceptions to patentability

European patents shall not be granted in respect of:

- (a) inventions the commercial exploitation of which would be contrary to "ordre public" or morality; such exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation in some or all of the Contracting States;
- (b) plant or animal varieties or essentially biological processes for the production of plants or animals; this provision shall not apply to microbiological processes or the products thereof;
- (c) methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body; this provision shall not apply to products, in particular substances or compositions, for use in any of these methods.

Article 54 Novelty

- (1) An invention shall be considered to be new if it does not form part of the state of the art.
- (2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the European patent application.
- (3) Additionally, the content of European patent applications as filed, the dates of filing of which are prior to the date referred to in paragraph 2 and which were published on or after that date, shall be considered as comprised in the state of the art.
- (4) Paragraphs 2 and 3 shall not exclude the patentability of any substance or composition, comprised in the state of the art, for use in a method referred to in Article 53(c), provided that its use for any such method is not comprised in the state of the art.
- (5) Paragraphs 2 and 3 shall also not exclude the patentability of any substance or composition referred to in paragraph 4 for any specific use in a method referred to in Article 53(c), provided that such use is not comprised in the state of the art.

Article 55 Non-prejudicial disclosures

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

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

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

Article 56 **Inventive step**

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

Article 57 **Industrial application**

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

Chapter II **Persons entitled to apply for and obtain a European patent – Mention of the inventor**

Article 58 **Entitlement to file a European patent application**

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

Article 59 **Multiple applicants**

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

Article 60 **Right to a European patent**

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

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

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

Article 61 **European patent applications filed by non-entitled persons**

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

(a) prosecute the European patent application as his own application in place of the applicant;
(b) file a new European patent application in respect of the same invention; or
(c) request that the European patent application be refused.

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

Article 62
Right of the inventor to be mentioned

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

Chapter III
Effects of the European patent and the European patent application

Article 63
Term of the European patent

- (1) The term of the European patent shall be 20 years from the date of filing of the application.
- (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:
 - (a) in order to take account of a state of war or similar emergency conditions affecting that State;
 - (b) if the subject-matter of the European patent is a product or a process for manufacturing a product or a use of a product which has to undergo an administrative authorisation procedure required by law before it can be put on the market in that State.
- (3) Paragraph 2 shall apply mutatis mutandis to European patents granted jointly for a group of Contracting States in accordance with Article 142.
- (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.

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 on which the mention of its grant is published in the European Patent Bulletin, in each Contracting State in respect of which it is granted, the same rights as would be conferred by a national patent granted in that State.
- (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.
- (3) Any infringement of a European patent shall be dealt with by national law.

Article 65
Translation of the European patent

- (1) Any Contracting State may, if the European patent as granted, amended or limited by the European Patent Office is not drawn up in one of its official languages, prescribe that the proprietor of the patent shall supply to its central industrial property office a translation of the patent as granted, amended or limited in one of its official languages at his option or, where that State has prescribed the use of one specific official language, in that language. The period for supplying the translation shall end three months after the date on which the mention of the grant, maintenance in amended form or limitation of the European patent is published in the European Patent Bulletin, unless the State concerned prescribes a longer period.
- (2) Any Contracting State which has adopted provisions pursuant to paragraph 1 may prescribe that the proprietor of the patent must pay all or part of the costs of publication of such translation within a period laid down by that State.
- (3) Any Contracting State may prescribe that in the event of failure to observe the provisions adopted in accordance with paragraphs 1 and 2, the European patent shall be deemed to be void ab initio in that State.

Article 66
Equivalence of European filing with national filing

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

Article 67
Rights conferred by a European patent application after publication

- (1) A European patent application shall, from the date of its publication, provisionally confer upon the applicant the protection provided for by Article 64, in the Contracting States designated in the application.
- (2) Any Contracting State may prescribe that a European patent application shall not confer such protection as is conferred by Article 64. However, the protection attached to the publication of the European patent application may not be less than that which the laws of the State concerned attach to the compulsory publication of unexamined national patent applications. In any event, each State shall ensure at least that, from the date of publication of a European patent application, the applicant can claim compensation reasonable in the circumstances from any person who has used the invention in that State in circumstances where that person would be liable under national law for infringement of a national patent.
- (3) Any Contracting State which does not have as an official language the language of the proceedings may prescribe that provisional protection in accordance with paragraphs 1 and 2 above shall not be effective until such time as a translation of the claims in one of its official languages at the option of the applicant or, where that State has prescribed the use of one specific official language, in that language:
- (a) has been made available to the public in the manner prescribed by national law, or
- (b) has been communicated to the person using the invention in the said State.
- (4) The European patent application shall be deemed never to have had the effects set out in paragraphs 1 and 2 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.

Article 68

Effect of revocation or limitation of the European patent

The European patent application and the resulting European patent shall be deemed not to have had, from the outset, the effects specified in Articles 64 and 67, to the extent that the patent has been revoked or limited in opposition, limitation or revocation proceedings.

Article 69

Extent of protection

- (1) The extent of the protection conferred by a European patent or a European patent application shall be determined by the claims. Nevertheless, the description and drawings shall be used to interpret the claims.
- (2) For the period up to grant of the European patent, the extent of the protection conferred by the European patent application shall be determined by the claims contained in the application as published. However, the European patent as granted or as amended in opposition, limitation or revocation proceedings shall determine retroactively the protection conferred by the application, in so far as such protection is not thereby extended.

Article 70

Authentic text of a European patent application or European patent

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

Chapter IV

The European patent application as an object of property

Article 71

Transfer and constitution of rights

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

Article 72 Assignment

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

Article 73 Contractual licensing

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

Article 74 Law applicable

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

PART III THE EUROPEAN PATENT APPLICATION

Chapter I Filing and requirements of the European patent application

Article 75 Filing of a European patent application

- (1) A European patent application may be filed:
- (a) with the European Patent Office, or
 - (b) if the law of a Contracting State so permits, and subject to Article 76, paragraph 1, with the central industrial property office or other competent authority of that State. Any application filed in this way shall have the same effect as if it had been filed on the same date with the European Patent Office.
- (2) Paragraph 1 shall not preclude the application of legislative or regulatory provisions which, in any Contracting State:
- (a) govern inventions which, owing to the nature of their subject-matter, may not be communicated abroad without the prior authorisation of the competent authorities of that State, or
 - (b) prescribe that any application is to be filed initially with a national authority, or make direct filing with another authority subject to prior authorisation.

Article 76 European divisional applications

- (1) A European divisional application shall be filed directly with the European Patent Office in accordance with the Implementing Regulations. It may be filed only in respect of subject-matter which does not extend beyond the content of the earlier application as filed; in so far as this requirement is complied with, the divisional application shall be deemed to have been filed on the date of filing of the earlier application and shall enjoy any right of priority.
- (2) All the Contracting States designated in the earlier application at the time of filing of a European divisional application shall be deemed to be designated in the divisional application.

Article 77 Forwarding of European patent applications

- (1) The central industrial property office of a Contracting State shall forward to the European Patent Office any European patent application filed with it or any other competent authority in that State, in accordance with the Implementing Regulations.
- (2) A European patent application the subject of which has been made secret shall not be forwarded to the European Patent Office.
- (3) A European patent application not forwarded to the European Patent Office in due time shall be deemed to be withdrawn.

Article 78 Requirements of a European patent application

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

and satisfy the requirements laid down in the Implementing Regulations.

- (2) A European patent application shall be subject to the payment of the filing fee and the search fee. If the filing fee or the search fee is not paid in due time, the application shall be deemed to be withdrawn.

Article 79 **Designation of Contracting States**

- (1) All the Contracting States party to this Convention at the time of filing of the European patent application shall be deemed to be designated in the request for grant of a European patent.
- (2) The designation of a Contracting State may be subject to the payment of a designation fee.
- (3) The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent.

Article 80 **Date of filing**

The date of filing of a European patent application shall be the date on which the requirements laid down in the Implementing Regulations are fulfilled.

Article 81 **Designation of the inventor**

The European patent application shall designate the inventor. If the applicant is not the inventor or is not the sole inventor, the designation shall contain a statement indicating the origin of the right to the European patent.

Article 82 **Unity of invention**

The European patent application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

Article 83 **Disclosure of the invention**

The European patent application shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

Article 84 **Claims**

The claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description.

Article 85 **Abstract**

The abstract shall serve the purpose of technical information only; it may not be taken into account for any other purpose, in particular for interpreting the scope of the protection sought or applying Article 54, paragraph 3.

Article 86 **Renewal fees for the European patent application**

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

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

Chapter II Priority

Article 87 Priority right

(1) Any person who has duly filed, in or for

(a) any State party to the Paris Convention for the Protection of Industrial Property or

(b) any Member of the World Trade Organization, an application for a patent, a utility model or a utility certificate, or his successor in title, shall enjoy, for the purpose of filing a European patent application in respect of the same invention, a right of priority during a period of twelve months from the date of filing of the first application.

(2) Every filing that is equivalent to a regular national filing under the national law of the State where it was made or under bilateral or multilateral agreements, including this Convention, shall be recognised as giving rise to a right of priority.

(3) A regular national filing shall mean any filing that is sufficient to establish the date on which the application was filed, whatever the outcome of the application may be.

(4) A subsequent application in respect of the same subject-matter as a previous first application and filed in or for the same State shall be considered as the first application for the purposes of determining priority, provided that, at the date of filing the subsequent application, the previous application has been withdrawn, abandoned or refused, without being open to public inspection and without leaving any rights outstanding, and has not served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.

(5) If the first filing has been made with an industrial property authority which is not subject to the Paris Convention for the Protection of Industrial Property or the Agreement Establishing the World Trade Organization, paragraphs 1 to 4 shall apply if that authority, according to a communication issued by the President of the European Patent Office, recognises that a first filing made with the European Patent Office gives rise to a right of priority under conditions and with effects equivalent to those laid down in the Paris Convention.

Article 88 Claiming priority

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

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

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

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

Article 89 Effect of priority right

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

PART IV PROCEDURE UP TO GRANT

Article 90 Examination on filing and examination as to formal requirements

(1) The European Patent Office shall examine, in accordance with the Implementing Regulations, whether the application satisfies the requirements for the accordance of a date of filing.

(2) If a date of filing cannot be accorded following the examination under paragraph 1, the application shall not be dealt with as a European patent application.

(3) If the European patent application has been accorded a date of filing, the European Patent Office shall examine, in accordance with the Implementing Regulations, whether the requirements in Articles 14, 78 and 81, and, where applicable, Article 88, paragraph 1, and Article 133, paragraph 2, as well as any other requirement laid down in the Implementing Regulations, have been satisfied.

(4) Where the European Patent Office in carrying out the examination under paragraphs 1 or 3 notes that there are deficiencies which may be corrected, it shall give the applicant an opportunity to correct them.

(5) If any deficiency noted in the examination under paragraph 3 is not corrected, the European patent application shall be refused unless a different legal consequence is provided for by this Convention. Where the deficiency concerns the right of priority, this right shall be lost for the application.

Article 91

(deleted)

Article 92

Drawing up of the European search report

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

Article 93

Publication of the European patent application

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

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

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

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

Article 94

Examination of the European patent application

(1) The European Patent Office shall, in accordance with the Implementing Regulations, examine on request whether the European patent application and the invention to which it relates meet the requirements of this Convention. The request shall not be deemed to be filed until the examination fee has been paid.

(2) If no request for examination has been made in due time, the application shall be deemed to be withdrawn.

(3) If the examination reveals that the application or the invention to which it relates does not meet the requirements of this Convention, the Examining Division shall invite the applicant, as often as necessary, to file his observations and, subject to Article 123, paragraph 1, to amend the application.

(4) If the applicant fails to reply in due time to any communication from the Examining Division, the application shall be deemed to be withdrawn.

Article 95

(deleted)

Article 96

(deleted)

Article 97

Grant or refusal

(1) If the Examining Division is of the opinion that the European patent application and the invention to which it relates meet the requirements of this Convention, it shall decide to grant a European patent, provided that the conditions laid down in the Implementing Regulations are fulfilled.

(2) If the Examining Division is of the opinion that the European patent application or the invention to which it relates does not meet the requirements of this Convention, it shall refuse the application unless this Convention provides for a different legal consequence.

(3) The decision to grant a European patent shall take effect on the date on which the mention of the grant is published in the European Patent Bulletin.

Article 98

Publication of the specification of the European patent

The European Patent Office shall publish the specification of the European patent as soon as possible after the mention of the grant of the European patent has been published in the European Patent Bulletin.

PART V

OPPOSITION AND LIMITATION PROCEDURE

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.

(2) The opposition shall apply to the European patent in all the Contracting States in which that patent has effect.

(3) Opponents shall be parties to the opposition proceedings as well as the proprietor of the patent.

(4) Where a person provides evidence that in a Contracting State, following a final decision, he has been entered in the patent register of such State instead of the previous proprietor, such person shall, at his request, replace the previous proprietor in respect of such State. Notwithstanding Article 118, the previous proprietor and the person making the request shall not be regarded as joint proprietors unless both so request.

Article 100

Grounds for opposition

Opposition may only be filed on the grounds that:

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

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

(c) the subject-matter of the European patent extends beyond the content of the application as filed, or, if the patent was granted on a divisional application or on a new application filed under Article 61, beyond the content of the earlier application as filed.

Article 101

Examination of the opposition – Revocation or maintenance of the European patent

(1) If the opposition is admissible, the Opposition Division shall examine, in accordance with the Implementing Regulations, whether at least one ground for opposition under Article 100 prejudices the maintenance of the European patent. During this examination, the Opposition Division shall invite the parties, as often as necessary, to file observations on communications from another party or issued by itself.

(2) If the Opposition Division is of the opinion that at least one ground for opposition prejudices the maintenance of the European patent, it shall revoke the patent. Otherwise, it shall reject the opposition.

(3) If the Opposition Division is of the opinion that, taking into consideration the amendments made by the proprietor of the European patent during the opposition proceedings, the patent and the invention to which it relates

(a) meet the requirements of this Convention, it shall decide to maintain the patent as amended, provided that the conditions laid down in the Implementing Regulations are fulfilled;

(b) do not meet the requirements of this Convention, it shall revoke the patent.

Article 102

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Article 103

Publication of a new specification of the European patent

If the European patent is maintained as amended under Article 101, paragraph 3(a), the European Patent Office shall publish a new specification of the European patent as soon as possible after the mention of the opposition decision has been published in the European Patent Bulletin.

Article 104 Costs

- (1) Each party to the opposition proceedings shall bear the costs it has incurred, unless the Opposition Division, for reasons of equity, orders, in accordance with the Implementing Regulations, a different apportionment of costs.
- (2) The procedure for fixing costs shall be laid down in the Implementing Regulations.
- (3) Any final decision of the European Patent Office fixing the amount of costs shall be dealt with, for the purpose of enforcement in the Contracting States, in the same way as a final decision given by a civil court of the State in which enforcement is to take place. Verification of such decision shall be limited to its authenticity.

Article 105 Intervention of the assumed infringer

- (1) Any third party may, in accordance with the Implementing Regulations, intervene in opposition proceedings after the opposition period has expired, if the third party proves that
 - (a) proceedings for infringement of the same patent have been instituted against him, or
 - (b) following a request of the proprietor of the patent to cease alleged infringement, the third party has instituted proceedings for a ruling that he is not infringing the patent.
- (2) An admissible intervention shall be treated as an opposition.

Article 105a Request for limitation or revocation

- (1) At the request of the proprietor, the European patent may be revoked or be limited by an amendment of the claims. The request shall be filed with the European Patent Office in accordance with the Implementing Regulations. It shall not be deemed to have been filed until the limitation or revocation fee has been paid.
- (2) The request may not be filed while opposition proceedings in respect of the European patent are pending.

Article 105b Limitation or revocation of the European patent

- (1) The European Patent Office shall examine whether the requirements laid down in the Implementing Regulations for limiting or revoking the European patent have been met.
- (2) If the European Patent Office considers that the request for limitation or revocation of the European patent meets these requirements, it shall decide to limit or revoke the European patent in accordance with the Implementing Regulations. Otherwise, it shall reject the request.
- (3) The decision to limit or revoke the European patent shall apply to the European patent in all the Contracting States in respect of which it has been granted. It shall take effect on the date on which the mention of the decision is published in the European Patent Bulletin.

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

If the European patent is limited under Article 105b, paragraph 2, the European Patent Office shall publish the amended specification of the European patent as soon as possible after the mention of the limitation has been published in the European Patent Bulletin.

PART VI APPEALS PROCEDURE

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.
- (2) A decision which does not terminate proceedings as regards one of the parties can only be appealed together with the final decision, unless the decision allows a separate appeal.
- (3) The right to file an appeal against decisions relating to the apportionment or fixing of costs in opposition proceedings may be restricted in the Implementing Regulations.

Article 107

Persons entitled to appeal and to be parties to appeal proceedings

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

Article 108

Time limit and form

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

Article 109

Interlocutory revision

- (1) If the department whose decision is contested considers the appeal to be admissible and well founded, it shall rectify its decision. This shall not apply where the appellant is opposed by another party to the proceedings.
- (2) If the appeal is not allowed within three months of receipt of the statement of grounds, it shall be remitted to the Board of Appeal without delay, and without comment as to its merit.

Article 110

Examination of appeals

If the appeal is admissible, the Board of Appeal shall examine whether the appeal is allowable. The examination of the appeal shall be conducted in accordance with the Implementing Regulations.

Article 111

Decision in respect of appeals

- (1) Following the examination as to the allowability of the appeal, the Board of Appeal shall decide on the appeal. The Board of Appeal may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution.
- (2) If the Board of Appeal remits the case for further prosecution to the department whose decision was appealed, that department shall be bound by the ratio decidendi of the Board of Appeal, in so far as the facts are the same. If the decision under appeal was taken by the Receiving Section, the Examining Division shall also be bound by the ratio decidendi of the Board of Appeal.

Article 112

Decision or opinion of the Enlarged Board of Appeal

- (1) In order to ensure uniform application of the law, or if a point of law of fundamental importance arises:
 - (a) the Board of Appeal shall, during proceedings on a case and either of its own motion or following a request from a party to the appeal, refer any question to the Enlarged Board of Appeal if it considers that a decision is required for the above purposes. If the Board of Appeal rejects the request, it shall give the reasons in its final decision;
 - (b) the President of the European Patent Office may refer a point of law to the Enlarged Board of Appeal where two Boards of Appeal have given different decisions on that question.
- (2) In the cases referred to in paragraph 1(a) the parties to the appeal proceedings shall be parties to the proceedings before the Enlarged Board of Appeal.
- (3) The decision of the Enlarged Board of Appeal referred to in paragraph 1(a) shall be binding on the Board of Appeal in respect of the appeal in question.

Article 112a
Petition for review by the Enlarged Board of Appeal

- (1) Any party to appeal proceedings adversely affected by the decision of the Board of Appeal may file a petition for review of the decision by the Enlarged Board of Appeal.
- (2) The petition may only be filed on the grounds that:
- (a) a member of the Board of Appeal took part in the decision in breach of Article 24, paragraph 1, or despite being excluded pursuant to a decision under Article 24, paragraph 4;
 - (b) the Board of Appeal included a person not appointed as a member of the Boards of Appeal;
 - (c) a fundamental violation of Article 113 occurred;
 - (d) any other fundamental procedural defect defined in the Implementing Regulations occurred in the appeal proceedings; or
 - (e) a criminal act established under the conditions laid down in the Implementing Regulations may have had an impact on the decision.
- (3) The petition for review shall not have suspensive effect.
- (4) The petition for review shall be filed in a reasoned statement, in accordance with the Implementing Regulations. If based on paragraph 2(a) to (d), the petition shall be filed within two months of notification of the decision of the Board of Appeal. If based on paragraph 2(e), the petition shall be filed within two months of the date on which the criminal act has been established and in any event no later than five years from notification of the decision of the Board of Appeal. The petition shall not be deemed to have been filed until after the prescribed fee has been paid.
- (5) The Enlarged Board of Appeal shall examine the petition for review in accordance with the Implementing Regulations. If the petition is allowable, the Enlarged Board of Appeal shall set aside the decision and shall re-open proceedings before the Boards of Appeal in accordance with the Implementing Regulations.
- (6) Any person who, in a designated Contracting State, has in good faith used or made effective and serious preparations for using an invention which is the subject of a published European patent application or a European patent in the period between the decision of the Board of Appeal and publication in the European Patent Bulletin of the mention of the decision of the Enlarged Board of Appeal on the petition, may without payment continue such use in the course of his business or for the needs thereof.

PART VII
COMMON PROVISIONS

Chapter I
Common provisions governing procedure

Article 113
Right to be heard and basis of decisions

- (1) The decisions of the European Patent Office may only be based on grounds or evidence on which the parties concerned have had an opportunity to present their comments.
- (2) The European Patent Office shall examine, and decide upon, the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.

Article 114
Examination by the European Patent Office of its own motion

- (1) In proceedings before it, the European Patent Office shall examine the facts of its own motion; it shall not be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought.
- (2) The European Patent Office may disregard facts or evidence which are not submitted in due time by the parties concerned.

Article 115
Observations by third parties

In proceedings before the European Patent Office, following the publication of the European patent application, any third party may, in accordance with the Implementing Regulations, present observations concerning the patentability of the invention to which the application or patent relates. That person shall not be a party to the proceedings.

Article 116
Oral proceedings

- (1) Oral proceedings shall take place either at the instance of the European Patent Office if it considers this to be expedient or at the request of any party to the proceedings. However, the European Patent Office may reject a request

for further oral proceedings before the same department where the parties and the subject of the proceedings are the same.

(2) Nevertheless, oral proceedings shall take place before the Receiving Section at the request of the applicant only where the Receiving Section considers this to be expedient or where it intends to refuse the European patent application.

(3) Oral proceedings before the Receiving Section, the Examining Divisions and the Legal Division shall not be public.

(4) Oral proceedings, including delivery of the decision, shall be public, as regards the Boards of Appeal and the Enlarged Board of Appeal, after publication of the European patent application, and also before the Opposition Divisions, in so far as the department before which the proceedings are taking place does not decide otherwise in cases where admission of the public could have serious and unjustified disadvantages, in particular for a party to the proceedings.

Article 117 **Means and taking of evidence**

(1) In proceedings before the European Patent Office the means of giving or obtaining evidence shall include the following:

- (a) hearing the parties;
- (b) requests for information;
- (c) production of documents;
- (d) hearing witnesses;
- (e) opinions by experts;
- (f) inspection;
- (g) sworn statements in writing.

(2) The procedure for taking such evidence shall be laid down in the Implementing Regulations.

Article 118 **Unity of the European patent application or European patent**

Where the applicants for or proprietors of a European patent are not the same in respect of different designated Contracting States, they shall be regarded as joint applicants or proprietors for the purposes of proceedings before the European Patent Office. The unity of the application or patent in these proceedings shall not be affected; in particular the text of the application or patent shall be uniform for all designated Contracting States, unless this Convention provides otherwise.

Article 119 **Notification**

Decisions, summonses, notices and communications shall be notified by the European Patent Office of its own motion in accordance with the Implementing Regulations. Notification may, where exceptional circumstances so require, be effected through the intermediary of the central industrial property offices of the Contracting States.

Article 120 **Time limits**

The Implementing Regulations shall specify:

- (a) the time limits which are to be observed in proceedings before the European Patent Office and are not fixed by this Convention;
- (b) the manner of computation of time limits and the conditions under which time limits may be extended;
- (c) the minima and maxima for time limits to be determined by the European Patent Office.

Article 121 **Further processing of the European patent application**

(1) If an applicant fails to observe a time limit vis-à-vis the European Patent Office, he may request further processing of the European patent application.

(2) The European Patent Office shall grant the request, provided that the requirements laid down in the Implementing Regulations are met. Otherwise, it shall reject the request.

(3) If the request is granted, the legal consequences of the failure to observe the time limit shall be deemed not to have ensued.

(4) Further processing shall be ruled out in respect of the time limits in Article 87, paragraph 1, Article 108 and Article 112a, paragraph 4, as well as the time limits for requesting further processing or re-establishment of rights. The Implementing Regulations may rule out further processing for other time limits.

Article 122 **Re-establishment of rights**

(1) An applicant for or proprietor of a European patent who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-à-vis the European Patent Office shall have his rights re-established upon request if the non-observance of this time limit has the direct consequence of causing the refusal of the European patent application or of a request, or the deeming of the application to have been withdrawn, or the revocation of the European patent, or the loss of any other right or means of redress.

(2) The European Patent Office shall grant the request, provided that the conditions of paragraph 1 and any other requirements laid down in the Implementing Regulations are met. Otherwise, it shall reject the request.

(3) If the request is granted, the legal consequences of the failure to observe the time limit shall be deemed not to have ensued.

(4) Re-establishment of rights shall be ruled out in respect of the time limit for requesting re-establishment of rights. The Implementing Regulations may rule out re-establishment for other time limits.

(5) Any person who, in a designated Contracting State, has in good faith used or made effective and serious preparations for using an invention which is the subject of a published European patent application or a European patent in the period between the loss of rights referred to in paragraph 1 and publication in the European Patent Bulletin of the mention of re-establishment of those rights, may without payment continue such use in the course of his business or for the needs thereof.

(6) Nothing in this Article shall limit the right of a Contracting State to grant re-establishment of rights in respect of time limits provided for in this Convention and to be observed vis-à-vis the authorities of such State.

Article 123 **Amendments**

(1) The European patent application or European patent may be amended in proceedings before the European Patent Office, in accordance with the Implementing Regulations. In any event, the applicant shall be given at least one opportunity to amend the application of his own volition.

(2) The European patent application or European patent may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed.

(3) The European patent may not be amended in such a way as to extend the protection it confers.

Article 124 **Information on prior art**

(1) The European Patent Office may, in accordance with the Implementing Regulations, invite the applicant to provide information on prior art taken into consideration in national or regional patent proceedings and concerning an invention to which the European patent application relates.

(2) If the applicant fails to reply in due time to an invitation under paragraph 1, the European patent application shall be deemed to be withdrawn.

Article 125 **Reference to general principles**

In the absence of procedural provisions in this Convention, the European Patent Office shall take into account the principles of procedural law generally recognised in the Contracting States.

Article 126

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Chapter II **Information to the public or to official authorities**

Article 127 **European Patent Register**

The European Patent Office shall keep a European Patent Register, in which the particulars specified in the Implementing Regulations shall be recorded. No entry shall be made in the European Patent Register before the publication of the European patent application. The European Patent Register shall be open to public inspection.

Article 128 **Inspection of files**

- (1) Files relating to European patent applications which have not yet been published shall not be made available for inspection without the consent of the applicant.
- (2) Any person who can prove that the applicant has invoked the rights under the European patent application against him may obtain inspection of the files before the publication of that application and without the consent of the applicant.
- (3) Where a European divisional application or a new European patent application filed under Article 61, paragraph 1, is published, any person may obtain inspection of the files of the earlier application before the publication of that application and without the consent of the applicant.
- (4) After the publication of the European patent application, the files relating to the application and the resulting European patent may be inspected on request, subject to the restrictions laid down in the Implementing Regulations.
- (5) Even before the publication of the European patent application, the European Patent Office may communicate to third parties or publish the particulars specified in the Implementing Regulations.

Article 129 **Periodical publications**

The European Patent Office shall periodically publish:

- (a) a European Patent Bulletin containing the particulars the publication of which is prescribed by this Convention, the Implementing Regulations or the President of the European Patent Office;
- (b) an Official Journal containing notices and information of a general character issued by the President of the European Patent Office, as well as any other information relevant to this Convention or its implementation.

Article 130 **Exchange of information**

- (1) Unless this Convention or national laws provide otherwise, the European Patent Office and the central industrial property office of any Contracting State shall, on request, communicate to each other any useful information regarding European or national patent applications and patents and any proceedings concerning them.
- (2) Paragraph 1 shall apply to the communication of information by virtue of working agreements between the European Patent Office and
 - (a) the central industrial property offices of other States;
 - (b) any intergovernmental organisation entrusted with the task of granting patents;
 - (c) any other organisation.
- (3) Communications under paragraphs 1 and 2(a) and (b) shall not be subject to the restrictions laid down in Article 128. The Administrative Council may decide that communications under paragraph 2(c) shall not be subject to such restrictions, provided that the organisation concerned treats the information communicated as confidential until the European patent application has been published.

Article 131 **Administrative and legal co-operation**

- (1) Unless this Convention or national laws provide otherwise, the European Patent Office and the courts or authorities of Contracting States shall on request give assistance to each other by communicating information or opening files for inspection. Where the European Patent Office makes files available for inspection by courts, Public Prosecutors' Offices or central industrial property offices, the inspection shall not be subject to the restrictions laid down in Article 128.
- (2) At the request of the European Patent Office, the courts or other competent authorities of Contracting States shall undertake, on behalf of the Office and within the limits of their jurisdiction, any necessary enquiries or other legal measures.

Article 132 **Exchange of publications**

- (1) The European Patent Office and the central industrial property offices of the Contracting States shall despatch to each other on request and for their own use one or more copies of their respective publications free of charge.
- (2) The European Patent Office may conclude agreements relating to the exchange or supply of publications.

Chapter III **Representation**

Article 133
General principles of representation

- (1) Subject to paragraph 2, no person shall be compelled to be represented by a professional representative in proceedings established by this Convention.
- (2) Natural or legal persons not having their residence or principal place of business in a Contracting State shall be represented by a professional representative and act through him in all proceedings established by this Convention, other than in filing a European patent application; the Implementing Regulations may permit other exceptions.
- (3) Natural or legal persons having their residence or principal place of business in a Contracting State may be represented in proceedings established by this Convention by an employee, who need not be a professional representative but who shall be authorised in accordance with the Implementing Regulations. The Implementing Regulations may provide whether and under what conditions an employee of a legal person may also represent other legal persons which have their principal place of business in a Contracting State and which have economic connections with the first legal person.
- (4) The Implementing Regulations may lay down special provisions concerning the common representation of parties acting in common.

Article 134
Representation before the European Patent Office

- (1) Representation of natural or legal persons in proceedings established by this Convention may only be undertaken by professional representatives whose names appear on a list maintained for this purpose by the European Patent Office.
- (2) Any natural person who
 - (a) is a national of a Contracting State,
 - (b) has his place of business or employment in a Contracting State and
 - (c) has passed the European qualifying examinationmay be entered on the list of professional representatives.
- (3) During a period of one year from the date on which the accession of a State to this Convention takes effect, entry on that list may also be requested by any natural person who
 - (a) is a national of a Contracting State,
 - (b) has his place of business or employment in the State having acceded to the Convention and
 - (c) is entitled to represent natural or legal persons in patent matters before the central industrial property office of that State. Where such entitlement is not conditional upon the requirement of special professional qualifications, the person shall have regularly so acted in that State for at least five years.
- (4) Entry shall be effected upon request, accompanied by certificates indicating that the conditions laid down in paragraph 2 or 3 are fulfilled.
- (5) Persons whose names appear on the list of professional representatives shall be entitled to act in all proceedings established by this Convention.
- (6) For the purpose of acting as a professional representative, any person whose name appears on the list of professional representatives shall be entitled to establish a place of business in any Contracting State in which proceedings established by this Convention may be conducted, having regard to the Protocol on Centralisation annexed to this Convention. The authorities of such State may remove that entitlement in individual cases only in application of legal provisions adopted for the purpose of protecting public security and law and order. Before such action is taken, the President of the European Patent Office shall be consulted.
- (7) The President of the European Patent Office may grant exemption from:
 - (a) the requirement of paragraphs 2(a) or 3(a) in special circumstances;
 - (b) the requirement of paragraph 3(c), second sentence, if the applicant furnishes proof that he has acquired the requisite qualification in another way.
- (8) Representation in proceedings established by this Convention may also be undertaken, in the same way as by a professional representative, by any legal practitioner qualified in a Contracting State and having his place of business in that State, to the extent that he is entitled in that State to act as a professional representative in patent matters. Paragraph 6 shall apply *mutatis mutandis*.

Article 134a
Institute of Professional Representatives before the European Patent Office

- (1) The Administrative Council shall be competent to adopt and amend provisions governing:
 - (a) the Institute of Professional Representatives before the European Patent Office, hereinafter referred to as the Institute;
 - (b) the qualifications and training required of a person for admission to the European qualifying examination and the conduct of such examination;

- (c) the disciplinary power exercised by the Institute or the European Patent Office in respect of professional representatives;
 - (d) the obligation of confidentiality on the professional representative and the privilege from disclosure in proceedings before the European Patent Office in respect of communications between a professional representative and his client or any other person.
- (2) Any person entered on the list of professional representatives referred to in Article 134, paragraph 1, shall be a member of the Institute.

PART VIII IMPACT ON NATIONAL LAW

Chapter I Conversion into a national patent application

Article 135 Request for conversion

- (1) The central industrial property office of a designated Contracting State shall, at the request of the applicant for or proprietor of a European patent, apply the procedure for the grant of a national patent in the following circumstances:
- (a) where the European patent application is deemed to be withdrawn under Article 77, paragraph 3;
 - (b) in such other cases as are provided for by the national law, in which the European patent application is refused or withdrawn or deemed to be withdrawn, or the European patent is revoked under this Convention.
- (2) In the case referred to in paragraph 1(a), the request for conversion shall be filed with the central industrial property office with which the European patent application has been filed. That office shall, subject to the provisions governing national security, transmit the request directly to the central industrial property offices of the Contracting States specified therein.
- (3) In the cases referred to in paragraph 1(b), the request for conversion shall be submitted to the European Patent Office in accordance with the Implementing Regulations. It shall not be deemed to be filed until the conversion fee has been paid. The European Patent Office shall transmit the request to the central industrial property offices of the Contracting States specified therein.
- (4) The effect of the European patent application referred to in Article 66 shall lapse if the request for conversion is not submitted in due time.

Article 136

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Article 137 Formal requirements for conversion

- (1) A European patent application transmitted in accordance with Article 135, paragraph 2 or 3, shall not be subjected to formal requirements of national law which are different from or additional to those provided for in this Convention.
- (2) Any central industrial property office to which the European patent application is transmitted may require that the applicant shall, within a period of not less than two months:
- (a) pay the national application fee; and
 - (b) file a translation of the original text of the European patent application in an official language of the State in question and, where appropriate, of the text as amended during proceedings before the European Patent Office which the applicant wishes to use as the basis for the national procedure.

Chapter II Revocation and prior rights

Article 138 Revocation of European patents

- (1) Subject to Article 139, a European patent may be revoked with effect for a Contracting State only on the grounds that:
- (a) the subject-matter of the European patent is not patentable under Articles 52 to 57;
 - (b) the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;

- (c) the subject-matter of the European patent extends beyond the content of the application as filed or, if the patent was granted on a divisional application or on a new application filed under Article 61, beyond the content of the earlier application as filed;
- (d) the protection conferred by the European patent has been extended; or
- (e) the proprietor of the European patent is not entitled under Article 60, paragraph 1.
- (2) If the grounds for revocation affect the European patent only in part, the patent shall be limited by a corresponding amendment of the claims and revoked in part.
- (3) In proceedings before the competent court or authority relating to the validity of the European patent, the proprietor of the patent shall have the right to limit the patent by amending the claims. The patent as thus limited shall form the basis for the proceedings.

Article 139

Prior rights and rights arising on the same date

- (1) In any designated Contracting State a European patent application and a European patent shall have with regard to a national patent application and a national patent the same prior right effect as a national patent application and a national patent.
- (2) A national patent application and a national patent in a Contracting State shall have with regard to a European patent designating that Contracting State the same prior right effect as if the European patent were a national patent.
- (3) Any Contracting State may prescribe whether and on what terms an invention disclosed in both a European patent application or patent and a national application or patent having the same date of filing or, where priority is claimed, the same date of priority, may be protected simultaneously by both applications or patents.

Chapter III

Miscellaneous effects

Article 140

National utility models and utility certificates

Articles 66, 124, 135, 137 and 139 shall apply to utility models and utility certificates and to applications for utility models and utility certificates registered or deposited in the Contracting States whose laws make provision for such models or certificates.

Article 141

Renewal fees for European patents

- (1) Renewal fees for a European patent may only be imposed for the years which follow that referred to in Article 86, paragraph 2.
- (2) Any renewal fees falling due within two months of the publication in the European Patent Bulletin of the mention of the grant of the European patent shall be deemed to have been validly paid if they are paid within that period. Any additional fee provided for under national law shall not be charged.

PART IX

SPECIAL AGREEMENTS

Article 142

Unitary patents

- (1) Any group of Contracting States, which has provided by a special agreement that a European patent granted for those States has a unitary character throughout their territories, may provide that a European patent may only be granted jointly in respect of all those States.
- (2) Where any group of Contracting States has availed itself of the authorisation given in paragraph 1, the provisions of this Part shall apply.

Article 143

Special departments of the European Patent Office

- (1) The group of Contracting States may give additional tasks to the European Patent Office.
- (2) Special departments common to the Contracting States in the group may be set up within the European Patent Office in order to carry out the additional tasks. The President of the European Patent Office shall direct such special departments; Article 10, paragraphs 2 and 3, shall apply mutatis mutandis.

Article 144

Representation before special departments

The group of Contracting States may lay down special provisions to govern representation of parties before the departments referred to in Article 143, paragraph 2.

Article 145
Select committee of the Administrative Council

(1) The group of Contracting States may set up a select committee of the Administrative Council for the purpose of supervising the activities of the special departments set up under Article 143, paragraph 2; the European Patent Office shall place at its disposal such staff, premises and equipment as may be necessary for the performance of its duties. The President of the European Patent Office shall be responsible for the activities of the special departments to the select committee of the Administrative Council.

(2) The composition, powers and functions of the select committee shall be determined by the group of Contracting States.

Article 146
Cover for expenditure for carrying out special tasks

Where additional tasks have been given to the European Patent Office under Article 143, the group of Contracting States shall bear the expenses incurred by the Organisation in carrying out these tasks. Where special departments have been set up in the European Patent Office to carry out these additional tasks, the group shall bear the expenditure on staff, premises and equipment chargeable in respect of these departments. Article 39, paragraphs 3 and 4, Article 41 and Article 47 shall apply mutatis mutandis.

Article 147
Payments in respect of renewal fees for unitary patents

If the group of Contracting States has fixed a common scale of renewal fees in respect of European patents, the proportion referred to in Article 39, paragraph 1, shall be calculated on the basis of the common scale; the minimum amount referred to in Article 39, paragraph 1, shall apply to the unitary patent. Article 39, paragraphs 3 and 4, shall apply mutatis mutandis.

Article 148
The European patent application as an object of property

(1) Article 74 shall apply unless the group of Contracting States has specified otherwise.

(2) The group of Contracting States may provide that a European patent application for which these Contracting States are designated may only be transferred, mortgaged or subjected to any legal means of execution in respect of all the Contracting States of the group and in accordance with the provisions of the special agreement.

Article 149
Joint designation

(1) The group of Contracting States may provide that these States may only be designated jointly, and that the designation of one or some only of such States shall be deemed to constitute the designation of all the States of the group.

(2) Where the European Patent Office acts as a designated Office under Article 153, paragraph 1, paragraph 1 shall apply if the applicant has indicated in the international application that he wishes to obtain a European patent for one or more of the designated States of the group. The same shall apply if the applicant designates in the international application one of the Contracting States in the group, whose national law provides that the designation of that State shall have the effect of the application being for a European patent.

Article 149a
Other agreements between the Contracting States

(1) Nothing in this Convention shall be construed as limiting the right of some or all of the Contracting States to conclude special agreements on any matters concerning European patent applications or European patents which under this Convention are subject to and governed by national law, such as, in particular

(a) an agreement establishing a European patent court common to the Contracting States party to it;

(b) an agreement establishing an entity common to the Contracting States party to it to deliver, at the request of national courts or quasi-judicial authorities, opinions on issues of European or harmonised national patent law;

(c) an agreement under which the Contracting States party to it dispense fully or in part with translations of European patents under Article 65;

(d) an agreement under which the Contracting States party to it provide that translations of European patents as required under Article 65 may be filed with, and published by, the European Patent Office.

(2) The Administrative Council shall be competent to decide that:

- (a) the members of the Boards of Appeal or the Enlarged Board of Appeal may serve on a European patent court or a common entity and take part in proceedings before that court or entity in accordance with any such agreement;
- (b) the European Patent Office shall provide a common entity with such support staff, premises and equipment as may be necessary for the performance of its duties, and the expenses incurred by that entity shall be borne fully or in part by the Organisation.

PART X INTERNATIONAL APPLICATIONS UNDER THE PATENT COOPERATION TREATY – EURO-PCT APPLICATIONS

Article 150 Application of the Patent Cooperation Treaty

(1) The Patent Cooperation Treaty of 19 June 1970, hereinafter referred to as the PCT, shall be applied in accordance with the provisions of this Part.

(2) International applications filed under the PCT may be the subject of proceedings before the European Patent Office. In such proceedings, the provisions of the PCT and its Regulations shall be applied, supplemented by the provisions of this Convention. In case of conflict, the provisions of the PCT or its Regulations shall prevail.

Article 151 The European Patent Office as a receiving Office

The European Patent Office shall act as a receiving Office within the meaning of the PCT, in accordance with the Implementing Regulations. Article 75, paragraph 2, shall apply.

Article 152 The European Patent Office as an International Searching Authority or International Preliminary Examining Authority

The European Patent Office shall act as an International Searching Authority and International Preliminary Examining Authority within the meaning of the PCT, in accordance with an agreement between the Organisation and the International Bureau of the World Intellectual Property Organization, for applicants who are residents or nationals of a State party to this Convention. This agreement may provide that the European Patent Office shall also act for other applicants.

Article 153 The European Patent Office as designated Office or elected Office

(1) The European Patent Office shall be

(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

(b) an elected Office, if the applicant has elected a State designated pursuant to letter (a).

(2) An international application for which the European Patent Office is a designated or elected Office, and which has been accorded an international date of filing, shall be equivalent to a regular European application (Euro-PCT application).

(3) The international publication of a Euro-PCT application in an official language of the European Patent Office shall take the place of the publication of the European patent application and shall be mentioned in the European Patent Bulletin.

(4) If the Euro-PCT application is published in another language, a translation into one of the official languages shall be filed with the European Patent Office, which shall publish it. Subject to Article 67, paragraph 3, the provisional protection under Article 67, paragraphs 1 and 2, shall be effective from the date of that publication.

(5) The Euro-PCT application shall be treated as a European patent application and shall be considered as comprised in the state of the art under Article 54, paragraph 3, if the conditions laid down in paragraph 3 or 4 and in the Implementing Regulations are fulfilled.

(6) The international search report drawn up in respect of a Euro-PCT application or the declaration replacing it, and their international publication, shall take the place of the European search report and the mention of its publication in the European Patent Bulletin.

(7) A supplementary European search report shall be drawn up in respect of any Euro-PCT application under paragraph 5. The Administrative Council may decide that the supplementary search report is to be dispensed with or that the search fee is to be reduced.

Article 154

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Article 155

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Article 156

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Article 157

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Article 158

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**PART XI
TRANSITIONAL PROVISIONS**

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**PART XII
FINAL PROVISIONS****Article 164
Implementing Regulations and Protocols**

(1) The Implementing Regulations, the Protocol on Recognition, the Protocol on Privileges and Immunities, the Protocol on Centralisation, the Protocol on the Interpretation of Article 69 and the Protocol on Staff Complement shall be integral parts of this Convention.

(2) In case of conflict between the provisions of this Convention and those of the Implementing Regulations, the provisions of this Convention shall prevail.

**Article 165
Signature – Ratification**

(1) This Convention shall be open for signature until 5 April 1974 by the States which took part in the Inter-Governmental Conference for the setting up of a European System for the Grant of Patents or were informed of the holding of that conference and offered the option of taking part therein.

(2) This Convention shall be subject to ratification; instruments of ratification shall be deposited with the Government of the Federal Republic of Germany.

**Article 166
Accession**

(1) This Convention shall be open to accession by:

(a) the States referred to in Article 165, paragraph 1;

(b) any other European State at the invitation of the Administrative Council.

(2) Any State which has been a party to the Convention and has ceased to be so as a result of the application of Article 172, paragraph 4, may again become a party to the Convention by acceding to it.

(3) Instruments of accession shall be deposited with the Government of the Federal Republic of Germany.

Article 167

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**Article 168
Territorial field of application**

(1) Any Contracting State may declare in its instrument of ratification or accession, or may inform the Government of the Federal Republic of Germany by written notification at any time thereafter, that this Convention shall be applicable to one or more of the territories for the external relations of which it is responsible. European patents granted for that Contracting State shall also have effect in the territories for which such a declaration has taken effect.

(2) If the declaration referred to in paragraph 1 is contained in the instrument of ratification or accession, it shall take effect on the same date as the ratification or accession; if the declaration is notified after the deposit of the instrument of ratification or accession, such notification shall take effect six months after the date of its receipt by the Government of the Federal Republic of Germany.

(3) Any Contracting State may at any time declare that the Convention shall cease to apply to some or to all of the territories in respect of which it has given notification pursuant to paragraph 1. Such declaration shall take effect one year after the date on which the Government of the Federal Republic of Germany received notification thereof.

Article 169 **Entry into force**

(1) This Convention shall enter into force three months after the deposit of the last instrument of ratification or accession by six States on whose territory the total number of patent applications filed in 1970 amounted to at least 180 000 for all the said States.

(2) Any ratification or accession after the entry into force of this Convention shall take effect on the first day of the third month after the deposit of the instrument of ratification or accession.

Article 170 **Initial contribution**

(1) Any State which ratifies or accedes to this Convention after its entry into force shall pay to the Organisation an initial contribution, which shall not be refunded.

(2) The initial contribution shall be 5% of an amount calculated by applying the percentage obtained for the State in question, on the date on which ratification or accession takes effect, in accordance with the scale provided for in Article 40, paragraphs 3 and 4, to the sum of the special financial contributions due from the other Contracting States in respect of the accounting periods preceding the date referred to above.

(3) In the event that special financial contributions were not required in respect of the accounting period immediately preceding the date referred to in paragraph 2, the scale of contributions referred to in that paragraph shall be the scale that would have been applicable to the State concerned in respect of the last year for which financial contributions were required.

Article 171 **Duration of the Convention**

The present Convention shall be of unlimited duration.

Article 172 **Revision**

(1) This Convention may be revised by a Conference of the Contracting States.

(2) The Conference shall be prepared and convened by the Administrative Council. The Conference shall not be validly constituted unless at least three-quarters of the Contracting States are represented at it. Adoption of the revised text shall require a majority of three-quarters of the Contracting States represented and voting at the Conference. Abstentions shall not be considered as votes.

(3) The revised text shall enter into force when it has been ratified or acceded to by the number of Contracting States specified by the Conference, and at the time specified by that Conference.

(4) Such States as have not ratified or acceded to the revised text of the Convention at the time of its entry into force shall cease to be parties to this Convention as from that time.

Article 173 **Disputes between Contracting States**

(1) Any dispute between Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiation shall be submitted, at the request of one of the States concerned, to the Administrative Council, which shall endeavour to bring about agreement between the States concerned.

(2) If such agreement is not reached within six months from the date when the dispute was referred to the Administrative Council, any one of the States concerned may submit the dispute to the International Court of Justice for a binding decision.

Article 174 Denunciation

Any Contracting State may at any time denounce this Convention. Denunciation shall be notified to the Government of the Federal Republic of Germany. It shall take effect one year after the date of receipt of such notification.

Article 175 Preservation of acquired rights

(1) In the event of a State ceasing to be party to this Convention in accordance with Article 172, paragraph 4, or Article 174, rights already acquired pursuant to this Convention shall not be impaired.

(2) A European patent application which is pending when a designated State ceases to be party to the Convention shall be processed by the European Patent Office, as far as that State is concerned, as if the Convention in force thereafter were applicable to that State.

(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.

(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.

Article 176 Financial rights and obligations of former Contracting States

(1) Any State which has ceased to be a party to this Convention in accordance with Article 172, paragraph 4, or Article 174, shall have the special financial contributions which it has paid pursuant to Article 40, paragraph 2, refunded to it by the Organisation only at the time when and under the conditions whereby the Organisation refunds special financial contributions paid by other States during the same accounting period.

(2) The State referred to in paragraph 1 shall, even after ceasing to be a party to this Convention, continue to pay the proportion pursuant to Article 39 of renewal fees in respect of European patents remaining in force in that State, at the rate current on the date on which it ceased to be a party.

Article 177 Languages of the Convention

(1) This Convention, drawn up in a single original, in the English, French and German languages, shall be deposited in the archives of the Government of the Federal Republic of Germany, the three texts being equally authentic.

(2) The texts of this Convention drawn up in official languages of Contracting States other than those specified in paragraph 1 shall, if they have been approved by the Administrative Council, be considered as official texts. In the event of disagreement on the interpretation of the various texts, the texts referred to in paragraph 1 shall be authentic.

Article 178 Transmission and notifications

(1) The Government of the Federal Republic of Germany shall draw up certified true copies of this Convention and shall transmit them to the Governments of all signatory or acceding States.

(2) The Government of the Federal Republic of Germany shall notify to the Governments of the States referred to in paragraph 1:

(a) the deposit of any instrument of ratification or accession;

(b) any declaration or notification received pursuant to Article 168;

(c) any denunciation received pursuant to Article 174 and the date on which such denunciation comes into force.

(3) The Government of the Federal Republic of Germany shall register this Convention with the Secretariat of the United Nations.

Implementing Regulations to the Convention on the Grant of European Patents of 5 October 1973

PART I IMPLEMENTING REGULATIONS TO PART I OF THE CONVENTION

Chapter I General provisions

Rule 1 Written proceedings

In written proceedings before the European Patent Office, the requirement to use the written form shall be satisfied if the content of the documents can be reproduced in a legible form on paper.

Rule 2 Filing of and formal requirements for documents

(1) In proceedings before the European Patent Office, documents may be filed by delivery by hand, by postal services or by means of electronic communication. The President of the European Patent Office shall lay down the details and conditions and, where appropriate, any special formal or technical requirements for the filing of documents. In particular, he may specify that confirmation must be supplied. If such confirmation is not supplied in due time, the European patent application shall be refused; documents filed subsequently shall be deemed not to have been received.

(2) Where the Convention provides that a document must be signed, the authenticity of the document may be confirmed by handwritten signature or other appropriate means the use of which has been permitted by the President of the European Patent Office. A document authenticated by such other means shall be deemed to meet the legal requirements of signature in the same way as a document bearing a handwritten signature which has been filed in paper form.

Rule 3 Language in written proceedings

(1) In written proceedings before the European Patent Office, any party may use any official language of the European Patent Office. The translation referred to in Article 14, paragraph 4, may be filed in any official language of the European Patent Office.

(2) Amendments to a European patent application or European patent shall be filed in the language of the proceedings.

(3) Documentary evidence and, in particular, publications may be filed in any language. The European Patent Office may, however, require that a translation in one of its official languages be filed, within a period to be specified. If a required translation is not filed in due time, the European Patent Office may disregard the document in question.

Rule 4 Language in oral proceedings

(1) Any party to oral proceedings before the European Patent Office may use an official language of the European Patent Office other than the language of the proceedings, if such party gives notice to the European Patent Office at least one month before the date of such oral proceedings or provides for interpretation into the language of the proceedings. Any party may use an official language of a Contracting State, if he provides for interpretation into the language of the proceedings. The European Patent Office may permit derogations from these provisions.

(2) In the course of oral proceedings, employees of the European Patent Office may use an official language of the European Patent Office other than the language of the proceedings.

(3) Where evidence is taken, any party, witness or expert to be heard who is unable to express himself adequately in an official language of the European Patent Office or of a Contracting State may use another language. Where evidence is taken upon request of a party, parties, witnesses or experts expressing themselves in a language other than an official language of the European Patent Office shall be heard only if that party provides for interpretation into the language of the proceedings. The European Patent Office may, however, permit interpretation into one of its other official languages.

(4) If the parties and the European Patent Office agree, any language may be used.

(5) The European Patent Office shall, if necessary, provide at its own expense interpretation into the language of the proceedings, or, where appropriate, into its other official languages, unless such interpretation is the responsibility of one of the parties.

(6) Statements by employees of the European Patent Office, parties, witnesses or experts, made in an official language of the European Patent Office, shall be entered in the minutes in that language. Statements made in any other language shall be entered in the official language into which they are translated. Amendments to a European patent application or European patent shall be entered in the minutes in the language of the proceedings.

Rule 5 Certification of translations

Where the translation of a document is required, the European Patent Office may require that a certificate that the translation corresponds to the original text be filed within a period to be specified. If the certificate is not filed in due time, such document shall be deemed not to have been filed, unless otherwise provided.

Rule 6
Filing of translations and reduction of fees

- (1) A translation under Article 14, paragraph 2, shall be filed within two months of filing the European patent application.
- (2) A translation under Article 14, paragraph 4, shall be filed within one month of filing the document. This shall also apply to requests under Article 105a. Where the document is a notice of opposition or appeal, or a statement of grounds of appeal, or a petition for review, the translation may be filed within the period for filing such a notice or statement or petition, if that period expires later.
- (3) Where a person referred to in Article 14, paragraph 4, files a European patent application or a request for examination in a language admitted in that provision, the filing fee or examination fee shall be reduced in accordance with the Rules relating to Fees.
- (4) The reduction referred to in paragraph 3 shall be available for:
- (a) small and medium-sized enterprises;
 - (b) natural persons; or
 - (c) non-profit organisations, universities or public research organisations.
- (5) For the purposes of paragraph 4(a), Commission recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises as published in the Official Journal of the European Union L 124, p. 36 of 20 May 2003 shall apply.
- (6) An applicant wishing to benefit from the fee reduction referred to in paragraph 3 shall declare himself to be an entity or a natural person within the meaning of paragraph 4. In case of reasonable doubt as to the veracity of such declaration, the Office may require evidence.
- (7) In case of multiple applicants, each applicant shall be an entity or a natural person within the meaning of paragraph 4.

Rule 7
Legal authenticity of the translation of the European patent application

Unless evidence is provided to the contrary, the European Patent Office shall assume, for the purpose of determining whether the subject-matter of the European patent application or European patent extends beyond the content of the application as filed, that the translation filed under Article 14, paragraph 2, or Rule 40, paragraph 3, is in conformity with the original text of the application.

Chapter II
Organisation of the European Patent Office

Section 1
General matters

Rule 8
Patent classification

The European Patent Office shall use the classification referred to in Article 1 of the Strasbourg Agreement concerning the International Patent Classification of 24 March 1971, hereinafter referred to as the international classification.

Rule 9
Administrative structure of the European Patent Office

- (1) The European Patent Office shall be divided administratively into Directorates-General, to which the departments specified in Article 15(a) to (e), and the services set up to deal with legal matters and the internal administration of the Office, shall be assigned.
- (2) Each Directorate-General shall be directed by a Vice-President. The assignment of a Vice-President to a Directorate-General shall be decided by the Administrative Council, after the President of the European Patent Office has been consulted.

Rule 10
Responsibility of the Receiving Section and the Examining Division

- (1) The Receiving Section shall be responsible for the examination on filing and the examination as to formal requirements of a European patent application up to the time when the Examining Division becomes responsible for the examination of the European patent application under Article 94, paragraph 1.
- (2) Subject to paragraphs 3 and 4, the Examining Division shall be responsible for the examination of a European patent application under Article 94, paragraph 1, from the time when a request for examination is filed.
- (3) If a request for examination is filed before the European search report has been transmitted to the applicant, the Examining Division shall, subject to paragraph 4, be responsible from the time when the European Patent Office receives the indication under Rule 70, paragraph 2.
- (4) If a request for examination is filed before the European search report has been transmitted to the applicant, and if the applicant has waived the right under Rule 70, paragraph 2, the Examining Division shall be responsible from the time when the search report is transmitted to the applicant.

Rule 11
Allocation of duties to the departments of first instance

- (1) Technically qualified examiners acting as members of Search, Examining or Opposition Divisions shall be assigned to Directorates. The President of the European Patent Office shall allocate duties to these Directorates by reference to the international classification.
- (2) The President of the European Patent Office may allocate further duties to the Receiving Section, the Search, Examining and Opposition Divisions, and the Legal Division, in addition to the responsibilities vested in them under the Convention.
- (3) The President of the European Patent Office may entrust to employees who are not technically or legally qualified examiners the execution of duties falling to the Search, Examining or Opposition Divisions and involving no technical or legal difficulties.

Section 2
Organisation of the Boards of Appeal and the Enlarged Board of Appeal

Rule 12

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Rule 12a
Organisation and management of the Boards of Appeal Unit and President of the Boards of Appeal

- (1) The Boards of Appeal and the Enlarged Board of Appeal, including their registries and support services, shall be organised as a separate unit (the "Boards of Appeal Unit") and be directed by the President of the Boards of Appeal. The Chairman of the Enlarged Board of Appeal shall act as President of the Boards of Appeal. The President of the Boards of Appeal shall be appointed by the Administrative Council on a joint proposal made by the Committee established under Rule 12c, paragraph 1, and the President of the European Patent Office. If the President of the Boards of Appeal is absent or indisposed, one of the members of the Enlarged Board of Appeal shall take his place in accordance with the procedure laid down by the Administrative Council.
- (2) The President of the Boards of Appeal shall manage the Boards of Appeal Unit and, to this end, have the functions and powers delegated to him by the President of the European Patent Office. In exercising the delegated functions and powers, the President of the Boards of Appeal shall be responsible solely to the Administrative Council and shall be subject to its hierarchical and disciplinary authority.
- (3) Without prejudice to Article 10, paragraph 2(d), and Article 46, the President of the Boards of Appeal shall prepare a substantiated budget request for the Boards of Appeal Unit. This request shall be examined and discussed with the relevant departments of the European Patent Office, and be presented by the President of the Boards of Appeal to the Committee established under Rule 12c, paragraph 1, for opinion, before being forwarded to the President of the European Patent Office for consideration for the yearly draft budget. The President of the European Patent Office shall provide the President of the Boards of Appeal with the necessary resources, as set out in the adopted budget.
- (4) The President of the European Patent Office shall make the services mentioned in Rule 9, paragraph 1, available to the President of the Boards of Appeal as far as necessary and within the limits of the adopted budget.

Rule 12b
Presidium of the Boards of Appeal and business distribution scheme for the Boards of Appeal

- (1) The autonomous authority within the Boards of Appeal Unit (the "Presidium of the Boards of Appeal") shall consist of the President of the Boards of Appeal, who shall act as chairman, and twelve members of the Boards of Appeal, six being Chairmen and six being other members.
- (2) All members of the Presidium shall be elected by the Chairmen and members of the Boards of Appeal for two working years. If the full composition of the Presidium cannot be reached, the vacancies shall be filled by designating the most senior Chairmen and members.
- (3) The Presidium shall:
 - (a) adopt the Rules of Procedure for the election and designation of its members;
 - (b) adopt, without prejudice to regulations adopted in accordance with Article 10, paragraph 2(c), and Article 33, paragraph 2(b), a Code of Conduct for the members and Chairmen of the Boards of Appeal and of the Enlarged Board of Appeal, which shall be subject to the approval of the Administrative Council;
 - (c) advise the President of the Boards of Appeal on proposals for amendments to the Rules of Procedure of the Boards of Appeal and of the Enlarged Board of Appeal;
 - (d) advise the President of the Boards of Appeal on matters concerning the functioning of the Boards of Appeal Unit in general.
- (4) Before the beginning of each working year, the Presidium, extended to include all Chairmen, shall allocate duties to the Boards of Appeal. In the same composition, it shall decide on conflicts regarding the allocation of duties between two or more Boards of Appeal. The extended Presidium shall designate the regular and alternate members of the various Boards of Appeal. Any member of a Board of Appeal may be designated as a member of more than one Board of Appeal. These measures may, where necessary, be amended during the course of the working year in question.
- (5) The Presidium may only take a decision if at least five of its members are present; these must include the President of the Boards of Appeal or his deputy, and the Chairmen of two Boards of Appeal. Where the tasks mentioned in paragraph 4 are concerned, nine members must be present, including the President of the Boards of Appeal or his deputy, and the Chairmen of three Boards of Appeal. Decisions shall be taken by a majority vote; in the event of parity of votes, the Chairman or his deputy shall have the casting vote. Abstentions shall not be considered as votes.
- (6) The Administrative Council may allocate duties under Article 134a, paragraph 1(c), to the Boards of Appeal.

Rule 12c

Boards of Appeal Committee and procedure for adoption of the Rules of Procedure of the Boards of Appeal and of the Enlarged Board of Appeal

- (1) The Administrative Council shall set up a committee (the "Boards of Appeal Committee") to advise it and the President of the Boards of Appeal on the Boards of Appeal Unit in general and to adopt the Rules of Procedure of the Boards of Appeal and of the Enlarged Board of Appeal. The Committee shall be composed of six members appointed by the Administrative Council, three from among the delegations of the Contracting States within the meaning of Article 26, and three from among serving or former judges of international or European courts or of national courts of the Contracting States. The President of the European Patent Office and the President of the Boards of Appeal shall have the right to attend the Committee's meetings. Further details, in particular as to the Committee's composition, alternate members, working arrangements and functions in advising the Boards of Appeal Unit, shall be determined by the Administrative Council in the decision setting up the Committee.
- (2) On a proposal from the President of the Boards of Appeal and after the President of the European Patent Office has been given the opportunity to comment, the Committee set up under paragraph 1 shall adopt the Rules of Procedure of the Boards of Appeal and of the Enlarged Board of Appeal.

Rule 12d

Appointment and re-appointment of the members, including the Chairmen, of the Boards of Appeal and of the Enlarged Board of Appeal

- (1) The Chairman of the Enlarged Board of Appeal shall, on his appointment, also be appointed as a legally qualified member of the Boards of Appeal.
- (2) Upon delegation from the President of the European Patent Office, the President of the Boards of Appeal shall exercise the right to propose the members, including the Chairmen, of the Boards of Appeal and the members of the Enlarged Board of Appeal for appointment by the Administrative Council, and the right to be consulted on their reappointment (Article 11, paragraph 3) and on the appointment and reappointment of external legally qualified members (Article 11, paragraph 5).
- (3) The President of the Boards of Appeal shall exercise the right under paragraph 2 to be consulted on re appointments by submitting a reasoned opinion, including an evaluation of the member's or Chairman's performance, to the Administrative Council. The criteria for evaluating performance shall be set by the President of the Boards of Appeal in consultation with the Committee established under Rule 12c, paragraph 1. Subject to a positive opinion and performance evaluation and the number of posts under Article 11, paragraph 3, available in the adopted budget for the Boards of Appeal Unit, the members, including the Chairmen, of the Boards of Appeal and the members of the Enlarged Board of Appeal shall be re-appointed at the end of their five-year term under Article 23, paragraph 1.

Rule 13

Business distribution scheme for the Enlarged Board of Appeal

Before the beginning of each working year, the members of the Enlarged Board of Appeal appointed under Article 11, paragraph 3, shall designate the regular and alternate members of the Enlarged Board of Appeal in proceedings under Article 22, paragraph 1(a) and (b), and the regular and alternate members in proceedings under Article 22, paragraph 1(c). Decisions may only be taken if at least five members are present, including the Chairman of the Enlarged Board of Appeal or his deputy; in the event of parity of votes, the Chairman or his deputy shall have the casting vote. Abstentions shall not be considered as votes.

PART II IMPLEMENTING REGULATIONS TO PART II OF THE CONVENTION

Chapter I Procedure where the applicant is not entitled

Rule 14 Stay of proceedings

(1) If a third party provides evidence that he has instituted proceedings against the applicant seeking a decision within the meaning of Article 61, paragraph 1, the proceedings for grant shall be stayed unless the third party communicates to the European Patent Office in writing his consent to the continuation of such proceedings. Such consent shall be irrevocable. However, proceedings for grant shall not be stayed before the publication of the European patent application.

(2) Where evidence is provided that a final decision within the meaning of Article 61, paragraph 1, has been taken, the European Patent Office shall inform the applicant and any other party that the proceedings for grant shall be resumed as from the date stated in the communication, unless a new European patent application under Article 61, paragraph 1(b), has been filed for all the designated Contracting States. If the decision is in favour of the third party, the proceedings may not be resumed earlier than three months after the decision has become final, unless the third party requests the resumption.

(3) Upon staying the proceedings for grant, or thereafter, the European Patent Office may set a date on which it intends to resume the proceedings for grant, regardless of the stage reached in the national proceedings instituted under paragraph 1. It shall communicate this date to the third party, the applicant and any other party. If no evidence has been provided by that date that a final decision has been taken, the European Patent Office may resume proceedings.

(4) All periods other than those for the payment of renewal fees, running at the date of the stay of proceedings, shall be interrupted by such stay. The time which has not yet elapsed shall begin to run from the date on which proceedings are resumed. However, the time still to run after such resumption shall not be less than two months.

Rule 15 Limitation on withdrawals

From the date on which a third party provides evidence that he has instituted national proceedings under Rule 14, paragraph 1, and up to the date on which the proceedings for grant are resumed, neither the European patent application nor the designation of any Contracting State may be withdrawn.

Rule 16 Procedure under Article 61, paragraph 1

(1) A person entitled to the grant of a European patent may only avail himself of the remedies under Article 61, paragraph 1, if:

- (a) he does so no later than three months after the decision recognising his entitlement has become final, and
- (b) the European patent has not yet been granted.

(2) Such remedies shall only apply in respect of Contracting States designated in the European patent application in which the decision has been taken or recognised or must be recognised on the basis of the Protocol on Recognition.

Rule 17 Filing of a new European patent application by the entitled person

(1) Where the person adjudged by a final decision to be entitled to the grant of the European patent files a new European patent application under Article 61, paragraph 1(b), the original application shall be deemed to be withdrawn on the date of filing the new application for the Contracting States designated therein in which the decision has been taken or recognised or must be recognised on the basis of the Protocol on Recognition.

(2) The filing fee and search fee shall be paid within one month of filing the new application. If the filing fee or search fee is not paid in due time, the application shall be deemed to be withdrawn.

(3) The designation fee shall be paid within six months of the date on which the European Patent Bulletin mentions the publication of the European search report drawn up in respect of the new application. Rule 39, paragraphs 2 and 3, shall apply.

Rule 18

Partial transfer of the right to the European patent

(1) If a final decision determines that a third party is entitled to the grant of a European patent in respect of only part of the subject-matter disclosed in the original European patent application, Article 61 and Rules 16 and 17 shall apply to such part.

(2) Where appropriate, the original European patent application shall contain, for the designated Contracting States in which the decision was taken or recognised or must be recognised on the basis of the Protocol on Recognition, claims, a description and drawings which are different from those for the other designated Contracting States.

Chapter II

Mention of the inventor

Rule 19

Designation of the inventor

(1) The request for grant of a European patent shall contain the designation of the inventor. However, if the applicant is not the inventor or is not the sole inventor, the designation shall be filed in a separate document. The designation shall state the family name, given names and full address of the inventor, contain the statement referred to in Article 81 and bear the signature of the applicant or his representative.

(2) The European Patent Office shall not verify the accuracy of the designation of the inventor.

(3) If the applicant is not the inventor or is not the sole inventor, the European Patent Office shall communicate to the designated inventor the information in the document designating him and the following data:

(a) the number of the European patent application;

(b) the date of filing of the European patent application and, if priority has been claimed, the date, State and file number of the previous application;

(c) the name of the applicant;

(d) the title of the invention;

(e) the Contracting States designated.

(4) The applicant and the inventor may invoke neither the omission of the communication under paragraph 3 nor any errors contained therein.

Rule 20

Publication of the mention of the inventor

(1) The designated inventor shall be mentioned in the published European patent application and the European patent specification, unless he informs the European Patent Office in writing that he has waived his right to be thus mentioned.

(2) Paragraph 1 shall apply where a third party files with the European Patent Office a final decision determining that the applicant for or proprietor of a European patent is required to designate him as an inventor.

Rule 21

Rectification of the designation of an inventor

(1) An incorrect designation of an inventor shall be rectified upon request and only with the consent of the wrongly designated person and, where such a request is filed by a third party, the consent of the applicant for or proprietor of the patent. Rule 19 shall apply mutatis mutandis.

(2) Where an incorrect designation of the inventor has been recorded in the European Patent Register or published in the European Patent Bulletin, its rectification or cancellation shall also be recorded or published therein.

Chapter III

Registration of transfers, licences and other rights

Rule 22

Registration of transfers

(1) The transfer of a European patent application shall be recorded in the European Patent Register at the request of an interested party, upon production of documents providing evidence of such transfer.

(2) The request shall not be deemed to have been filed until an administrative fee has been paid. It may be rejected only if paragraph 1 has not been complied with.

(3) A transfer shall have effect vis-à-vis the European Patent Office only at the date when and to the extent that the documents referred to in paragraph 1 have been produced.

Rule 23

Registration of licences and other rights

(1) Rule 22, paragraphs 1 and 2, shall apply mutatis mutandis to the registration of the grant or transfer of a licence, the establishment or transfer of a right in rem in respect of a European patent application and any legal means of execution affecting such an application.

(2) A registration under paragraph 1 shall be cancelled upon request, supported by documents providing evidence that the right has lapsed, or by the written consent of the proprietor of the right to the cancellation of the registration. Rule 22, paragraph 2, shall apply mutatis mutandis.

Rule 24

Special entries for licence registrations

A licence in respect of a European patent application shall be recorded

(a) as an exclusive licence if the applicant and the licensee so request;

(b) as a sub-licence where it is granted by a licensee whose licence is recorded in the European Patent Register.

Chapter IV

Certificate of exhibition

Rule 25

Certificate of exhibition

Within four months of filing the European patent application, the applicant shall file the certificate referred to in Article 55, paragraph 2, which:

(a) is issued at the exhibition by the authority responsible for the protection of industrial property at that exhibition;

(b) states that the invention was in fact displayed there;

(c) states the opening date of the exhibition and, where the invention was disclosed later than on that date, the date on which the invention was first disclosed; and

(d) is accompanied by an identification of the invention, duly authenticated by the above-mentioned authority.

Chapter V

Biotechnological inventions

Rule 26

General and definitions

(1) For European patent applications and patents concerning biotechnological inventions, the relevant provisions of the Convention shall be applied and interpreted in accordance with the provisions of this Chapter. Directive 98/44/EC of 6 July 1998 on the legal protection of biotechnological inventions shall be used as a supplementary means of interpretation.

(2) "Biotechnological inventions" are inventions which concern a product consisting of or containing biological material or a process by means of which biological material is produced, processed or used.

(3) "Biological material" means any material containing genetic information and capable of reproducing itself or being reproduced in a biological system.

(4) "Plant variety" means any plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a plant variety right are fully met, can be:

(a) defined by the expression of the characteristics that results from a given genotype or combination of genotypes,

(b) distinguished from any other plant grouping by the expression of at least one of the said characteristics, and

(c) considered as a unit with regard to its suitability for being propagated unchanged.

(5) A process for the production of plants or animals is essentially biological if it consists entirely of natural phenomena such as crossing or selection.

(6) "Microbiological process" means any process involving or performed upon or resulting in microbiological material.

Rule 27

Patentable biotechnological inventions

Biotechnological inventions shall also be patentable if they concern:

- (a) biological material which is isolated from its natural environment or produced by means of a technical process even if it previously occurred in nature;
- (b) without prejudice to Rule 28, paragraph 2, plants or animals if the technical feasibility of the invention is not confined to a particular plant or animal variety;
- (c) a microbiological or other technical process, or a product obtained by means of such a process other than a plant or animal variety.

Rule 28 **Exceptions to patentability**

- (1) Under Article 53(a), European patents shall not be granted in respect of biotechnological inventions which, in particular, concern the following:
 - (a) processes for cloning human beings;
 - (b) processes for modifying the germ line genetic identity of human beings;
 - (c) uses of human embryos for industrial or commercial purposes;
 - (d) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.
- (2) Under Article 53(b), European patents shall not be granted in respect of plants or animals exclusively obtained by means of an essentially biological process.

Rule 29 **The human body and its elements**

- (1) The human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene, cannot constitute patentable inventions.
- (2) An element isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, may constitute a patentable invention, even if the structure of that element is identical to that of a natural element.
- (3) The industrial application of a sequence or a partial sequence of a gene must be disclosed in the patent application.

Rule 30 **Requirements of European patent applications relating to nucleotide and amino acid sequences**

- (1) If nucleotide or amino acid sequences are disclosed in the European patent application, the description shall contain a sequence listing conforming to the rules laid down by the President of the European Patent Office for the standardised representation of nucleotide and amino acid sequences.
- (2) A sequence listing filed after the date of filing shall not form part of the description.
- (3) Where the applicant has not filed a sequence listing complying with the requirements under paragraph 1 at the date of filing, the European Patent Office shall invite the applicant to furnish such a sequence listing and pay the late furnishing fee. If the applicant does not furnish the required sequence listing and pay the required late furnishing fee within a period of two months after such an invitation, the application shall be refused.

Rule 31 **Deposit of biological material**

- (1) If an invention involves the use of or concerns biological material which is not available to the public and which cannot be described in the European patent application in such a manner as to enable the invention to be carried out by a person skilled in the art, the invention shall only be regarded as being disclosed as prescribed in Article 83 if:
 - (a) a sample of the biological material has been deposited with a recognised depositary institution on the same terms as those laid down in the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of 28 April 1977 not later than the date of filing of the application;
 - (b) the application as filed gives such relevant information as is available to the applicant on the characteristics of the biological material;
 - (c) the depositary institution and the accession number of the deposited biological material are stated in the application, and
 - (d) where the biological material has been deposited by a person other than the applicant, the name and address of the depositor are stated in the application and a document is submitted to the European Patent Office providing evidence that the depositor has authorised the applicant to refer to the deposited biological material in the application and has given his unreserved and irrevocable consent to the deposited material being made available to the public in accordance with Rule 33.
- (2) The information referred to in paragraph 1(c) and (d) may be submitted

- (a) within sixteen months after the date of filing of the application or, if priority has been claimed, after the priority date, this period being deemed to have been observed if the information is communicated before completion of the technical preparations for publication of the European patent application;
- (b) up to the date of submission of a request under Article 93, paragraph 1(b);
- (c) within one month after the European Patent Office has communicated to the applicant that the right to inspect the files under Article 128, paragraph 2, exists.

The ruling period shall be the one which is the first to expire. The communication of this information shall be considered as constituting the unreserved and irrevocable consent of the applicant to the deposited biological material being made available to the public in accordance with Rule 33.

Rule 32 **Expert solution**

(1) Until completion of the technical preparations for publication of the European patent application, the applicant may inform the European Patent Office that,

- (a) until the publication of the mention of the grant of the European patent or, where applicable,
 - (b) for twenty years from the date of filing, if the application is refused or withdrawn or deemed to be withdrawn,
- the availability referred to in Rule 33 shall be effected only by the issue of a sample to an independent expert nominated by the requester.

(2) Any natural person may be nominated as an expert, provided that he complies with the requirements and obligations laid down by the President of the European Patent Office.

The nomination shall be accompanied by a declaration from the expert that he undertakes to comply with the aforementioned requirements and obligations and that he knows of no circumstances which might give rise to justified doubts as to his independence or which might conflict in any other way with his function as expert.

The nomination shall also be accompanied by a declaration from the expert vis-à-vis the applicant in which he enters into the undertaking given under Rule 33 until either the date on which the patent expires in all the designated States or, where the application is refused, withdrawn or deemed to be withdrawn, the date referred to in paragraph 1(b), the requester being regarded as a third party.

Rule 33 **Availability of biological material**

(1) Biological material deposited in accordance with Rule 31 shall be available upon request to any person from the date of publication of the European patent application and to any person having the right to inspect the files under Article 128, paragraph 2, prior to that date. Subject to Rule 32, such availability shall be effected by the issue of a sample of the biological material to the person making the request (hereinafter referred to as "the requester").

(2) Said issue shall be made only if the requester has undertaken vis-à-vis the applicant for or proprietor of the patent not to make the biological material or any biological material derived therefrom available to any third party and to use that material for experimental purposes only, until such time as the patent application is refused or withdrawn or deemed to be withdrawn, or before the European patent has expired in all the designated States, unless the applicant for or proprietor of the patent expressly waives such an undertaking.

The undertaking to use the biological material for experimental purposes only shall not apply in so far as the requester is using that material under a compulsory licence. The term "compulsory licence" shall be construed as including ex officio licences and the right to use patented inventions in the public interest.

(3) For the purposes of paragraph 2, derived biological material shall mean any material which still exhibits those characteristics of the deposited material which are essential to carrying out the invention. The undertaking under paragraph 2 shall not impede any deposit of derived biological material necessary for the purpose of patent procedure.

(4) The request referred to in paragraph 1 shall be submitted to the European Patent Office on a form recognised by that Office. The European Patent Office shall certify on the form that a European patent application referring to the deposit of the biological material has been filed, and that the requester or the expert nominated by him under Rule 32 is entitled to the issue of a sample of that material. After grant of the European patent, the request shall also be submitted to the European Patent Office.

(5) The European Patent Office shall transmit a copy of the request, with the certification provided for in paragraph 4, to the depositary institution and to the applicant for or the proprietor of the patent.

(6) The European Patent Office shall publish in its Official Journal the list of depositary institutions recognised for the purpose of Rules 31, 33 and 34.

Rule 34 **New deposit of biological material**

If biological material deposited in accordance with Rule 31 ceases to be available from the recognised depositary institution, an interruption in availability shall be deemed not to have occurred if a new deposit of that material is made with a recognised depositary institution on the same terms as those laid down in the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of 28 April 1977, and if a copy of

the receipt of the new deposit issued by the depositary institution is forwarded to the European Patent Office within four months of the date of the new deposit, stating the number of the European patent application or of the European patent.

PART III IMPLEMENTING REGULATIONS TO PART III OF THE CONVENTION

Chapter I Filing of the European patent application

Rule 35 General provisions

- (1) European patent applications may be filed in writing with the European Patent Office in Munich, The Hague or Berlin, or the authorities referred to in Article 75, paragraph 1(b).
- (2) The authority with which the European patent application is filed shall mark the documents making up the application with the date of their receipt, and issue without delay a receipt to the applicant including at least the application number and the nature, number and date of receipt of the documents.
- (3) If the European patent application is filed with an authority referred to in Article 75, paragraph 1(b), such authority shall without delay inform the European Patent Office of the receipt of the application, and, in particular, of the nature and date of receipt of the documents, the application number and any priority date claimed.
- (4) Upon receipt of a European patent application forwarded by the central industrial property office of a Contracting State, the European Patent Office shall inform the applicant accordingly, indicating the date of its receipt.

Rule 36 European divisional applications

- (1) The applicant may file a divisional application relating to any pending earlier European patent application.
- (2) A divisional application shall be filed in the language of the proceedings for the earlier application. If the latter was not in an official language of the European Patent Office, the divisional application may be filed in the language of the earlier application; a translation into the language of the proceedings for the earlier application shall then be filed within two months of the filing of the divisional application. The divisional application shall be filed with the European Patent Office in Munich, The Hague or Berlin.
- (3) The filing fee and search fee shall be paid within one month of filing the divisional application. If the filing fee or search fee is not paid in due time, the application shall be deemed to be withdrawn.
- (4) The designation fee shall be paid within six months of the date on which the European Patent Bulletin mentions the publication of the European search report drawn up in respect of the divisional application. Rule 39, paragraphs 2 and 3, shall apply.

Rule 37 Forwarding of European patent applications

- (1) The central industrial property office of a Contracting State shall forward European patent applications to the European Patent Office in the shortest time compatible with its national law relating to the secrecy of inventions in the interests of the State, and shall take all appropriate steps to ensure such forwarding within:
 - (a) six weeks of filing, where the subject of the application is evidently not liable to secrecy under the national law; or
 - (b) four months of filing or, if priority has been claimed, fourteen months of the date of priority, where the application requires further examination as to its liability to secrecy.
- (2) A European patent application not received by the European Patent Office within fourteen months of filing or, if priority has been claimed, of the date of priority, shall be deemed to be withdrawn. Any fees paid in respect of this application shall be refunded.

Rule 38 Filing fee and search fee

- (1) The filing fee and search fee shall be paid within one month of filing the European patent application.
- (2) The Rules relating to Fees may provide for an additional fee as part of the filing fee if the application comprises more than 35 pages.
- (3) The additional fee referred to in paragraph 2 shall be paid within one month of filing the European patent application or one month of filing the first set of claims or one month of filing the certified copy referred to in Rule 40, paragraph 3, whichever period expires last.

(4) The Rules relating to Fees may provide for an additional fee as part of the filing fee in the case of a divisional application filed in respect of any earlier application which is itself a divisional application.

Rule 39 **Designation fees**

- (1) The designation fee shall be paid within six months of the date on which the European Patent Bulletin mentions the publication of the European search report.
- (2) Where the designation fee is not paid in due time or the designations of all the Contracting States are withdrawn, the European patent application shall be deemed to be withdrawn.
- (3) Without prejudice to Rule 37, paragraph 2, second sentence, the designation fee shall not be refunded.

Rule 40 **Date of filing**

- (1) The date of filing of a European patent application shall be the date on which the documents filed by the applicant contain:
 - (a) an indication that a European patent is sought;
 - (b) information identifying the applicant or allowing the applicant to be contacted; and
 - (c) a description or reference to a previously filed application.
- (2) A reference to a previously filed application under paragraph 1(c) shall state the filing date and number of that application and the Office with which it was filed. Such reference shall indicate that it replaces the description and any drawings.
- (3) Where the application contains a reference under paragraph 2, a certified copy of the previously filed application shall be filed within two months of filing the application. Where the previously filed application is not in an official language of the European Patent Office, a translation thereof in one of these languages shall be filed within the same period. Rule 53, paragraph 2, shall apply mutatis mutandis.

Chapter II **Provisions governing the application**

Rule 41 **Request for grant**

- (1) The request for grant of a European patent shall be filed on a form drawn up by the European Patent Office.
- (2) The request shall contain:
 - (a) a petition for the grant of a European patent;
 - (b) the title of the invention, which shall clearly and concisely state the technical designation of the invention and shall exclude all fancy names;
 - (c) the name, address and nationality of the applicant and the State in which his residence or principal place of business is located. Names of natural persons shall be indicated by the person's family name, followed by his given names. Names of legal persons, as well as of bodies equivalent to legal persons under the law governing them, shall be indicated by their official designations. Addresses shall be indicated in accordance with applicable customary requirements for prompt postal delivery and shall comprise all the relevant administrative units, including the house number, if any. It is recommended that the fax and telephone numbers be indicated;
 - (d) if the applicant has appointed a representative, his name and the address of his place of business as prescribed in sub-paragraph (c);
 - (e) where appropriate, an indication that the application constitutes a divisional application and the number of the earlier European patent application;
 - (f) in cases covered by Article 61, paragraph 1(b), the number of the original European patent application;
 - (g) where applicable, a declaration claiming the priority of an earlier application and indicating the date on which and the country in or for which the earlier application was filed;
 - (h) the signature of the applicant or his representative;
 - (i) a list of the documents accompanying the request. This list shall also indicate the number of sheets of the description, claims, drawings and abstract filed with the request;
 - (j) the designation of the inventor, where the applicant is the inventor.
- (3) If there is more than one applicant, the request shall preferably contain the appointment of one applicant or representative as common representative.

Rule 42 **Content of the description**

- (1) The description shall:

- (a) specify the technical field to which the invention relates;
 - (b) indicate the background art which, as far as is known to the applicant, can be regarded as useful to understand the invention, draw up the European search report and examine the European patent application, and, preferably, cite the documents reflecting such art;
 - (c) disclose the invention, as claimed, in such terms that the technical problem, even if not expressly stated as such, and its solution can be understood, and state any advantageous effects of the invention with reference to the background art;
 - (d) briefly describe the figures in the drawings, if any;
 - (e) describe in detail at least one way of carrying out the invention claimed, using examples where appropriate and referring to the drawings, if any;
 - (f) indicate explicitly, when it is not obvious from the description or nature of the invention, the way in which the invention is industrially applicable.
- (2) The description shall be presented in the manner and order specified in paragraph 1, unless, owing to the nature of the invention, a different presentation would afford a better understanding or be more concise.

Rule 43 **Form and content of claims**

- (1) The claims shall define the matter for which protection is sought in terms of the technical features of the invention. Wherever appropriate, claims shall contain:
- (a) a statement indicating the designation of the subject-matter of the invention and those technical features which are necessary for the definition of the claimed subject-matter but which, in combination, form part of the prior art;
 - (b) a characterising portion, beginning with the expression "characterised in that" or "characterised by" and specifying the technical features for which, in combination with the features stated under sub-paragraph (a), protection is sought.
- (2) Without prejudice to Article 82, a European patent application may contain more than one independent claim in the same category (product, process, apparatus or use) only if the subject-matter of the application involves one of the following:
- (a) a plurality of interrelated products,
 - (b) different uses of a product or apparatus,
 - (c) alternative solutions to a particular problem, where it is inappropriate to cover these alternatives by a single claim.
- (3) Any claim stating the essential features of an invention may be followed by one or more claims concerning particular embodiments of that invention.
- (4) Any claim which includes all the features of any other claim (dependent claim) shall contain, if possible at the beginning, a reference to the other claim and then state the additional features. A dependent claim directly referring to another dependent claim shall also be admissible. All dependent claims referring back to a single previous claim, and all dependent claims referring back to several previous claims, shall be grouped together to the extent and in the most appropriate way possible.
- (5) The number of claims shall be reasonable with regard to the nature of the invention claimed. The claims shall be numbered consecutively in Arabic numerals.
- (6) Except where absolutely necessary, claims shall not rely on references to the description or drawings in specifying the technical features of the invention. In particular, they shall not contain such expressions as "as described in part ... of the description", or "as illustrated in figure ... of the drawings".
- (7) Where the European patent application contains drawings including reference signs, the technical features specified in the claims shall preferably be followed by such reference signs relating to these features, placed in parentheses, if the intelligibility of the claim can thereby be increased. These reference signs shall not be construed as limiting the claim.

Rule 44 **Unity of invention**

- (1) Where a group of inventions is claimed in a European patent application, the requirement of unity of invention under Article 82 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those features which define a contribution which each of the claimed inventions considered as a whole makes over the prior art.
- (2) The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim.

Rule 45 **Claims incurring fees**

- (1) Any European patent application comprising more than fifteen claims shall, in respect of the sixteenth and each subsequent claim, incur payment of claims fees as laid down in the Rules relating to Fees.

- (2) The claims fees shall be paid within one month of filing the first set of claims. If the claims fees have not been paid in due time, they may still be paid within one month of a communication concerning the failure to observe the time limit.
- (3) If a claims fee is not paid in due time, the claim concerned shall be deemed to be abandoned.

Rule 46

Form of the drawings

(1) On sheets containing drawings, the usable surface area shall not exceed 26.2 cm x 17 cm. The usable or used surface shall not be surrounded by frames. The minimum margins shall be as follows:

top 2.5 cm
left side 2.5 cm
right side 1.5 cm
bottom 1 cm

(2) Drawings shall be executed as follows:

(a) Drawings shall be executed without colourings in durable, black, sufficiently dense and dark, uniformly thick and well-defined lines and strokes.

(b) Cross-sections shall be indicated by hatching which should not impede the clear reading of the reference signs and leading lines.

(c) The scale of the drawings and their graphical execution shall be such that electronic or photographic reproduction with a linear reduction in size to two-thirds will allow all details to be distinguished without difficulty. If, exceptionally, the scale is given on a drawing, it shall be represented graphically.

(d) All numbers, letters, and reference signs appearing on the drawings shall be simple and clear. Brackets, circles or inverted commas shall not be used in association with numbers and letters.

(e) Generally, all lines in the drawings shall be drawn with the aid of drafting instruments.

(f) Elements of the same figure shall be proportional to one another, unless a difference in proportion is indispensable for the clarity of the figure.

(g) The height of the numbers and letters shall not be less than 0.32 cm. For the lettering of drawings, the Latin and, where customary, the Greek alphabets shall be used.

(h) The same sheet of drawings may contain several figures. Where figures drawn on two or more sheets are intended to form a single figure, the figures on the several sheets shall be so arranged that the whole figure can be assembled without concealing any part of the partial figures. The different figures shall be arranged without wasting space, preferably in an upright position, clearly separated from one another. Where the figures are not arranged in an upright position, they shall be presented sideways with the top of the figures at the left side of the sheet. The different figures shall be numbered consecutively in Arabic numerals, independently of the numbering of the sheets.

(i) Reference signs not mentioned in the description and claims shall not appear in the drawings, and vice versa. Reference signs to features shall be consistent throughout the application.

(j) The drawings shall not contain text matter. Where indispensable to understand the drawings, a few short keywords, such as "water", "steam", "open", "closed" or "section on AB", may be included. Any such keywords shall be placed in such a way that, if required, they can be replaced by their translations without interfering with any lines of the drawings.

(3) Flow sheets and diagrams shall be deemed to be drawings.

Rule 47

Form and content of the abstract

(1) The abstract shall indicate the title of the invention.

(2) The abstract shall contain a concise summary of the disclosure as contained in the description, the claims and any drawings. The summary shall indicate the technical field to which the invention pertains, and shall be drafted in a manner allowing the clear understanding of the technical problem, the gist of the solution of that problem through the invention, and the principal use or uses of the invention. The abstract shall, where applicable, contain the chemical formula which, among those contained in the application, best characterises the invention. It shall not contain statements on the alleged merits or value of the invention or on speculative applications thereof.

(3) The abstract shall preferably not contain more than one hundred and fifty words.

(4) If the European patent application contains drawings, the applicant shall indicate the figure or, exceptionally, the figures of the drawings which should be published with the abstract. The European Patent Office may decide to publish one or more other figures if it considers that they better characterise the invention. Each essential feature mentioned in the abstract and illustrated by a drawing shall be followed by a reference sign placed in parentheses.

(5) The abstract shall be drafted in such a manner as to constitute an efficient instrument for the purpose of searching in the particular technical field. In particular, it shall make it possible to assess whether consultation of the European patent application itself is necessary.

Rule 48

Prohibited matter

- (1) The European patent application shall not contain:
- (a) statements or other matter contrary to "ordre public" or morality;
 - (b) statements disparaging the products or processes of any third party or the merits or validity of the applications or patents of any such party. Mere comparisons with the prior art shall not be considered disparaging per se;
 - (c) any statement or other matter obviously irrelevant or unnecessary under the circumstances.
- (2) If the application contains matter prohibited under paragraph 1(a), the European Patent Office may omit such matter from the application as published, indicating the place and number of words or drawings omitted.
- (3) If the application contains statements referred to in paragraph 1(b), the European Patent Office may omit them from the application as published, indicating the place and number of words omitted. Upon request, the European Patent Office shall furnish a copy of the passages omitted.

Rule 49

General provisions governing the presentation of the application documents

- (1) Any translation filed under Article 14, paragraph 2, or Rule 40, paragraph 3, shall be deemed to be a document making up the European patent application.
- (2) The documents making up the application shall be presented so as to allow electronic and direct reproduction, in particular by scanning, photography, electrostatic processes, photo offset and microfilming, in an unlimited number of copies. All sheets shall be free from cracks, creases and folds. Only one side of the sheet shall be used.
- (3) The documents making up the application shall be on A4 paper (29.7 cm x 21 cm) which shall be pliable, strong, white, smooth, matt and durable. Subject to paragraph 9 and Rule 46, paragraph 2(h), each sheet shall be used with its short sides at the top and bottom (upright position).
- (4) Each of the documents making up the application (request, description, claims, drawings and abstract) shall commence on a new sheet. The sheets shall be connected in such a way that they can easily be turned over, separated and joined together again.
- (5) Subject to Rule 46, paragraph 1, the minimum margins shall be as follows:
- top 2 cm
 - left side 2.5 cm
 - right side 2 cm
 - bottom 2 cm
- The recommended maximum for the margins quoted above is as follows:
- top 4 cm
 - left side 4 cm
 - right side 3 cm
 - bottom 3 cm
- (6) All the sheets contained in the application shall be numbered in consecutive Arabic numerals. These shall be centred at the top of the sheet, but not placed in the top margin.
- (7) The lines of each sheet of the description and of the claims shall preferably be numbered in sets of five, the numbers appearing on the left side, to the right of the margin.
- (8) The request for grant of a European patent, the description, the claims and the abstract shall be typed or printed. Only graphic symbols and characters and chemical or mathematical formulae may, if necessary, be drawn or written by hand. The typing shall be 1½ spaced. All text matter shall be in characters, the capital letters of which are not less than 0.21 cm high, and shall be in a dark, indelible colour.
- (9) The request for grant of a European patent, the description, the claims and the abstract shall not contain drawings. The description, claims and abstract may contain chemical or mathematical formulae. The description and abstract may contain tables. The claims may contain tables only if their subject-matter makes the use of tables desirable. Tables and chemical or mathematical formulae may be placed sideways on the sheet if they cannot be presented satisfactorily in an upright position. Tables or chemical or mathematical formulae presented sideways shall be placed so that the tops of the tables or formulae are at the left-hand side of the sheet.
- (10) Values shall be expressed in units conforming to international standards, wherever appropriate in terms of the metric system using SI units. Any data not meeting this requirement shall also be expressed in units conforming to international standards. Only the technical terms, formulae, signs and symbols generally accepted in the field in question shall be used.
- (11) The terminology and the signs shall be consistent throughout the European patent application.
- (12) Each sheet shall be reasonably free from erasures and shall be free from alterations. Non-compliance with this rule may be authorised if the authenticity of the content is not impugned and the requirements for good reproduction are not thereby jeopardised.

Rule 50

Documents filed subsequently

- (1) Rules 42, 43 and 46 to 49 shall apply to documents replacing documents making up the European patent application. Rule 49, paragraphs 2 to 12, shall also apply to the translation of the claims referred to in Rule 71.
- (2) All documents other than those making up the application shall generally be typewritten or printed. There shall be a margin of about 2.5 cm on the left-hand side of each page.
- (3) Documents filed after filing the application shall be signed, with the exception of annexed documents. If a document has not been signed, the European Patent Office shall invite the party concerned to do so within a time limit to be specified. If signed in due time, the document shall retain its original date of receipt; otherwise it shall be deemed not to have been filed.

Chapter III Renewal fees

Rule 51 Payment of renewal fees

- (1) A renewal fee for the European patent application in respect of the coming year shall be due on the last day of the month containing the anniversary of the date of filing of the European patent application. The renewal fee in respect of the third year may not be validly paid more than six months before it falls due. All other renewal fees may not be validly paid more than three months before they fall due.
- (2) If a renewal fee is not paid on the due date under paragraph 1, the fee may still be paid within six months of the said date, provided that an additional fee is also paid within that period. The legal consequence laid down in Article 86, paragraph 1, shall ensue upon expiry of the six-month period.
- (3) Renewal fees already due in respect of an earlier application at the date on which a divisional application is filed shall also be paid for the divisional application and shall be due on its filing. These fees and any renewal fee due within four months of filing the divisional application may be paid within that period without an additional fee. Paragraph 2 shall apply.
- (4) If a European patent application has been refused or deemed to be withdrawn as a result of non-observance of a time limit, and if the applicant's rights are re-established under Article 122, a renewal fee
- (a) which would have fallen due under paragraph 1 in the period starting on the date on which the loss of rights occurred, up to and including the date of the notification of the decision re-establishing the rights, shall be due on that latter date. This fee and any renewal fee due within four months from that latter date may still be paid within four months of that latter date without an additional fee. Paragraph 2 shall apply.
- (b) which, on the date on which the loss of rights has occurred, was already due but the period provided for in paragraph 2 has not yet expired, may still be paid within six months from the date of the notification of the decision re-establishing the rights, provided that the additional fee pursuant to paragraph 2 is also paid within that period.
- (5) If the Enlarged Board of Appeal re-opens proceedings before the Board of Appeal under Article 112a, paragraph 5, second sentence, a renewal fee
- (a) which would have fallen due under paragraph 1 in the period starting on the date when the decision of the Board of Appeal subject to the petition for review was taken, up to and including the date of the notification of the decision of the Enlarged Board of Appeal re-opening proceedings before the Board of Appeal, shall be due on that latter date. This fee and any renewal fee due within four months from that latter date may still be paid within four months of that latter date without an additional fee. Paragraph 2 shall apply.
- (b) which, on the day on which the decision of the Board of Appeal was taken, was already due but the period provided for in paragraph 2 has not yet expired, may still be paid within six months from the date of the notification of the decision of the Enlarged Board of Appeal re-opening proceedings before the Board of Appeal, provided that the additional fee pursuant to paragraph 2 is also paid within that period.
- (6) A renewal fee shall not be payable for a new European patent application filed under Article 61, paragraph 1(b), in respect of the year in which it was filed and any preceding year.

Chapter IV Priority

Rule 52 Declaration of priority

- (1) The declaration of priority referred to in Article 88, paragraph 1, shall indicate the date of the previous filing, the State party to the Paris Convention or Member of the World Trade Organization in or for which it was made and the file number. In the case referred to in Article 87, paragraph 5, the first sentence shall apply *mutatis mutandis*.
- (2) The declaration of priority shall preferably be made on filing the European patent application. It may still be made within sixteen months from the earliest priority date claimed.
- (3) The applicant may correct the declaration of priority within sixteen months from the earliest priority date claimed, or, where the correction would cause a change in the earliest priority date claimed, within sixteen months from the corrected earliest priority date, whichever sixteen-month period expires first, provided that such a correction may be submitted until the expiry of four months from the date of filing accorded to the European patent application.

(4) However, a declaration of priority may not be made or corrected after a request under Article 93, paragraph 1(b), has been filed.

(5) The particulars of the declaration of priority shall appear in the published European patent application and the European patent specification.

Rule 53 **Priority documents**

(1) An applicant claiming priority shall file a copy of the previous application within sixteen months of the earliest priority date claimed. This copy and the date of filing of the previous application shall be certified as correct by the authority with which that application was filed.

(2) The copy of the previous application shall be deemed to be duly filed if a copy of that application available to the European Patent Office is to be included in the file of the European patent application under the conditions determined by the President of the European Patent Office.

(3) Where the previous application is not in an official language of the European Patent Office and the validity of the priority claim is relevant to the determination of the patentability of the invention concerned, the European Patent Office shall invite the applicant for or proprietor of the European patent to file a translation of that application into one of the official languages within a period to be specified. Alternatively, a declaration may be submitted that the European patent application is a complete translation of the previous application. Paragraph 2 shall apply *mutatis mutandis*. If a requested translation of a previous application is not filed in due time, the right of priority for the European patent application or for the European patent with respect to that application shall be lost. The applicant for or proprietor of the European patent shall be informed accordingly.

Rule 54 **Issuing priority documents**

On request, the European Patent Office shall issue to the applicant a certified copy of the European patent application (priority document), under the conditions determined by the President of the European Patent Office, including the form of the priority document and the circumstances under which an administrative fee shall be paid.

PART IV **IMPLEMENTING REGULATIONS TO PART IV OF THE CONVENTION**

Chapter I **Examination by the Receiving Section**

Rule 55 **Examination on filing**

If the examination under Article 90, paragraph 1, reveals that the application fails to meet the requirements laid down in Rule 40, paragraph 1(a) or (c), paragraph 2 or paragraph 3, first sentence, the European Patent Office shall inform the applicant of any deficiencies and advise him that the application will not be dealt with as a European patent application unless such deficiencies are remedied within two months. If the applicant does this, he shall be informed of the date of filing accorded by the Office.

Rule 56 **Missing parts of the description or missing drawings**

(1) If the examination under Article 90, paragraph 1, reveals that parts of the description, or drawings referred to in the description or in the claims, appear to be missing, the European Patent Office shall invite the applicant to file the missing parts within two months. The applicant may not invoke the omission of such a communication.

(2) If missing parts of the description or missing drawings are filed later than the date of filing, but within two months of the date of filing or, if a communication is issued under paragraph 1, within two months of that communication, the application shall be re-dated to the date on which the missing parts of the description or missing drawings were filed. The European Patent Office shall inform the applicant accordingly.

(3) If the missing parts of the description or missing drawings are filed within the period under paragraph 2, and the application claims priority of an earlier application, the date of filing shall, provided that the missing parts of the description or the missing drawings are completely contained in the earlier application, remain the date on which the requirements laid down in Rule 40, paragraph 1, were fulfilled, where the applicant so requests and files, within the period under paragraph 2:

(a) a copy of the earlier application, unless such copy is available to the European Patent Office under Rule 53, paragraph 2;

(b) where the earlier application is not in an official language of the European Patent Office, a translation thereof in one of these languages, unless such copy is available to the European Patent Office under Rule 53, paragraph 3; and

(c) an indication as to where the missing parts of the description or the missing drawings are completely contained in the earlier application and, where applicable, in the translation thereof.

(4) If the applicant:

(a) fails to file the missing parts of the description or the missing drawings within the period under paragraph 1 or 2, or

(b) withdraws under paragraph 6 any missing part of the description or missing drawing filed under paragraph 2, any references referred to in paragraph 1 shall be deemed to be deleted, and any filing of the missing parts of the description or missing drawings shall be deemed not to have been made. The European Patent Office shall inform the applicant accordingly.

(5) If the applicant fails to comply with the requirements referred to in paragraph 3(a) to (c) within the period under paragraph 2, the application shall be re-dated to the date on which the missing parts of the description or missing drawings were filed. The European Patent Office shall inform the applicant accordingly.

(6) Within one month of the notification referred to in paragraph 2 or 5, last sentence, the applicant may withdraw the missing parts of the description or the missing drawings filed, in which case the re-dating shall be deemed not to have been made. The European Patent Office shall inform the applicant accordingly.

Rule 57

Examination as to formal requirements

If the European patent application has been accorded a date of filing, the European Patent Office shall examine, in accordance with Article 90, paragraph 3, whether:

(a) a translation of the application required under Article 14, paragraph 2, under Rule 36, paragraph 2, second sentence, or under Rule 40, paragraph 3, second sentence, has been filed in due time;

(b) the request for grant of a European patent satisfies the requirements of Rule 41;

(c) the application contains one or more claims in accordance with Article 78, paragraph 1(c), or a reference to a previously filed application in accordance with Rule 40, paragraphs 1(c), 2 and 3, indicating that it replaces also the claims;

(d) the application contains an abstract in accordance with Article 78, paragraph 1(e);

(e) the filing fee and the search fee have been paid in accordance with Rule 17, paragraph 2, Rule 36, paragraph 3, or Rule 38;

(f) the designation of the inventor has been made in accordance with Rule 19, paragraph 1;

(g) where appropriate, the requirements laid down in Rules 52 and 53 concerning the claim to priority have been satisfied;

(h) where appropriate, the requirements of Article 133, paragraph 2, have been satisfied;

(i) the application meets the requirements laid down in Rule 46 and Rule 49, paragraphs 1 to 9 and 12;

(j) the application meets the requirements laid down in Rule 30.

Rule 58

Correction of deficiencies in the application documents

If the European patent application does not comply with the requirements of Rule 57(a) to (d), (h) and (i), the European Patent Office shall inform the applicant accordingly and invite him to correct the deficiencies noted within two months. The description, claims and drawings may be amended only to an extent sufficient to remedy such deficiencies.

Rule 59

Deficiencies in claiming priority

If the file number of the previous application under Rule 52, paragraph 1, or the copy of that application under Rule 53, paragraph 1, have not been filed in due time, the European Patent Office shall inform the applicant accordingly and invite him to file them within a period to be specified.

Rule 60

Subsequent designation of the inventor

(1) If the designation of the inventor has not been made in accordance with Rule 19, the European Patent Office shall inform the applicant that the European patent application will be refused unless the designation is made within sixteen months of the date of filing of the application or, if priority is claimed, of the date of priority, this period being deemed to have been observed if the information is communicated before completion of the technical preparations for the publication of the European patent application.

(2) Where, in a divisional application or a new application under Article 61, paragraph 1(b), the designation of the inventor has not been made in accordance with Rule 19, the European Patent Office shall invite the applicant to make the designation within a period to be specified.

Chapter II

European search report

Rule 61

Content of the European search report

- (1) The European search report shall mention those documents, available to the European Patent Office at the time of drawing up the report, which may be taken into consideration in deciding whether the invention to which the European patent application relates is new and involves an inventive step.
- (2) Each citation shall be referred to the claims to which it relates. Where appropriate, relevant parts of the documents cited shall be identified.
- (3) The European search report shall distinguish between cited documents published before the date of priority claimed, between such date of priority and the date of filing, and on or after the date of filing.
- (4) Any document which refers to an oral disclosure, a use or any other means of disclosure which took place before the date of filing of the European patent application shall be mentioned in the European search report, together with an indication of the date of publication, if any, of the document and the date of the non-written disclosure.
- (5) The European search report shall be drawn up in the language of the proceedings.
- (6) The European search report shall contain the classification of the subject-matter of the European patent application in accordance with the international classification.

Rule 62

Extended European search report

- (1) The European search report shall be accompanied by an opinion on whether the application and the invention to which it relates seem to meet the requirements of this Convention, unless a communication under Rule 71, paragraph 1 or 3, can be issued.
- (2) The opinion under paragraph 1 shall not be published together with the search report.

Rule 62a

Applications containing a plurality of independent claims

- (1) If the European Patent Office considers that the claims as filed do not comply with Rule 43, paragraph 2, it shall invite the applicant to indicate, within a period of two months, the claims complying with Rule 43, paragraph 2, on the basis of which the search is to be carried out. If the applicant fails to provide such an indication in due time, the search shall be carried out on the basis of the first claim in each category.
- (2) The Examining Division shall invite the applicant to restrict the claims to the subject-matter searched unless it finds that the objection under paragraph 1 was not justified.

Rule 63

Incomplete search

- (1) If the European Patent Office considers that the European patent application fails to such an extent to comply with this Convention that it is impossible to carry out a meaningful search regarding the state of the art on the basis of all or some of the subject-matter claimed, it shall invite the applicant to file, within a period of two months, a statement indicating the subject-matter to be searched.
- (2) If the statement under paragraph 1 is not filed in due time, or if it is not sufficient to overcome the deficiency noted under paragraph 1, the European Patent Office shall either issue a reasoned declaration stating that the European patent application fails to such an extent to comply with this Convention that it is impossible to carry out a meaningful search regarding the state of the art on the basis of all or some of the subject-matter claimed or, as far as is practicable, draw up a partial search report. The reasoned declaration or the partial search report shall be considered, for the purposes of subsequent proceedings, as the European search report.
- (3) When a partial search report has been drawn up, the Examining Division shall invite the applicant to restrict the claims to the subject-matter searched unless it finds that the objection under paragraph 1 was not justified.

Rule 64

European search report where the invention lacks unity

- (1) If the European Patent Office considers that the European patent application does not comply with the requirement of unity of invention, it shall draw up a partial search report on those parts of the application which relate to the invention, or the group of inventions within the meaning of Article 82, first mentioned in the claims. It shall inform the applicant that, for the European search report to cover the other inventions, a further search fee must be paid, in respect of each invention involved, within a period of two months. The European search report shall be drawn up for the parts of the application relating to inventions in respect of which search fees have been paid.
- (2) Any fee paid under paragraph 1 shall be refunded if, during the examination of the European patent application, the applicant requests a refund and the Examining Division finds that the communication under paragraph 1 was not justified.

Rule 65
Transmittal of the European search report

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

Rule 66
Definitive content of the abstract

Upon drawing up the European search report, the European Patent Office shall determine the definitive content of the abstract and transmit it to the applicant together with the search report.

Chapter III
Publication of the European patent application

Rule 67
Technical preparations for publication

- (1) The President of the European Patent Office shall determine when the technical preparations for publication of the European patent application are deemed to have been completed.
- (2) The application shall not be published if it has been finally refused or withdrawn or is deemed to be withdrawn before the termination of the technical preparations for publication.

Rule 68
Form of the publication of European patent applications and European search reports

- (1) The publication of the European patent application shall contain the description, the claims and any drawings as filed, and the abstract, or, if these documents making up the application were not filed in an official language of the European Patent Office, a translation in the language of the proceedings, and, in an annex, the European search report, where it is available before the termination of the technical preparations for publication. If the search report or the abstract is not published at the same time as the application, it shall be published separately.
- (2) The President of the European Patent Office shall determine the form of the publication of the application and the data to be included. The same shall apply where the European search report and the abstract are published separately.
- (3) The designated Contracting States shall be indicated in the published application.
- (4) If the claims were not filed on the date of filing of the application, this shall be indicated when the application is published. If, before the termination of the technical preparations for publication of the application, the claims have been amended under Rule 137, paragraph 2, the new or amended claims shall be included in the publication in addition to the claims as filed.

Rule 69
Information about publication

- (1) The European Patent Office shall inform the applicant of the date on which the European Patent Bulletin mentions the publication of the European search report and shall draw his attention to Rule 70, paragraph 1, Article 94, paragraph 2, and Rule 70a, paragraph 1.
- (2) If a date of publication is specified in the communication under paragraph 1 which is later than the actual date of publication, that later date shall be the decisive date as regards the periods referred to in Rule 70, paragraph 1, and Rule 70a, paragraph 1, unless the error is obvious.

Rule 70
Request for examination

- (1) The applicant may request examination of the European patent application up to six months after the date on which the European Patent Bulletin mentions the publication of the European search report. The request may not be withdrawn.
- (2) If the request for examination has been filed before the European search report has been transmitted to the applicant, the European Patent Office shall invite the applicant to indicate, within a period to be specified, whether he wishes to proceed further with the application, and shall give him the opportunity to comment on the search report and to amend, where appropriate, the description, claims and drawings.
- (3) If the applicant fails to reply in due time to the invitation under paragraph 2, the application shall be deemed to be withdrawn.

Chapter IV

Examination by the Examining Division

Rule 70a

Response to the extended European search report

- (1) In the opinion accompanying the European search report the European Patent Office shall give the applicant the opportunity to comment on the extended European search report and, where appropriate, invite him to correct any deficiencies noted in the opinion accompanying the European search report and to amend the description, claims and drawings within the period referred to in Rule 70, paragraph 1.
- (2) In the case referred to in Rule 70, paragraph 2, or if a supplementary European search report is drawn up on a Euro-PCT application, the European Patent Office shall give the applicant the opportunity to comment on the extended European search report and, where appropriate, invite him to correct any deficiencies noted in the opinion accompanying the European search report and to amend the description, claims and drawings within the period specified for indicating whether he wishes to proceed further with the application.
- (3) If the applicant neither complies with nor comments on an invitation in accordance with paragraph 1 or 2, the application shall be deemed to be withdrawn.

Rule 70b

Request for a copy of search results

- (1) Where the European Patent Office notes, at the time the Examining Division assumes responsibility, that a copy referred to in Rule 141, paragraph 1, has not been filed by the applicant and is not deemed to be duly filed under Rule 141, paragraph 2, it shall invite the applicant to file, within a period of two months, the copy or a statement that the results of the search referred to in Rule 141, paragraph 1, are not available to him.
- (2) If the applicant fails to reply in due time to the invitation under paragraph 1, the European patent application shall be deemed to be withdrawn.

Rule 71

Examination procedure

- (1) In any communication under Article 94, paragraph 3, the Examining Division shall, where appropriate, invite the applicant to correct any deficiencies noted and to amend the description, claims and drawings within a period to be specified.
- (2) Any communication under Article 94, paragraph 3, shall contain a reasoned statement covering, where appropriate, all the grounds against the grant of the European patent.
- (3) Before the Examining Division decides to grant the European patent, it shall inform the applicant of the text in which it intends to grant it and of the related bibliographic data. In this communication the Examining Division shall invite the applicant to pay the fee for grant and publishing and to file a translation of the claims in the two official languages of the European Patent Office other than the language of the proceedings within four months.
- (4) If the European patent application in the text intended for grant comprises more than fifteen claims, the Examining Division shall invite the applicant to pay claims fees in respect of the sixteenth and each subsequent claim within the period under paragraph 3 unless the said fees have already been paid under Rule 45 or Rule 162.
- (5) If the applicant, within the period laid down in paragraph 3, pays the fees under paragraph 3 and, where applicable, paragraph 4 and files the translations under paragraph 3, he shall be deemed to have approved the text communicated to him under paragraph 3 and verified the bibliographic data.
- (6) If the applicant, within the period under paragraph 3, requests reasoned amendments or corrections to the communicated text or keeps to the latest text submitted by him, the Examining Division shall issue a new communication under paragraph 3 if it gives its consent; otherwise it shall resume the examination proceedings.
- (7) If the fee for grant and publishing or the claims fees are not paid in due time, or if the translations are not filed in due time, the European patent application shall be deemed to be withdrawn.

Rule 71a

Conclusion of the grant procedure

- (1) The decision to grant the European patent shall be issued if all fees have been paid, a translation of the claims in the two official languages of the European Patent Office other than the language of the proceedings has been filed and there is agreement as to the text to be granted. It shall state which text of the European patent application forms the basis for the decision.
- (2) Until the decision to grant the European patent, the Examining Division may resume the examination proceedings at any time.
- (3) If the designation fee becomes due after the communication under Rule 71, paragraph 3, the mention of the grant of the European patent shall not be published until the designation fee has been paid. The applicant shall be informed accordingly.

(4) If a renewal fee becomes due after the communication under Rule 71, paragraph 3, and before the next possible date for publication of the mention of the grant of the European patent, the mention shall not be published until the renewal fee has been paid. The applicant shall be informed accordingly.

(5) If, in response to an invitation under Rule 71, paragraph 3, the applicant has already paid the fee for grant and publishing or the claims fees, the paid amount shall be credited if a further such invitation is issued.

(6) If the European patent application is refused, withdrawn prior to notification of the decision on the grant of a European patent or, at that time, deemed to be withdrawn, the fee for grant and publishing shall be refunded.

Rule 72

Grant of the European patent to different applicants

Where different persons are recorded in the European Patent Register as applicants in respect of different Contracting States, the European Patent Office shall grant the European patent for each Contracting State accordingly.

Chapter V

The European patent specification

Rule 73

Content and form of the specification

(1) The specification of the European patent shall include the description, the claims and any drawings. It shall also indicate the period for opposing the European patent.

(2) The President of the European Patent Office shall determine the form of the publication of the specification and the data to be included.

(3) The designated Contracting States shall be indicated in the specification.

Rule 74

Certificate for a European patent

As soon as the specification of the European patent has been published, the European Patent Office shall issue to the proprietor of the patent a certificate for a European patent. The President of the European Patent Office shall prescribe the content, form and means of communication of the certificate and determine the circumstances in which an administrative fee is payable.

PART V

IMPLEMENTING REGULATIONS TO PART V OF THE CONVENTION

Chapter I

Opposition procedure

Rule 75

Surrender or lapse of the patent

An opposition may be filed even if the European patent has been surrendered in all the designated Contracting States or has lapsed in all those States.

Rule 76

Form and content of the opposition

(1) Notice of opposition shall be filed in a written reasoned statement.

(2) The notice of opposition shall contain:

(a) particulars of the opponent as provided in Rule 41, paragraph 2(c);

(b) the number of the European patent against which opposition is filed, the name of the proprietor of the patent and the title of the invention;

(c) a statement of the extent to which the European patent is opposed and of the grounds on which the opposition is based, as well as an indication of the facts and evidence presented in support of these grounds;

(d) if the opponent has appointed a representative, particulars as provided in Rule 41, paragraph 2(d).

(3) Part III of the Implementing Regulations shall apply mutatis mutandis to the notice of opposition.

Rule 77

Rejection of the opposition as inadmissible

- (1) If the Opposition Division notes that the notice of opposition does not comply with Article 99, paragraph 1, or Rule 76, paragraph 2(c), or does not sufficiently identify the patent against which opposition has been filed, it shall reject the opposition as inadmissible, unless these deficiencies have been remedied before expiry of the opposition period.
- (2) If the Opposition Division notes that the notice of opposition does not comply with provisions other than those referred to in paragraph 1, it shall communicate this to the opponent and shall invite him to remedy the deficiencies noted within a period to be specified. If the deficiencies are not remedied in due time, the Opposition Division shall reject the opposition as inadmissible.
- (3) The decision to reject an opposition as inadmissible shall be communicated to the proprietor of the patent, together with a copy of the notice of opposition.

Rule 78

Procedure where the proprietor of the patent is not entitled

- (1) If a third party provides evidence, during opposition proceedings or during the opposition period, that he has instituted proceedings against the proprietor of the European patent, seeking a decision within the meaning of Article 61, paragraph 1, opposition proceedings shall be stayed unless the third party communicates to the European Patent Office in writing his consent to the continuation of such proceedings. Such consent shall be irrevocable. However, proceedings shall not be stayed until the Opposition Division has deemed the opposition admissible. Rule 14, paragraphs 2 to 4, shall apply *mutatis mutandis*.
- (2) Where a third party has, in accordance with Article 99, paragraph 4, replaced the previous proprietor for one or some of the designated Contracting States, the patent as maintained in opposition proceedings may, for these States, contain claims, a description and drawings different from those for the other designated States.

Rule 79

Preparation of the examination of the opposition

- (1) The Opposition Division shall communicate the notice of opposition to the proprietor of the patent and shall give him the opportunity to file his observations and to amend, where appropriate, the description, claims and drawings within a period to be specified.
- (2) If several notices of opposition have been filed, the Opposition Division shall communicate them to the other opponents at the same time as the communication under paragraph 1.
- (3) The Opposition Division shall communicate any observations and amendments filed by the proprietor of the patent to the other parties, and shall invite them, if it considers this expedient, to reply within a period to be specified.
- (4) In the case of an intervention under Article 105, the Opposition Division may dispense with the application of paragraphs 1 to 3.

Rule 80

Amendment of the European patent

Without prejudice to Rule 138, the description, claims and drawings may be amended, provided that the amendments are occasioned by a ground for opposition under Article 100, even if that ground has not been invoked by the opponent.

Rule 81

Examination of opposition

- (1) The Opposition Division shall examine those grounds for opposition which are invoked in the opponent's statement under Rule 76, paragraph 2(c). Grounds for opposition not invoked by the opponent may be examined by the Opposition Division of its own motion if they would prejudice the maintenance of the European patent.
- (2) Communications under Article 101, paragraph 1, second sentence, and all replies thereto shall be sent to all parties. If the Opposition Division considers this expedient, it shall invite the parties to reply within a period to be specified.
- (3) In any communication under Article 101, paragraph 1, second sentence, the proprietor of the European patent shall, where necessary, be given the opportunity to amend, where appropriate, the description, claims and drawings. Where necessary, the communication shall contain a reasoned statement covering the grounds against the maintenance of the European patent.

Rule 82

Maintenance of the European patent in amended form

- (1) Before the Opposition Division decides to maintain the European patent as amended, it shall inform the parties of the text in which it intends to maintain the patent, and shall invite them to file their observations within two months if they disapprove of that text.
- (2) If a party disapproves of the text communicated by the Opposition Division, examination of the opposition may be continued. Otherwise, the Opposition Division shall, on expiry of the period under paragraph 1, invite the proprietor of the patent to pay the prescribed fee and to file a translation of any amended claims in the official languages of the

European Patent Office other than the language of the proceedings, within a period of three months. Where, in oral proceedings, decisions under Article 106, paragraph 2, or Article 111, paragraph 2, have been based on documents not complying with Rule 49, paragraph 8, the proprietor of the patent shall be invited to file the amended text in a form compliant with Rule 49, paragraph 8, within the three-month period.

(3) If the acts required under paragraph 2 are not performed in due time, they may still be performed within two months of a communication concerning the failure to observe the time limit, provided that a surcharge is paid within this period. Otherwise, the patent shall be revoked.

(4) The decision to maintain the European patent as amended shall state which text of the patent forms the basis for the decision.

Rule 83

Request for documents

Documents referred to by a party to opposition proceedings shall be filed together with the notice of opposition or the written submissions. If such documents are neither enclosed nor filed in due time upon invitation by the European Patent Office, it may decide not to take into account any arguments based on them.

Rule 84

Continuation of the opposition proceedings by the European Patent Office of its own motion

(1) If the European patent has been surrendered in all the designated Contracting States or has lapsed in all those States, the opposition proceedings may be continued at the request of the opponent filed within two months of a communication from the European Patent Office informing him of the surrender or lapse.

(2) In the event of the death or legal incapacity of an opponent, the opposition proceedings may be continued by the European Patent Office of its own motion, even without the participation of the heirs or legal representatives. The same shall apply where the opposition is withdrawn.

Rule 85

Transfer of the European patent

Rule 22 shall apply to any transfer of the European patent made during the opposition period or during opposition proceedings.

Rule 86

Documents in opposition proceedings

Part III of the Implementing Regulations shall apply mutatis mutandis to documents filed in opposition proceedings.

Rule 87

Content and form of the new specification of the European patent

The new specification of the European patent shall include the description, claims and drawings as amended. Rule 73, paragraphs 2 and 3, and Rule 74 shall apply.

Rule 88

Costs

(1) The apportionment of costs shall be dealt with in the decision on the opposition. Such apportionment shall only take into consideration the expenses necessary to assure proper protection of the rights involved. The costs shall include the remuneration of the representatives of the parties.

(2) The Opposition Division shall, on request, fix the amount of costs to be paid under a final decision apportioning them. A bill of costs, with supporting evidence, shall be attached to the request. Costs may be fixed once their credibility is established.

(3) A request for a decision by the Opposition Division may be filed within one month of the communication on the fixing of costs under paragraph 2. The request shall be filed in writing and state the grounds on which it is based. It shall not be deemed to be filed until the prescribed fee has been paid.

(4) The Opposition Division shall decide on the request under paragraph 3 without oral proceedings.

Rule 89

Intervention of the assumed infringer

(1) Notice of intervention shall be filed within three months of the date on which proceedings referred to in Article 105 are instituted.

(2) Notice of intervention shall be filed in a written reasoned statement; Rules 76 and 77 shall apply mutatis mutandis. The notice of intervention shall not be deemed to have been filed until the opposition fee has been paid.

Chapter II

Procedure for limitation or revocation

Rule 90

Subject of proceedings

The subject of limitation or revocation proceedings under Article 105a shall be the European patent as granted or as amended in opposition or limitation proceedings before the European Patent Office.

Rule 91

Responsibility for proceedings

Decisions on requests for limitation or revocation of the European patent under Article 105a shall be taken by the Examining Division. Article 18, paragraph 2, shall apply mutatis mutandis.

Rule 92

Requirements of the request

(1) The request for limitation or revocation of a European patent shall be filed in writing in one of the official languages of the European Patent Office. It may also be filed in an official language of a Contracting State, provided that a translation is filed in one of the official languages of the European Patent Office within the period specified in Rule 6, paragraph 2. Part III of the Implementing Regulations shall apply mutatis mutandis to documents filed in limitation or revocation proceedings.

(2) The request shall contain:

(a) particulars of the proprietor of the European patent making the request (the requester) as provided in Rule 41, paragraph 2(c), and an indication of the Contracting States for which the requester is the proprietor of the patent;

(b) the number of the patent whose limitation or revocation is requested, and a list of the Contracting States in which the patent has taken effect;

(c) where appropriate, the names and addresses of the proprietors of the patent for those Contracting States in which the requester is not the proprietor of the patent, and evidence that the requester is entitled to act on their behalf in the proceedings;

(d) where limitation of the patent is requested, the complete version of the amended claims and, as the case may be, of the amended description and drawings;

(e) where the requester has appointed a representative, particulars as provided in Rule 41, paragraph 2(d).

Rule 93

Precedence of opposition proceedings

(1) The request for limitation or revocation shall be deemed not to have been filed if opposition proceedings in respect of the patent are pending at the time of filing the request.

(2) If, at the time of filing an opposition to a European patent, limitation proceedings in respect of that patent are pending, the Examining Division shall terminate the limitation proceedings and order the reimbursement of the limitation fee. The reimbursement shall also be ordered in respect of the fee referred to in Rule 95, paragraph 3, first sentence, if the requester has already paid this fee.

Rule 94

Rejection of the request as inadmissible

If the Examining Division finds that the request for limitation or revocation fails to comply with the requirements of Rule 92, it shall invite the requester to correct the deficiencies noted, within a period to be specified. If the deficiencies are not corrected in due time, the Examining Division shall reject the request as inadmissible.

Rule 95

Decision on the request

(1) If a request for revocation is admissible, the Examining Division shall revoke the patent and communicate this to the requester.

(2) If a request for limitation is admissible, the Examining Division shall examine whether the amended claims constitute a limitation vis-à-vis the claims as granted or amended in opposition or limitation proceedings and comply with Article 84 and Article 123, paragraphs 2 and 3. If the request does not comply with these requirements, the Examining Division

shall give the requester one opportunity to correct any deficiencies noted, and to amend the claims and, where appropriate, the description and drawings, within a period to be specified.

(3) If a request for limitation is allowable under paragraph 2, the Examining Division shall communicate this to the requester and invite him to pay the prescribed fee and to file a translation of the amended claims in the official languages of the European Patent Office other than the language of the proceedings, within a period of three months; Rule 82, paragraph 3, first sentence, shall apply *mutatis mutandis*. If the requester performs these acts in due time, the Examining Division shall limit the patent.

(4) If the requester does not respond in due time to the communication issued under paragraph 2, or if the request for limitation is not allowable, or if the requester fails to perform the acts required under paragraph 3 in due time, the Examining Division shall reject the request.

Rule 96

Content and form of the amended European patent specification

The amended European patent specification shall include the description, claims and drawings as amended. Rule 73, paragraphs 2 and 3, and Rule 74 shall apply.

PART VI

IMPLEMENTING REGULATIONS TO PART VI OF THE CONVENTION

Chapter I

Appeals procedure

Rule 97

Appeal against apportionment and fixing of costs

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

(2) A decision fixing the amount of costs of opposition proceedings cannot be appealed unless the amount exceeds that of the fee for appeal.

Rule 98

Surrender or lapse of the patent

The decision of an Opposition Division may be appealed even if the European patent has been surrendered in all the designated Contracting States or has lapsed in all those States.

Rule 99

Content of the notice of appeal and the statement of grounds

(1) The notice of appeal shall contain:

(a) the name and the address of the appellant as provided in Rule 41, paragraph 2(c);

(b) an indication of the decision impugned; and

(c) a request defining the subject of the appeal.

(2) In the statement of grounds of appeal the appellant shall indicate the reasons for setting aside the decision impugned, or the extent to which it is to be amended, and the facts and evidence on which the appeal is based.

(3) Part III of the Implementing Regulations shall apply *mutatis mutandis* to the notice of appeal, the statement of grounds and the documents filed in appeal proceedings.

Rule 100

Examination of appeals

(1) Unless otherwise provided, the provisions relating to proceedings before the department which has taken the decision impugned shall apply to appeal proceedings.

(2) In the examination of the appeal, the Board of Appeal shall invite the parties, as often as necessary, to file observations, within a period to be specified, on communications issued by itself or observations submitted by another party.

(3) If the applicant fails to reply in due time to an invitation under paragraph 2, the European patent application shall be deemed to be withdrawn, unless the decision impugned was taken by the Legal Division.

Rule 101

Rejection of the appeal as inadmissible

(1) If the appeal does not comply with Articles 106 to 108, Rule 97 or Rule 99, paragraph 1(b) or (c) or paragraph 2, the Board of Appeal shall reject it as inadmissible, unless any deficiency has been remedied before the relevant period under Article 108 has expired.

(2) If the Board of Appeal notes that the appeal does not comply with Rule 99, paragraph 1(a), it shall communicate this to the appellant and shall invite him to remedy the deficiencies noted within a period to be specified. If the deficiencies are not remedied in due time, the Board of Appeal shall reject the appeal as inadmissible.

Rule 102

Form of decision of the Board of Appeal

The decision shall be authenticated by the Chairman of the Board of Appeal and by the competent employee of the registry of the Board of Appeal, either by their signature or by any other appropriate means. The decision shall contain:

- (a) a statement that it was delivered by the Board of Appeal;
- (b) the date when the decision was taken;
- (c) the names of the Chairman and of the other members of the Board of Appeal taking part;
- (d) the names of the parties and their representatives;
- (e) the requests of the parties;
- (f) a summary of the facts;
- (g) the reasons;
- (h) the order of the Board of Appeal, including, where appropriate, a decision on costs.

Rule 103

Reimbursement of appeal fees

(1) The appeal fee shall be reimbursed in full

- (a) in the event of interlocutory revision or where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation, or
- (b) if the appeal is withdrawn before the filing of the statement of grounds of appeal and before the period for filing that statement has expired.

(2) The appeal fee shall be reimbursed at 75% if, in response to a communication from the Board of Appeal indicating its intention to start substantive examination of the appeal, the appeal is withdrawn within two months of notification of that communication.

(3) The appeal fee shall be reimbursed at 50% if the appeal is withdrawn after expiry of the period under paragraph 1(b), provided withdrawal occurs:

- (a) if a date for oral proceedings has been set, within one month of notification of a communication issued by the Board of Appeal in preparation for these oral proceedings;
- (b) if no date for oral proceedings has been set, and the Board of Appeal has issued a communication inviting the appellant to file observations, before expiry of the period set by the Board for filing observations;
- (c) in all other cases, before the decision is issued.

(4) The appeal fee shall be reimbursed at 25%

- (a) if the appeal is withdrawn after expiry of the period under paragraph 3(a) but before the decision is announced at oral proceedings;
- (b) if the appeal is withdrawn after expiry of the period under paragraph 3(b) but before the decision is issued;
- (c) if any request for oral proceedings is withdrawn within one month of notification of the communication issued by the Board of Appeal in preparation for the oral proceedings, and no oral proceedings take place.

(5) The appeal fee shall be reimbursed under only one of the above provisions. Where more than one rate of reimbursement applies, reimbursement shall be at the higher rate.

(6) The department whose decision is impugned shall order the reimbursement if it revises its decision and considers reimbursement equitable by reason of a substantial procedural violation. In all other cases, matters of reimbursement shall be decided by the Board of Appeal.

Chapter II

Petitions for review by the Enlarged Board of Appeal**Rule 104****Further fundamental procedural defects**

A fundamental procedural defect under Article 112a, paragraph 2(d), may have occurred where the Board of Appeal, (a) contrary to Article 116, failed to arrange for the holding of oral proceedings requested by the petitioner, or (b) decided on the appeal without deciding on a request relevant to that decision.

Rule 105**Criminal acts**

A petition for review may be based on Article 112a, paragraph 2(e), if a competent court or authority has finally established that the criminal act occurred; a conviction is not necessary.

Rule 106**Obligation to raise objections**

A petition under Article 112a, paragraph 2(a) to (d), is only admissible where an objection in respect of the procedural defect was raised during the appeal proceedings and dismissed by the Board of Appeal, except where such objection could not be raised during the appeal proceedings.

Rule 107**Contents of the petition for review**

- (1) The petition shall contain:
 - (a) the name and the address of the petitioner as provided in Rule 41, paragraph 2(c);
 - (b) an indication of the decision to be reviewed.
- (2) The petition shall indicate the reasons for setting aside the decision of the Board of Appeal, and the facts and evidence on which the petition is based.
- (3) Part III of the Implementing Regulations shall apply mutatis mutandis to the petition for review and the documents filed in the proceedings.

Rule 108**Examination of the petition**

- (1) If the petition does not comply with Article 112a, paragraphs 1, 2 or 4, Rule 106 or Rule 107, paragraph 1(b) or 2, the Enlarged Board of Appeal shall reject it as inadmissible, unless any defect has been remedied before the relevant period under Article 112a, paragraph 4, expires.
- (2) If the Enlarged Board of Appeal notes that the petition does not comply with Rule 107, paragraph 1(a), it shall communicate this to the petitioner and shall invite him to remedy the deficiencies noted within a period to be specified. If the deficiencies are not remedied in due time, the Enlarged Board of Appeal shall reject the petition as inadmissible.
- (3) If the petition is allowable, the Enlarged Board of Appeal shall set aside the decision of the Board of Appeal and order the re-opening of the proceedings before the Board of Appeal responsible under Rule 12b, paragraph 4. The Enlarged Board of Appeal may order that members of the Board of Appeal who participated in taking the decision set aside shall be replaced.

Rule 109**Procedure in dealing with petitions for review**

- (1) In proceedings under Article 112a, the provisions relating to proceedings before the Boards of Appeal shall apply, unless otherwise provided. Rule 115, paragraph 1, second sentence, Rule 118, paragraph 2, first sentence, and Rule 132, paragraph 2, shall not apply. The Enlarged Board of Appeal may specify a period deviating from Rule 4, paragraph 1, first sentence.
- (2) The Enlarged Board of Appeal
 - (a) consisting of two legally qualified members and one technically qualified member shall examine all petitions for review and shall reject those which are clearly inadmissible or unallowable; such decision shall require unanimity;
 - (b) consisting of four legally qualified members and one technically qualified member shall decide on any petition not rejected under sub-paragraph (a).
- (3) The Enlarged Board of Appeal composed according to paragraph 2(a) shall decide without the involvement of other parties and on the basis of the petition.

Rule 110**Reimbursement of the fee for petitions for review**

The Enlarged Board of Appeal shall order the reimbursement of the fee for a petition for review if the proceedings before the Boards of Appeal are reopened.

**PART VII
IMPLEMENTING REGULATIONS TO PART VII OF THE CONVENTION**

**Chapter I
Decisions and communications of the European Patent Office**

**Rule 111
Form of decisions**

- (1) Where oral proceedings are held before the European Patent Office, the decision may be given orally. The decision shall subsequently be put in writing and notified to the parties.
- (2) Decisions of the European Patent Office which are open to appeal shall be reasoned and shall be accompanied by a communication pointing out the possibility of appeal and drawing the attention of the parties to Articles 106 to 108, the text of which shall be attached. The parties may not invoke the omission of the communication.

**Rule 112
Noting of loss of rights**

- (1) If the European Patent Office notes that a loss of rights has occurred, without any decision concerning the refusal of the European patent application or the grant, revocation or maintenance of the European patent, or the taking of evidence, it shall communicate this to the party concerned.
- (2) If the party concerned considers that the finding of the European Patent Office is inaccurate, it may, within two months of the communication under paragraph 1, apply for a decision on the matter. The European Patent Office shall take such decision only if it does not share the opinion of the party requesting it; otherwise, it shall inform that party.

**Rule 113
Signature, name, seal**

- (1) Any decisions, summonses, notices and communications from the European Patent Office shall be signed by, and state the name of, the employee responsible.
- (2) Where a document referred to in paragraph 1 is produced by the employee responsible using a computer, a seal may replace the signature. Where the document is produced automatically by a computer, the employee's name may also be dispensed with. The same shall apply to pre-printed notices and communications.

**Chapter II
Observations by third parties**

**Rule 114
Observations by third parties**

- (1) Any observations by a third party shall be filed in writing in an official language of the European Patent Office and state the grounds on which they are based. Rule 3, paragraph 3, shall apply.
- (2) Any such observations shall be communicated to the applicant for or proprietor of the patent, who may comment on them.

**Chapter III
Oral proceedings and taking of evidence**

**Rule 115
Summons to oral proceedings**

- (1) The parties shall be summoned to oral proceedings under Article 116, drawing their attention to paragraph 2 of this Rule. At least two months' notice of the summons shall be given, unless the parties agree to a shorter period.

(2) If a party duly summoned to oral proceedings before the European Patent Office does not appear as summoned, the proceedings may continue without that party.

Rule 116
Preparation of oral proceedings

(1) When issuing the summons, the European Patent Office shall draw attention to the points which in its opinion need to be discussed for the purposes of the decision to be taken. At the same time a final date for making written submissions in preparation for the oral proceedings shall be fixed. Rule 132 shall not apply. New facts and evidence presented after that date need not be considered, unless admitted on the grounds that the subject of the proceedings has changed.

(2) If the applicant or patent proprietor has been notified of the grounds prejudicing the grant or maintenance of the patent, he may be invited to submit, by the date specified in paragraph 1, second sentence, documents which meet the requirements of the Convention. Paragraph 1, third and fourth sentences, shall apply *mutatis mutandis*.

Rule 117
Decision on taking of evidence

Where the European Patent Office considers it necessary to hear a party, witness or expert, or to carry out an inspection, it shall take a decision to this end, setting out the investigation which it intends to carry out, relevant facts to be proved, the date, time and place of the investigation and whether it will be conducted by videoconference. If the hearing of a witness or expert is requested by a party, the decision shall specify the period within which the requester must make known the name and address of any witness or expert concerned.

Rule 118
Summons to give evidence before the European Patent Office

(1) A summons to give evidence before the European Patent Office shall be issued to the parties, witnesses or experts concerned.

(2) At least two months' notice of a summons issued to a party, witness or expert to testify shall be given, unless they agree to a shorter period. The summons shall contain:

(a) an extract from the decision under Rule 117, indicating the date, time and place of the investigation ordered, specifying whether it will be conducted by videoconference and stating the facts in respect of which parties, witnesses or experts are to be heard;

(b) the names of the parties and particulars of the rights which the witnesses or experts may invoke under Rule 122, paragraphs 2 to 4;

(c) an indication that a party, witness or expert who has been summoned to appear before the European Patent Office on its premises may, at his request, be heard by videoconference;

(d) an indication that the party, witness or expert may request to be heard by a competent court of his country of residence under Rule 120, and an invitation to inform the European Patent Office, within a period to be specified, whether he is prepared to appear before it.

Rule 119
Examination of evidence before the European Patent Office

(1) The Examining Division, Opposition Division or Board of Appeal may commission one of its members to examine the evidence adduced.

(2) Before a party, witness or expert may be heard, he shall be informed that the European Patent Office may request the competent court in the country of residence of the person concerned to re-examine his testimony under oath or in an equally binding form.

(3) The parties may attend an investigation and may put relevant questions to the testifying party, witness or expert.

Rule 120
Hearing by a competent national court

(1) A party, witness or expert who is summoned before the European Patent Office may request the latter to allow him to be heard by a competent court in his country of residence. If this is requested, or if no reply is received within the period specified in the summons, the European Patent Office may, in accordance with Article 131, paragraph 2, request the competent court to hear the person concerned.

(2) If a party, witness or expert has been heard by the European Patent Office, the latter may, if it considers it advisable for the testimony to be given under oath or in an equally binding form, issue a request under Article 131, paragraph 2, to the competent court in the country of residence of the person concerned to re-examine his testimony under such conditions.

(3) When the European Patent Office requests a competent court to take evidence, it may request the court to take the evidence under oath or in an equally binding form and to permit a member of the department concerned to attend the hearing and question the party, witness or expert, either through the intermediary of the court or directly.

Rule 121 **Commissioning of experts**

- (1) The European Patent Office shall decide in what form the opinion of an expert whom it appoints shall be submitted.
- (2) The terms of reference of the expert shall include:
 - (a) a precise description of his task;
 - (b) the period specified for the submission of his opinion;
 - (c) the names of the parties to the proceedings;
 - (d) particulars of the rights which he may invoke under Rule 122, paragraphs 2 to 4.
- (3) A copy of any written opinion shall be submitted to the parties.
- (4) The parties may object to an expert. The department of the European Patent Office concerned shall decide on the objection.

Rule 122 **Costs of taking of evidence**

- (1) The taking of evidence by the European Patent Office may be made conditional upon deposit with it, by the party requesting the evidence to be taken, of an amount to be fixed by reference to an estimate of the costs.
- (2) Witnesses or experts who are summoned by and appear before the European Patent Office shall be entitled to appropriate reimbursement of expenses for travel and subsistence. An advance for these expenses may be granted to them. This shall also apply to persons who appear before the European Patent Office without being summoned by it and are heard as witnesses or experts.
- (3) Witnesses entitled to reimbursement under paragraph 2 shall also be entitled to appropriate compensation for loss of earnings, and experts to fees for their work. These payments shall be made to the witnesses and experts after they have fulfilled their duties or tasks.
- (4) The Administrative Council shall lay down the details implementing paragraphs 2 and 3. Any amounts due under these provisions shall be paid by the European Patent Office.

Rule 123 **Conservation of evidence**

- (1) On request, the European Patent Office may, without delay, take measures to conserve evidence of facts liable to affect a decision which it may be called upon to take with regard to a European patent application or a European patent, where there is reason to fear that it might subsequently become more difficult or even impossible to take evidence. The date on which the measures are to be taken shall be communicated to the applicant for or proprietor of the patent in sufficient time to allow him to attend. He may ask relevant questions.
- (2) The request shall contain:
 - (a) particulars of the requester as provided in Rule 41, paragraph 2(c);
 - (b) sufficient identification of the European patent application or European patent in question;
 - (c) an indication of the facts in respect of which evidence is to be taken;
 - (d) particulars of the means of giving or obtaining evidence;
 - (e) a statement establishing a prima facie case for fearing that it might subsequently become more difficult or impossible to take evidence.
- (3) The request shall not be deemed to have been filed until the prescribed fee has been paid.
- (4) The decision on the request and any resulting taking of evidence shall be incumbent upon the department of the European Patent Office which would have to take the decision liable to be affected by the facts to be established. The provisions with regard to the taking of evidence in proceedings before the European Patent Office shall apply.

Rule 124 **Minutes of oral proceedings and of taking of evidence**

- (1) Minutes of oral proceedings and of the taking of evidence shall be drawn up, containing the essentials of the oral proceedings or of the taking of evidence, the relevant statements made by the parties, the testimony of the parties, witnesses or experts and the result of any inspection.
- (2) The minutes of the testimony of a witness, expert or party shall be read out, submitted to him, so that he may examine them or, where they are recorded by technical means, played back to him, unless he waives this right. It shall be noted in the minutes that this formality has been carried out and that the person who gave the testimony approved the minutes. If his approval is not given, his objections shall be noted. It is not necessary to play back the minutes or to obtain approval of them if the testimony has been recorded verbatim and directly using technical means.

- (3) The minutes shall be authenticated by the employee responsible for drawing them up and by the employee who conducted the oral proceedings or taking of evidence, either by their signature or by any other appropriate means.
- (4) The parties shall be provided with a copy of the minutes.

Chapter IV Notifications

Rule 125 General provisions

- (1) The European Patent Office shall, as a matter of course, notify those concerned of decisions and summonses, and of any notice or other communication from which a time limit is reckoned, or of which those concerned must be notified under the Convention, or of which notification has been ordered by the President of the European Patent Office. Any notification to be made shall take the form of the original document, a copy thereof certified by or bearing the seal of the European Patent Office, a computer print-out bearing such seal or an electronic document containing such seal or otherwise certified. Copies of documents emanating from the parties themselves shall not require such certification.
- (2) Notification shall be made:
 - (a) by postal services in accordance with Rule 126;
 - (b) by means of electronic communication in accordance with Rule 127;
 - (c) by delivery on the premises of the European Patent Office in accordance with Rule 128; or
 - (d) by public notice in accordance with Rule 129.
- (3) Notification through the central industrial property office of a Contracting State shall be made in accordance with the law applicable to that office in national proceedings.
- (4) Where a document has reached the addressee, if the European Patent Office is unable to prove that it has been duly notified, or if provisions relating to its notification have not been observed, the document shall be deemed to have been notified on the date established by the European Patent Office as the date of receipt.

Rule 126 Notification by postal services

- (1) All notifications by postal services shall be by registered letter.
- (2) Where notification is effected in accordance with paragraph 1, the letter shall be deemed to be delivered to the addressee on the tenth day following its handover to the postal service provider, unless it has failed to reach the addressee or has reached him at a later date; in the event of any dispute, it shall be incumbent on the European Patent Office to establish that the letter has reached its destination or to establish the date on which the letter was delivered to the addressee, as the case may be.
- (3) Notification in accordance with paragraph 1 shall be deemed to have been effected even if acceptance of the letter has been refused.
- (4) To the extent that notification by postal services is not covered by paragraphs 1 to 3, the law of the State in which the notification is made shall apply.

Rule 127 Notification by means of electronic communication

- (1) Notification may be effected by means of electronic communication as determined by the President of the European Patent Office and under the conditions laid down by him.
- (2) Where notification is effected by means of electronic communication, the electronic document shall be deemed to be delivered to the addressee on the tenth day following its transmission, unless it has failed to reach its destination or has reached its destination at a later date; in the event of any dispute, it shall be incumbent on the European Patent Office to establish that the electronic document has reached its destination or to establish the date on which it reached its destination, as the case may be.

Rule 128 Notification by delivery by hand

Notification may be effected on the premises of the European Patent Office by delivery by hand of the document to the addressee, who shall on delivery acknowledge its receipt. Notification shall be deemed to have been effected even if the addressee refuses to accept the document or to acknowledge receipt thereof.

Rule 129 Public notification

- (1) If the address of the addressee cannot be established, or if notification in accordance with Rule 126, paragraph 1, has proved to be impossible even after a second attempt, notification shall be effected by public notice.
- (2) The President of the European Patent Office shall determine how the public notice is to be given and the beginning of the period of one month on expiry of which the document shall be deemed to have been notified.

Rule 130
Notification to representatives

- (1) If a representative has been appointed, notifications shall be addressed to him.
- (2) If several representatives have been appointed for a single party, notification to any one of them shall be sufficient.
- (3) If several parties have a common representative, notification to the common representative shall be sufficient.

Chapter V
Time limits

Rule 131
Calculation of periods

- (1) Periods shall be laid down in terms of full years, months, weeks or days.
- (2) Computation shall start on the day following the day on which the relevant event occurred, the event being either a procedural step or the expiry of another period. Where the procedural step is a notification, the relevant event shall be the receipt of the document notified, unless otherwise provided.
- (3) When a period is expressed as one year or a certain number of years, it shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the said event occurred; if the relevant subsequent month has no day with the same number, the period shall expire on the last day of that month.
- (4) When a period is expressed as one month or a certain number of months, it shall expire in the relevant subsequent month on the day which has the same number as the day on which the said event occurred; if the relevant subsequent month has no day with the same number, the period shall expire on the last day of that month.
- (5) When a period is expressed as one week or a certain number of weeks, it shall expire in the relevant subsequent week on the day having the same name as the day on which the said event occurred.

Rule 132
Periods specified by the European Patent Office

- (1) Where the Convention or these Implementing Regulations refer to "a period to be specified", this period shall be specified by the European Patent Office.
- (2) Unless otherwise provided, a period specified by the European Patent Office shall be neither less than two months nor more than four months; in certain circumstances it may be up to six months. In special cases, the period may be extended upon request, presented before the expiry of such period.

Rule 133
Late receipt of documents

- (1) A document received late at the European Patent Office shall be deemed to have been received in due time if it was delivered to a recognised postal service provider in due time before expiry of the period in accordance with the conditions laid down by the President of the European Patent Office, unless the document was received later than three months after expiry of the period.
- (2) Paragraph 1 shall apply mutatis mutandis to any period where transactions are carried out with the competent authority in accordance with Article 75, paragraphs 1(b) or 2(b).

Rule 134
Extension of periods

- (1) If a period expires on a day on which one of the filing offices of the European Patent Office under Rule 35, paragraph 1, is not open for receipt of documents or on which, for reasons other than those referred to in paragraph 2, mail is not delivered there, the period shall extend to the first day thereafter on which all the filing offices are open for receipt of documents and on which mail is delivered. The first sentence shall apply mutatis mutandis if documents filed by one of the means of electronic communication permitted by the President of the European Patent Office under Rule 2, paragraph 1, cannot be received.
- (2) If a period expires on a day on which there is a general dislocation in the delivery or transmission of mail in a Contracting State, the period shall extend to the first day following the end of the interval of dislocation for parties which are resident in the State concerned or have appointed representatives with a place of business in that State. Where the

State concerned is the State in which the European Patent Office is located, this provision shall apply to all parties and their representatives. This paragraph shall apply mutatis mutandis to the period referred to in Rule 37, paragraph 2.

(3) Paragraphs 1 and 2 shall apply mutatis mutandis where acts are performed with the competent authority in accordance with Article 75, paragraphs 1(b) or 2(b).

(4) The date of commencement and the end of any dislocation under paragraph 2 shall be published by the European Patent Office.

(5) Without prejudice to paragraphs 1 to 4, a party concerned may produce evidence that on any of the ten days preceding the day of expiry of a period the delivery or transmission of mail was dislocated due to an exceptional occurrence such as a natural disaster, war, civil disorder, a general breakdown in any of the means of electronic communication permitted by the President of the European Patent Office under Rule 2, paragraph 1, or other like reasons affecting the locality where the party or his representative resides or has his place of business. If the evidence produced satisfies the European Patent Office, a document received late shall be deemed to have been received in due time, provided that the mailing or the transmission was effected at the latest on the fifth day after the end of the dislocation.

Rule 135 **Further processing**

(1) Further processing under Article 121, paragraph 1, shall be requested by payment of the prescribed fee within two months of the communication concerning either the failure to observe a time limit or a loss of rights. The omitted act shall be completed within the period for making the request.

(2) Further processing shall be ruled out in respect of the periods referred to in Article 121, paragraph 4, and of the periods under Rule 6, paragraph 1, Rule 16, paragraph 1(a), Rule 31, paragraph 2, Rule 36, paragraph 2, Rule 40, paragraph 3, Rule 51, paragraphs 2 to 5, Rule 52, paragraphs 2 and 3, Rules 55, 56, 58, 59, 62a, 63, 64, Rule 112, paragraph 2, and Rule 164, paragraphs 1 and 2.

(3) The department competent to decide on the omitted act shall decide on the request for further processing.

Rule 136 **Re-establishment of rights**

(1) Any request for re-establishment of rights under Article 122, paragraph 1, shall be filed in writing within two months of the removal of the cause of non-compliance with the period, but at the latest within one year of expiry of the unobserved time limit. However, a request for re-establishment of rights in respect of any of the periods specified in Article 87, paragraph 1, and in Article 112a, paragraph 4, shall be filed within two months of expiry of that period. The request for re-establishment of rights shall not be deemed to have been filed until the prescribed fee has been paid.

(2) The request shall state the grounds on which it is based and shall set out the facts on which it relies. The omitted act shall be completed within the relevant period for filing the request according to paragraph 1.

(3) Re-establishment of rights shall be ruled out in respect of any period for which further processing under Article 121 is available and in respect of the period for requesting re-establishment of rights.

(4) The department competent to decide on the omitted act shall decide on the request for re-establishment of rights.

Chapter VI **Amendments and corrections**

Rule 137 **Amendment of the European patent application**

(1) Before receiving the European search report, the applicant may not amend the description, claims or drawings of a European patent application unless otherwise provided.

(2) Together with any comments, corrections or amendments made in response to communications by the European Patent Office under Rule 70a, paragraph 1 or 2, or Rule 161, paragraph 1, the applicant may amend the description, claims and drawings of his own volition.

(3) No further amendment may be made without the consent of the Examining Division.

(4) When filing any amendments referred to in paragraphs 1 to 3, the applicant shall identify them and indicate the basis for them in the application as filed. If the Examining Division notes a failure to meet either requirement, it may request the correction of this deficiency within a period of one month.

(5) Amended claims may not relate to unsearched subject-matter which does not combine with the originally claimed invention or group of inventions to form a single general inventive concept. Nor may they relate to subject-matter not searched in accordance with Rule 62a or Rule 63.

Rule 138 **Different claims, description and drawings for different States**

If the European Patent Office is informed of the existence of a prior right under Article 139, paragraph 2, the European patent application or European patent may, for such State or States, contain claims and, where appropriate, a description and drawings which are different from those for the other designated States.

Rule 139

Correction of errors in documents filed with the European Patent Office

Linguistic errors, errors of transcription and mistakes in any document filed with the European Patent Office may be corrected on request. However, if the request for such correction concerns the description, claims or drawings, the correction must be obvious in the sense that it is immediately evident that nothing else would have been intended than what is offered as the correction.

Rule 140

Correction of errors in decisions

In decisions of the European Patent Office, only linguistic errors, errors of transcription and obvious mistakes may be corrected.

Chapter VII

Information on prior art

Rule 141

Information on prior art

(1) An applicant claiming priority within the meaning of Article 87 shall file a copy of the results of any search carried out by the authority with which the previous application was filed together with the European patent application, in the case of a Euro-PCT application on entry into the European phase, or without delay after such results have been made available to him.

(2) The copy referred to in paragraph 1 shall be deemed to be duly filed if it is available to the European Patent Office and to be included in the file of the European patent application under the conditions determined by the President of the European Patent Office.

(3) Without prejudice to paragraphs 1 and 2, the European Patent Office may invite the applicant to provide, within a period of two months, information on prior art within the meaning of Article 124, paragraph 1.

Chapter VIII

Interruption of proceedings

Rule 142

Interruption of proceedings

(1) Proceedings before the European Patent Office shall be interrupted:

(a) in the event of the death or legal incapacity of the applicant for or proprietor of a European patent or of the person authorised by national law to act on his behalf. To the extent that the above events do not affect the authorisation of a representative appointed under Article 134, proceedings shall be interrupted only on application by such representative;

(b) in the event of the applicant for or proprietor of a patent, as a result of some action taken against his property, being prevented by legal reasons from continuing the proceedings;

(c) in the event of the death or legal incapacity of the representative of an applicant for or proprietor of a patent, or of his being prevented for legal reasons resulting from action taken against his property from continuing the proceedings.

(2) When, in the cases referred to in paragraph 1(a) or (b), the European Patent Office has been informed of the identity of the person authorised to continue the proceedings, it shall notify such person and, where applicable, any third party, that the proceedings will be resumed as from a specified date. If, three years after the publication of the date of interruption in the European Patent Bulletin, the European Patent Office has not been informed of the identity of the person authorised to continue the proceedings, it may set a date on which it intends to resume the proceedings of its own motion.

(3) In the case referred to in paragraph 1(c), the proceedings shall be resumed when the European Patent Office has been informed of the appointment of a new representative of the applicant or when the Office has informed the other parties of the appointment of a new representative of the proprietor of the patent. If, three months after the beginning of the interruption of the proceedings, the European Patent Office has not been informed of the appointment of a new representative, it shall communicate to the applicant for or proprietor of the patent:

(a) where Article 133, paragraph 2, is applicable, that the European patent application will be deemed to be withdrawn or the European patent will be revoked if the information is not submitted within two months of this communication; or

(b) otherwise, that the proceedings will be resumed with the applicant for or proprietor of the patent as from the notification of this communication.

(4) Any periods, other than those for requesting examination and paying renewal fees, in force at the date of interruption of the proceedings, shall begin again as from the day on which the proceedings are resumed. If such date is less than two months before the end of the period within which the request for examination must be filed, such a request may be filed within two months of such date.

Chapter IX Information to the public

Rule 143 Entries in the European Patent Register

(1) The European Patent Register shall contain the following entries:

- (a) number of the European patent application;
- (b) date of filing of the application;
- (c) title of the invention;
- (d) classification symbols assigned to the application;
- (e) the Contracting States designated;
- (f) particulars of the applicant for or proprietor of the patent as provided in Rule 41, paragraph 2(c);
- (g) family name, given names and address of the inventor designated by the applicant for or proprietor of the patent, unless he has waived his right to be mentioned under Rule 20, paragraph 1;
- (h) particulars of the representative of the applicant for or proprietor of the patent as provided in Rule 41, paragraph 2(d); in the case of several representatives only the particulars of the representative first named, followed by the words "and others" and, in the case of an association referred to in Rule 152, paragraph 11, only the name and address of the association;
- (i) priority data (date, State and file number of the previous application);
- (j) in the event of a division of the application, the numbers of all the divisional applications;
- (k) in the case of a divisional application or a new application under Article 61, paragraph 1(b), the information referred to in sub-paragraphs (a), (b) and (i) with regard to the earlier application;
- (l) date of publication of the application and, where appropriate, date of the separate publication of the European search report;
- (m) date of filing of the request for examination;
- (n) date on which the application is refused, withdrawn or deemed to be withdrawn;
- (o) date of publication of the mention of the grant of the European patent;
- (p) date of lapse of the European patent in a Contracting State during the opposition period and, where appropriate, pending a final decision on opposition;
- (q) date of filing opposition;
- (r) date and purport of the decision on opposition;
- (s) dates of stay and resumption of proceedings in the cases referred to in Rules 14 and 78;
- (t) dates of interruption and resumption of proceedings in the case referred to in Rule 142;
- (u) date of re-establishment of rights where an entry has been made under sub-paragraphs (n) or (r);
- (v) the filing of a request for conversion under Article 135, paragraph 3;
- (w) rights and transfer of such rights relating to an application or a European patent where these Implementing Regulations provide that they shall be recorded.
- (x) date and purport of the decision on the request for limitation or revocation of the European patent;
- (y) date and purport of the decision of the Enlarged Board of Appeal on the petition for review.

(2) The President of the European Patent Office may decide that entries other than those referred to in paragraph 1 shall be made in the European Patent Register.

Rule 144 Parts of the file excluded from inspection

The parts of the file excluded from inspection under Article 128, paragraph 4, shall be:

- (a) the documents relating to the exclusion of or objections to members of the Boards of Appeal or of the Enlarged Board of Appeal;
- (b) draft decisions and notices, and all other documents, used for the preparation of decisions and notices, which are not communicated to the parties;
- (c) the designation of the inventor, if he has waived his right to be mentioned under Rule 20, paragraph 1;
- (d) any other document excluded from inspection by the President of the European Patent Office on the ground that such inspection would not serve the purpose of informing the public about the European patent application or the European patent.

Rule 145
Procedures for the inspection of files

- (1) Inspection of the files of European patent applications and patents shall either be of the original document, or of copies thereof, or of technical means of storage if the files are stored in this way.
- (2) The President of the European Patent Office shall determine all file-inspection arrangements, including the circumstances in which an administrative fee is payable.

Rule 146
Communication of information contained in the files

Subject to the restrictions laid down in Article 128, paragraphs 1 to 4, and in Rule 144, the European Patent Office may, upon request, communicate information concerning any file relating to a European patent application or European patent, subject to the payment of an administrative fee. However, the European Patent Office may refer to the option of file inspection where it deems this to be appropriate in view of the quantity of information to be supplied.

Rule 147
Constitution, maintenance and preservation of files

- (1) The European Patent Office shall constitute, maintain and preserve files relating to all European patent applications and patents in electronic form.
- (2) The President of the European Patent Office shall determine all necessary technical and administrative arrangements relating to the management of electronic files according to paragraph 1.
- (3) Documents incorporated in an electronic file shall be considered to be originals. The initial paper version of such documents shall only be destroyed after expiry of at least five years. This preservation period starts at the end of the year in which the document was incorporated in the electronic file.
- (4) Any files shall be preserved for at least five years from the end of the year in which:
 - (a) the application is refused or withdrawn or is deemed to be withdrawn;
 - (b) the patent is revoked by the European Patent Office; or
 - (c) the patent or the corresponding protection under Article 63, paragraph 2, lapses in the last of the designated States.
- (5) Without prejudice to paragraph 4, files relating to applications which have given rise to divisional applications under Article 76 or new applications under Article 61, paragraph 1(b), shall be preserved for at least the same period as the files relating to any one of these last applications. The same shall apply to files relating to any resulting European patents.

Chapter X
Legal and administrative co-operation

Rule 148
Communications between the European Patent Office and the authorities of the Contracting States

- (1) Communications between the European Patent Office and the central industrial property offices of the Contracting States which arise out of the application of this Convention shall be effected directly between these authorities. Communications between the European Patent Office and the courts or other authorities of the Contracting States may be effected through the intermediary of the said central industrial property offices.
- (2) Expenditure in respect of communications under paragraph 1 shall be borne by the authority making the communications, which shall be exempt from fees.

Rule 149
Inspection of files by or via courts or authorities of the Contracting States

- (1) Inspection of the files of European patent applications or of European patents by courts or authorities of the Contracting States shall be of the original documents or of copies thereof; Rule 145 shall not apply.
- (2) Courts or Public Prosecutors' offices of the Contracting States may, in the course of their proceedings, communicate to third parties files or copies thereof transmitted to them by the European Patent Office. Such communications shall be effected in accordance with Article 128 and shall not be subject to any fee.

(3) The European Patent Office shall, when transmitting the files, draw attention to the restrictions which may, under Article 128, paragraphs 1 and 4, apply to file inspection by third parties.

Rule 150

Procedure for letters rogatory

- (1) Each Contracting State shall designate a central authority to receive letters rogatory issued by the European Patent Office and to transmit them to the court or authority competent to execute them.
- (2) The European Patent Office shall draw up letters rogatory in the language of the competent court or authority or shall attach to such letters rogatory a translation into that language.
- (3) Subject to paragraphs 5 and 6, the competent court or authority shall apply national law as to the procedures to be followed in executing such requests and, in particular, as to the appropriate measures of compulsion.
- (4) If the court or authority to which the letters rogatory are transmitted is not competent to execute them, the letters rogatory shall be sent forthwith to the central authority referred to in paragraph 1. That authority shall transmit the letters rogatory either to the competent court or authority in that State, or to the European Patent Office where no court or authority is competent in that State.
- (5) The European Patent Office shall be informed of the time when, and the place where, the enquiry or other legal measure is to take place and shall inform the parties, witnesses and experts concerned.
- (6) If so requested by the European Patent Office, the competent court or authority shall permit the attendance of members of the department concerned and allow them to question any person giving evidence either directly or through the competent court or authority.
- (7) The execution of letters rogatory shall not give rise to any reimbursement of fees or costs of any nature. Nevertheless, the State in which letters rogatory are executed has the right to require the Organisation to reimburse any fees paid to experts or interpreters and the costs arising from the procedure under paragraph 6.
- (8) If the law applied by the competent court or authority obliges the parties to secure evidence and the competent court or authority is not able itself to execute the letters rogatory, that court or authority may, with the consent of the European Patent Office, appoint a suitable person to do so. When seeking such consent, the competent court or authority shall indicate the approximate costs which would result from this procedure. If the European Patent Office gives its consent, the Organisation shall reimburse any costs incurred; otherwise, the Organisation shall not be liable for such costs.

Chapter XI

Representation

Rule 151

Appointment of a common representative

- (1) If there is more than one applicant and the request for grant of a European patent does not name a common representative, the applicant first named in the request shall be deemed to be the common representative. However, if one of the applicants is obliged to appoint a professional representative, this representative shall be deemed to be the common representative, unless the applicant first named has appointed a professional representative. The same shall apply to third parties acting in common in filing a notice of opposition or intervention and to joint proprietors of a European patent.
- (2) If the European patent application is transferred to more than one person, and such persons have not appointed a common representative, paragraph 1 shall apply *mutatis mutandis*. If such application is not possible, the European Patent Office shall invite such persons to appoint a common representative within a period to be specified. If this invitation is not complied with, the European Patent Office shall appoint the common representative.

Rule 152

Authorisations

- (1) The President of the European Patent Office shall determine the cases in which a signed authorisation shall be filed by representatives acting before the European Patent Office.
- (2) Where a representative fails to file such an authorisation, the European Patent Office shall invite him to do so within a period to be specified. The authorisation may cover one or more European patent applications or European patents and shall be filed in the corresponding number of copies.
- (3) Where the requirements of Article 133, paragraph 2, have not been satisfied, the same period shall be specified for the appointment of a representative and the filing of the authorisation.
- (4) A general authorisation may be filed enabling a representative to act in respect of all the patent transactions of a party. A single copy shall suffice.
- (5) The President of the European Patent Office may determine the form and content of:
 - (a) an authorisation relating to the representation of persons under Article 133, paragraph 2;
 - (b) a general authorisation.

- (6) If a required authorisation is not filed in due time, any procedural steps taken by the representative, other than the filing of a European patent application, shall be deemed not to have been taken, without prejudice to any other legal consequences provided for by this Convention.
- (7) Paragraphs 2 and 4 shall apply to the withdrawal of an authorisation.
- (8) A representative shall be deemed to be authorised until the termination of his authorisation has been communicated to the European Patent Office.
- (9) Unless it expressly provides otherwise, an authorisation shall not terminate vis-à-vis the European Patent Office upon the death of the person who gave it.
- (10) If a party appoints several representatives, they may act either jointly or singly, notwithstanding any provisions to the contrary in the communication of their appointment or in the authorisation.
- (11) The authorisation of an association of representatives shall be deemed to be an authorisation of any representative who can provide evidence that he practises within that association.

Rule 153

Attorney-client evidentiary privilege

- (1) Where advice is sought from a professional representative in his capacity as such, all communications between the professional representative and his client or any other person, relating to that purpose and falling under Article 2 of the Regulation on discipline for professional representatives, are permanently privileged from disclosure in proceedings before the European Patent Office, unless such privilege is expressly waived by the client.
- (2) Such privilege from disclosure shall apply, in particular, to any communication or document relating to:
- (a) the assessment of the patentability of an invention;
 - (b) the preparation or prosecution of a European patent application;
 - (c) any opinion relating to the validity, scope of protection or infringement of a European patent or a European patent application.

Rule 154

Amendment of the list of professional representatives

- (1) The entry of a professional representative shall be deleted from the list of professional representatives if he so requests or if, despite a reminder, he fails to pay the applicable annual subscription to the Institute within five months from either:
- (a) 1 January for members on the list at that date; or
 - (b) the date of entry for members entered on the list after 1 January of the year for which the subscription is due.
- (2) Without prejudice to any disciplinary measures taken under Article 134a, paragraph 1(c), the entry of a professional representative may be deleted ex officio only:
- (a) in the event of his death or legal incapacity;
 - (b) where he is no longer a national of one of the Contracting States, unless he was granted an exemption under Article 134, paragraph 7(a);
 - (c) where he no longer has his place of business or employment within one of the Contracting States.
- (3) Any person entered on the list of professional representatives under Article 134, paragraphs (2) or (3), whose entry has been deleted shall, upon request, be re-entered on that list if the conditions for deletion no longer exist.

PART VIII

IMPLEMENTING REGULATIONS TO PART VIII OF THE CONVENTION

Rule 155

Filing and transmission of the request for conversion

- (1) The request for conversion referred to in Article 135, paragraph 1(a) or (b), shall be filed within three months of the withdrawal of the European patent application, or of the communication that the application is deemed to be withdrawn, or of the decision refusing the application or revoking the European patent. The effect of the European patent application under Article 66 shall lapse if the request is not filed in due time.
- (2) When transmitting the request for conversion to the central industrial property offices of the Contracting States specified in the request, the central industrial property office concerned or the European Patent Office shall attach to the request a copy of the file relating to the European patent application or European patent.
- (3) Article 135, paragraph 4, shall apply if the request for conversion referred to in Article 135, paragraphs 1(a) and (2), is not transmitted before the expiry of a period of twenty months from the date of filing or, if priority has been claimed, the date of priority.

Rule 156

Information to the public in the event of conversion

- (1) The documents accompanying the request for conversion under Rule 155, paragraph 2, shall be made available to the public by the central industrial property office under the same conditions and to the same extent as documents relating to national proceedings.
- (2) The printed specification of the national patent resulting from the conversion of a European patent application shall mention that application.

**PART IX
IMPLEMENTING REGULATIONS TO PART X OF THE CONVENTION**

Rule 157

The European Patent Office as a receiving Office

- (1) The European Patent Office shall be competent to act as a receiving Office within the meaning of the PCT if the applicant is a resident or national of a Contracting State to this Convention and to the PCT. Without prejudice to paragraph 3, if the applicant chooses the European Patent Office as a receiving Office, the international application shall be filed directly with the European Patent Office. Article 75, paragraph 2, shall apply *mutatis mutandis*.
- (2) Where the European Patent Office acts as a receiving Office under the PCT, the international application shall be filed in English, French or German. The President of the European Patent Office may determine that the international application and any related item shall be filed in more than one copy.
- (3) If an international application is filed with an authority of a Contracting State for transmittal to the European Patent Office as the receiving Office, the Contracting State shall ensure that the application reaches the European Patent Office not later than two weeks before the end of the thirteenth month from filing or, if priority is claimed, from the date of priority.
- (4) The transmittal fee for the international application shall be paid within one month of filing the application.

Rule 158

The European Patent Office as an International Searching Authority or International Preliminary Examining Authority

- (1) In the case of Article 17, paragraph 3(a) PCT, an additional international search fee shall be paid for each further invention for which an international search is to be carried out.
- (2) In the case of Article 34, paragraph 3(a) PCT, an additional fee for international preliminary examination shall be paid for each further invention for which the international preliminary examination is to be carried out.
- (3) Where an additional fee has been paid under protest, the European Patent Office shall examine the protest in accordance with Rule 40.2(c) to (e) or Rule 68.3(c) to (e) PCT, subject to payment of the prescribed protest fee. Further details concerning the procedure shall be determined by the President of the European Patent Office.

Rule 159

The European Patent Office as a designated or elected Office – Requirements for entry into the European phase

- (1) In respect of an international application under Article 153, the applicant shall perform the following acts within thirty-one months from the date of filing of the application or, if priority has been claimed, from the priority date:
 - (a) supply, where applicable, the translation of the international application required under Article 153, paragraph 4;
 - (b) specify the application documents, as originally filed or as amended, on which the European grant procedure is to be based;
 - (c) pay the filing fee provided for in Article 78, paragraph 2;
 - (d) pay the designation fee if the period under Rule 39 has expired earlier;
 - (e) pay the search fee, where a supplementary European search report has to be drawn up;
 - (f) file the request for examination provided for in Article 94, if the period under Rule 70, paragraph 1, has expired earlier;
 - (g) pay the renewal fee in respect of the third year provided for in Article 86, paragraph 1, if the fee has fallen due earlier under Rule 51, paragraph 1;
 - (h) file, where applicable, the certificate of exhibition referred to in Article 55, paragraph 2, and Rule 25.
- (2) The Examining Division shall be competent to take decisions of the European Patent Office under Article 25, paragraph 2(a) PCT.

Rule 160

Consequences of non-fulfilment of certain requirements

- (1) If either the translation of the international application or the request for examination is not filed in due time, or if the filing fee, the search fee or the designation fee is not paid in due time, the European patent application shall be deemed to be withdrawn.
- (2) If the European Patent Office notes that the application is deemed to be withdrawn under paragraph 1, it shall communicate this to the applicant. Rule 112, paragraph 2, shall apply *mutatis mutandis*.

Rule 161
Amendment of the application

(1) If the European Patent Office has acted as the International Searching Authority and, where a demand under Article 31 PCT was filed, also as the International Preliminary Examining Authority for a Euro-PCT application, it shall give the applicant the opportunity to comment on the written opinion of the International Searching Authority or the International Preliminary Examination Report and, where appropriate, invite him to correct any deficiencies noted in the written opinion or in the International Preliminary Examination Report and to amend the description, claims and drawings within a period of six months from the respective communication. If the European Patent Office has drawn up a supplementary international search report, an invitation in accordance with the first sentence shall be issued in respect of the explanations given in accordance with Rule 45bis.7(e) PCT. If the applicant does not comply with or comment on an invitation in accordance with the first or second sentence, the application shall be deemed to be withdrawn.

(2) Where the European Patent Office draws up a supplementary European search report on a Euro-PCT application, the application may be amended once within a period of six months from a communication informing the applicant accordingly. The application as amended shall serve as the basis for the supplementary European search.

Rule 162
Claims incurring fees

(1) If the application documents on which the European grant procedure is to be based comprise more than fifteen claims, claims fees shall be paid for the sixteenth and each subsequent claim as laid down in the Rules relating to Fees within the period under Rule 159, paragraph 1.

(2) If the claims fees are not paid in due time, they may still be paid within the period under Rule 161, paragraph 1 or paragraph 2, as the case may be. If within this period amended claims are filed, the claims fees due shall be computed on the basis of such amended claims and shall be paid within this period.

(3) Any claims fees paid within the period under paragraph 1 and in excess of those due under paragraph 2, second sentence, shall be refunded.

(4) Where a claims fee is not paid in due time, the claim concerned shall be deemed to be abandoned.

Rule 163
Examination of certain formal requirements by the European Patent Office

(1) Where the designation of the inventor under Rule 19, paragraph 1, has not yet been made within the period under Rule 159, paragraph 1, the European Patent Office shall invite the applicant to make the designation within two months.

(2) Where the priority of an earlier application is claimed and the file number of the previous application or the copy thereof provided for in Rule 52, paragraph 1, and Rule 53 have not yet been submitted within the period under Rule 159, paragraph 1, the European Patent Office shall invite the applicant to furnish that number or copy within two months. Rule 53, paragraph 2, shall apply.

(3) Where, at the expiry of the period under Rule 159, paragraph 1, a sequence listing complying with the standard provided for in the Administrative Instructions under the PCT is not available to the European Patent Office, the applicant shall be invited to file a sequence listing complying with the rules laid down by the President of the European Patent Office within two months. Rule 30, paragraphs 2 and 3, shall apply mutatis mutandis.

(4) Where, at the expiry of the period under Rule 159, paragraph 1, the address, the nationality or the State in which his residence or principal place of business is located is missing in respect of any applicant, the European Patent Office shall invite the applicant to furnish these indications within two months.

(5) Where, at the expiry of the period under Rule 159, paragraph 1, the requirements of Article 133, paragraph 2, have not been satisfied, the European Patent Office shall invite the applicant to appoint a professional representative within two months.

(6) If the deficiencies noted under paragraphs 1, 4 or 5 are not corrected in due time, the European patent application shall be refused. If the deficiency noted under paragraph 2 is not corrected in due time, the right of priority shall be lost for the application.

Rule 164
Unity of invention and further searches

(1) If the European Patent Office considers that the application documents which are to serve as the basis for the supplementary European search do not comply with the requirement of unity of invention, it shall:

(a) draw up a partial supplementary search report on those parts of the application which relate to the invention, or the group of inventions within the meaning of Article 82, first mentioned in the claims;

(b) inform the applicant that, for the supplementary European search report to cover the other inventions, a further search fee must be paid, in respect of each invention involved, within a period of two months; and

(c) draw up the supplementary European search report for the parts of the application relating to inventions in respect of which search fees have been paid.

(2) If the supplementary European search report is dispensed with and the Examining Division considers that in the application documents which are to serve as the basis for examination an invention, or a group of inventions within the meaning of Article 82, is claimed which was not searched by the European Patent Office in its capacity as International Searching Authority or Authority specified for supplementary international search, the Examining Division shall:

(a) inform the applicant that a search will be performed in respect of any such invention for which a search fee is paid within a period of two months;

(b) issue the results of any search performed in accordance with paragraph (a) together with:

- a communication under Article 94, paragraph 3, and Rule 71, paragraphs 1 and 2, in which it shall give the applicant the opportunity to comment on these results and to amend the description, claims and drawings, or

- a communication under Rule 71, paragraph 3,

and

(c) where appropriate, in the communication issued under paragraph (b), invite the applicant to limit the application to one invention, or group of inventions within the meaning of Article 82, for which a search report was drawn up by the European Patent Office in its capacity either as International Searching Authority or as Authority specified for supplementary international search, or for which a search was performed in accordance with the procedure under paragraph (a).

(3) In the procedure under paragraph 2(a), Rules 62a and 63 shall apply *mutatis mutandis*.

(4) Rule 62 and Rule 70, paragraph 2, shall not apply to the results of any search performed in accordance with paragraph 2.

(5) Any fee paid under paragraphs 1 or 2 shall be refunded if the applicant requests a refund and the Examining Division finds that the communication under paragraphs 1(b) or 2(a) was not justified.

Rule 165

The Euro-PCT application as conflicting application under Article 54, paragraph 3

A Euro-PCT application shall be considered as comprised in the state of the art under Article 54, paragraph 3, if in addition to the conditions laid down in Article 153, paragraph 3 or 4, the filing fee under Rule 159, paragraph 1(c) has been paid.

Protocol on the Interpretation of Article 69 of European Patent Convention of 5 October 1973

Article 1

General principles

Article 69 should not be interpreted as meaning that the extent of the protection conferred by a European patent is to be understood as that defined by the strict, literal meaning of the wording used in the claims, the description and drawings being employed only for the purpose of resolving an ambiguity found in the claims. Nor should it be taken to mean that the claims serve only as a guideline and that the actual protection conferred may extend to what, from a consideration of the description and drawings by a person skilled in the art, the patent proprietor has contemplated. On the contrary, it is to be interpreted as defining a position between these extremes which combines a fair protection for the patent proprietor with a reasonable degree of legal certainty for third parties.

Article 2

Equivalents

For the purpose of determining the extent of protection conferred by a European patent, due account shall be taken of any element which is equivalent to an element specified in the claims.

Protocol on the Centralisation of the European Patent System and on its Introduction (Protocol on Centralisation) of 5 October 1973

Section I

(1) (a) Upon entry into force of the Convention, States parties thereto which are also members of the International Patent Institute set up by the Hague Agreement of 6 June 1947 shall take all necessary steps to ensure the transfer to the European Patent Office no later than the date referred to in *Article 162, paragraph 1*, of the Convention of all assets and liabilities and all staff members of the International Patent Institute. Such transfer shall be effected by an agreement between the International Patent Institute and the European Patent Organisation. The above States and the other States parties to the Convention shall take all necessary steps to ensure that that agreement shall be implemented no later than the date referred to in *Article 162, paragraph 1*, of the Convention. Upon implementation of the agreement, those

Member States of the International Patent Institute which are also parties to the Convention further undertake to terminate their participation in the Hague Agreement.

(b) The States parties to the Convention shall take all necessary steps to ensure that all the assets and liabilities and all the staff members of the International Patent Institute are taken into the European Patent Office in accordance with the agreement referred to in sub-paragraph (a). After the implementation of that agreement the tasks incumbent upon the International Patent Institute at the date on which the Convention is opened for signature, and in particular those carried out vis-à-vis its Member States, whether or not they become parties to the Convention, and such tasks as it has undertaken at the time of the entry into force of the Convention to carry out vis-à-vis States which, at that date, are both members of the International Patent Institute and parties to the Convention, shall be assumed by the European Patent Office. In addition, the Administrative Council of the European Patent Organisation may allocate further duties in the field of searching to the European Patent Office.

(c) The above obligations shall also apply mutatis mutandis to the sub-office set up under the Hague Agreement under the conditions set out in the agreement between the International Patent Institute and the Government of the Contracting State concerned. This Government hereby undertakes to make a new agreement with the European Patent Organisation in place of the one already made with the International Patent Institute to harmonise the clauses concerning the organisation, operation and financing of the sub-office with the provisions of this Protocol.

(2) Subject to the provisions of Section III, the States parties to the Convention shall, on behalf of their central industrial property offices, renounce in favour of the European Patent Office any activities as International Searching Authorities under the Patent Cooperation Treaty as from the date referred to in *Article 162, paragraph 1*, of the Convention.

(3) (a) A sub-office of the European Patent Office shall be set up in Berlin as from the date referred to in *Article 162, paragraph 1*, of the Convention. It shall operate under the direction of the branch at The Hague.

(b) The Administrative Council shall determine the duties to be allocated to the sub-office in Berlin in the light of general considerations and of the requirements of the European Patent Office.

(c) At least at the beginning of the period following the progressive expansion of the field of activity of the European Patent Office, the amount of work assigned to that sub-office shall be sufficient to enable the examining staff of the Berlin Annex of the German Patent Office, as it stands at the date on which the Convention is opened for signature, to be fully employed.

(d) The Federal Republic of Germany shall bear any additional costs incurred by the European Patent Organisation in setting up and maintaining the sub-office in Berlin.

Section II

Subject to the provisions of Sections III and IV, the States parties to the Convention shall, on behalf of their central industrial property offices, renounce in favour of the European Patent Office any activities as International Preliminary Examining Authorities under the Patent Cooperation Treaty. This obligation shall apply only to the extent to which the European Patent Office may examine European patent applications in accordance with *Article 162, paragraph 2*, of the Convention and shall not apply until two years after the date on which the European Patent Office has begun examining activities in the areas of technology concerned, on the basis of a five-year plan which shall progressively extend the activities of the European Patent Office to all areas of technology and which may be amended only by decision of the Administrative Council. The procedures for implementing this obligation shall be determined by decision of the Administrative Council.

Section III

(1) The central industrial property office of any State party to the Convention in which the official language is not one of the official languages of the European Patent Office, shall be authorised to act as an International Searching Authority and as an International Preliminary Examining Authority under the Patent Cooperation Treaty. Such authorisation shall be subject to an undertaking by the State concerned to restrict such activities to international applications filed by nationals or residents of such State and by nationals or residents of States parties to the Convention which are adjacent to that State. The Administrative Council may decide to authorise the central industrial property office of any State party to the Convention to extend such activities to cover such international applications as may be filed by nationals or residents of any non-Contracting State having the same official language as the Contracting State in question and drawn up in that language.

(2) For the purpose of harmonising search activities under the Patent Cooperation Treaty within the framework of the European system for the grant of patents, co-operation shall be established between the European Patent Office and any central industrial property office authorised under this Section. Such cooperation shall be based on a special agreement which may cover e.g. search procedures and methods, qualifications required for the recruitment and training of examiners, guidelines for the exchange of search and other services between the offices as well as other measures needed to establish the required control and supervision.

Section IV

(1) (a) For the purpose of facilitating the adaptation of the national patent offices of the States parties to the Convention to the European patent system, the Administrative Council may, if it considers it desirable, and subject to the conditions

set out below, entrust the central industrial property offices of such of those States in which it is possible to conduct the proceedings in one of the official languages of the European Patent Office with tasks concerning the examination of European patent applications drawn up in that language which, pursuant to Article 18, paragraph 2, of the Convention, shall, as a general rule, be entrusted to a member of the Examining Division. Such tasks shall be carried out within the framework of the proceedings for grant laid down in the Convention; decisions on such applications shall be taken by the Examining Division composed in accordance with Article 18, paragraph 2.

(b) Tasks entrusted under sub-paragraph (a) shall not be in respect of more than 40% of the total number of European patent applications filed; tasks entrusted to any one State shall not be in respect of more than one-third of the total number of European patent applications filed. These tasks shall be entrusted for a period of 15 years from the opening of the European Patent Office and shall be reduced progressively (in principle by 20% a year) to zero during the last 5 years of the period.

(c) The Administrative Council shall decide, while taking into account the provisions of sub-paragraph (b), upon the nature, origin and number of the European patent applications in respect of which examining tasks may be entrusted to the central industrial property office of each of the Contracting States mentioned above.

(d) The above implementing procedures shall be set out in a special agreement between the central industrial property office of the Contracting State concerned and the European Patent Organisation.

(e) An office with which such a special agreement has been concluded may act as an International Preliminary Examining Authority under the Patent Cooperation Treaty, until the expiry of the period of 15 years.

(2) (a) If the Administrative Council considers that it is compatible with the proper functioning of the European Patent Office, and in order to alleviate the difficulties which may arise for certain Contracting States from the application of Section I, paragraph 2, it may entrust searching in respect of European patent applications to the central industrial property offices of those States in which the official language is one of the official languages of the European Patent Office, provided that these offices possess the necessary qualifications for appointment as an International Searching Authority in accordance with the conditions laid down in the Patent Cooperation Treaty.

(b) In carrying out such work, undertaken under the responsibility of the European Patent Office, the central industrial property offices concerned shall adhere to the guidelines applicable to the drawing up of the European search report.

(c) The provisions of paragraph 1(b), second sentence, and sub-paragraph (d) of this Section shall apply to this paragraph.

Section V

(1) The sub-office referred to in Section I, paragraph 1(c), shall be authorised to carry out searches, among the documentation which is at its disposal and which is in the official language of the State in which the sub-office is located, in respect of European patent applications filed by nationals and residents of that State. This authorisation shall be on the understanding that the procedure for the grant of European patents will not be delayed and that additional costs will not be incurred for the European Patent Organisation.

(2) The sub-office referred to in paragraph 1 shall be authorised to carry out, at the option of an applicant for a European patent and at his expense, a search on his patent application among the documentation referred to in paragraph 1. This authorisation shall be effective until the search provided for in Article 92 of the Convention has been extended, in accordance with Section VI, to cover such documentation and shall be on the understanding that the procedure for the grant of European patents will not be delayed.

(3) The Administrative Council may also extend the authorisations provided for in paragraphs 1 and 2, under the conditions of those paragraphs, to the central industrial property office of a Contracting State which does not have as an official language one of the official languages of the European Patent Office.

Section VI

The search provided for in Article 92 of the Convention shall, in principle, be extended, in respect of all European patent applications, to published patents, published patent applications and other relevant documents of Contracting States not included in the search documentation of the European Patent Office on the date referred to in *Article 162, paragraph 1*, of the Convention. The extent, conditions and timing of any such extension shall be determined by the Administrative Council on the basis of a study concerning particularly the technical and financial aspects.

Section VII

The provisions of this Protocol shall prevail over any contradictory provisions of the Convention.

Section VIII

The decisions of the Administrative Council provided for in this Protocol shall require a three-quarters majority (Article 35, paragraph 2, of the Convention). The provisions governing the weighting of votes (Article 36 of the Convention) shall apply.

**Protocol on Jurisdiction and the Recognition of Decisions in respect of the Right to the Grant of a European Patent
(Protocol on Recognition) of 5 October 1973**

**Section I
Jurisdiction**

Article 1

(1) The courts of the Contracting States shall, in accordance with Articles 2 to 6, have jurisdiction to decide claims, against the applicant, to the right to the grant of a European patent in respect of one or more of the Contracting States designated in the European patent application.

(2) For the purposes of this Protocol, the term "courts" shall include authorities which, under the national law of a Contracting State, have jurisdiction to decide the claims referred to in paragraph 1. Any Contracting State shall notify the European Patent Office of the identity of any authority on which such a jurisdiction is conferred, and the European Patent Office shall inform the other Contracting States accordingly.

(3) For the purposes of this Protocol, the term "Contracting State" refers to a Contracting State which has not excluded application of this Protocol pursuant to Article 167 of the Convention.

Article 2

Subject to Articles 4 and 5, if an applicant for a European patent has his residence or principal place of business within one of the Contracting States, proceedings shall be brought against him in the courts of that Contracting State.

Article 3

Subject to Articles 4 and 5, if an applicant for a European patent has his residence or principal place of business outside the Contracting States, and if the party claiming the right to the grant of the European patent has his residence or principal place of business within one of the Contracting States, the courts of the latter State shall have exclusive jurisdiction.

Article 4

Subject to Article 5, if the subject-matter of a European patent application is the invention of an employee, the courts of the Contracting State, if any, whose law determines the right to the European patent pursuant to Article 60, paragraph 1, second sentence, of the Convention, shall have exclusive jurisdiction over proceedings between the employee and the employer.

Article 5

(1) If the parties to a dispute concerning the right to the grant of a European patent have concluded an agreement, either in writing or verbally with written confirmation, to the effect that a court or the courts of a particular Contracting State shall decide on such a dispute, the court or courts of that State shall have exclusive jurisdiction.

(2) However, if the parties are an employee and his employer, paragraph 1 shall only apply in so far as the national law governing the contract of employment allows the agreement in question.

Article 6

In cases where neither Articles 2 to 4 nor Article 5, paragraph 1, apply, the courts of the Federal Republic of Germany shall have exclusive jurisdiction.

Article 7

The courts of Contracting States before which claims referred to in Article 1 are brought shall of their own motion decide whether or not they have jurisdiction pursuant to Articles 2 to 6.

Article 8

(1) In the event of proceedings based on the same claim and between the same parties being brought before courts of different Contracting States, the court to which a later application is made shall of its own motion decline jurisdiction in favour of the court to which an earlier application was made.

(2) In the event of the jurisdiction of the court to which an earlier application is made being challenged, the court to which a later application is made shall stay the proceedings until the other court takes a final decision.

Section II Recognition

Article 9

(1) Subject to the provisions of Article 11, paragraph 2, final decisions given in any Contracting State on the right to the grant of a European patent in respect of one or more of the Contracting States designated in the European patent application shall be recognised without requiring a special procedure in the other Contracting States.

(2) The jurisdiction of the court whose decision is to be recognised and the validity of such decision may not be reviewed.

Article 10

Article 9, paragraph 1, shall not be applicable where:

(a) an applicant for a European patent who has not contested a claim proves that the document initiating the proceedings was not notified to him regularly and sufficiently early for him to defend himself; or

(b) an applicant proves that the decision is incompatible with another decision given in a Contracting State in proceedings between the same parties which were started before those in which the decision to be recognised was given.

Article 11

(1) In relations between any Contracting States the provisions of this Protocol shall prevail over any conflicting provisions of other agreements on jurisdiction or the recognition of judgments.

(2) This Protocol shall not affect the implementation of any agreement between a Contracting State and a State which is not bound by the Protocol.

Protocol on Privileges and Immunities of the European Patent Organisation (Protocol on Privileges and Immunities) of 5 October 1973

Article 1

(1) The premises of the Organisation shall be inviolable.

(2) The authorities of the States in which the Organisation has its premises shall not enter those premises, except with the consent of the President of the European Patent Office. Such consent shall be assumed in case of fire or other disaster requiring prompt protective action.

(3) Service of process at the premises of the Organisation and of any other procedural instruments relating to a cause of action against the Organisation shall not constitute breach of inviolability.

Article 2

The archives of the Organisation and any documents belonging to or held by it shall be inviolable.

Article 3

(1) Within the scope of its official activities the Organisation shall have immunity from jurisdiction and execution, except

(a) to the extent that the Organisation shall have expressly waived such immunity in a particular case;

(b) in the case of a civil action brought by a third party for damage resulting from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Organisation, or in respect of a motor traffic offence involving such a vehicle;

(c) in respect of the enforcement of an arbitration award made under Article 23.

(2) The property and assets of the Organisation, wherever situated, shall be immune from any form of requisition, confiscation, expropriation and sequestration.

(3) The property and assets of the Organisation shall also be immune from any form of administrative or provisional judicial constraint, except in so far as may be temporarily necessary in connection with the prevention of, and investigation into, accidents involving motor vehicles belonging to or operated on behalf of the Organisation.

(4) The official activities of the Organisation shall, for the purposes of this Protocol, be such as are strictly necessary for its administrative and technical operation, as set out in the Convention.

Article 4

(1) Within the scope of its official activities the Organisation and its property and income shall be exempt from all direct taxes.

(2) Where substantial purchases for the exercise of its official activities, and in the price of which taxes or duties are included, are made by the Organisation, appropriate measures shall, whenever possible, be taken by the Contracting States to remit or reimburse to the Organisation the amount of such taxes or duties.

(3) No exemption shall be accorded in respect of duties and taxes which are no more than charges for public utility services.

Article 5

Goods imported or exported by the Organisation for the exercise of its official activities shall be exempt from duties and charges on import or export other than fees or taxes representing services rendered, and from all prohibitions and restrictions on import or export.

Article 6

No exemption shall be granted under Articles 4 and 5 in respect of goods purchased or imported for the personal benefit of the employees of the European Patent Office.

Article 7

(1) Goods belonging to the Organisation which have been acquired or imported under Article 4 or Article 5 shall not be sold or given away except in accordance with conditions laid down by the Contracting States which have granted the exemptions.

(2) The transfer of goods and provision of services between the various buildings of the Organisation shall be exempt from charges or restrictions of any kind; where appropriate, the Contracting States shall take all the necessary measures to remit or reimburse the amount of such charges or to lift such restrictions.

Article 8

The transmission of publications and other information material by or to the Organisation shall not be restricted in any way.

Article 9

The Contracting States shall accord the Organisation the currency exemptions which are necessary for the exercise of its official activities.

Article 10

(1) With regard to its official communications and the transfer of all its documents, the Organisation shall in each Contracting State enjoy the most favourable treatment accorded by that State to any other international organisation.

(2) No censorship shall be applied to official communications of the Organisation by whatever means of communication.

Article 11

The Contracting States shall take all appropriate measures to facilitate the entry, stay and departure of the employees of the European Patent Office.

Article 12

(1) Representatives of Contracting States, alternate Representatives and their advisers or experts, if any, shall enjoy, while attending meetings of the Administrative Council and of any body established by it, and in the course of their journeys to and from the place of meeting, the following privileges and immunities:

- (a) immunity from arrest or detention and from seizure of their personal luggage, except when found committing, attempting to commit, or just having committed an offence;
 - (b) immunity from jurisdiction, even after the termination of their mission, in respect of acts, including words written and spoken, done by them in the exercise of their functions; this immunity shall not apply, however, in the case of a motor traffic offence committed by one of the persons referred to above, nor in the case of damage caused by a motor vehicle belonging to or driven by such a person;
 - (c) inviolability for all their official papers and documents;
 - (d) the right to use codes and to receive documents or correspondence by special courier or sealed bag;
 - (e) exemption for themselves and their spouses from all measures restricting entry and from aliens' registration formalities;
 - (f) the same facilities in the matter of currency and exchange control as are accorded to the representatives of foreign Governments on temporary official missions.
- (2) Privileges and immunities are accorded to the persons referred to in paragraph 1, not for their personal advantage but in order to ensure complete independence in the exercise of their functions in connection with the Organisation. Consequently, a Contracting State has the duty to waive the immunity in all cases where, in the opinion of that State, such immunity would impede the course of justice and where it can be waived without prejudicing the purposes for which it was accorded.

Article 13

- (1) Subject to the provisions of Article 6, the President of the European Patent Office shall enjoy the privileges and immunities accorded to diplomatic agents under the Vienna Convention on Diplomatic Relations of 18 April 1961.
- (2) However, immunity from jurisdiction shall not apply in the case of a motor traffic offence committed by the President of the European Patent Office or damage caused by a motor vehicle belonging to or driven by him.

Article 14

The employees of the European Patent Office:

- (a) shall, even after their service has terminated, have immunity from jurisdiction in respect of acts, including words written and spoken, done in the exercise of their functions; this immunity shall not apply, however, in the case of a motor traffic offence committed by an employee of the European Patent Office, nor in the case of damage caused by a motor vehicle belonging to or driven by an employee;
- (b) shall be exempt from all obligations in respect of military service;
- (c) shall enjoy inviolability for all their official papers and documents;
- (d) shall enjoy the same facilities as regards exemption from all measures restricting immigration and governing aliens' registration as are normally accorded to staff members of international organisations, as shall members of their families forming part of their household;
- (e) shall enjoy the same privileges in respect of exchange regulations as are normally accorded to the staff members of international organisations;
- (f) shall enjoy the same facilities as to repatriation as diplomatic agents in time of international crises, as shall the members of their families forming part of their household;
- (g) shall have the right to import duty-free their furniture and personal effects at the time of first taking up their post in the State concerned and the right on the termination of their functions in that State to export free of duty their furniture and personal effects, subject to the conditions considered necessary by the Government of the State in whose territory the right is exercised and with the exception of property acquired in that State which is subject to an export prohibition therein.

Article 15

Experts performing functions on behalf of, or carrying out missions for, the Organisation shall enjoy the following privileges and immunities, to the extent that they are necessary for the carrying out of their functions, including during journeys made in carrying out their functions and in the course of such missions:

- (a) immunity from jurisdiction in respect of acts done by them in the exercise of their functions, including words written or spoken, except in the case of a motor traffic offence committed by an expert or in the case of damage caused by a motor vehicle belonging to or driven by him; experts shall continue to enjoy this immunity after they have ceased to be employed by the Organisation;
- (b) inviolability for all their official papers and documents;
- (c) the exchange facilities necessary for the transfer of their remuneration.

Article 16

- (1) The persons referred to in Articles 13 and 14 shall be subject to a tax for the benefit of the Organisation on salaries and emoluments paid by the Organisation, subject to the conditions and rules laid down by the Administrative Council within a period of one year from the date of the entry into force of the Convention. From the date on which this tax is

applied, such salaries and emoluments shall be exempt from national income tax. The Contracting States may, however, take into account the salaries and emoluments thus exempt when assessing the amount of tax to be applied to income from other sources.

(2) Paragraph 1 shall not apply to pensions and annuities paid by the Organisation to the former employees of the European Patent Office.

Article 17

The Administrative Council shall decide the categories of employees to whom the provisions of Article 14, in whole or in part, and Article 16 shall apply and the categories of experts to whom the provisions of Article 15 shall apply. The names, titles and addresses of the employees and experts included in such categories shall be communicated from time to time to the Contracting States.

Article 18

In the event of the Organisation establishing its own social security scheme, the Organisation and the employees of the European Patent Office shall be exempt from all compulsory contributions to national social security schemes, subject to the agreements made with the Contracting States in accordance with the provisions of Article 25.

Article 19

(1) The privileges and immunities provided for in this Protocol are not designed to give to employees of the European Patent Office or experts performing functions for or on behalf of the Organisation personal advantage. They are provided solely to ensure, in all circumstances, the unimpeded functioning of the Organisation and the complete independence of the persons to whom they are accorded.

(2) The President of the European Patent Office has the duty to waive immunity where he considers that such immunity prevents the normal course of justice and that it is possible to dispense with such immunity without prejudicing the interests of the Organisation. The Administrative Council may waive immunity of the President for the same reasons.

Article 20

(1) The Organisation shall co-operate at all times with the competent authorities of the Contracting States in order to facilitate the proper administration of justice, to ensure the observance of police regulations and regulations concerning public health, labour inspection or other similar national legislation, and to prevent any abuse of the privileges, immunities and facilities provided for in this Protocol.

(2) The procedure of co-operation mentioned in paragraph 1 may be laid down in the complementary agreements referred to in Article 25.

Article 21

Each Contracting State retains the right to take all precautions necessary in the interests of its security.

Article 22

No Contracting State is obliged to extend the privileges and immunities referred to in Article 12, Article 13, Article 14, sub-paragraphs (b), (e) and (g), and Article 15, sub-paragraph (c), to:

(a) its own nationals;

(b) any person who at the time of taking up his functions with the Organisation has his permanent residence in that State and is not an employee of any other inter-governmental organisation whose staff is incorporated into the Organisation.

Article 23

(1) Any Contracting State may submit to an international arbitration tribunal any dispute concerning the Organisation or an employee of the European Patent Office or an expert performing functions for or on its behalf, in so far as the Organisation or the employees and experts have claimed a privilege or an immunity under this Protocol in circumstances where that immunity has not been waived.

(2) If a Contracting State intends to submit a dispute to arbitration, it shall notify the Chairman of the Administrative Council, who shall forthwith inform each Contracting State of such notification.

(3) The procedure laid down in paragraph 1 of this Article shall not apply to disputes between the Organisation and the employees or experts in respect of the Service Regulations or conditions of employment or, with regard to the employees, the Pension Scheme Regulations.

(4) No appeal shall lie against the award of the arbitration tribunal, which shall be final; it shall be binding on the parties. In case of dispute concerning the import or scope of the award, it shall be incumbent upon the arbitration tribunal to interpret it on request by either party.

Article 24

(1) The arbitration tribunal referred to in Article 23 shall consist of three members, one arbitrator nominated by the State or States party to the arbitration, one arbitrator nominated by the Administrative Council and a third arbitrator, who shall be the chairman, nominated by the said two arbitrators.

(2) The arbitrators shall be nominated from a panel comprising no more than six arbitrators appointed by each Contracting State and six arbitrators appointed by the Administrative Council. This panel shall be established as soon as possible after the Protocol enters into force and shall be revised each time this proves necessary.

(3) If, within three months from the date of the notification referred to in Article 23, paragraph 2, either party fails to make the nomination referred to in paragraph 1 above, the choice of the arbitrator shall, on request of the other party, be made by the President of the International Court of Justice from the persons included in the said panel. This shall also apply, when so requested by either party, if within one month from the date of appointment of the second arbitrator, the first two arbitrators are unable to agree on the nomination of the third arbitrator. However, if, in these two cases, the President of the International Court of Justice is prevented from making the choice, or if he is a national of one of the States parties to the dispute, the Vice-President of the International Court of Justice shall make the aforementioned appointments, provided that he himself is not a national of one of the States parties to the dispute; if such is the case, the member of the International Court of Justice who is not a national of one of the States parties to the dispute and who has been chosen by the President or Vice-President shall make the appointments. A national of the State applying for arbitration may not be chosen to fill the post of the arbitrator whose appointment devolves on the Administrative Council nor may a person included in the panel and appointed by the Administrative Council be chosen to fill the post of an arbitrator whose appointment devolves on the State which is the claimant. Nor may a person of either of these categories be chosen as chairman of the Tribunal.

(4) The arbitration tribunal shall draw up its own rules of procedure.

Article 25

The Organisation may, on a decision of the Administrative Council, conclude with one or more Contracting States complementary agreements to give effect to the provisions of this Protocol as regards such State or States, and other arrangements to ensure the efficient functioning of the Organisation and the safeguarding of its interests.

Protocol on the Staff Complement of the European Patent Office at The Hague (Protocol on Staff Complement) of 29 November 2000

The European Patent Organisation shall ensure that the proportion of European Patent Office posts assigned to the duty station at The Hague as defined under the 2000 establishment plan and table of posts remains substantially unchanged. Any change in the number of posts assigned to the duty station at The Hague resulting in a deviation of more than ten per cent of that proportion, which proves necessary for the proper functioning of the European Patent Office, shall be subject to a decision by the Administrative Council of the Organisation on a proposal from the President of the European Patent Office after consultation with the Governments of the Federal Republic of Germany and the Kingdom of the Netherlands.

Konvencija o priznavanju evropskih patenata (Konvencija o evropskom patentu) od 5. oktobra 1973. godine, sa izmjenama člana 63 Konvencije o evropskom patentu od 17. decembra 1991. godine i izmjenama od 29. novembra 2000. godine

PREAMBULA

Države ugovornice,

U želji da ojačaju saradnju između evropskih država u oblasti zaštite pronalazaka,

U želji da se takva zaštita može dobiti u tim državama na osnovu jedinstvenog postupka priznavanja patenata i ustanovljenjem određenih jedinstvenih pravila o tako priznatim patentima,

U želji da, u tom cilju, zakluče konvenciju kojom se ustanovljava Evropska organizacija za patente i stvara poseban sporazum u smislu Člana 19 Konvencije za zaštitu industrijske svojine, potpisane u Parizu 20. marta 1883. godine i revidirane posljednji put 14. jula 1967. godine, i Ugovora o regionalnom patentu u smislu Člana 45 stav 1 Ugovora o saradnji u oblasti patenata od 19. juna 1970. godine,

Sporazumno su donijele sljedeće odredbe:

Prvi dio
OPŠTE I INSTITUCIONALNE ODREDBE

Glava I
OPŠTE ODREDBE

Član 1
Evropsko pravo priznavanja патената

Ovom konvencijom ustanovljeno je zajedničko pravo država ugovornica u oblasti priznavanja патената за проналаске.

Član 2
Evropski patent

- 1) Patenti priznati na osnovu ove konvencije zovu se evropski patenti.
- 2) Evropski patent ima u svakoj od država ugovornica za koju je priznat ista dejstva i podliježe istim propisima kao nacionalni patent priznat u toj državi, osim ako ovom konvencijom nije određeno drugačije.

Član 3
Teritorijalno dejstvo

Priznanje evropskog патената može biti traženo за једну, за више или за све државе уговорнице.

Član 4
Evropska organizacija за patente

- 1) Ovom konvencijom ustanovljava se Evropska organizacija за patente (u daljem tekstu: Organizacija). Ona je upravno i finansijski samostalna.
- 2) Organi Organizacije su:
 - a) Evropski zavod за patente,
 - b) Upravni savjet.
- 3) Zadatak Organizacije je да priznaje evropske patente. Ovaj zadatak izvršava Evropski zavod за patente pod kontrolom Upravnog savjeta.

Član 4a
Konferencija ministara država ugovornica

Konferencija ministara država ugovornica odgovorna за pitanja патената sastajаće se najmanje svake pete godine да diskutuje о pitanjima koja se tiču Organizacije i evropskog патенатног sistema.

Glava II
EVROPSKA ORGANIZACIJA ZA PATENTE

Član 5
Pravni položaj

- 1) Organizacija je pravno lice.
- 2) U svakoj od država ugovornica Organizacija ima svojstvo pravnog lica sa najvećim mogućim ovlašćenjima koja se, na osnovu nacionalnih propisa te државе, priznaju pravnim licima; она може нарочито стичати или отуђивати непокретна и покретна добра, и бити странка у судском поступку.
- 3) Predsjednik Evropskog zavoda за patente predstavlja organizaciju.

Član 6 Sjedište

- 1) Sjedište Organizacije je u Minhenu.
- 2) Sjedište Evropskog zavoda za patente je u Minhenu. On ima svoj ogranak u Hagu.

Član 7 Agencije Evropskog zavoda za patente

U državama ugovornicama ili pri međuvladinim organizacijama nadležnim za pitanja industrijske svojine Upravni savjet može, kada za to postoji potreba, odlukom osnivati agencije Evropskog zavoda za patente, u cilju davanja obavještenja ili ustanovljenja saradnje, uz uslov da dobije saglasnost te države ugovornice ili organizacije.

Član 8 Privilegije i imuniteti

Protokol o privilegijama i imunitetima, priložen uz ovu konvenciju, određuje uslove pod kojima Organizacija, članovi Upravnog savjeta, službenici Evropskog zavoda za patente i sva ostala lica navedena u tom protokolu, a koja obavljaju poslove Organizacije, uživaju, na teritoriji država ugovornica, privilegije i imunitete koji su neophodni za obavljanje njihovih zadataka.

Član 9 Odgovornost

- 1) Ugovorna odgovornost Organizacije određuje se zakonom koji se primjenjuje na ugovor u pitanju.
- 2) Vanugovorna odgovornost Organizacije u pogledu štete koju nanese ona, ili koju nanesu službenici Evropskog zavoda za patente prilikom obavljanja svojih zadataka, određuje se saglasno odredbama zakona koji je na snazi u Saveznoj Republici Njemačkoj. Ako je štetu prouzrokovao ogranak u Hagu ili neka agencija ili službenici ogranka ili agencije, primjenjuje se zakon države ugovornice na čijem području se nalazi ogranak ili agencija.
- 3) Lična odgovornost službenika Evropskog zavoda za patente prema organizaciji određuje se odredbama koje uređuju njihov položaj ili radni odnos.
- 4) Sudovi nadležni za rješavanje sporova navedenih u stavovima 1 i 2 su:
 - a) za sporove navedene u stavu 1 sudovi u Saveznoj Republici Njemačkoj, osim ako je u ugovoru zaključenom između stranaka određen sud u nekoj drugoj državi;
 - b) za sporove navedene u stavu 2 zavisno od slučaja, ili sudovi Savezne Republike Njemačke, ili države u kojoj se nalazi ogranak ili agencija.

Glava III EVROPSKI ZAVOD ZA PATENTE

Član 10 Rukovođenje

- 1) Predsjednik rukovodi Evropskim zavodom za patente i odgovara za rad Zavoda pred Upravnim savjetom.
- 2) U tom cilju, predsjednik ima naročito sljedeća ovlašćenja i obaveze:
 - a) preuzima sve neophodne mjere da obezbijedi rad Evropskog zavoda za patente a naročito, donosi interna administrativna uputstva i saopštenja za javnost;
 - b) osim ako ova konvencija ne predviđa drugačije, određuje koje radnje treba izvesti kod Evropskog zavoda za patente u Minhenu ili njegovog ogranka u Hagu kako je odgovarajuće;
 - c) može da podnese Upravnom savjetu predlog za izmjenu ove konvencije ili opštih odredbi za njenu primjenu, ili za odluke čije je donošenje u nadležnosti Upravnog savjeta;
 - d) predlaže budžet i stara se o njegovom izvršenju, što važi i za sve njegove izmjene i dopune;
 - e) svake godine podnosi Upravnom savjetu izvještaj o radu;
 - f) rukovodni je organ za sve zaposlene;
 - g) na osnovu Člana 11 imenuje službenike i odlučuje o njihovom napredovanju;
 - h) disciplinski je organ za službenike o kojima je riječ u Članu 11 i može predložiti Upravnom savjetu izricanje disciplinskih mjera protiv službenika na koje se odnosi Član 11 stavovi 2 i 3;
 - i) može prenositi svoja ovlašćenja.
- 3) Predsjedniku u radu pomažu potpredsjednici. U slučaju odsutnosti ili spriječenosti predsjednika, jedan od potpredsjednika obavlja njegovu dužnost na način koji određuje Upravni savjet.

Član 11 Imenovanje rukovodećeg kadra

- 1) Управни савјет именује својом одлуком предсједника Европског завода за патенте.
- 2) Управни савјет именује својом одлуком, након консултација са предсједником Европског завода за патенте, потпредсједнике.
- 3) Чланове и предсједнике жалбених вјећа и Великог жалбеног вјећа именује Управни савјет, на предлог предсједника Европског завода за патенте. Управни савјет може да их поново именује након претходне консултације са предсједником Европског завода за патенте.
- 4) Управни савјет може изрицати дисциплинске мјере према службеницима о којима је ријеч у ставовима 1 до 3 овог члана.
- 5) Управни савјет, послје консултација са предсједником Европског завода за патенте, може такође именовати као чланове Великог жалбеног вјећа правно квалификоване чланове националних судова или квази-судских органа држава уговорница, који могу наставити са својим судским активностима на националном нивоу. Они ће бити именовани за период од три године и могу бити reizабрани.

Члан 12 **Службене обавезе**

Зaposлени Европског завода за патенте не могу, чак и по престанку радног односа, да објављују и користе информације које, по својој природи, представљају службену тајну.

Члан 13 **Спорови између Организације и запослених Европског завода за патенте**

- 1) Зaposлени или бивши запослени Европског завода за патенте, или њихови правни слједбеници, могу поднјети тужбу Управном суду Међународне организације рада у споровима са Европским заводом за патенте, сагласно Статуту тог суда, а у границама и под условима одређеним у општем акту о статусу запослених, правилнику о пензијама или радним прописима који се односе на остале запослене.
- 2) Жалба може бити поднјета само ако је лице које има правни интерес употријebile сва правна средства која му стоје на располагању на основу општег акта о статусу запослених, правилника о пензијама или радног прописа који се односи на запослене.

Члан 14 **Језици Европског завода за патенте, европских пријава патената и других докумената**

- 1) Службени језици Европског завода за патенте су њемачки, енглески и француски.
- 2) Европска пријава патената мора бити поднјета на једном од службених језика или, ако је поднјета на неком другом језику, мора бити преведена на један од службених језика, у складу са Правилником о спровођењу. За све вријеме док траје поступак пред Европским заводом за патенте, овај превод може бити усаглашаван са текстом пријаве каква је поднјета. Ако се захтијевани превод не поднесе у прописаном року, пријава ће се сматрати повученом.
- 3) Службени језик Европског завода за патенте на коме је поднјета европска пријава патената, или на који је та пријава преведена, мора бити коришћен у свим поступцима пред Европским заводом за патенте осим ако је Правилником о спровођењу другачије одређено.
- 4) Физичка или правна лица која имају боравиште или главно сједиште фирме у некој држави уговорници гдје се као службени језик не користи енглески, француски или њемачки и држављани те државе који имају боравиште у иностранству могу на службеном језику државе уговорнице у питању, подносити документа која су обавезна да доставе у одређеном року. Они морају, ипак, доставити њихов превод на службени језик Европског завода за патенте у складу са Правилником о спровођењу. Ако неки документ, који не припада документима који чине европску пријаву патената, није поднјет на прописаном језику или ако захтијевани превод није поднјет у року, сматра се да такав документ није поднјет.
- 5) Европске пријаве патената објављују се на језику поступка.
- 6) Списи европског патената објављују се на језику поступка и они садрже превод патентних захтјева на друга два службена језика Европског завода за патенте.
- 7) На три службена језика Европског завода за патенте објављује се слjedeће:
 - a) "Европски билтен за патенте",
 - b) "Службени лист Европског завода за патенте".
- 8) Уписи у Европски регистар патената врше се на три службена језика Европског завода за патенте. У случају сумње, мјеродаван је упис на језику на којем је вођен поступак.

Члан 15 **Органи који воде поступак**

За спровођење поступака предвиђених овом конвенцијом у Европском заводу за патенте се мора успоставити слjedeће:

- a) служба за пријем,
- b) одсјeci за решерш,
- c) одсјeci за испитивање,
- d) одсјeci за опозиву,

- e) правни одсјек,
- f) жалбена вijeća,
- g) Велико жалбено вijeće.

Члан 16 **Служба за пријем**

Служба за пријем је надлежна за испитивање европских пријава патената приликом њиховог подношења и у погледу њихове формалне uredности.

Члан 17 **Одсјeci за решерш**

Одсјeci за решерш су надлежни за израду европског решершног извјештаја.

Члан 18 **Одсјeci за испитивање**

- 1) Одсјeci за испитивање су надлежни за испитивање европских пријава патената.
- 2) Одсјек за испитивање се састоји од три испитивача који су квалификована техничка лица. Међутим, прије доношења коначне одлуке о европској пријави патента, испитивање пријаве је, по општем правилу, повјерено једном од испитивача у одсјеку за испитивање. Тај исти одсјек за испитивање надлежан је и за вођење усменог поступка. Ако сматра да то природа предмета захтијева, одсјек за испитивање се допуњује једним испитивачем који је правник. У случају подјеле гласова, глас предсједника Одсјeka за испитивање је одлукујући.

Члан 19 **Одсјeci за опозицију**

- 1) Одсјeci за опозицију су надлежни за испитивање опозиције против европских патената.
- 2) Одсјек за опозицију се састоји од три испитивача који су квалификована техничка лица, од којих најмање два нису учествовала у поступку признања патента против кога је изјављена опозиција. Испитивач који је учествовао у поступку признања европског патента не мора бити предсједник. Прије доношења одлуке по опозицији, одсјек за опозицију може повјерити једном од својих чланова разматрање опозиције. Исти одсјек за опозицију је надлежан за вођење усменог поступка. Ако сматра да то природа одлуке захтијева, одсјек за опозицију допуњује се једним испитивачем који је правник, и који није учествовао у поступку признања патента. У случају подјеле гласова, глас предсједника одсјeka за приговоре је одлукујући.

Члан 20 **Правни одсјек**

- 1) Правни одсјек је надлежан за доношење свих одлука које се односе, с једне стране, на уписе у Европски регистар патената и, с друге стране, на уписе у листу професионалних заступника и брисања са те листе.
- 2) Одлуке правног одсјeka доноси његов члан који је правник.

Члан 21 **Жалбена вijeća**

- 1) Жалбена вijeća су надлежна за доношење одлука о жалбама изјављеним против одлука службе за пријем пријава, одсјeka за испитивање, одсјeka за опозицију и правног одсјeka.
- 2) Ако је жалба изјављена против одлука службе за пријем пријава или правног одсјeka, жалбено вijeće се састоји од три члана који су правници.
- 3) Ако је жалба изјављена против одлуке одсјeka за испитивање, жалбено вijeće се састоји од:
 - a) два члана која су технички квалификована лица и једног члана који је правник, ако се одлука односи на одбијање европске пријаве патента или на признање, ограничење или оглашавање ништавим европског патента, и ако је одлуку donio одсјек за испитивање који саčinjavaju мање од четри члана;
 - b) три члана који су технички квалификована лица и два члана који су правници, ако је одлуку donio одсјек за испитивање који саčinjavaju четри члана или ако жалбено вijeće сматра да то природа жалбе захтијева;
 - c) три члана који су правници, у осталим случајевима.
- 4) Ако је жалба поднијета против одлуке одсјeka за опозицију, жалбено вijeće се састоји од:
 - a) два члана који су технички квалификована лица и једног члана који је правник, ако је одлуку donio одсјек за опозицију који саčinjavaju три члана;
 - b) три члана који су технички квалификована лица и два члана који су правници, ако је одлуку donio одсјек за опозицију који саčinjavaju четри члана или ако жалбено вijeće сматра да то природа жалбе захтијева.

Član 22

Veliko žalbeno vijeće

1) Veliko žalbeno vijeće nadležno je za:

- a) donošenje odluka o pravnim pitanjima koja mu dostavljaju žalbena vijeća na osnovu člana 112;
- b) davanje mišljenja o pravnim pitanjima koja mu dostavlja predsjednik Evropskog zavoda za patente na osnovu člana 112;
- c) odlučivanje o molbama za reviziju odluka žalbenih vijeća na osnovu člana 112a.

2) U postupku na osnovu stava 1 (a) i (b) Veliko žalbeno vijeće se sastoji od pet članova koji su pravnici i dva člana koji su tehnički kvalifikovana lica. U postupku na osnovu stava 1(c), veliko žalbeno vijeće se sastoji od tri ili pet članova kao što je predviđeno u Pravilniku o sprovođenju. U svim postupcima, predsjednik je jedan od članova koji je pravnik.

Član 23

Nezavisnost članova vijeća

1) Članovi Velikog žalbenog vijeća i žalbenih vijeća imenovani su za period od pet godina i ne mogu biti smijenjeni u tom periodu, osim zbog ozbiljnih razloga i ako Upravni savjet, na predlog Velikog žalbenog vijeća, donese takvu odluku. Bez obzira na prvu rečenicu, mandat članova vijeća završava se ako oni daju otkaz ili se povuku u skladu sa Pravilnikom o zaposlenju za stalno zaposlene u Evropskom zavodu za patente.

2) Članovi vijeća ne mogu biti članovi službe za prijem prijave, odsjeka za ispitivanje, odsjeka za opoziciju, niti pravnog odsjeka.

3) Prilikom donošenja odluka, članovi vijeća nisu vezani bilo kakvim uputstvom i dužni su da primjenjuju samo odredbe ove konvencije.

4) Pravilnici o postupcima koje vode žalbena vijeća i Veliko žalbeno vijeće, donose se saglasno Pravilniku o sprovođenju. Oni prethodno moraju biti odobreni od strane Upravnog savjeta.

Član 24

Izuzeće i prigovor

(1) Članovi žalbenog vijeća i Velikog žalbenog vijeća ne mogu učestvovati u rješavanju predmeta ako u vezi sa njim imaju lični interes, ako su u postupku u predmetu već učestvovali kao zastupnici jedne od stranaka ili ako su učestvovali u donošenju odluke koja je predmet žalbe.

(2) Ako iz bilo kog razloga navedenog u stavu 1 ili iz bilo kog drugog razloga, član žalbenog vijeća ili Velikog žalbenog vijeća smatra da ne može učestvovati u rješavanju predmeta, on će o tome obavijestiti vijeće.

(3) Članovi žalbenog vijeća ili Velikog žalbenog vijeća mogu biti izuzeti na zahtjev bilo koje stranke iz bilo kog razloga navedenog u stavu 1 ili zbog sumnje u njihovu pristrasnost. Zahtjev za izuzeće neće biti prihvaćen ako je ista stranka već izvršila procesne radnje i pored toga što je znala za razlog izuzeća. Zahtjev za izuzeće ne može se zasnivati na nacionalnosti članova.

(4) Žalbena vijeća i Veliko žalbeno vijeće donose odluke, u slučajevima navedenim u stavovima 2 i 3 bez učešća dotičnog člana. Prilikom ovog odlučivanja zamjenik učestvuje u radu vijeća umjesto izuzetog člana.

Član 25

Tehničko mišljenje

Na traženje nadležnog nacionalnog suda koji vodi raspravu po tužbi zbog povrede prava ili po zahtjevu za oglašavanje ništavim, Evropski zavod za patente je obavezan da dostavi, uz plaćanje odgovarajuće takse, tehničko mišljenje u vezi sa predmetnim evropskim patentom. Odsjek za ispitivanje je nadležan za davanje ovih mišljenja.

Glava IV

UPRAVNI SAVJET

Član 26

Sastav

1) Upravni savjet čine predstavnici država ugovornica i njihovi zamjenici. Svaka država ugovornica ima pravo da imenuje jednog predstavnika i jednog zamjenika u Upravnom savjetu.

2) Članovima Upravnog savjeta mogu, u skladu sa odredbama poslovnika o radu Upravnog savjeta, pomagati savjetnici ili eksperti.

Član 27 Predsjedništvo

- 1) Upravni savjet bira među predstavnicima država ugovornica i njihovim zamjenicima jednog predsjednika i jednog zamjenika predsjednika. Zamjenik predsjednika zamjenjuje predsjednika po službenoj dužnosti ako je ovaj spriječen da izvršava svoje dužnosti.
- 2) Mandat predsjednika i zamjenika predsjednika traje tri godine. Oni mogu biti ponovo izabrani.

Član 28 Biro

- 1) Kad broj država ugovornica dostigne najmanje osam, Upravni savjet može osnovati Biro koji sačinjavaju pet njegovih članova.
- 2) Predsjednik i zamjenik predsjednika Upravnog savjeta su članovi biroa po položaju; tri preostala člana bira Upravni savjet.
- 3) Mandat članova koje je izabrao Upravni savjet traje tri godine. Oni ne mogu biti ponovo izabrani.
- 4) Biro se stara o izvršenju zadataka koje mu je Upravni savjet odredio saglasno poslovniku.

Član 29 Sjednice

- 1) Predsjednik saziva sjednice Upravnog savjeta.
- 2) Predsjednik Evropskog zavoda za patente ima pravo učešća u radu Upravnog savjeta.
- 3) Upravni savjet se redovno sastaje jedanput godišnje; pored toga, on se sastaje na inicijativu svog predsjednika ili na traženje jedne trećine država ugovornica.
- 4) Upravni savjet razmatra pitanja po utvrđenom dnevnom redu i prema svom poslovniku.
- 5) Svako pitanje koje jedna država ugovornica želi da stavi na dnevni red saglasno odredbama poslovnika, unosi se u predlog dnevnog reda.

Član 30 Učešće posmatrača

- 1) Svjetska organizacija za intelektualnu svojinu ima svog predstavnika na sjednicama Upravnog savjeta, u skladu sa sporazumom između Organizacije i Svjetske organizacije za intelektualnu svojinu.
- 2) Druga međuvladina organizacija kojoj je povjereno vođenje međunarodnog postupka u oblasti patenata, sa kojom je Organizacija zaključila sporazum, ima svoje predstavnike na sjednicama Upravnog savjeta, saglasno sporazumu.
- 3) Svaka druga međuvladina organizacija ili međunarodna nevladina organizacija koja sprovodi poslove od interesa za Organizaciju može dobiti poziv od Upravnog savjeta da prisustvuje njegovim sjednicama za sve vrijeme dok se raspravlja o pitanjima od zajedničkog interesa.

Član 31 Jezici Upravnog savjeta

- 1) Jezici koji su u službenoj upotrebi u radu u Upravnom savjetu su njemački, engleski i francuski.
- 2) Dokumenti koji se podnose Upravnom savjetu i zapisnici sa sastanaka su na tri jezika određena u stavu 1.

Član 32 Osoblje, prostorije i oprema

Evropski zavod za patente stavlja na raspolaganje Upravnom savjetu i bilo kom komitetu koji on ustanovi osoblje, prostorije i opremu koji su neophodni za izvršenje njihovih zadataka.

Član 33 Nadležnost Upravnog savjeta u određenim slučajevima

- 1) Upravni savjet je nadležan da vrši izmjene:
 - a) rokova predviđenih ovom konvencijom;
 - b) Glava II do VIII i Glave X ove konvencije da ih uskladi sa nekim međunarodnim ugovorom koji se odnosi na patente ili sa zakonodavstvom Evropske zajednice koje se odnosi na patente;

- c) Pravilnika o sprovođenju.
- 2) Upravni savjet je nadležan, saglasno ovoj konvenciji, da usvaja ili mijenja:
- pravilnik o finansijskom poslovanju;
 - opšte akte o radnom odnosu stalno zaposlenih i drugih zaposlenih Evropskog zavoda za patente, o platnim razredima zaposlenih, kao i vrsti i pravilima za davanje posebnih pogodnosti;
 - pravilnik o penzijama i povećanjima postojećih penzija saglasno porastu plata;
 - pravilnik o taksama;
 - poslovnik o radu.
- 3) I pored odredbi člana 18 stav 2 Upravni savjet je ovlašćen da odluči, ako iskustvo to opravda, da u određenim slučajevima odsjeci za ispitivanje imaju samo po jednog ispitivača koji je tehnički kvalifikovano lice. Ova odluka može biti povučena.
- 4) Upravni savjet je nadležan da ovlasti predsjednika Evropskog zavoda za patente da pregovara i da, uz njegovu saglasnost, zaključi u ime Evropske organizacije za patente, sporazume sa državama ili međuvladinim organizacijama, kao i centrima za dokumentaciju koji su osnovani na osnovu sporazuma zaključenim sa tim organizacijama.
- 5) Upravni savjet ne može da donese odluku na osnovu stava 1(b):
- u vezi međunarodnog ugovora, prije njegovog stupanja na snagu;
 - u vezi zakonodavstva Evropske zajednice, prije njegovog stupanja na snagu, ili, kada neki propis predviđa period za svoju primjenu, prije isteka tog perioda.

Član 34 **Pravo glasa**

- Samo države ugovornice imaju pravo glasa u Upravnom savjetu.
- Svaka država ugovornica ima jedan glas, izuzev kada se primjenjuje odredba Člana 36.

Član 35 **Glasanje**

- Upravni savjet donosi svoje odluke, pored odluka o kojima je riječ u stavovima 2 i 3, prostom većinom glasova država ugovornica koje su prisutne i koje glasaju.
- Zahtijeva se tročetvrtinska većina glasova država ugovornica koje su prisutne i koje glasaju za usvajanje odluka koje donosi Upravni savjet u okviru svoje nadležnosti na osnovu Člana 7, Člana 11 stav 1, Člana 33 stavovi 1(a) i (c) i 2 do 4, Člana 39 stav 1, Člana 40 stavovi 2 i 4, članova 46, 134a, Člana 149a stav 2, Člana 152, Člana 153 stav 7, članova 166 i 172.
- Jednoglasnost država ugovornica u glasanju se zahtijeva za odluke koje je Upravni savjet ovlašćen da donosi na osnovu Člana 33 stav 1(b). Upravni savjet donosi takve odluke samo ako su zastupljene sve države ugovornice. Odluka donijeta na osnovu Člana 33 stav 1(b), neće proizvesti pravno dejstvo ako neka država ugovornica izjavi, u roku od 12 mjeseci od datuma odluke, da ne želi da bude obavezana tom odlukom.
- Uzdržavanje od glasanja se ne smatra glasom.

Član 36 **Brojanje glasova**

- Za usvajanje i za izmjene pravilnika o taksama, kao i za usvajanje budžeta Organizacije i izmjene i dopune u budžetu, ako se time povećavaju finansijske obaveze država ugovornica, svaka država ugovornica, može zahtijevati da odmah nakon prvog glasanja u kome svaka država ugovornica ima jedan glas, bez obzira na rezultat tog glasanja, otpočne drugo glasanje kod koga se glasovi računaju saglasno odredbama stava 2. Odluka se donosi na tom drugom glasanju.
- Broj glasova koji ima svaka država ugovornica prilikom novog glasanja računa se na sljedeći način:
 - broj koji odgovara postotku koji se dobija za svaku državu ugovornicu po ključu podjele posebnih finansijskih doprinosa iz Člana 40 stavovi 3 i 4 množi se brojem država ugovornica i dijeli sa pet;
 - broj glasova koji je tako dobijen zaokružuje se na cio naredni broj;
 - ovom broju glasova dodaje se pet glasova;
 - ipak, nijedna država ugovornica ne može imati više od trideset glasova.

Glava V **FINANSIJSKE ODREDBE**

Član 37 **Pokrivanje rashoda**

Budžet Organizacije finansira se iz:

- vlastitih prihoda Organizacije;
- uplata država ugovornica iz takse za održavanje u važnosti evropskih patenata, naplaćenih u tim zemljama;
- posebnih finansijskih doprinosa država ugovornica, ukoliko je to potrebno;

- d) u odgovarajućem slučaju, prihoda na osnovu Člana 146;
- e) kada je pogodno, i samo za materijalna dobra, pozajmicama od treće strane gdje je položeno obezbjeđenje u vidu zemljišta ili nekretnina;
- f) kada je pogodno, treća strana finansira specifične projekte.

Član 38

Vlastiti prihodi Organizacije

Vlastiti prihodi Organizacije sastoje se od:

- a) svih prihoda od taksi i iz drugih izvora i takođe rezerve Organizacije;
- b) resursi Penzionog rezervnog fonda, koji će biti tretirani kao posebna klasa prihoda Organizacije namijenjena da podrži penzioni plan organizacije obezbjeđujući adekvatne rezerve.

Član 39

Uplate država ugovornica od naplaćenih taksi za održavanje u važnosti evropskih патената

- 1) Svaka država ugovornica, od svake takse koju je naplatila za održavanje u važnosti evropskog патента u toj državi, doznačuje Organizaciji iznos koji odgovara dijelu te takse, koji određuje Upravni savjet; taj dio ne može преći 75% i jedinstven je za sve države ugovornice. Ako je taj iznos niži od jedinstvenog minimuma koji je одредio Upravni savjet, država ugovornica doznačuje Organizaciji taj minimum.
- 2) Svaka država ugovornica саопštava Organizaciji sve elemente koje Upravni savjet smatra potrebnim za određivanje iznosa ovih uplata.
- 3) Upravni savjet određuje datum kada treba izvršiti uplatu.
- 4) Ako uplata nije izvršena u potpunosti određenog дана, država ugovornica дугује od tog дана kamatu na neuplaćeni iznos.

Član 40

Visina taksi i uplata - Posebni finansijski doprinosi

- 1) Iznos taksi i dio takse, koji su наведени u Članu 38 odnosno u Članu 39 moraju biti tako одређени da prihodi na osnovu njih omogućavaju da se obezbijedi ravnoteža u budžetu Organizacije.
- 2) Ipak, kada Organizacija nije u mogućnosti da ostvari ravnotežu u budžetu pod uslovima predviđenim u stavu 1 државе ugovornice doznačuju Organizaciji posebne finansijske doprinose čiji iznos utvrđuje Upravni savjet za odnosnu budžetsku godinu.
- 3) Posebni finansijski doprinosi utvrđuju se za svaku државу ugovornicu prema broju prijava патената podnijetih u prethodnoj godini koja prethodi godini u kojoj je stupila na snagu ova konvencija, i to prema sljedećem ključu:
 - a) za polovinu, srazmjerno broju prijava патената podnijetih u odnosnoj држави ugovornici;
 - b) za polovinu, srazmjerno broju prijava патената podnijetih od strane fizičkih i правних lica koja imaju svoj domicil ili poslovno sjedište na teritoriji te државе, u onoj држави међу осталим државима ugovornicama, koja je na drugom mjestu po visini broja prijava koje su pomenuta lica podnijela u drugim државима ugovornicama.Ipak, iznosi kojima se zadužuju државе u kojima je broj podnijetih prijava патената преко 25.000 uzimaju se kao cjelina i ponovo se dijele srazmjerno ukupnom broju prijava патената podnijetih u tim istim државима.
- 4) Kada iznos doprinosa једне државе ugovornice ne može biti одређен pod uslovima наведеним u stavu 3 Upravni savjet određuje taj iznos u saglasnosti sa државом u pitanju.
- 5) Odredbe Člana 39 stavovi 3 i 4 primjenjuju se *mutatis mutandis* na posebne finansijske doprinose.
- 6) Posebni finansijski doprinosi враćају se увећани za iznos kamate čija je stopa јединствена za sve државе ugovornice. Повраćај se врši kada su u budžetu obezbijedena sredstva za tu svrhu; tako obezbijedeni iznos se raspoređuje na државе ugovornice prema ključu наведеном u stavovima 3 i 4 ovog člana.
- 7) Posebni finansijski doprinosi doznačeni u toku одређене budžetske године moraju u cjelini biti враćени prije враćања, u cjelini ili u ratama, posebnog doprinosa uplaćenog u toku неке касније budžetske године.

Član 41

Akontacije

- 1) Na traženje predsjednika Evropskog zavoda za patente, државе ugovornice daju Organizaciji novčane akontacije, za njihove uplate i doprinose, a u granicama iznosa koji određuje Upravni savjet. Iznos takvih akontacija se određuje imajući u vidu iznose koje државе ugovornice дугују za odnosnu budžetsku godinu.
- 2) Odredbe Člana 39 stavovi 3 i 4 primjenjuju se *mutatis mutandis* na akontacije.

Član 42

Budžet

- 1) Budžet Organizacije mora biti saldiran. Biće planiran u skladu sa опште prihvaćenim računovodstvenim principima, наведеним u Правилнику o finansijskom poslovanju. U slučaju потребе, mogu se вршити izmjene i dopune budžeta.

2) Budžet mora biti sačinjen kao računovodstvena cjelina, saglasno pravilniku o finansijskom poslovanju.

Član 43 **Ovlašćenja za rashode**

- 1) Rashodi prikazani u budžetu na raspolaganju su u toku trajanja budžetske godine, osim ako Pravilnik o finansijskom poslovanju ne predviđa drugačije.
- 2) U skladu sa Pravilnikom o finansijskom poslovanju, sredstva koja nisu iskorišćena do kraja budžetske godine, izuzev onih koja se odnose na personalne rashode, mogu biti prenijeta samo na narednu godinu.
- 3) Sredstva se posebno prikazuju po poglavljima u kojima se grupišu rashodi prema njihovoj prirodi ili njihovoj namjeni i raščlanjuju se, u slučaju potrebe, saglasno Pravilniku o finansijskom poslovanju.

Član 44 **Sredstva za nepredvidive rashode**

- 1) Iznosi za nepredvidive rashode mogu biti unijeti u budžet Organizacije.
- 2) Organizacija može koristiti ta sredstva ako dobije prethodno saglasnost Upravnog savjeta.

Član 45 **Budžetska godina**

Budžetska godina započinje 1. januara i završava se 31. decembra.

Član 46 **Predlog budžeta i njegovo usvajanje**

- 1) Predsjednik Evropskog zavoda za patente podnosi Upravnom savjetu predlog budžeta najkasnije do datuma određenog u Pravilniku o finansijskom poslovanju.
- 2) Upravni savjet usvaja budžet i sve njegove izmjene i dopune.

Član 47 **Privremeni budžet**

- 1) Ako, na početku budžetske godine, Upravni savjet još nije usvojio budžet, rashodi će se činiti na mjesečnoj osnovi, po poglavlju ili drugoj podjeli, saglasno Pravilniku o finansijskom poslovanju, u granicama dvanaestine iznosa koji je određen u budžetu za prethodnu godinu, s tim da predsjednik Evropskog zavoda za patente ne može raspolagati iznosima većim od dvanaestine u odnosu na iznose predviđene u predlogu budžeta.
- 2) Upravni savjet može, ako poštuje druge uslove iz stava 1 odobriti da rashodi budu veći od dvanaestine.
- 3) Isplate o kojima je riječ u članu 37(b) biće privremeno vršene pod uslovima određenim u članu 39 za budžetsku godinu koja je prethodila godini na koju se odnosi predlog budžeta.
- 4) Države ugovornice uplaćuju svakog mjeseca, privremeno i saglasno ključu navedenom u članu 40 stavovi 3 i 4 sve posebne finansijske doprinose radi obezbjeđenja primjene stavova 1 i 2. Član 39 stav 4 primjenjuje se *mutatis mutandis* na ove doprinose.

Član 48 **Izvršenje budžeta**

- 1) Predsjednik Evropskog zavoda za patente izvršava, uz ličnu odgovornost i u granicama odobrenih iznosa, budžet kao i njegove izmjene i dopune.
- 2) Predsjednik Evropskog zavoda za patente može, u okviru budžeta, u skladu sa pravilnikom o finansijskom poslovanju, davati naloge za isplate unutar poglavlja ili jedinica podjele.

Član 49 **Revizija**

- 1) Račune ukupnih prihoda i rashoda u budžetu, kao i bilans Organizacije ispituju revizori koji su nezavisni u svom radu i koje imenuje Upravni savjet za period od 5 godina, s tim da taj period može biti produžen ili obnovljen.
- 2) Revizija se vrši na dokumentima i može biti na licu mjesta, ako za to postoji potreba. Revizija ima za cilj da utvrdi da li su svi primljeni prihodi i svi namireni rashodi zakoniti i regularni, i da li je obezbijeđeno dobro finansijsko poslovanje. Revizori sastavljaju izvještaj koji sadrži potpisano mišljenje revizora nakon utvrđivanja završnog računa za svaku budžetsku godinu.
- 3) Predsjednik Evropskog zavoda za patente podnosi svake godine Upravnom savjetu za proteklu budžetsku godinu izvještaj o finansijskom poslovanju u okviru budžeta, kao i bilans prihoda i rashoda Organizacije kome je priložen izvještaj revizora.

4) Управни савјет одобрава годишњи биланс, као и извјештаје ревизора, и раздужује предсједника Европског завода за patente у погледу извршења буџета.

Члан 50

Pravilnik o finansijskom poslovanju

Pravilnik o finansijskom poslovanju predviđa naročito:

- a) postupke utvrđivanja i izvršenja budžeta, kao i polaganje i reviziju računa;
- b) načine i postupak po kojima uplate i doprinosi predviđeni u Članu 37 kao i akontacije predviđene u Članu 41 treba da budu stavljeni na raspolaganje Organizaciji od strane država ugovornica;
- c) pravila koja se tiču odgovornosti u pogledu ovlašćenja službenika u računovodstvu i postupke njihovog nadzora;
- d) kamatne stope predviđene u članovima 39, 40 i 47;
- e) načine obračuna doprinosa koji se plaćaju na osnovu lana 146;
- f) sastav i zadatke budžetskog i finansijskog odbora koji formira Upravni savjet;
- g) opšte prihvaćene računovodstvene principe na kojima se zasniva budžet i godišnji finansijski izvještaj.

Члан 51

Pravilnik o taksama

- 1) Европски завод за patente може да пропише takse за svaki službeni zadatak ili postupak koji se sprovodi na osnovu ove konvencije.
- 2) Rokovi za plaćanje taksi pored onih propisanih ovom konvencijom predviđaju se u Pravilniku o sprovođenju.
- 3) Kada Pravilnik o sprovođenju utvrđuje da se mora platiti neka taksa, on takođe predviđa pravne posljedice neplaćanja takve takse u zakonskom roku.4) Pravilnik o taksama utvrđuje, naročito, iznose taksi i način njihove naplate.

Drugi dio

PATENTNO PRAVO

Glava I

PATENTIBILNOST

Члан 52

Patentibilni pronalasci

- 1) Европски patenti priznaju se za pronalaskе iz bilo koje oblasti tehnike, pod uslovom da su oni novi, da imaju inventivan nivo i da su pogodni za industrijsku primjenu.
- 2) Ne smatraju se pronalascima u smislu stava 1 naročito:
 - a) otkrića, naučne teorije i matematičke metode;
 - b) estetske kreacije;
 - c) planovi, pravila i postupci za obavljanje intelektualnih djelatnosti, za igranje igara ili obavljanje poslova, kao i programi za računare;
 - d) prikazivanje informacija.
- 3) Stav 2 isključuje patentibilnost predmeta ili aktivnosti ovdje navedenih jedino ako se evropska prijava patenta ili evropski patent odnosi na neki od tih predmeta, posmatran kao takav.

Члан 53

Izuzeci od patentibilnosti

Evropski patenti ne priznaju se za:

- a) pronalaskе čija bi komercijalna upotreba bila protivna javnom poretку ili moralu, s tim što se takva upotreba pronalaska ne može smatrati protivnom javnom poretку ili moralu jedino zbog činjenice da je zabranjena u svim ili u nekim državama ugovornicama, zakonskim ili podzakonskim aktom;
- b) biljne sorte i životinjske rase, kao ni za bitno biološke postupke za dobijanje biljki ili životinja, s tim što se ova odredba ne odnosi na mikrobiološke postupke ili na proizvode dobijene tim postupcima;
- c) postupci liječenja ljudskog ili životinjskog tijela, hirurški, terapijski ili dijagnostički postupci za liječenje ljudskog ili životinjskog tijela; ova odredba ne primjenjuje se na proizvode, posebno supstance ili kompozicije koje se koriste u bilo kom od ovih postupaka.

Члан 54

Novost

- 1) Pronalazak je nov ako nije obuhvaćen stanjem tehnike.
- 2) Stanje tehnike čini sve ono što je prije datuma podnošenja evropske prijave patenta učinjeno dostupnim javnosti putem pisanog ili usmenog opisa, upotrebom ili na bilo koji drugi način.

3) Такође, stanje tehnike obuhvata sadržinu evropskih prijava patenata, onakvih kakve su podnijete, koje imaju raniji datum podnošenja u odnosu na datum naveden u stavu 2 i koje su objavljene tog datuma ili kasnije.

4) Stavovi 2 i 3 ne isključuju patentibilnost bilo koje supstance ili kompozicije, sadržane u stanju tehnike, za korišćenje u nekom postupku pomenutom u Članu 53(c), pod uslovom da njena upotreba u bilo kom takvom postupku nije sadržana u stanju tehnike.

5) Stavovi 2 i 3 takođe ne isključuju patentibilnost bilo koje supstance ili kompozicije navedene u stavu 4 za bilo koju posebnu upotrebu u postupku navedenom u Članu 53(c), pod uslovom da takva upotreba nije sadržana u stanju tehnike.

Član 55

Otkrivanje pronalaska bez štetnih posljedica

1) Prilikom primjene člana 54 ne uzima se u obzir otkrivanje pronalaska ako je do njega došlo najviše šest mjeseci prije podnošenja evropske prijave patenta i ako je ono neposredna ili posredna posljedica:

a) očigledne zloupotrebe u odnosu na podnosioca prijave ili njegovog pravnog prethodnika, ili

b) činjenice da je podnosilac prijave ili njegov pravni prethodnik izložio pronalazak na zvaničnim ili zvanično priznatim izložbama u smislu Konvencije o međunarodnim izložbama, potpisane u Parizu 22. novembra 1928. godine i revidirane posljednji put 30. novembra 1972. godine.

2) U slučaju predviđenom u stavu 1 tačka (b), stav 1 primjenjuje se samo ako podnosilac prijave navede prilikom podnošenja evropske prijave patenta, da je pronalazak bio izložen i dostavi dokaz o tome u roku i pod uslovima predviđenim u Pravilniku o sprovođenju.

Član 56

Inventivni nivo

Smatra se da pronalazak ima inventivni nivo ako za stručnjaka iz odgovarajuće oblasti ne proizlazi na očigledan način iz stanja tehnike. Ako stanje tehnike obuhvata dokumente navedene u Članu 54 stav 3 oni se ne uzimaju u obzir kod ocjene postojanja inventivnog nivoa.

Član 57

Industrijska primjenljivost

Smatra se da je pronalazak industrijski primjenljiv ako se predmet pronalaska može proizvesti ili upotrijebiti u bilo kojoj grani industrije, uključujući i poljoprivredu.

Glava II

LICA KOJA IMAJU PRAVO DA PODNESU PRIJAVU I STEKNU EVROPSKI PATENT - NAVOĐENJE PRONALAZAČA

Član 58

Pravo na podnošenje evropske prijave patenta

Svako fizičko i pravno lice, i svako lice koje se smatra pravnim licem na osnovu zakona koji se na njega primjenjuje, može podnijeti evropsku prijavu patenta.

Član 59

Više prijavitelaca

Evropsku prijavu patenta mogu takođe, podnijeti zajednički podnosioci prijave ili dva ili više podnosioca koji naznačuju različite države ugovornice.

Član 60

Pravo na evropski patent

1) Pravo na evropski patent pripada pronalazaču ili njegovom pravnom sljedbeniku. Ako je pronalazač u radnom odnosu, pravo na evropski patent određeno je pravom države na čijoj teritoriji lice u radnom odnosu pretežno obavlja svoju djelatnost; ako država na čijoj teritoriji lice u radnom odnosu pretežno obavlja djelatnost ne može biti određena, primjenjuje se pravo države na čijoj teritoriji se nalazi preduzeće poslodavca, u kojem je zaposleni u radnom odnosu.

2) Ako dva ili više lica stvore pronalazak nezavisno jedno od drugog, pravo na evropski patent pripada licu koje je podnijelo prijavu patenta, čiji je datum podnošenja najraniji, pod uslovom da je ova prva prijava objavljena.

3) U postupku pred Evropskim zavodom za patente podnosilac prijave je ovlašten da vrši sve radnje u vezi sa sticanjem prava na evropski patent.

Član 61

Evropska prijava patenta podnijeta od lica koje nema prava na podnošenje

- 1) Ако је konačnom odlukom priznato pravo na sticanje evropskog patenta licu koje nije podnosilac prijave, to lice može u skladu sa Pravilnikom o sprovođenju:
 - a) nastaviti, umjesto podnosioca prijave, postupak po evropskoj prijavi patenta, postupajući po toj prijavi kao po svojoj,
 - b) podnijeti novu evropsku prijavu patenta za isti pronalazak, ili
 - c) tražiti odbijanje evropske prijave patenta.
- 2) Član 76 stav 1, primjenjuje se *mutatis mutandis* na novu evropsku prijavu patenta podnijetu na osnovu stava 1(b).

Član 62

Pravo pronalazača da bude naveden

Pronalazač ima pravo, u odnosu na podnosioca evropske prijave patenta ili nosioca evropskog patenta, da bude naveden kao takav kod Evropskog zavoda za patente.

Glava III

DEJSTVA EVROPSKOG PATENTA I EVROPSKE PRIJAVE PATENTA

Član 63

Trajanje evropskog patenta

- 1) Trajanje evropskog patenta iznosi 20 godina računajući od datuma podnošenja prijave.
- 2) Prethodni stav ne ograničava pravo države ugovornice da produži trajanje evropskog patenta ili da prizna odgovarajuću zaštitu koja slijedi direktno po isteku trajanja patenta, pod istim uslovima kakvi se primjenjuju i na nacionalne patente:
 - a) da bi se uzelo u obzir ratno stanje ili slični vanredni uslovi koji utiču na tu državu;
 - b) ukoliko je predmet evropske prijave patenta proizvod ili postupak za dobijanje proizvoda ili primjena proizvoda koji prije nego što se može iznijeti na tržište te države treba da prođe postupak dobijanja administrativne dozvole u skladu sa zakonom.
- 3) Stav 2 se primjenjuje *mutatis mutandis* na evropske patente koji su zajednički odobreni za grupu država ugovornica u skladu sa članom 142.
- 4) Država ugovornica koja omogućava produženje trajanja patenta ili odgovarajuću zaštitu na osnovu stava 2(b) može, u skladu sa ugovorom zaključenim sa ovom Organizacijom povjeriti Evropskom zavodu za patente zadatke u vezi sa primjenom odgovarajućih odredbi.

Član 64

Prava iz evropskog patenta

- 1) Uz rezervu odredbe iz stava 2 evropski patent daje svom nosiocu, od dana objave obavještenja o priznanju prava u Evropskom patentnom biltenu, u svakoj državi ugovornici za koju je priznat, ista prava koja bi mu dao nacionalni patent izdat u toj državi.
- 2) Ako je predmet evropskog patenta postupak, prava iz tog patenta obuhvataju proizvode neposredno dobijene tim postupkom.
- 3) Svaka povreda evropskog patenta ocjenjuje se saglasno odredbama nacionalnog zakonodavstva.

Član 65

Prevod evropskog patenta

- 1) Svaka država ugovornica može, ako evropski patent kakav je priznat, izmijenjen ili ograničen od strane Evropskog zavoda za patente, nije sastavljen na jednom od njegovih službenih jezika, da propiše da nosilac tog patenta mora podnijeti centralnom zavodu za industrijsku svojinu prevod patenta, kakav je priznat, izmijenjen ili ograničen, na jednom od njegovih službenih jezika ili, kada je ta država propisala upotrebu jednog posebnog službenog jezika, na tom jeziku. Prevod mora biti dostavljen u roku od 3 mjeseca od datuma objavljivanja obavještenja o priznanju, održavanju u važnosti u izmijenjenoj formi, ili ograničenju evropskog patenta u Evropskom patentnom biltenu, osim ako odnosna država ne odredi duži rok.
- 2) Svaka država ugovornica koja je usvojila odredbe saglasne stavu 1 može propisati da nosilac patenta plati, u roku koji ta država odredi, sve ili dio troškova objavljivanja prevoda.
- 3) Ako odredbe usvojene na osnovu stava 1 i 2 nisu poštovane, svaka država ugovornica može propisati da je evropski patent, još od početka, bez dejstva u toj državi.

Član 66

Dejstvo prijave evropskog patenta kao nacionalne prijave

Evropska prijava patenta kojoj je utvrđen datum podnošenja ima, u naznačenim državama ugovornicama, dejstvo uredne nacionalne prijave, s tim što se, u odgovarajućem slučaju, vodi računa o pravu prvenstva koje je zatraženo u evropskoj prijavi patenta.

Član 67

Prava iz prijave evropskog patenta nakon njene objave

- 1) Evropska prijava patenta, onakva kakva je objavljena, privremeno obezbjeđuje podnosiocu prijave u državama ugovornicama koje su naznačene u prijavi patenta zaštitu predviđenu članom 64 počev od dana objave.
- 2) Svaka država ugovornica može predvidjeti da evropska prijava patenta ne obezbjeđuje zaštitu predviđenu članom 64. Ipak, zaštita koja se dobija objavom evropske prijave patenta ne može biti manja od zaštite koju nacionalni propisi odnosno države daju na osnovu obavezne objave neispitanih nacionalnih prijava patenata. U svakom slučaju, svaka država ugovornica je dužna bar da predvidi da, nakon objave evropske prijave patenta, podnosilac prijave može da zahtijeva razumnu naknadu, određenu prema okolnostima, od svakog lica koje je iskorišćavalo, u toj državi ugovornici, pronalazak koji je predmet evropske prijave patenta, i to pod uslovima koji povlače, prema nacionalnom pravu, odgovornost za povredu nacionalnog patenta.
- 3) Svaka država ugovornica čiji službeni jezik nije jezik postupka može propisati da je privremena zaštita iz stavova 1 i 2 obezbijeđena tek od datuma prevoda patentnih zahtjeva na jedan od službenih jezika te zemlje, koji je podnosilac prijave izabrao, ili, ako ta država propisuje upotrebu određenog službenog jezika, na tom jeziku:
 - a) postao dostupan javnosti, pod uslovima predviđenim njenim nacionalnim propisima, ili
 - b) bio dostavljen licu koje u pomenutoj državi iskorišćava pronalazak koji je predmet evropske prijave patenta.
- 4) Smatra se da prava iz evropske prijave patenta predviđena u stavovima 1 i 2 ne postoje i da nikada nisu nastala ukoliko je evropska prijava patenta povučena ili se smatra povučenom ili je odbijena. Isto važi u pogledu prava evropske prijave patenta u državi ugovornici za koju je naznačenje povučeno ili se smatra povučenim.

Član 68

Posljedice oglašavanja ništavim ili ograničenja evropskog patenta

Smatra se da evropska prijava patenta ili evropski patent priznat na osnovu nje nisu imali od početka dejstva predviđena članovima 64 i 67 ako je, i u mjeri u kojoj je patent oglašen ništavim ili ograničen u postupku vođenom po opoziciji, za oglašavanje ništavim ili ograničenje prava.

Član 69

Obim zaštite

- 1) Obim zaštite koji se stiče evropskim patentom ili na osnovu evropske prijave patenta određen je patentnim zahtjevima, s tim što se, opis i nacrti koriste za tumačenje patentnih zahtjeva.
- 2) Za period do priznanja evropskog patenta, obim zaštite na osnovu evropske prijave patenta određen je patentnim zahtjevima, koji su sadržani u objavi. Ipak, evropski patent, onakav kakav je priznat ili izmijenjen u toku postupka po opoziciji, ograničenja ili oglašavanja ništavim određuje retroaktivno obim zaštite iz objavljene prijave, ako se time zaštita ne proširuje.

Član 70

Vjerodostojni tekst evropske prijave patenta ili evropskog patenta

- 1) Tekst evropske prijave patenta ili evropskog patenta napisan na jeziku postupka je vjerodostojni tekst za sve postupke kod Evropskog zavoda za patente i u svim državama ugovornicama.
- 2) Ako je, međutim, evropska prijava patenta podnijeta na jeziku koji nije službeni jezik Evropskog zavoda za patente, taj tekst će se smatrati originalnom prijavom u smislu ove konvencije.
- 3) Svaka država ugovornica može predvidjeti da se prevod na neki od službenih jezika te države, kako je propisano ovom konvencijom, smatra u toj državi kao vjerodostojan, izuzev u postupku oglašavanja ništavim, u slučaju kada evropska prijava patenta ili evropski patent na jeziku prevoda daju uži stepen zaštite nego što je to slučaj na jeziku postupka.
- 4) Svaka država ugovornica koja donese odredbu zasnovanu na stavu 3:
 - a) dužna je da omogućiti podnosiocu prijave ili nosiocu evropskog patenta da podnese izmijenjeni prevod evropske prijave patenta ili evropskog patenta. Taj izmijenjeni prevod nema pravno dejstvo sve dok nisu ispunjeni uslovi određeni od strane države ugovornice na osnovu primjene Člana 65 stav 2 ili Člana 67 stav 3;
 - b) može predvidjeti da lice koje je u toj državi savjesno počelo korišćenje pronalaska ili je izvršilo neophodne i ozbiljne pripreme u tom cilju, a pod uslovom da to korišćenje ne predstavlja povredu prava iz prijave ili patenta, sudeći prema tekstu prvobitnog prevoda, može, nakon što je izmijenjeni prevod počeo da proizvodi dejstvo, nastaviti besplatno iskorišćavanje tog pronalaska u svom preduzeću ili za potrebe tog preduzeća.

Glava IV

EVROPSKA PRIJAVA PATENTA KAO PREDMET SVOJINE

Član 71

Prenos i konstituisanje prava

Evropska prijava patenta može biti predmet prenosa prava ili osnov za konstituisanje prava za jednu ili više naznačenih država ugovornica.

Član 72 **Prenos prava**

Prenos evropske prijave patenta može biti izvršen samo u pismenoj formi i uz potpise oba ugovarača.

Član 73 **Ugovorna licenca**

Evropska prijava patenta može biti u cjelini ili djelimično predmet licence za teritoriju svih ili nekih naznačenih država ugovornica.

Član 74 **Pravo koje se primjenjuje**

Osim ako ovom konvencijom nije određeno drugačije, na evropsku prijavu patenta kao predmet svojine, u svakoj naznačenoj državi ugovornici i sa dejstvom u toj državi, primjenjuju se propisi koji se, u toj državi, odnose na prijave nacionalnih patenata.

Treći dio **EVROPSKA PRIJAVA PATENTA**

Glava I **PODNOŠENJE EVROPSKE PRIJAVE PATENTA I USLOVI KOJE ONA MORA DA ISPUNJAVA**

Član 75 **Podnošenje evropske prijave patenta**

- 1) Evropska prijava patenta može biti podnijeta:
 - a) kod Evropskog zavoda za patente ili;
 - b) ako propisi države ugovornice to dozvoljavaju, i na osnovu Člana 76 stav 1 kod centralnog zavoda za industrijsku svojinu ili drugog nadležnog organa te države. Svaka tako podnijeta prijava ima isto dejstvo kao da je podnijeta istog datuma kod Evropskog patentnog zavoda.
- 2) Stav 1 ne može biti smetnja za primjenu zakonskih i podzakonskih propisa koji u jednoj državi ugovornici:
 - a) određuju koji pronalasci ne mogu, zbog svog predmeta, biti saopšteni u inostranstvu bez prethodnog ovlašćenja nadležnih organa države u pitanju, ili
 - b) određuju da svaka prijava patenta mora biti prvo podnijeta kod nacionalnog organa, ili da mora biti prethodno data saglasnost za neposredno podnošenje prijave kod drugog organa.

Član 76 **Izdvojene evropske prijave patenta**

- 1) Izdvojena evropska prijava patenta podnosi se neposredno kod Evropskog zavoda za patente u skladu sa Pravilnikom o sprovođenju. Ona može imati za predmet samo ono što je sadržano u prvobitnoj prijavi, onakvoj kakva je podnijeta; ako je ispunjen taj zahtjev, smatra se da je izdvojena prijava podnijeta onog datuma kada je podnijeta prvobitna prijava, i uživa pravo prvenstva.
- 2) Sve države ugovornice naznačene u prvobitnoj prijavi u vrijeme podnošenja izdvojene evropske prijave patenta smatraće se naznačenim i u izdvojenoj prijavi.

Član 77 **Dostavljanje evropske prijave patenta**

- 1) Centralni zavod za industrijsku svojinu државе уговорнице дужан је да достави Европском заводу за patente, европске пријаве патента које су поднијете код ње или код другог надлежног органа те државе, у складу са Правилником о спровођењу.
- 2) Европска пријава патента чији се предмет сматра тајном, не доставља се Европском заводу за patente.
- 3) Европска пријава патента која није достављена Европском заводу за patente у року, сматра се повученом.

Član 78

Uslovi koje mora da ispunjava evropska prijava patenta

- 1) Европска пријава патента мора садржати:
 - a) захтев за признање европског патента;
 - b) опис проналазка;
 - c) један или више патентних захтева;
 - d) nacрте на које се позивају опис или патентни захтеви;
 - e) апстракт;и да задовољи услове наведене у Правилнику о спровођењу.
- 2) За европску пријаву патента плаћа се такса за подношење пријаве и такса за реферш. Ако такса за подношење и такса за реферш нису плаћене у propisanom року, пријава се сматра повученом.

Član 79

Naznačenje država ugovornica

- 1) Све државе, уговорне стране ове конвенције у vrijeme подношења европске пријаве патента сматраће се назначеним у захтеву за признање европског патента.
- 2) Назначење државе уговорнице подлијеже плаћању таксе за назначење.
- 3) Назначење једне државе уговорнице може бити повучено у било ком тренутку prije признања европског патента.

Član 80

Datum podnošenja prijave

Datum podnošenja evropske prijave patenta je datum kada je podnosilac prijave ispunio zahtjeve navedene u Pravilniku o sprovođenju.

Član 81

Navođenje pronalazača

U evropskoj prijavi patenta mora biti naveden pronalazač. Ako podnosilac prijave nije pronalazač ili nije jedini pronalazač, u navođenju mora biti sadržana izjava o osnovu sticanja prava podnosioca prijave na evropski patent.

Član 82

Jedinstvo pronalaska

Evropska prijava patenta može se odnositi na samo jedan pronalazak ili na više pronalazaka koji su tako međusobno povezani da ostvaruju jednu opštu pronalazačku zamisao.

Član 83

Opis pronalaska

Pronalazak u evropskoj prijavi patenta mora biti opisan jasno i potpuno, tako da ga stručnjak iz odgovarajuće oblasti može primijeniti.

Član 84

Patentni zahtjevi

Patentni zahtjevi određuju predmet čija se zaštita traži. Oni moraju biti jasni, sažeti i podržani opisom.

Član 85

Apstrakt

Apstrakt služi isključivo za potrebe tehničkog informisanja; on ne može poslužiti u bilo koju drugu svrhu, naročito ne za određivanje obima tražene zaštite, niti kod primjene Člana 54 stav 3.

Član 86 **Godišnje takse za evropsku prijavu patenta**

- 1) Godišnje takse za evropsku prijavu patenta plaćaju se, saglasno odredbama Pravilnika za sprovođenje, Evropskom zavodu za patente. Ove takse se plaćaju za treću godinu, koja se računa od dana podnošenja prijave, kao i za svaku narednu godinu. Ako godišnje takse nisu plaćene u propisanom roku, prijava se smatra povučenom.
- 2) Obaveza plaćanja godišnje takse prestaje plaćanjem te takse za godinu u kojoj je objavljeno obavještenje o priznanju evropskog patenta u Evropskom patentnom biltenu.

Glava II **PRVENSTVO**

Član 87 **Pravo prvenstva**

- 1) Svako lice koje je propisno podnijelo u jednoj, ili za jednu od država
 - a) članica Pariske konvencije za zaštitu industrijske svojine ili
 - b) članica Svjetske trgovinske organizacije,urednu prijavu patenta, korisnog modela ili svjedočanstvo o korisnosti ili njegov pravni sljedbenik, uživa, kod podnošenja evropske prijave patenta za isti pronalazak, pravo prvenstva u roku od dvanaest mjeseci, računajući od datuma podnošenja prve prijave.
- 2) Svakoj prijavi koja se smatra urednom nacionalnom prijavom na osnovu nacionalnih propisa jedne države u kojoj je podnijeta, ili na osnovu dvostranih ili višestranih sporazuma, uključujući tu i ovu konvenciju, priznaje se pravo prvenstva.
- 3) Smatra se urednom nacionalnom prijavom svaka prijava na osnovu koje se može utvrditi datum kada je podnijeta, bez obzira kakav je kasniji ishod te prijave.
- 4) Kasnija prijava koja ima isti predmet zaštite kao i prvopodnijeta prijava u istoj državi smatraće se prvom prijavom za određivanje prava prvenstva pod uslovom da je na dan njenog podnošenja prva prijava povučena, da se od nje odustalo ili je odbijena, a da nije bila dostupna javnosti i nije bila osnov nekog prava i ako ranije nije poslužila kao osnov za priznanje prava prvenstva. Na osnovu prve prijave, u tom slučaju, ne može se više zahtijevati pravo prvenstva.
- 5) Ako je prva prijava podnijeta kod organa nadležnog za industrijsku svojinu u državi koja nije članica Pariske konvencije za zaštitu industrijske svojine ili Ugovora o osnivanju Svjetske trgovinske organizacije, odredbe stavova 1 do 4 primjenjuju se samo ako taj organ, prema javnom saopštenju izdatom od strane predsjednika Evropskog zavoda za patente priznaje da se na osnovu prve prijave podnijete kod Evropskog zavoda za patente uspostavlja pravo prvenstva na osnovu uslova i sa pravnim dejstvom jednakim onim iz Pariske konvencije.

Član 88 **Zahtjev za priznanje prava prvenstva**

- 1) Podnosilac prijave koji želi da koristi pravo prvenstva ranije prijave dužan je da podnese izjavu o prvenstvu, i sve druge dokumente koji se zahtijevaju, u skladu sa Pravilnikom o sprovođenju.
- 2) Višestruka prvenstva mogu biti zatražena za jednu evropsku prijavu patenta, čak i ako potiču iz različitih država. U odgovarajućem slučaju, višestruka prava prvenstva mogu biti zatražena za isti patentni zahtjev. Ako su zatražena višestruka prvenstva, rokovi koji počinju teći od datuma prvenstva računaju se od najranijeg datuma prvenstva.
- 3) Kada se zahtijeva jedno ili više prava prvenstva za evropsku prijavu patenta, pravo prvenstva obuhvata samo one karakteristike evropske prijave patenta, koji su sadržani u prijavi ili u prijavama čije se prvenstvo zahtijeva.
- 4) Ako se izvjesne karakteristike pronalaska za koje se zahtijeva pravo prvenstvo ne nalaze u patentnim zahtjevima iznijetim u ranijoj prijavi, za priznanje prava prvenstva je dovoljno da sastavni djelovi ranije prijave opisuju precizno te karakteristike.

Član 89 **Dejstvo prava prvenstva**

Na osnovu dejstva prava prvenstva, datum prvenstva smatra se kao datum podnošenja evropske prijave patenta u vezi sa primjenom Člana 54 stavovi 2 i 3 i Člana 60 stav 2.

Četvrti dio **POSTUPAK ZA PRIZNANJA PATENATA**

Član 90 **Ispitivanje prijave prilikom njenog podnošenja i formalno ispitivanje**

- 1) Evropski zavod za patente ispituje, u skladu sa Pravilnikom o sprovođenju, da li prijava ispunjava uslove da joj se prizna datum podnošenja.

- 2) Ако се prijavi ne može priznati datum podnošenja ni poslije ispitivanja u smislu stava 1 po njoj se neće postupati kao sa evropskom prijavom patenta.
- 3) Ако је evropskoj prijavi patenta priznat datum podnošenja, Evropski zavod za patente ispituje, u skladu sa Pravilnikom za sprovođenje, da li su ispunjeni zahtjevi iz članova 14, 78 i 81 i gdje je to primjenjivo Člana 88 stav 1 i Člana 133 stav 2, kao i svi drugi uslovi navedeni u Pravilniku o sprovođenju.
- 4) Kada Evropski zavod za patente, u toku vođenja postupka ispitivanja u smislu stavova 1 ili 3 utvrdi nedostatke koji se mogu ispraviti, on će pružiti podnosiocu prijave mogućnost da ih ispravi.
- 5) Ако nedostatak primijećen u toku ispitivanja u smislu stava 3 nije ispravljen, evropska prijava patenta se odbija, osim ako ova konvencija ne predviđa drugačiju pravnu posljedicu. Kada se nedostatak odnosi na pravo prvenstva, to pravo biće izgubljeno za ovu prijavu.

Član 91

(brisan)

Član 92

Izrada evropskog rešeršnog izvještaja

Evropski zavod za patente, u skladu sa Pravilnikom o sprovođenju, izrađuje i objavljuje evropski rešeršni izvještaj za evropsku prijavu patenta na osnovu patentnih zahtjeva i imajući u vidu sadržaj opisa i crteža.

Član 93

Objava evropske prijave patenta

- 1) Evropski zavod za patente objavljuje evropsku prijavu patenta što je prije moguće
 - a) nakon isteka roka od osamnaest mjeseci, računajući od datuma podnošenja ili, ako je zatraženo pravo prvenstva, računajući od datuma tog prvenstva, ili
 - b) na zahtjev podnosioca prijave, prije isteka tog roka.
- 2) Evropska prijava patenta objavljuje se istovremeno kada se izdaje i spis evropskog patenta, ukoliko odluka o priznanju patenta stupi na snagu prije isteka roka navedenog u stavu 1(a).

Član 94

Postupak ispitivanja evropske prijave patenta

- 1) Evropski zavod za patente, u skladu sa Pravilnikom o sprovođenju, ispituje, po zahtjevu, da li evropska prijava patenta i pronalazak koji je njen predmet ispunjavaju uslove predviđene ovom konvencijom. Smatra se da je zahtjev podnijet tek kada je plaćena taksa za ispitivanje.
- 2) Ако zahtjev za ispitivanje nije podnijet u roku, evropska prijava patenta smatra se povučenom.
- 3) Ако se u toku ispitivanja otkrije da prijava, ili pronalazak na koji se prijava odnosi ne ispunjavaju zahtjeve iz ove konvencije, odsjek za ispitivanje poziva podnosioca prijave, koliko god je to neophodno, da podnese svoje primjedbe i da, na osnovu Člana 123 stav 1 izmijeni prijavu.
- 4) Ако podnosilac prijave propusti da u roku odgovori na sva saopštenja iz odsjeka za ispitivanje, smatra se da je prijava povučena.

Član 95

(brisan)

Član 96

(brisan)

Član 97

Priznanje patenta ili odbijanje prijave

- 1) Ако Odsjek za ispitivanje smatra da evropska prijava patenta i pronalazak, koji je njen predmet ispunjavaju zahtjeve iz ove konvencije, donosi odluku o priznanju evropskog patenta, pod uslovom da su ispunjeni zahtjevi navedeni u Pravilniku o sprovođenju.
- 2) Ако Odsjek za ispitivanje smatra da evropska prijava patenta i pronalazak koji je njen predmet ne ispunjavaju uslove propisane ovom konvencijom, on donosi odluku o odbijanju prijave osim ako ova konvencija ne predviđa drugačije pravne posljedice.

3) Odluka o priznanju evropskog patenta stupa na snagu na dan objavljivanja obavještenja o priznanju u Evropskom patentnom glasniku.

Član 98 **Objavljivanje spisa evropskog patenta**

Evropski zavod za patente objavljuje spis evropskog patenta što je prije moguće poslije objavljivanja obavještenja o priznanju evropskog patenta u Evropskom patentnom glasniku.

Peti dio **POSTUPAK PO OPOZICIJI I POSTUPAK OGRANIČENJA**

Član 99 **Opozicija**

- 1) U roku od 9 mjeseci, računajući od datuma objave obavještenja o priznanju evropskog patenta u Evropskom patentnom glasniku, svako lice može izjaviti opoziciju kod Evropskog zavoda za patente zbog priznanja tog patenta u skladu sa Pravilnikom o sprovođenju. Smatra se da je opozicija podnijeta samo ako je plaćena taksa za opoziciju.
- 2) Opozicija zbog priznanja evropskog patenta odnosi se na taj patent u svim državama ugovornicama u kojima on proizvodi svoja dejstva.
- 3) Treća lica koja su izjavila opoziciju su, sa nosiocem patenta, stranke u postupku po opoziciji.
- 4) Ako jedno lice dostavi dokaz da je, u jednoj državi ugovornici, upisano u registar patenata na osnovu konačne odluke, umjesto ranijeg nosioca, ono, na osnovu svog zahtjeva, zauzima mjesto ranijeg nosioca za navedenu državu. Bez obzira na odredbe člana 118 raniji nosilac patenta i lice koje ističe svoje pravo ne smatraju se zajedničkim nosiocima, osim ako to oni traže.

Član 100 **Razlozi za opoziciju**

Opozicija se može zasnivati samo na sljedećim razlozima:

- a) predmet evropskog patenta nije patentibilan u smislu članova 52 do 57;
- b) u evropskom patentu pronalazak nije opisan potpuno i jasno da bi ga stručnjak iz odgovarajuće oblasti mogao izvesti;
- c) predmet evropskog patenta je proširen u odnosu na predmet prijave, onakve kakva je podnijeta, ili ako patent, priznat na osnovu izdvojene prijave ili nove prijave podnijete na osnovu Člana 61 proširuje predmet ranije prijave, onakve kakva je podnijeta.

Član 101 **Ispitivanje opozicije - oglašavanje ništavim ili održavanje u važnosti evropskog patenta**

- 1) Ako je opozicija dopuštena, odsjek za opoziciju ispituje u skladu sa Pravilnikom o sprovođenju da li bar jedan osnov za opoziciju na osnovu člana 100 nanosi štetu održavanju u važnosti evropskog patenta. Tokom ovog ispitivanja, odsjek za opoziciju poziva strane, koliko god je to neophodno, da dostave svoje primjedbe na podneske druge strane ili na one koje je izdao sam odsjek za opoziciju.
- 2) Ako odsjek za opoziciju utvrdi da bar jedan osnov za opoziciju nanosi štetu održavanju u važnosti evropskog patenta, on će oglasiti ništavim patent. U suprotnom, on će odbaciti zahtjev za opoziciju.
- 3) Ako odsjek za opoziciju smatra da, imajući u vidu izmjene koje je izvršio nosilac evropskog patenta u toku postupka po opoziciji, patent i pronalazak koji je njegov predmet
 - a) ispunjavaju uslove iz ove konvencije, on donosi odluku o održavanju patenta, sa izmjenama, u važnosti, pod uslovom da su ispunjeni zahtjevi navedeni u Pravilniku o sprovođenju;
 - b) ne ispunjavaju uslove iz ove konvencije, on će patent oglasiti ništavim.

Član 102

(brisan)

Član 103 **Objavljivanje novog spisa evropskog patenta**

Ako je evropski patent održavan u važnosti kao izmijenjen na osnovu Člana 101 stav 3(a), Evropski zavod za patente objavljuje novi spis evropskog patenta što je prije moguće poslije objavljivanja obavještenja o odluci po opoziciji u Evropskom patentnom glasniku.

Član 104 **Troškovi**

- 1) Svaka stranka u postupku po opoziciji snosi svoje troškove, osim ako odsjek za opoziciju iz razloga pravičnosti, odredi u skladu sa Pravilnikom o sprovođenju drugačije učešće u troškovima.
- 2) Postupak za određivanje troškova naveden je u Pravilniku o sprovođenju.
- 3) Svaka konačna odluka Evropskog zavoda za patente kojom se određuju iznosi troškova, u cilju njenog izvršenja u zemljama ugovornicama, smatra se istom kao i pravosnažna odluka građanskog suda države u kojoj treba da bude izvršena. Kontrola ove odluke može se odnositi samo na njenu autentičnost.

Član 105

Miješanje pretpostavljenog neovlašćenog korisnika

- 1) Svako treće lice može, u skladu sa Pravilnikom o sprovođenju, da se umiješa u postupak po opoziciji po isteku roka za podnošenje opozicije, ako to treće lice dokaže
 - a) da je protiv njega pokrenut postupak za povredu prava tog istog patenta, ili
 - b) ako treće lice, poslije zahtjeva nosioca patenta da se prestane sa navodnim kršenjem prava, pokrene postupak da se donese presuda da on ne vrijedi taj patent.
- 2) Dopustivo miješanje tretira se kao opozicija.

Član 105a

Zahtjev za ograničenje ili oglašavanje ništavim

- 1) Na zahtjev nosioca, evropski patent može se oglasiti ništavim ili ograničiti izmjenom zahtjeva. Zahtjev će se podnijeti u Evropskom zavodu za patente u skladu sa Pravilnikom o sprovođenju Konvencije. On se neće smatrati podnijetim dok se ne plati taksa za ograničenje ili oglašavanje ništavim.
- 2) Zahtjev se ne može podnijeti dok traje postupak po opoziciji za taj evropski patent.

Član 105b

Ograničenje ili oglašavanje ništavim evropskog patenta

- 1) Evropski zavod za patente mora da ispita da li su ispunjeni uslovi za ograničenje ili oglašavanje ništavim evropskog patenta navedeni u Pravilniku o sprovođenju Konvencije.
- 2) Ako Evropski zavod za patente smatra da zahtjev za ograničenje ili oglašavanje ništavim evropskog patenta ispunjava ove uslove, on će odlučiti da ograniči ili oglasi ništavim evropski patent u skladu sa Pravilnikom o sprovođenju Konvencije. U suprotnom, zahtjev će biti odbačen.
- 3) Odluka da se ograniči ili oglasi ništavim evropski patent primjenjivaće se na taj evropski patent u svim državama ugovornicama u kojima je bio priznat. Ona će stupiti na snagu na datum kada se upis odluke objavi u Evropskom patentnom glasniku.

Član 105c

Objavljivanje izmijenjenog spisa evropskog patenta

Ako je evropski patent ograničen na osnovu Člana 105b stav 2 Evropski zavod za patente će objaviti izmijenjeni spis evropskog patenta što je prije moguće poslije objavljivanja obavještenja o ograničenju u Evropskom patentnom glasniku.

Šesti dio

ŽALBENI POSTUPAK

Član 106

Odluke protiv kojih se može izjaviti žalba

- 1) Žalba se može izjaviti protiv odluka službe za prijem prijave, odsjeka za ispitivanje, odsjeka za opoziciju i pravnog odsjeka. Žalba ima odloženo dejstvo.
- 2) Odluka kojom se ne okončava postupak u odnosu na jednu od stranaka može biti predmet žalbe samo sa konačnom odlukom, osim ako ta odluka dopušta posebnu žalbu.
- 3) Pravo da se izjavi žalba protiv odluka koje se tiču učešća u troškovima ili određivanja troškova u postupku po opoziciji može biti ograničeno Pravilnikom o sprovođenju.

Član 107

Lica koja mogu izjaviti žalbu i biti stranke u postupku

Pravo na žalbu ima svaka stranka u postupku u kome je donijeta odluka kojom nije udovoljeno njenim zahtjevima. Ostale stranke u tom postupku učestvuju i u postupku po žalbi.

Član 108 **Rok i forma**

Žalba mora biti izjavljena u skladu sa Pravilnikom o sprovođenju, u Evropskom zavodu za patente u roku od dva mjeseca od dana dostavljanja odluke. Smatra se da je žalba izjavljena tek kada je plaćena taksa za žalbu. Podnesak u kome su iznijeti razlozi za žalbu mora biti u skladu sa Pravilnikom o sprovođenju, podnijetom u roku od četiri mjeseca od dana dostavljanja odluke.

Član 109 **Prejudiciona revizija**

- 1) Ako instanca čija je odluka predmet žalbe smatra da je žalba blagovremena i osnovana, ona je dužna da je usvoji. Ova odredba se ne primjenjuje ako je žalbeni postupak pokrenula stranka koja ima suprotan interes u odnosu na drugu stranku.
- 2) Ako žalba nije usvojena u roku od tri mjeseca od prijema podneska u kome su izloženi razlozi, žalba mora biti odmah dostavljena žalbenom vijeću bez mišljenja o njenoj osnovanosti.

Član 110 **Žalbeni postupak**

Ako je žalba blagovremena i dozvoljena, žalbeno vijeće ispituje njenu osnovanost. Razmatranje žalbe se odvija u skladu sa Pravilnikom o sprovođenju.

Član 111 **Odluka po žalbi**

- 1) Nakon razmatranja žalbe, žalbeno vijeće donosi odluku o žalbi. Ono može djelovati u nadležnosti instance koja je donijela odluku koja je predmet žalbe, ili vratiti predmet toj instanci na dalji postupak.
- 2) Ako žalbeno vijeće vrati predmet radi daljeg postupka instanci koja je donijela odluku koja je predmet žalbe, ta instanca je vezana razlozima i dispozitivom žalbenog vijeća, ako je činjenično stanje isto. Ako je odluku donijela služba za prijem prijave, odsjek za ispitivanje je takođe vezan razlozima i dispozitivom odluke žalbenog vijeća.

Član 112 **Odluke ili mišljenja Velikog žalbenog vijeća**

- 1) U cilju obezbjeđenja jedinstvene primjene prava ili ako se pojavi pravno pitanje od osnovnog značaja:
 - a) žalbeno vijeće se obraća, bilo po službenoj dužnosti bilo na zahtjev jedne od stranaka u postupku, Velikom žalbenom vijeću ako smatra da je neophodno donijeti odluku u vezi sa tim. U slučaju odbijanja zahtjeva, žalbeno vijeće je dužno obrazložiti odbijanje u svojoj konačnoj odluci;
 - b) predsjednik Evropskog zavoda za patente može iznijeti pred Veliko žalbeno vijeće neko pravno pitanje, ako dva žalbena vijeća o tom pitanju donesu različite odluke.
- 2) U slučajevima navedenim u stavu 1 tačka (a) stranke u žalbenom postupku su stranke u postupku pred Velikim žalbenim vijećem.
- 3) Odluka Velikog žalbenog vijeća o kojoj je riječ u stavu 1 tačka (a) obavezuje žalbeno vijeće u pogledu žalbe koju razmatra.

Član 112a **Molba za reviziju od strane Velikog žalbenog vijeća**

- 1) Bilo koja strana u žalbenom postupku na čiju štetu je donijeta odluka Žalbenog vijeća može da podnese molbu za reviziju odluke od strane Velikog žalbenog vijeća.
- 2) Molba može biti podnijeta samo po sljedećem osnovu:
 - a) član Žalbenog vijeća je učestvovao u odluci kršeći član 24 stav 1 ili uprkos tome što je bio isključen na osnovu odluke iz Člana 24 stav 4;
 - b) žalbeno vijeće uključilo je lice koje nije imenovano kao član Žalbenog vijeća;
 - c) dogodila se fundamentalna povreda Člana 113;
 - d) dogodila se bilo koja druga fundamentalna proceduralna nepravilnost definisana u Pravilniku o sprovođenju u toku žalbenog postupka; ili
 - e) nezakonitog djela predviđenog na osnovu uslova navedenih u Pravilniku o sprovođenju koje je moglo imati uticaja na odluku.
- 3) Molba za reviziju neće imati dejstvo obustave.

4) Molba za reviziju mora biti podnijeta u obrazloženoj izjavi, u skladu sa Pravilnikom o sprovođenju. Ako je zasnovana na stavu (2)(a) do (d), molba mora biti podnijeta u roku od dva mjeseca od obavještenja o odluci Žalbenog vijeća. Ako je zasnovana na stavu 2(e), molba mora biti podnijeta u roku od dva mjeseca od datuma kada je ustanovljeno nezakonito djelo i u svakom slučaju ne kasnije od pet godina od obavještanja o odluci Žalbenog vijeća. Molba se neće smatrati podnijetom dok se ne plati propisana taksa.

5) Veliko žalbeno vijeće mora ispitati molbu za reviziju u skladu sa Pravilnikom o sprovođenju. Ako se molba može prihvatiti, Veliko žalbeno vijeće će poništiti odluku i ponovo otvoriti postupak pred Žalbenim vijećem u skladu sa Pravilnikom o sprovođenju.

6) Svako lice koje je, u naznačenoj državi ugovornici, u dobroj namjeri koristilo pronalazak ili učinilo uspješne i ozbiljne pripreme da koristi pronalazak koji je predmet objavljene evropske prijave patenta ili evropskog patenta u periodu između odluke Žalbenog vijeća i objave u Evropskom patentnom glasniku upisa odluke Velikog žalbenog vijeća o molbi, može bez plaćanja da nastavi takvo korišćenje u svom poslu ili za njegove potrebe.

Sedmi dio ZAJEDNIČKE ODREDBE

Glava I OPŠTE ODREDBE O POSTUPKU

Član 113 Pravo na saslušanje i zasnivanje odluka

1) Odluke Evropskog zavoda za patente mogu se zasnivati samo na razlozima ili dokazima o kojima su se stranke mogle izjasniti.

2) Evropski zavod za patente ispituje i donosi odluke o evropskoj prijavi patenta ili evropskom patentu samo na osnovu teksta koji je predložio ili prihvatio podnosilac prijave ili nosilac patenta.

Član 114 Ispitivanje službenim putem

1) U toku postupka Evropski zavod za patente ispituje činjenice službenim putem; ovo ispitivanje nije ograničeno samo na činjenice i dokaze i argumente na koje je ukazano, niti na zahtjeve koje su podnijele stranke.

2) Evropski zavod za patente ne mora uzeti u obzir činjenice ili dokaze koje stranke nisu istakle blagovremeno.

Član 115 Primjedbe trećih lica

U postupku pred Evropskim zavodom za patente, poslije objave evropske prijave patenta, svako treće lice može, u skladu sa Pravilnikom o sprovođenju, da iznese svoje primjedbe u pogledu patentibilnosti pronalaska na koji se odnosi prijava ili patent. To lice ne može biti strana u postupku.

Član 116 Usmeni postupak

1) Usmeni postupak se vodi po službenoj dužnosti, ako to Evropski zavod za patente smatra korisnim, ili na zahtjev stranke u postupku. Evropski zavod za patente može odbiti zahtjev za dalje vođenje usmenog postupka pred istom instancom, ako su stranke i činjenično stanje isti.

2) Usmeni postupak po zahtjevu podnosioca prijave biće vođen kod službe za prijem prijava samo ako ona to smatra korisnim, ili ako namjerava da odbije evropsku prijavu patenta.

3) Usmeni postupak pred službom za prijem prijava, odsjecima za ispitivanje i pravnim odsjekom nije javan.

4) Usmeni postupak, uključujući i izricanje odluke, jeste javan u postupku kod žalbenih vijeća i Velikog žalbenog vijeća nakon objavljivanja evropske prijave patenta, kao i kod odsjeka za opoziciju, osim ako instances koja vodi postupak odluči drugačije u slučajevima kada bi zbog javnosti mogle nastati, posebno za jednu stranku u postupku, teške i neopravdane posljedice.

Član 117 Pribavljanje i iznošenje dokaza

- 1) U postupku pred Evropskim zavodom za patente sredstva za iznošenje i pribavljanje dokaza uključuju sljedeće:
 - a) saslušanje stranaka;
 - b) prikupljanje podataka;
 - c) dostavljanje dokumenata;
 - d) saslušanje svjedoka;
 - e) vještačenje;
 - f) uviđaj na licu mjesta;
 - g) pismene izjave date pod zakletvom.
- 2) Postupak za iznošenje dokaza naveden je u Pravilniku o sprovođenju.

Član 118

Jedinstvo evropske prijave patenta ili evropskog patenta

Ako podnosioci prijave ili nosioci evropskog patenta nisu isti za razne naznačene države ugovornice, smatraju se zajedničkim podnosiocima prijave ili zajedničkim nosiocima u postupku kod Evropskog zavoda za patente. Jedinstvo prijave ili patenta u toku tog postupka time nije narušeno; posebno, tekst prijave ili patenta mora biti istovjetan za sve naznačene države, osim ako ovom konvencijom nije drugo određeno.

Član 119

Dostava

Odluke, pozive, obavještenja i saopštenja šalje Evropski zavod za patente po službenoj dužnosti u skladu sa Pravilnikom o sprovođenju. Dostava može biti izvršena, kada to zahtijevaju izuzetne okolnosti i posredstvom centralnog zavoda za industrijsku svojinu država ugovornica.

Član 120

Rokovi

Pravilnik o sprovođenju određuje:

- a) rokove koje treba poštovati u postupku pred Evropskim zavodom za patente i koji nisu određeni u ovoj konvenciji;
- b) način računanja rokova i uslove pod kojima se rok može produžiti;
- c) minimalno i maksimalno trajanje rokova koje određuje Evropski zavod za patente.

Član 121

Nastavljanje postupka po evropskoj prijavi patenta

- 1) Ako podnosilac prijave ne ispoštuje rok pred Evropskim zavodom za patente, on može zahtijevati nastavlanje postupka po evropskoj prijavi patenta.
- 2) Evropski zavod za patente uvažiće zahtjev, ako su ispunjeni uslovi navedeni u Pravilniku o sprovođenju. U suprotnom, on će odbiti zahtjev.
- 3) Ako se zahtjev uvaži, smatra se da nema pravnih posljedica zbog nepoštovanja roka.
- 4) Nastavljanje postupka je isključeno u pogledu rokova iz Člana 87 stav 1, Člana 108 i Člana 112a stav 4, kao i u pogledu rokova za nastavlanje postupka ili povraćaj u pređašnje stanje. Pravilnik o sprovođenju može isključiti nastavlanje postupka za druge rokove.

Član 122

Povraćaj u pređašnje stanje

- 1) Podnosilac prijave ili nosilac evropskog patenta koji, i pored toga što je u odgovarajućim okolnostima pokazao svu potrebnu pažnju, nije bio u stanju da postupi u roku kod Evropskog zavoda za patente, ima, ako podnese zahtjev, pravo na povraćaj u pređašnje stanje ukoliko je zbog nepoštovanja roka došlo do odbijanja evropske prijave patenta ili nekog zahtjeva, ili je donijeta odluka kojom se prijava smatra povučenom, ili se oglašava ništavim evropski patent, ili je došlo do gubitka bilo kojeg drugog prava ili pravnog sredstva.
- 2) Evropski zavod za patente prihvata zahtjev, ako su ispunjeni uslovi iz stava 1 i drugi zahtjevi navedeni u Pravilniku o sprovođenju. U suprotnom, on odbacuje zahtjev.
- 3) Ako se zahtjev uvaži, smatra se da nema pravnih posljedica zbog nepoštovanja roka.
- 4) Povraćaj u pređašnje stanje je isključeno ako se ne poštuju rokovi za povraćaj u pređašnje stanje. Pravilnik o sprovođenju može isključiti povraćaj u pređašnje stanje kod drugih rokova.
- 5) Svako savjesno lice koje je u jednoj državi ugovornici, u toku perioda između gubitka prava o kome je riječ u stavu 1 i objave obavještenja o ponovnom ustanovljenju ovog prava u Evropskom patentnom glasniku, počelo da iskorišćava ili izvršilo stvarne i ozbiljne pripreme za iskorišćavanje pronalaska koji je predmet objavljene evropske prijave patenta ili evropskog patenta, može besplatno nastaviti sa tim korišćenjem u svom preduzeću ili za potrebe svog preduzeća.

6) Ovim članom ne ograničava se pravo države ugovornice da dozvoli povraćaj u pređašnje stanje u odnosu na rokove predviđene ovom konvencijom koji moraju biti poštovani u odnosu na organe te države.

Član 123 **Izmjene**

- 1) Evropska prijava patenta ili evropski patent mogu biti izmijenjeni u toku postupka pred Evropskim zavodom za patente, u skladu sa Pravilnikom o sprovođenju. U svakom slučaju podnosilac prijave može, po svojoj volji, najmanje jednom izmijeniti prijavu.
- 2) Evropska prijava patenta ili evropski patent ne mogu biti izmijenjeni tako da se proširi predmet zaštite iz prijave, onakve kakva je podnijeta.
- 3) Evropski patent ne može biti mijenjan tako da se proširuje zaštita koju on pruža.

Član 124 **Podaci o stanju tehnike**

- 1) Evropski zavod za patente može, u skladu sa Pravilnikom o sprovođenju, pozvati podnosioca prijave da pruži informacije o stanju tehnike uzetom u obzir u nacionalnom ili regionalnom postupku za zaštitu patenta a u vezi pronalaska koji je predmet evropske prijave patenta.
- 2) Ako, u ostavljenom roku, podnosilac prijave ne postupi po tom pozivu, smatra se da je evropska prijava patenta povučena.

Član 125 **Pozivanje na opšta načela**

U slučaju da određeno pitanje postupka nije regulisano u ovoj konvenciji, Evropski zavod za patente rukovodiće se načelima procesnog prava, opšte prihvaćenim u zemljama ugovornicama.

Član 126

(brisan)

Glava II **INFORMISANJE JAVNOSTI I NADLEŽNIH ORGANA**

Član 127 **Evropski registar патената**

Evropski zavod za patente vodi Evropski registar патената, u koji se unose podaci čiji je upis predviđen u Pravilniku o sprovođenju. Nijedan upis u Evropski registar патената ne može biti izvršen prije objave evropske prijave patenta. Evropski registar патената je dostupan javnosti.

Član 128 **Razgledanje predmeta**

- 1) Spisi koji se odnose na još neobjavljene evropske prijave патената, ne mogu biti razgledani bez saglasnosti podnosioca prijave.
- 2) Svako lice koje dokaže da se, postupajući protiv njega, podnosilac evropske prijave patenta pozvao na prava iz svoje prijave, može imati uvid u spis prije objave prijave i bez saglasnosti podnosioca.
- 3) Kad je objavljena izdvojena prijava ili nova evropska prijava patenta podnijeta na osnovu odredbi Člana 61 stav 1 svako lice može, bez saglasnosti podnosioca, razgledati spis prvobitne prijave prije njenog objavljivanja.
- 4) Nakon objave evropske prijave patenta, spisi te prijave i patenta koji je priznat na osnovu nje mogu, na zahtjev, biti razgledani, s tim što se moraju imati u vidu ograničenja predviđena u Pravilniku o sprovođenju.
- 5) Evropski zavod za patente može, čak prije objave evropske prijave patenta, saopštiti trećim licima, ili objaviti podatke navedene u Pravilniku o sprovođenju.

Član 129 **Periodične publikacije**

Evropski patentni zavod objavljuje periodično:

- a) „Evropski patentni glasnik" koji sadrži podatke čije objavljivanje propisuje ova konvencija, Pravilnik o sprovođenju ili predsjednik Evropskog zavoda za patente;
- b) „Službeni list Evropskog zavoda za patente" koji sadrži saopštenja i informacije od opšteg značaja koje daje predsjednik Evropskog zavoda za patente, kao i sve druge informacije od značaja za ovu konvenciju i njenu primjenu.

Član 130

Razmjena informacija

- 1) Osim kada je ovom konvencijom ili nacionalnim zakonima predviđeno drugačije, Evropski zavod za patente i centralni zavodi za industrijsku svojinu svih država ugovornica dostavljaju jedne drugima, na zahtjev, sve korisne informacije o evropskim ili nacionalnim prijavama patenata i patentima i svim postupcima u vezi sa njima.
- 2) Stav 1 primjenjuje se na razmjenu informacija na osnovu ugovora o razmjeni informacija zaključenih između Evropskog zavoda za patente, sa jedne strane i, sa druge strane:
 - a) centralnih zavoda za industrijsku svojinu država koje nisu potpisnice ove konvencije;
 - b) svake međuvladine organizacije nadležne za priznanje patenata;
 - c) svake druge organizacije.
- 3) Dostavljanje informacija koje se vrši saglasno stavu 1 i stavu 2 tačke (a) i (b) nisu podložne ograničenjima predviđenim u Članu 128. Upravni savjet može odlučiti da dostavljanja izvršena saglasno stavu 2 tačka (c) ne podliježu takvim ograničenjima pod uslovom da se zainteresovana organizacija obavezuje da će te informacije smatrati povjerljivim do datuma objave evropske prijave patenta.

Član 131

Upravna i sudska saradnja

- 1) Osim ako nije drugačije određeno ovom konvencijom ili nacionalnim zakonima, Evropski zavod za patente i sudski ili drugi nadležni organi država ugovornica pružaju, na traženje, jedni drugima pomoć, dostavljanjem informacija ili pružanjem uvida u spise. Kada Evropski zavod za patente pruži sudovima, državnom javnom tužiocu ili centralnim zavodima za industrijsku svojinu spise na uvid, ne primjenjuju se restrikcije predviđene u Članu 128.
- 2) Na zahtjev Evropskog zavoda za patente, sudovi ili drugi nadležni organi država ugovornica, u granicama svoje nadležnosti, vode u ime Zavoda dokazni postupak ili preduzimaju druge pravne mjere.

Član 132

Razmjena publikacija

- 1) Evropski zavod za patente i centralni zavodi za industrijsku svojinu država ugovornica razmjenjuju, na zahtjev, za njihove vlastite potrebe i besplatno, po jedan ili više primjeraka njihovih odgovarajućih publikacija.
- 2) Evropski zavod za patente može zaključiti sporazume o razmjeni ili slanju publikacija.

Glava III

ZASTUPANJE

Član 133

Opšta načela o zastupanju

- 1) Osim u slučajevima predviđenim u stavu 2 niko nije obavezan da bude zastupan od strane profesionalnog zastupnika u postupcima predviđenim ovom konvencijom.
- 2) Fizička ili pravna lica koja nemaju ni domicil ni sjedište u nekoj od država ugovornica moraju imati profesionalnog zastupnika i preko njega vršiti sve radnje u toku postupka predviđenih ovom konvencijom, osim kod podnošenja evropske prijave patenta; drugi izuzeci mogu biti dopušteni Pravilnikom o sprovođenju.
- 3) Fizička ili pravna lica koja imaju domicil ili sjedište u nekoj državi ugovornici mogu, u toku svih postupaka predviđenih ovom konvencijom, postupati preko lica koje je kod njih zaposleno; to lice mora imati ovlaštenje saglasno odredbama Pravilnika o sprovođenju, ali ne mora biti profesionalni zastupnik. Pravilnik o sprovođenju može predvidjeti da li i pod kojim uslovima zaposleno lice kod pravnog lica, može takođe da postupa za druga pravna lica koja imaju sjedište u nekoj od država ugovornica i imaju privredne veze sa njim.
- 4) Posebne odredbe o zajedničkom zastupanju stranaka koje postupaju zajednički mogu biti sadržane u Pravilniku o sprovođenju.

Član 134

Profesionalni zastupnici

- 1) Zastupanje fizičkih ili pravnih lica u postupcima predviđenim ovom konvencijom mogu vršiti samo profesionalni zastupnici upisani u listu koju za tu svrhu vodi Evropski zavod za patente.
- 2) Svako fizičko lice koje:

- a) има држављанство једне од држава уговорница;
 - b) има пословно сједиште или мјесто запосленја у некој држави уговорници;
 - c) положи стручни европски испит;
може бити уписано у листу професионалних заступника.
- 3) Током периода од годину дана од датума када ступи на снагу приступање неке државе овој конвенцији, упис на ту листу може захтијевати било које физичко лице које:
- a) је држављанин неке државе уговорнице,
 - b) има пословно сједиште или запосленје у тој држави која је приступила овој конвенцији и
 - c) има право да заступа физичка или правна лица у патентним питањима пред централним заводом за индустријску својину у тој држави. Право на то није условљено захтјевом постојања специјалистичких професионалних квалификација, ако је то лице редовно радilo на таквим пословима у тој држави најмање пет година.
- 4) Упис се врши на захтјев коме су приложени докази да су испуњени сви услови из става 2 или 3.
- 5) Лица која су уписана на листу професионалних заступника овлашћена су да поступају у сваком поступку предвиђеном овом конвенцијом.
- 6) Свако лице које је уписано у листу професионалних заступника, овлашћено је, како би могло да поступа као професионални заступник, да има своје службено сједиште у некој држави уговорници у којој се воде поступци установљени овом конвенцијом, водећи рачуна о протоколу о централизацији у прилогу ове конвенције. Органи те државе могу повући такво овлашћење само у посебним случајевима и на основу националних прописа који уређују јавни поредак и јавну безбједност. Предсједник Европског завода за патенте мора бити консултован prije него што буде предузета таква мјера.
- 7) Предсједник Европског завода за патенте може да предвиди изузеће од:
- a) захтјева из Члана 2(a) или 3(a) у посебним околностима;
 - b) захтјева из Члана 3(c), друга реченица, ако подносилац пријаве поднесе доказ да је стекао тражену квалификацију на други начин.
- 8) Заступање у поступцима предвиђеним овом конвенцијом може, на исти начин као и професионални заступник, вршити сваки адвокат који је овлашћен да обавља адвокатску праксу на територији једне од држава уговорница, и који у нjoj има своје службено сједиште, уколико има право да у тој земљи поступа као пуномоћник у пословима везаним за патенте. Став 6 се примјењује *mutatis mutandis*.

Члан 134а

Институт професионалних заступника пред Европским заводом за патенте

- 1) Управни савјет биће надлежан за усвајање и измјену одредаби које регулишу:
 - a) Институт професионалних заступника пред Европским заводом за патенте, у даљем тексту Институт;
 - b) квалификације и обуку која се захтијева од неке особе за пристапање Европском квалификационом испиту и организацију таквог испита;
 - c) дисциплинарна овлашћења која спроводи Институт или Европски завод за патенте у погледу професионалних заступника;
 - d) обавезу професионалног заступника у веzi чувања тајне која се тиче привилегије откривања проналазка у поступку пред Европским заводом за патенте и у погледу саопштења између професионалног заступника и његовог клијента или било ког другог лица;
- 2) Свако лице уписано на листу професионалних заступника поменути у Члану 134 став 1 сматраће се чланом Института.

Осми дио

УТИЦАЈ НА НАЦИОНАЛНО ПРАВО

Глава I

ПРЕТВАРАЊЕ У ПРИЈАВУ НАЦИОНАЛНОГ ПАТЕНТА

Члан 135

Захтјев за претварање

- 1) Централни завод за индустријску својину назначене државе уговорнице може покренути поступак за признање националног патента само ако је подносилац пријаве или носилац европског патента поднио захтјев, и то у слjedeћим случајевима:
 - a) ако се сматра да је европска пријава патента повучена на основу Члана 77 став 3;
 - b) у другим случајевима предвиђеним националним прописима када је, на основу ове конвенције, европска пријава патента одбијена или повучена или се сматра повученом, или је европски патент оглашен ништавим.
- 2) У случају наведеном у ставу 1(a), захтјев за претварање мора бити поднијет код централног завода за индустријску својину код кога је била поднијета европска пријава патента. Тај завод мора, на основу одредаби које регулишу националну безбједност, да пошаље захтјев директно централним заводима за индустријску својину држава уговорница које су ту наведене.
- 3) У случајевима поменути у ставу 1(b) захтјев за претварање се подноси Европском заводу за патенте у складу са Правилником о спровођењу. Не сматра се поднијетим док се не плати такса за претварање. Европски завод за патенте преноси захтјев централним заводима за индустријску својину наведеним државима уговорницама.

4) Dejstvo evropske prijave patenta navedeno u Članu 66 ističe ako se zahtjev za pretvaranje ne podnese blagovremeno.

Član 136

(brisan)

Član 137

Formalni uslovi za pretvaranje

- 1) Evropska prijava patenta koja je dostavljena saglasno odredbama Člana 135 stav 2 ili 3 ne može biti ispitivana u pogledu formalnih uslova koje predviđa nacionalni zakon, a ne predviđa ova konvencija, kao niti u pogledu dodatnih uslova.
- 2) Centralna služba za industrijsku svojinu kojoj je dostavljena evropska prijava patenta može zahtijevati da, u roku, koji ne može biti kraći od dva mjeseca, podnosilac prijave:
 - a) plati nacionalnu taksu za prijavu; i
 - b) podnese, na jednom od službenih jezika države u pitanju, prevod originalnog teksta evropske prijave patenta, kao i, u odgovarajućem slučaju, prevod teksta izmijenjenog u toku postupka kod Evropskog zavoda za patente, koji treba da posluži kao osnov za nacionalni postupak.

Glava II

NIŠTAVOST I RANIJA PRAVA

Član 138

Oglašavanje ništavim evropskih patenata

- 1) Na osnovu Člana 139 evropski patent može biti oglašen ništavim u nekoj državi ugovornici samo na osnovu sljedećeg:
 - a) predmet evropskog patenta nije patentibilan u smislu članova 52 do 57;
 - b) evropski patent ne otkriva pronalazak na dovoljno jasan i potpun način da bi ga stručnjak iz odgovarajuće oblasti mogao izvesti;
 - c) predmet evropskog patenta prevazilazi sadržinu prijave, onakve kakva je podnijeta, ili, u slučaju da je patent priznat na osnovu izdvojene prijave ili nove prijave podnijete na osnovu Člana 61 predmet patenta prevazilazi sadržinu ranije prijave onakve kakva je podnijeta;
 - d) obim zaštite koja je pružena evropskim patentom je proširen ili;
 - e) nosilac evropskog patenta nije imao pravo na patent u smislu Člana 60 stav 1.
- 2) Ako se razlozi ništavosti odnose na jedan dio evropskog patenta, patent se ograničava odgovarajućom izmjenom zahtjeva i djelimično se oglašava ništavim.
- 3) U postupku pred odgovarajućim sudom ili organom koji se tiče važenja evropskog patenta, nosilac patenta ima pravo da ograniči patent izmjenom zahtjeva. Ovako ograničen patent čini osnov za postupak.

Član 139

Ranija prava i prava koja su nastala istog dana

- 1) U svakoj naznačenoj državi ugovornici evropska prijava patenta ili evropski patent ima, u odnosu na prijavu nacionalnog patenta ili na nacionalni patent, isto dejstvo u smislu ranijeg prava, kao i prijava nacionalnog patenta ili nacionalni patent.
- 2) Sa prijavom nacionalnog patenta ili nacionalnim patentom jedne države ugovornice postupa se, u pogledu ranijih prava u odnosu na evropski patent u kome je naznačena ta država ugovornica, kao da je taj evropski patent nacionalni patent.
- 3) Svaka država ugovornica može propisati da li i pod kojim uslovima može biti istovremeno pružena zaštita pronalasku opisanom u evropskoj prijavi patenta ili evropskom patentu i u nacionalnoj prijavi patenta ili nacionalnom patentu sa istim datumom podnošenja ili, ako je zahtijevano prvenstvo, istim datumom prvenstva.

Glava III

DRUGI UTICAJI NA NACIONALNO PRAVO

Član 140

Nacionalni korisni modeli i svjedočanstva o korisnosti

Članovi 66, 124, 135 do 137 i 139 se primjenjuju na korisne modele i svjedočanstva o korisnosti, kao i na odgovarajuće prijave korisnog modela i svjedočanstva o korisnosti registrovane ili deponovane u zemljama ugovornicama čiji propisi predviđaju takve oblike zaštite.

Član 141 **Godišnje takse za evropski patent**

- 1) Godišnje takse za evropski patent se mogu naplatiti samo za godine koje slijede nakon godine pomenute u Članu 86 stav 2.
- 2) Ako obaveza plaćanja godišnje takse za evropski patent dopijeva u roku od dva mjeseca, računajući od dana kada je objavljeno obavještenje o priznanju patenta u Evropskom patentnom glasniku, smatra se da je ta taksa uredno plaćena pod uslovom da je plaćena u navedenom roku. Ne naplaćuje se nikakva dodatna taksa predviđena nacionalnim propisima.

Deveti dio **POSEBNI SPORAZUMI**

Član 142 **Jedinstveni patent**

- 1) Grupa zemalja ugovornica, koja predvidi u posebnom sporazumu da evropski patenti priznati za te zemlje imaju jedinstveni karakter na njihovim teritorijama, može predvidjeti da evropski patenti mogu biti priznati samo zajedno za sve te zemlje.
- 2) Odredbe ovog dijela primjenjuju se kada jedna grupa zemalja ugovornica iskoristi mogućnost navedenu u stavu 1.

Član 143 **Posebne instance Evropskog zavoda za patente**

- 1) Grupa država ugovornica može povjeriti dodatne zadatke Evropskom zavodu za patente.
- 2) U Evropskom zavodu za patente, radi izvršenja tih dodatnih zadataka, mogu biti osnovane posebne zajedničke instance država koje pripadaju toj grupi. Predsjednik Evropskog zavoda za patente rukovodi tim posebnim instancama; odredbe Člana 10 stavovi 2 i 3 primjenjuju se *mutatis mutandis*.

Član 144 **Zastupanje pred posebnim instancama**

Grupa država ugovornica može predvidjeti posebna pravila u vezi sa zastupanjem stranaka pred instancama navedenim u Članu 143 stav 2.

Član 145 **Komitet u užem sastavu Upravnog savjeta**

- 1) Grupa zemalja ugovornica može osnovati Komitet u užem sastavu Upravnog savjeta u cilju kontrolisanja rada posebnih instanci osnovanih saglasno Članu 143 stav 2; Evropski zavod za patente stavlja na raspolaganje tom Komitetu osoblje, prostorije, opremu koji su potrebni za izvršenje njegovih zadataka. Predsjednik Evropskog zavoda za patente odgovara za rad posebnih instanci Komitetu u užem sastavu Upravnog savjeta.
- 2) Grupa država ugovornica određuje sastav, nadležnosti i aktivnosti Komiteta u užem sastavu.

Član 146 **Pokriće troškova za posebne zadatke**

Ako jedna grupa zemalja ugovornica odredi Evropskom zavodu za patente dodatne zadatke u smislu Člana 143 ona preuzima na svoj teret troškove za izvršenje tih zadataka, koje obavlja Organizacija. Ako su posebne instance osnovane u Evropskom zavodu za patente radi izvršenja ovih dodatnih zadataka, grupa država članica snosi troškove osoblja, prostorija i opreme koji se odnose na te instance. Član 39 stavovi 3 i 4, Član 41 i Član 47 primjenjuju se u *mutatis mutandis*.

Član 147 **Uplata na ime taksi za održavanje važnosti jedinstvenog patenta**

Ako je grupa zemalja ugovornica utvrdila jedinstveni iznos godišnjih taksi, postotak naveden u članu 39 stav 1 obračunava se prema jedinstvenoj tarifi; minimalni iznos naveden u članu 39 stav 1 je takođe minimalni iznos u odnosu na jedinstveni patent. Član 39 stavovi 3 i 4 primjenjuju se *mutatis mutandis*.

Član 148 **O evropskoj prijavi patenta kao predmetu svojine**

- 1) Član 74 primjenjuje se kada grupa država članica nije donijela drugačije odredbe.

2) Grupa država ugovornica može propisati da evropska prijava patenta, u kojoj su te države ugovornice naznačene, može biti prenijeta, biti predmet zaloge ili prinudnog izvršenja samo za sve te države ugovornice i saglasno odredbama posebnog sporazuma.

Član 149 Zajedničko naznačenje

1) Grupa država ugovornica može propisati da države te grupe mogu biti samo zajedno naznačene, i da naznačenje jedne ili više država te grupe važi kao naznačenje svih tih država.

2) Kada je Evropski zavod za patente, u smislu Člana 153 stav 1 naznačeni zavod, stav 1 ovog člana primjenjuje se ako podnosilac prijave izjavi u međunarodnoj prijavi da želi da dobije evropski patent u jednoj ili više država te grupe. Ova odredba se takođe primjenjuje kada podnosilac prijave naznači u međunarodnoj prijavi jednu državu ugovornicu koja pripada toj grupi, ako propisi te države predviđaju da naznačenje te države ima dejstva evropske prijave patenta.

Član 149a Drugi sporazumi među državama ugovornicama

1) Ništa u ovoj konvenciji neće biti tumačeno tako da ograničava prava nekih ili svih država ugovornica da zaključuju posebne sporazume po bilo kojim pitanjima koja se tiču evropskih prijava patenata ili evropskih patenata koji su na osnovu ove konvencije predmet nacionalnog zakonodavstva i njime regulisani, kao što je, posebno

a) sporazum kojim se osniva Evropski patentni sud zajednički svim državama ugovornicama;

b) sporazum kojim se osniva entitet zajednički svim zemljama ugovornicama sa ciljem da daje, na zahtjev nacionalnih sudova ili kvazi sudskih organa, mišljenja o pitanjima evropskog ili harmonizovanog nacionalnog patentnog prava;

c) sporazum na osnovu kojeg se države ugovornice odriču u potpunosti ili djelimično prevoda evropskih patenata na osnovu Člana 65;

d) sporazum na osnovu koga države ugovornice predviđaju da prevodi evropskih patenata koji se zahtijevaju na osnovu Člana 65 mogu da budu podnijeti i objavljeni kod Evropskog zavoda za patente.

2) Upravni savjet biće nadležan da odluči da:

a) članovi Žalbenog vijeća ili Velikog žalbenog vijeća mogu da budu članovi Evropskog patentnog suda ili nekog zajedničkog entiteta i da učestvuju u postupku pred tim sudom ili entitetom u skladu sa takvim sporazumom;

b) Evropski zavod za patente predviđaje zajednički entitet sa pomoćnim osobljem, prostorijama i opremom kao što je neophodno za izvršavanje dužnosti, a troškove koje taj entitet pravi snosiće u potpunosti ili djelimično Organizacija.

Deseti dio MEЂUNARODNA PRIJAVA U SMISLU SPORAZUMA O SARADNJI U OBLASTI PATENATA-EURO-PCT PRIJAVE

Član 150 Primjena Ugovora o saradnji u oblasti patenata

1) Ugovor o saradnji u oblasti patenata od 19. juna 1970. godine, u daljem tekstu: PCT, primjenjuje se saglasno odredbama ovog dijela.

2) Međunarodne prijave podnijete saglasno PCT mogu biti predmet postupka kod Evropskog zavoda za patente. U tim postupcima primjenjuju se odredbe PCT i Pravilnika o sprovođenju i, kao dopunske, odredbe ove konvencije. U slučaju nesaglasnosti, odredbe PCT i njegovog Pravilnika o sprovođenju imaju jaču pravnu snagu.

Član 151 Evropski zavod za patente kao zavod primalac

1) Evropski zavod za patente biće zavod primalac u smislu PCT, u skladu sa Pravilnikom o sprovođenju. Primjenjuje se Član 75 stav 2.

Član 152 Evropski zavod za patente kao organ za međunarodni rešerš ili organ za međunarodno preliminarno ispitivanje

Evropski zavod za patente djeluje kao organ za međunarodni rešerš i organ za međunarodno preliminarno ispitivanje u smislu PCT, u skladu sa ugovorom između Organizacije i Međunarodnog biroa Svjetske organizacije za intelektualnu svojinu, za podnosiocе prijava koji imaju boravište ili državljanstvo државе стране ове конвенције. Овај уговор може да предвиди да Evropski zavod za patente такође djeluje за друге пријавиоце.

Član 153

Evropski zavod za patente kao naznačeni zavod ili izabrani zavod

- 1) Evropski zavod za patente je
 - a) naznačeni zavod za svaku državu stranu ove konvencije u kojoj je PCT na snazi, koja je naznačena u međunarodnoj prijavi, i za koju podnosilac prijave želi da dobije evropski patent, i
 - b) izabrani zavod, ako je podnosilac prijave izabrao neku državu naznačenu u smislu podstava (a).
- 2) Međunarodna prijava za koju je Evropski zavod za patente naznačeni ili izabrani zavod i kojoj je dodijeljen međunarodni datum podnošenja prijave, jednaka je redovnoj evropskoj prijavi (Euro-PCT prijavi).
- 3) Međunarodno objavljivanje Euro-PCT prijave na nekom službenom jeziku Evropskog zavoda za patente objavljuje se na mjestu objave evropske prijave patenta i navodi se u Evropskom patentnom glasniku.
- 4) Ako je Euro-PCT prijava objavljena na nekom drugom jeziku, prevod na jedan od službenih jezika podnosi se u Evropskom zavodu za patente, koji će ga objaviti. Na osnovu Člana 67 stav 3 privremena zaštita na osnovu Člana 67 stavovi 1 i 2 proizvodi dejstvo od datuma tog objavljivanja.
- 5) Euro-PCT prijava se tretira kao evropska prijava patenta i smatra se da ulazi u stanje tehnike, na osnovu Člana 54 stav 3 ako su ispunjeni uslovi navedeni u stavovima 3 ili 4 Pravilnika o sprovođenju.
- 6) Međunarodni rešeršni izvještaj sačinjen za Euro-PCT prijavu ili deklaracija koja ga zamjenjuje, i njihovo međunarodno objavljivanje, vrši se na mjestu predviđenom za evropski rešeršni izvještaj kao i navođenje objavljivanja u Evropskom patentnom glasniku.
- 7) Dopunski evropski rešeršni izvještaj biće sačinjen za svaku Euro-PCT prijavu na osnovu stava 5. Upravni savjet može odlučiti da se ukine taj dopunski rešeršni izvještaj ili da se smanji taksa za rešerš.

Član 154

(brisan)

Član 155

(brisan)

Član 156

(brisan)

Član 157

(brisan)

Član 158

(brisan)

Jedanaesti dio PRELAZNE ODREDBE

(brisan)

Dvanaesti dio ZAVRŠNE ODREDBE

Član 164

Pravilnik o sprovođenju i protokoli

- 1) Pravilnik o sprovođenju, Protokol o priznanju, Protokol o povlasticama i imunitetima, Protokol o centralizaciji, Protokol kojim se tumači Član 69 i Protokol o zaposlenima su sastavni dio ove konvencije.
- 2) U slučaju neslaganja između teksta ove konvencije i teksta Pravilnika o sprovođenju, mjerodavne su odredbe Konvencije.

Član 165

Potpis – Ratifikacija

- 1) Ova konvencija je do 5. aprila 1974. godine otvorena za potpisivanje državama koje su učestvovalе na Međuvladinoj konferenciji za ustanovljenje evropskog sistema priznanja патената, ili koje su bile obaviještene o održavanju te konferencije i kojima je bilo ponuđeno da na njoj učestvuju.
- 2) Ova konvencija podliježe ratifikaciji; instrumenti za ratifikaciju podnose se Vladi Savezne Republike Njemačke.

Član 166 Pristupanje

- 1) Ova konvencija je otvorena za pristupanje:
 - a) državama navedenim u Članu 165 stav 1;
 - b) svakoj drugoj evropskoj državi kojoj Upravni savjet uputi poziv.
- 2) Svaka država koja je bila članica ove konvencije i koja je prestala da bude na osnovu primjene člana 172 stav 4 može ponovo postati članica Konvencije tako što će joj pristupiti.
- 3) Instrumenti za pristupanje podnose se Vladi Savezne Republike Njemačke.

Član 167

(brisan)

Član 168 Teritorijalno područje primjene

- 1) Svaka država ugovornica može izjaviti u svom instrumentu za ratifikaciju ili pristupanje, ili kasnije u bilo kom trenutku, u saopštenju upućenom Vladi Savezne Republike Njemačke, da se Konvencija primjenjuje na jednoj ili više teritorija za koje je ona preuzela obaveze u spoljnim poslovima. Evropski patenti priznati za tu državu imaju takođe dejstvo na teritorijama za koje ta izjava ima dejstvo.
- 2) Ako je izjava iz stava 1 data u instrumentu za ratifikaciju ili pristupanje, ona ima dejstvo počev od dana ratifikacije ili pristupanja; ako je izjava data u saopštenju nakon podnošenja instrumenta za ratifikaciju ili pristupanje, to saopštenje ima dejstvo šest mjeseci nakon datuma njegovog prijema kod Vlade Savezne Republike Njemačke.
- 3) Svaka država ugovornica može u svakom trenutku izjaviti da prestaje primjena Konvencije u odnosu na neke ili na sve teritorije za koje je dala izjavu na osnovu stava 1. Ta izjava ima dejstvo nakon isteka roka od jedne godine, računajući od dana kada je Vlada Savezne Republike Njemačke primila saopštenje.

Član 169 Stupanje na snagu

- 1) Ova konvencija stupa na snagu tri mjeseca nakon podnošenja posljednjeg instrumenta za ratifikaciju ili pristupanje šest država na čijoj je teritoriji ukupan broj podnijetih prijava патената u 1970. godini iznosio najmanje 180 hiljada za sve te države.
- 2) Svaka ratifikacija ili pristupanje poslije stupanja na snagu ove konvencije ima dejstvo prvog dana trećeg mjeseca nakon podnošenja instrumenta za ratifikaciju ili pristupanje.

Član 170 Pristupna kotizacija

- 1) Svaka država koja ratifikuje ovu konvenciju ili joj pristupi nakon njenog stupanja na snagu, uplaćuje Organizaciji pristupnu kotizaciju koja se ne vraća.
- 2) Pristupna kotizacija je 5% od iznosa koji za tu državu proizlazi na dan kada je ratifikacija ili pristupanje navedene države stupilo na snagu, na osnovu važećeg ključa za raspodjelu posebnih finansijskih doprinosa, predviđenog u Članu 40 stavovi 3 i 4 primijenjenog na ukupan iznos posebnih finansijskih doprinosa koji duguju druge države ugovornice po osnovu ranijih budžetskih godina.
- 3) U slučaju kada nisu bili traženi posebni finansijski doprinosi za budžetsku godinu koja prethodi godini u kojoj pada datum naveden u stavu 2 način raspodjele, na koji se poziva navedeni stav, je onaj koji bi bio primijenjen u državi u pitanju za posljednju budžetsku godinu na osnovu koje je izvršeno pozivanje na posebne finansijske doprinose.

Član 171 Trajanje Konvencije

Ova konvencija je zaključena na neograničeno vrijeme.

Član 172 Revizija

- 1) Ova konvencija može biti revidirana na konferenciji država ugovornica.
- 2) Upravni savjet priprema i saziva konferenciju. Konferencija donosi punovažne odluke samo ako su prisutne najmanje tri četvrtine ugovornih država članica. Usvajanje revidiranog teksta zahtijeva tro četvrtinsku većinu država ugovornica koje su prisutne na Konferenciji i koje glasaju. Uzdržavanje se ne smatra glasom.
- 3) Revidirani tekst Konvencije stupa na snagu nakon ratifikacije ili pristupanja jednog broja država, koji je odredila konferencija i na dan koji je ona odredila.
- 4) Države koje na dan stupanja na snagu revidirane Konvencije nisu ratifikovale Konvenciju ili joj nisu pristupile, prestaju da budu članice ove konvencije, računajući od tog datuma.

Član 173

Sporovi između država ugovornica

- 1) Svaki spor između država ugovornica koji se odnosi na tumačenje ili na primjenu ove konvencije, a koji nije sporazumno riješen, iznosi se, na zahtjev jedne od zainteresovanih država, Upravnom savjetu koji nastoji da se države o kojima je riječ sporazumiju.
- 2) Ako ne dođe do tog sporazuma u roku od šest mjeseci, računajući od dana kada je spor iznesen pred Upravni savjet, jedna od država u pitanju može iznijeti spor pred Međunarodni sud pravde radi donošenja odluke koja obavezuje stranke u pitanju.

Član 174

Otkaz

Svaka država ugovornica može u svako doba otkazati ovu konvenciju. Otkaz se saopštava Vladi Savezne Republike Njemačke. On stupa na snagu po isteku roka od jedne godine, računajući od dana prijema saopštenja.

Član 175

Očuvanje stečenih prava

- 1) Kada jedna država prestane da bude članica Konvencije po osnovu Člana 172 stav 4 ili člana 174 time se ne dovode u pitanje prava stečena ranije po osnovu ove konvencije.
- 2) Evropske prijave patenta po kojima se vodi postupak na dan kada naznačena država prestaje da bude članica Konvencije i dalje se razmatraju, u pogledu te države, kod Evropskog zavoda za patente, kao da Konvencija, onakva kakva je na snazi poslije tog datuma, treba na nju da bude primijenjena.
- 3) Odredbe stava 2 primjenjuju se na evropske patente u odnosu na koje je, dana navedenog u tom stavu, uložena opozicija po kojoj se vodi postupak, ili u odnosu na koje rok za opoziciju nije istekao.
- 4) Ovaj član ne utiče na pravo jedne države koja je prestala da bude članica ove konvencije, da primjenjuje na evropske patente odredbe teksta Konvencije čija je bila članica.

Član 176

Finansijska prava i obaveze države ugovornice koja je prestala da bude članica Konvencije

- 1) Svaka država koja je prestala da bude članica ove konvencije na osnovu primjene Člana 172 stav 4 ili Člana 174 ima pravo na povraćaj, od strane Organizacije, posebnih finansijskih doprinosa uplaćenih na osnovu Člana 40 stav 2 tek na dan i pod uslovima pod kojima Organizacija vrši povraćaj posebnih finansijskih doprinosa koji su uplaćeni u njenu korist od strane drugih država u toku iste budžetske godine.
- 2) Država pomenuta u stavu 1 dužna je da nastavi da plaća, u skladu sa Članom 39, dio taksi za održavanje u važnosti evropskih patenata u toj državi, u iznosima koji su važili na dan prestanka njenog članstva u ovoj konvenciji.

Član 177

Jezici Konvencije

- 1) Ova konvencija je sačinjena u jednom primjerku na engleskom, francuskom i njemačkom jeziku. Sva tri teksta su jednako vjerodostojna. Taj primjerak je deponovan u arhivi Vlade Savezne Republike Njemačke.
- 2) Tekstovi ove konvencije na službenim jezicima država ugovornica, koji nisu jezici navedeni u stavu 1 a koje je odobrio Upravni savjet, smatraju se službenim tekstovima. U slučaju neslaganja u vezi sa tumačenjem raznih tekstova, tekstovi navedeni u stavu 1 su mjerodavni.

Član 178

Dostave i saopštenja

- 1) Vlada Savezne Republike Njemačke izdaje ovjerene kopije ove konvencije i dostavlja ih vladama država koje su potpisale Konvenciju ili su joj pristupile.
- 2) Vlada Savezne Republike Njemačke dostavlja vladama država o kojima je riječ u stavu 1 saopštenja koja se odnose na:
 - a) deponovanje svakog instrumenta o ratifikaciji ili pristupanju;
 - b) svaku izjavu ili saopštenje primljeno na osnovu primjene Člana 168;
 - c) svaki otkaz primljen na osnovu primjene Člana 174 i datum od kada otkaz stupa na snagu.
- 3) Vlada Savezne Republike Njemačke preuzima obavezu da se ova konvencija registruje kod Sekretarijata Organizacije Ujedinjenih nacija.

Pravilnik o sprovođenju Konvencije o priznavanju evropskih патената од 5. октобра 1973. године

Prvi dio

ODREDBE O SPROVOĐENJU PRVOG DIJELA KONVENCIJE

POGLAVLJE I

OPŠTE ODREDBE

Pravilo 1

Pisani postupak

U pisanom postupku pred Evropskim zavodom za patente, zahtjev za korišćenje pisane forme biće zadovoljen ako se sadržaj dokumenta može reprodukovati u čitljivoj formi na papiru.

Pravilo 2

Podnošenje i formalni zahtjevi za dokumenta

- 1) U postupku pred Evropskim zavodom za patente, dokumenta se mogu predati ličnom isporukom, poštom ili tehničkim sredstvima komunikacije. Predsjednik Evropskog zavoda za patente propisuje detalje i uslove i, prema potrebi, bilo koje specijalne formalne ili tehničke zahtjeve za podnošenje dokumenata. Posebno, on može zahtijevati da se dostavi potvrda ovjere. Ako se takva ovjera ne dostavi blagovremeno, evropska prijava patenta biće odbijena, za dokumenta kasnije podnijeta smatraće se da nijesu ni primljena.
- 2) Kada Konvencija predviđa da dokument mora biti potpisan, autentičnost tog dokumenta može biti ovjerena svojeručnim potpisom ili na drugi odgovarajući način koji je dopustio predsjednik Evropskog zavoda za patente. Dokument koji je ovjeren drugim sredstvima smatraće se da ispunjava pravne zahtjeve potpisa na isti način kao i dokument koji nosi svojeručan potpis koji je podnijet u papirnoj formi.

Pravilo 3

Jezik u pisanom postupku

- 1) U pisanom postupku pred Evropskim zavodom za patente svaka stranka može koristiti bilo koji od službenih jezika Evropskog zavoda za patente. Prevod u smislu Člana 14 stav 4 se može podnijeti na bilo kom službenom jeziku Evropskog zavoda za patente.
- 2) Izmjene evropske prijave patenta ili izmjene evropskog patenta moraju se podnijeti na jeziku postupka.
- 3) Dokumenta koja treba da budu korišćena kao dokazno sredstvo, posebno publikacije, mogu se podnositi na bilo kom jeziku. Evropski zavod za patente može, međutim, zahtijevati da se u roku koji on odredi, podnese prevod na jedan od njegovih službenih jezika. Ako zahtijevani prevod nije blagovremeno podnijet, Evropski zavod za patente može da odbaci takva dokumenta.

Pravilo 4

Jezik u usmenom postupku

- 1) Svaka stranka u usmenom postupku pred Evropskim zavodom za patente može se, umjesto jezikom postupka, služiti nekim drugim službenim jezikom Evropskog zavoda za patente, ukoliko to, najkasnije mjesec dana prije termina određenog za usmeni postupak, saopšti Evropskom zavodu za patente ili se sama pobrine za prevođenje na jezik postupka. Svaka stranka može se služiti i službenim jezikom jedne od država ugovornica, ako se sama pobrine za prevođenje na jezik postupka. Evropski zavod za patente može dopustiti odstupanja od propisa ovih odredbi.

- 2) Službenici Evropskog zavoda za patente mogu se u usmenom postupku, umjesto jezikom postupka, služiti nekim drugim službenim jezikom Evropskog zavoda za patente.
- 3) Stranke, svjedoci ili vještaci koji treba da budu saslušani, a koji nijesu u mogućnosti da se u dovoljnoj mjeri izraze na jednom od službenih jezika Evropskog zavoda za patente ili država ugovornica, mogu se u dokaznom postupku poslužiti nekim drugim jezikom. Ako je odluka o sprovođenju dokaznog postupka donesena na zahtjev jedne od stranaka, onda će stranke, svjedoci ili vještaci koje je potrebno saslušati moći da daju svoje izjave na jezicima koji nijesu službeni jezici Evropskog zavoda za patente, samo onda, ako se stranka koja je podnijela zahtjev, sama pobrine za prevod na jezik postupka; Evropski zavod za patente može, međutim, dopustiti i prevod na neki od njegovih drugih službenih jezika.
- 4) Uz saglasnost svih stranaka i Evropskog zavoda za patente, u usmenom postupku se može koristiti bilo koji jezik.
- 5) Ukoliko se pokaže potrebnim, Evropski zavod za patente može preuzeti na svoj trošak obezbjeđenje prevoda na jezik postupka ili, eventualno, na neki drugi službeni jezik, osim ukoliko je takav prevod odgovornost jedne od stranaka.
- 6) Izjave službenika Evropskog zavoda za patente, stranaka, svjedoka ili vještaka u usmenom postupku, koje se daju na jednom od službenih jezika Evropskog zavoda za patente, biće na tom jeziku unesene u zapisnik. Izjave na nekom drugom jeziku unosiće se na službenom jeziku, na koji su prevedene. Izmjene evropske prijave patenta ili samog evropskog patenta, unose se u zapisnik na jeziku postupka.

Pravilo 5 Ovjera prevoda

Ako se zahtijeva prevod nekog dokumenta, Evropski zavod za patente može u roku koji on odredi, zahtijevati dostavljanje potvrde o tome da je prevod vjeran originalu. Ako se potvrda ne podnese blagovremeno, onda se smatra da dokument nije primljen, ukoliko nije regulisano drugačije.

Pravilo 6 Podnošenje prevoda i umanjnje taksi

- 1) Prevod koji je obavezan shodno Članu 14 stav 2 mora se podnijeti u roku od dva mjeseca nakon podnošenja evropske prijave patenta.
- 2) Prevod koji je propisan u Članu 14 stav 4 mora se podnijeti u roku od mjesec dana nakon podnošenja dokumenta. Ovo se takođe odnosi na zahtjeve na osnovu člana 105a. Ako je opozicija ili žalba, obrazloženje žalbe ili molba za reviziju, prevod se može podnijeti u roku predviđenom za podnošenje takvog obrazloženja ili izjave ili molbe ako taj rok ističe kasnije.
- 3) Ako lice navedeno u Članu 14 stav 4 podnese evropsku prijavu patenta, zahtjev za ispitivanje na jeziku predviđenom u toj odredbi, taksa za podnošenje ili taksa za ispitivanje se umanjuju u skladu sa pravilima koja se odnose na takse.
- 4) Umanjenje taksi iz stava 3 dostupno je za:
 - a) mala i srednja preduzeća;
 - b) fizička lica; ili
 - c) neprofitne organizacije, univerzitete ili javne istraživačke organizacije.
- 5) Za potrebe stava 4(a) Preporuke Komisije 2003 / 361 / EZ od 6. maja 2003. o primjeni definicija mikro, malih i srednjih preduzeća kako je objavljena u Službenom listu Evropske unije L 124, str. 36 od 20. maja 2003. godine.
- 6) Podnosilac prijave koji želi da ostvari pogodnost u pogledu umanjenja takse iz stava 3 izjavljuje da je subjekat ili fizičko lice u smislu stava 4. U slučaju osnovane sumnje u istinitost takve izjave, služba može da zahtijeva dokaze.
- 7) U slučaju više podnosilaca zahtjeva, svaki podnosilac zahtjeva je subjekat ili fizičko lice u smislu stava 4.

Pravilo 7 Pravna vjerodostojnost prevoda evropske prijave patenta

Osim ako je obezbijeđen dokaz o suprotnom, Evropski zavod za patente će pretpostaviti, u svrhe utvrđivanja da li predmet evropske prijave patenta ili evropskog patenta izlazi izvan okvira sadržaja prijave kakva je podnijeta, da je prevod podnjet na osnovu Člana 14 stav 2 ili pravila 40 stav 3 u skladu sa originalnim tekstom prijave.

Odsjek 1 Opšta pitanja

Pravilo 8 Klasifikacija патената

Evropski zavod za patente koristi klasifikaciju navedenu u članu 1 Strasburškog sporazuma o međunarodnoj klasifikaciji патената od 24. marta 1971. godine, u daljem tekstu navedenu kao međunarodnu klasifikaciju.

Pravilo 9 Administrativna struktura Evropskog zavoda za patente

- 1) Evropski zavod za patente administrativno se dijeli na generalne direktorate kojima su dodijeljeni odsjeci precizirani u Članu 15(a) do (e) koji se uspostavljaju radi rješavanja pravnih pitanja i interne administracije zavoda.
- 2) Svakim generalnom direktoratom rukovodi jedan potpredsjednik. Nakon pribavljanja mišljenja predsjednika Evropskog zavoda za patente, Upravni savjet svojom odlukom imenuje potpredsjednike za generalne direktorate.

Pravilo 10 Odgovornost odsjeka za prijem i odsjeka za ispitivanje

- 1) Odsjek za prijem je odgovoran za ispitivanje podnesaka i ispitivanje ispunjavanja formalnih uslova evropske prijave патента dok odsjek za ispitivanje postaje odgovoran za ispitivanje evropskih prijava патента na osnovu Člana 94 stav 1.
- 2) Na osnovu čl. 3 i 4 odsjek za ispitivanje odgovoran je za ispitivanje evropskih prijava патента u smislu člana 94 stav 1 od trenutka kada se podnese zahtjev za ispitivanje.
- 3) Ako je zahtjev za ispitivanje podnjet prije nego što se evropski rešeršni izvještaj uputi podnosiocu prijave, Odsjek za ispitivanje će, na osnovu stava 4 biti odgovoran od trenutka kada Evropski zavod za patente primi indikaciju u smislu pravila 70 stav 2.
- 4) Ako se zahtjev za ispitivanje podnese prije nego što se evropski rešeršni izvještaj dostavi podnosiocu prijave i ako se podnosilac prijave odrekne svog prava na osnovu pravila 70 stav 2, odsjek za ispitivanje će biti odgovoran od trenutka kada se rešeršni izvještaj dostavi podnosiocu prijave.

Pravilo 11 Podjela poslova odsjecima u prvoj instanci

- 1) Tehnički kvalifikovani ispitivači koji su vršioци dužnosti članova odsjeka za rešerš, ispitivanje ili opoziciju dodjeljuju se direktorata. Predsjednik Evropskog zavoda za patente raspoređuje poslove na te direktorate shodno međunarodnoj klasifikaciji.
- 2) Predsjednik Evropskog zavoda za patente može prenijeti i nove dužnosti na službu za prijem prijava, odsjeke za rešerše, odsjeke za ispitivanje, odsjeke za opoziciju i pravni odsjek pored dužnosti koje su im povjerene na osnovu ove konvencije.
- 3) Predsjednik Evropskog patentnog zavoda može službenicima koji nijesu tehnički ili pravno obrazovani ispitivači, naložiti da obavljaju poslove iz nadležnosti odsjeka za rešerš, odsjeka za ispitivanje ili odsjeka za opoziciju, ukoliko ti poslovi tehnički ili pravno ne predstavljaju teškoću.

Odsjek 2 Organizacija žalbenog vijeća i velikog žalbenog vijeća

Pravilo 12

(brisan)

Pravilo 12a Organizacija i upravljanje organizacionom jedinicom žalbenih vijeća i predsjednik žalbenih vijeća

- 1) Žalbena vijeća i Veliko žalbeno vijeće, kao i njihovi registri i službe za podršku, organizuju se kao zasebna jedinica (organizaciona jedinica žalbenih vijeća) i njima rukovodi predsjednik žalbenih vijeća. Predsjednik Velikog žalbenog vijeća vrši dužnost predsjednika žalbenih vijeća. Predsjednika žalbenih vijeća imenuje Upravni savjet na zajednički predlog odbora osnovanog u skladu sa pravilom 12c stav 1 i predsjednika Evropskog zavoda za patente. Ako je predsjednik žalbenih vijeća odsutan ili je razriješen, jedan od članova velikog žalbenog vijeća zauzima njegovo mjesto u skladu sa postupkom koji utvrđuje Upravni savjet.
- 2) Predsjednik žalbenih vijeća upravlja organizacionom jedinicom žalbenih vijeća i ima funkcije i ovlašćenja koja mu dodjeljuje predsjednik Evropskog zavoda za patente. U vršenju delegiranih funkcija i ovlašćenja, predsjednik žalbenih

vijeća odgovoran je isključivo Administrativnom savjetu i podliježe hijerarhijskim i disciplinskim ovlaštenjima ovog savjeta.

3) Ne dovodeći u pitanje Član 10 stav 2(d) i Član 46, predsjednik žalbenih vijeća priprema valjano obrazložen zahtjev za budžet organizacione jedinice žalbenih vijeća. Ovaj zahtjev se ispituje i o njemu raspravljaju relevantne službe Evropskog zavoda za patente i podnosi ga predsjednik žalbenih vijeća odboru osnovanom u skladu s pravilom 12c stav 1, radi pribavljanja mišljenja, nakon čega se prosljeđuje na razmatranje predsjedniku Evropskog patenta za godišnji nacrt budžeta. Predsjednik Evropskog zavoda za patente obezbjeđuje predsjedniku žalbenih vijeća neophodna sredstva, prema usvojenom budžetu.

4) Predsjednik Evropskog zavoda za patente stavlja na raspolaganje usluge navedene u Članu 9 stav 1 predsjednicima žalbenih vijeća, u granicama usvojenog budžeta.

Pravilo 12b

Predsjedavanje žalbenim vijećima i plan raspodjele posla žalbenih vijeća

1) Autonomni organ u okviru žalbenih vijeća (Predsjedništvo žalbenih vijeća) sastoji se od predsjednika žalbenog vijeća, koji je predsjedavajući, i dvanaest članova žalbenog vijeća od kojih su šest predsjedavajući i šest drugi članovi.

2) Svi članovi predsjedništva biraju se od strane predsjedavajućih i članova žalbenog vijeća na rok od dvije radne godine. Ako se ne može postići puni sastav predsjedništva, prazna mjesta se popunjavaju imenovanjem najstarijih predsjedavajućih i članova.

3) Predsjedništvo:

a) usvaja Poslovnik o izboru i imenovanju svojih članova;

b) usvaja, ne dovodeći u pitanje propise usvojene u skladu sa članom 10 stav 2(c) i članom 33 stav 2(b), Kodeks ponašanja za članove i predsjedavajuće žalbenih vijeća i Velikog žalbenog vijeća, koji odobrava Upravni savjet;

c) savjetuje predsjednika žalbenog vijeća o prijedlozima izmjena Pravilnika o radu žalbenog vijeća i Velikog žalbenog vijeća;

d) savjetuje predsjednika žalbenih vijeća o opštim pitanjima koja se tiču funkcionisanja jedinice žalbenih vijeća.

4) Prije početka svake radne godine, predsjedništvo, prošireno tako da uključuje sve predsjedavajuće, dodjeljuje dužnosti Odboru za žalbe. U istom sastavu odlučuje o sukobima u pogledu raspodjele dužnosti između dva ili više žalbenih vijeća. Prošireno predsjedništvo imenuje redovne članove i zamjenike članova različitih žalbenih vijeća. Svi članovi žalbenog vijeća mogu se imenovati kao članovi više od jednog žalbenog vijeća. Prema potrebi, ove mjere mogu se izmijeniti tokom date radne godine.

5) Predsjedništvo može da donese odluku ako je prisutno najmanje pet njegovih članova; oni moraju uključivati predsjednika žalbenih vijeća ili njegovog zamjenika i predsjedavajuće dva žalbenih vijeća. U pogledu zadataka u smislu stava 4, devet članova mora biti prisutno, uključujući predsjednika žalbenih vijeća ili njegovog zamjenika i predsjedavajuće tri žalbenih vijeća. Odluke se donose većinom glasova; u slučaju izjednačenosti glasova, predsjedavajući ili njegov zamjenik imaju odlučujući glas. Uzdržani se ne smatraju glasovima.

6) Upravni savjet može da dodijeli dužnosti žalbenim vijećima na osnovu člana 134a stav 1(c).

Pravilo 12c

Odbor žalbenih vijeća i postupak usvajanja Poslovnika o radu žalbenih vijeća i velikog žalbenog vijeća

1) Upravni savjet uspostavlja odbor (Odbor žalbenih vijeća) koji ima ulogu da savjetuje Upravni savjet i predsjednika žalbenih vijeća, u pogledu opštih pitanja u vezi sa organizacionom jedinicom žalbenih vijeća i usvajanja Poslovnika o radu žalbenih vijeća i Velikog žalbenog vijeća. Komitet čine šest članova koje imenuje Upravni savjet, od kojih su tri iz reda delegacija država ugovornica prema Članu 26 i troje zvaničnih ili bivših sudija međunarodnih ili evropskih sudova ili nacionalnih sudova država ugovornica. Predsjednik Evropskog zavoda za patente i predsjednik žalbenih vijeća imaju pravo da prisustvuju sjednicama odbora. Dalje pojedinsti, naročito u pogledu sastava odbora, zamjenika članova, radnih aranžmana i funkcija u savjetovanju žalbenog vijeća, utvrđuje Upravni savjet u odluci o osnivanju odbora.

2) Na prijedlog predsjednika žalbenih vijeća, nakon što se predsjedniku Evropskog zavoda za patente omogući davanje primjedbi, odbor uspostavljen u skladu sa stavom 1 donosi Poslovnik o radu žalbenih vijeća i Velikog žalbenog vijeća.

Pravilo 12d

Imenovanje i ponovno imenovanje članova, uključujući predsjedavajuće žalbenih vijeća i velikog žalbenog vijeća

1) Predsjedavajući Velikog žalbenog vijeća se nakon svog imenovanja takođe imenuje za pravno kvalifikovanog člana žalbenih vijeća.

2) Nakon delegiranja od strane predsjednika Evropskog zavoda za patente, predsjednik žalbenih vijeća ima pravo da predlaže članove, uključujući predsjedavajuće žalbenih odbora i članove Velikog žalbenog odbora, za imenovanje od strane Upravnog savjeta, te pravo da bude konsultovan o njihovom ponovnom imenovanju (Član 11 stav 3), kao i o imenovanju i ponovnom imenovanju spoljnih pravno kvalifikovanih članova (Član 11 stav 5).

3) Na osnovu stava 2, predsjednik žalbenih vijeća koristi pravo da bude konsultovan u vezi sa ponovnim imenovanjima, putem podnošenja obrazloženog mišljenja Upravnom savjetu, uključujući davanje procjene učinka člana ili predsjedavajućeg. Kriterijume za ocjenu učinka utvrđuje predsjednik žalbenih vijeća uz konsultovanje odbora

ustanovljenog na osnovu pravila 12c, stav 1. U zavisnosti od izričitog mišljenja i ocjene učinka, te broja raspoloživih mjesta u skladu sa Članom 11 stav 3, prema usvojenom budžetu za organizacionu jedinicu žalbenih vijeća, članovi, uključujući i predsjedavajuće žalbenih vijeća i Velikog žalbenog vijeća, se ponovo imenuju na kraju svog petogodišnjeg mandata u skladu sa Članom 23 stav 1.

Pravilo 13

Plan raspodijele posla za veliko žalbeno vijeće

Prije početka svake radne godine, članovi velikog žalbenog vijeća imenovani na osnovu Člana 11 stav 3 imenovaće redovne članove i zamjenike za Veliko žalbeno vijeće u postupku na osnovu Člana 22 stav 1(a) i (b) i redovne članove i zamjenike, u postupku na osnovu Člana 22 stav 1(c). Odluke se mogu donijeti samo ako je najmanje pet članova prisutno, uključujući i predsjedavajućeg Velikog žalbenog vijeća ili njegovog zamjenika; u slučaju izjednačenosti glasova, predsjedavajući ili njihov zamjenik imaju odlučujući glas. Uzdržani se ne smatraju glasovima.

Drugi dio

PROPISI O SPROVOĐENJU DRUGOG DIJELA KONVENCIJE

POGLAVLJE I

POSTUPAK U SLUČAJU NEDOSTATKA PRAVA PODNOSIOCA PRIJAVE

Pravilo 14

Mirovanje postupka

1) Ako neko treće lice podnese dokaz da je povelu postupak protiv podnosioca prijave, u kojem traži odluku u smislu Člana 61 stav 1 onda postupak za priznanje prava miruje, osim ako to treće lice ne saopšti Evropskom zavodu za patente u pisanoj formi svoj pristanak za nastavljanje postupka. Pristanak je neopoziv. Međutim, postupak za priznanje ne može se obustaviti prije objavljivanja evropske prijave patenta.

2) Ako se podnese dokaz da je donijeta konačna odluka u smislu Člana 61 stav 1 onda Evropski zavod za patente saopštava podnosiocu prijave i drugim strankama da će se postupak za priznanje prava nastaviti sa danom navedenim u tom saopštenju, osim ako je, prema Članu 61 stav 1 tačka (b), podnešena nova evropska prijava patenta za sve naznačene države ugovornice. Ukoliko je odluka donijeta u korist trećeg lica, onda se postupak ne smije nastaviti prije isteka tri mjeseca od donošenja konačne odluke, osim ako treće lice ne podnese zahtjev za nastavljanje postupka.

3) Odlukom o mirovanju postupka za priznanje prava, ili kasnijom odlukom, Evropski zavod za patente može utvrditi datum u kojem namjerava da nastavi postupak za priznanje prava koji je pokrenuo, bez obzira na stanje nacionalnog postupka pokrenuto na osnovu stava 1. Taj rok ima se saopštiti trećem licu, podnosiocu i eventualnim strankama. Ako se do tog roka ne obezbijedi dokaz da je donijeta konačna odluka, Evropski zavod za patente može nastaviti svoj postupak.

4) Svi rokovi osim onih za plaćanje taksi za održanje prava koji teku u vrijeme mirovanja postupka, prekidaju se tim mirovanjem. Neistekli dio roka počinje da teče od datuma nastavka postupka. Međutim, rok koji treba da teče poslije nastavka takvog postupka ne smije biti manji od dva mjeseca.

Pravilo 15

Ograničenje u pogledu povlačenja evropske prijave patenta

Od dana kada neko treće lice podnese dokaz da je povelu nacionalni postupak za priznanje prava, na osnovu pravila 14 stav 1 pa do dana kada Evropski zavod za patente nastavi postupak za priznanje prava, ne smije se povući ni evropska prijava patenta, ni naznačenje država ugovornica.

Pravilo 16

Postupak na osnovu člana 61 stav 1

1) Lice koje ima pravo na priznanje evropskog patenta može da iskoristi pravne lijekove na osnovu Člana 61 stav 1 ako
a) to učini prije isteka roka od tri mjeseca pošto je donijeta konačna odluka o priznanju ovlaštenja, i
b) evropski patent još uvijek nije priznat.

2) Takvi pravni lijekovi primjenjuju se samo za države ugovornice naznačene u evropskoj prijavi patenta u kojima je odluka donijeta ili priznata ili mora biti priznata na osnovu Protokola o priznanju.

Pravilo 17

Podnošenje nove evropske prijave patenta od strane ovlašćenog lica

1) Ako lice kojem je pravosnažnom odlukom priznato pravo na dobijanje evropskog patenta podnese novu evropsku prijavu patenta prema Članu 61 stav 1 tačka (b) onda se, sa danom podnošenja nove evropske prijave patenta, ranija evropska prijava patenta smatra povučenom za države ugovornice koje su naznačene u njoj, i u kojima je pomenuta odluka donesena ili priznata, ili mora biti priznata na osnovu Protokola o priznanju.

- 2) Za novu evropsku prijavu patenta potrebno je u roku od mjesec dana nakon njenog podnošenja uplatiti taksu za prijavu i taksu za rešerš. Ako taksa za prijavu ili taksa za rešerš nije blagovremeno plaćena, prijava se smatra povučenom.
- 3) Takse za naznačenje moraju se platiti u roku od šest mjeseci od datuma kada se u Evropskom patentnom biltenu navede objava evropskog rešeršnog izvještaja sačinjenog za novu prijavu. Primjenjuje se pravilo 39 stavovi 2 i 3.

Pravilo 18

Djelimično prenošenje prava na evropski patent

- 1) Ako je konačnom odlukom utvrđeno da je nekom trećem licu priznato pravo na priznanje evropskog patenta samo za jedan dio predmeta sadržanog u prvobitnoj evropskoj prijavi patenta, onda se na taj dio primjenjuje Član 61 i pravila 16 i 17.
- 2) U slučaju potrebe, prvobitna evropska prijava patenta mora da sadrži, za naznačene države ugovornice, u kojima je odluka donijeta ili priznata ili mora biti priznata na osnovu Protokola o priznavanju, patentne zahtjeve, opis i crteže koji su različiti od onih za druge naznačene države ugovornice.

POGLAVLJE II

NAVOĐENJE PRONALAZAČA

Pravilo 19

Navođenje pronalazača

- 1) U zahtjevu za priznanje evropskog patenta mora da se navede pronalazač. Ako, međutim, podnosilac prijave nije pronalazač, ili nije jedini pronalazač, onda se zahtjev sa navođenjem pronalazača podnosi u posebnom dokumentu. Navođenje mora sadržati prezime, ime i punu adresu pronalazača, kao i izjavu navedenu u Članu 81 i nositi potpis podnosioca prijave ili zastupnika.
- 2) Evropski zavod za patente ne ispituje ispravnost navođenja pronalazača.
- 3) Ako podnosilac prijave nije pronalazač, ili nije jedini pronalazač, onda Evropski zavod za patente saopštava navedenom pronalazaču podatke sadržane u dokumentu o njegovom navođenju i sljedeće podatke:
 - a) broj evropske prijave patenta;
 - b) datum podnošenja evropske prijave patenta i, ako je zahtjevan prioritet, datum, državu i broj ranije podnesene prijave;
 - c) ime podnosioca prijave;
 - d) naziv pronalaska;
 - e) naznačene države ugovornice.
- 4) Podnosilac prijave i pronalazač ne mogu izvoditi nikakva prava iz propuštanja dostavljanja saopštenja prema stavu 3 ili iz grešaka sadržanih u njemu.

Pravilo 20

Objava navođenja pronalazača

- 1) Lice navedeno kao pronalazač biće naznačeno u objavljenoj evropskoj prijavi patenta i u evropskom patentnom spisu kao pronalazač, osim ako on ne obavijesti Evropski zavod za patente u pisanoj formi da se odriče svog prava da bude naveden.
- 2) Stav 1 se mora primijeniti kada neko treće lice podnese Evropskom zavodu za patente pravosnažnu odluku iz koje proizlazi da je podnosilac prijave ili nosilac patenta dužan da njega navede kao pronalazača.

Pravilo 21

Ispravka u navođenju pronalazača

- 1) Neispravno navođenje pronalazača može biti ispravljeno samo na zahtjev i samo uz pristanak lica koje je pogrešno navedeno kao pronalazač i ako je zahtjev podnijela treća strana, uz pristanak podnosioca prijave ili nosioca patenta. Pravilo 19 se primjenjuje *mutatis mutandis*.
- 2) Ako je u Evropski registar patenata unijet neispravno naveden pronalazač ili je isto navođenje objavljeno u Evropskom patentnom biltenu, tamo će biti zabilježena ili objavljena i ispravka ili poništaj tog podatka.

POGLAVLJE III

UPIS PRENOSA PRAVA, LICENCI I DRUGIH PRAVA

Pravilo 22

Upis prenosa prava

- 1) Svaki prenos evropske prijave patenta upisuje se u Evropski registar patenata na zahtjev zainteresovane strane, ako se podnesu dokumenta koja pružaju dokaz za takav prenos.
- 2) Zahtjev za upis smatra se podnešenim ako je plaćena administrativna taksa. On može biti odbijen samo ako nijesu ispunjeni uslovi predviđeni u stavu 1.
- 3) Svaki prenos prava djeluje u odnosu na Evropski zavod za patente tek od datuma prijema dokumenata navedenih u stavu 1 i samo u obimu koji proizlazi iz tih dokumenata.

Pravilo 23

Upis licenci i drugih prava

- 1) Pravilo 22 stavovi 1 i 2 primjenjuju se *mutatis mutandis* na registraciju priznatog prava ili prenos licence, kao i na upis konstituisanja ili prenosa prava *in rem* u pogledu evropske prijave patenta, i na sva sredstva sprovođenja prava koja utiču na takvu prijavu.
- 2) Registracija na osnovu stava 1 poništava se na zahtjev, uz koji se prilažu dokumenta koja pružaju dokaz da je pravo isteklo ili na osnovu izjava nosioca prava o tome da je saglasan sa poništajem tog registrovanja. Pravilo 22 stav 2 primjenjuje se *mutatis mutandis*.

Pravilo 24

Posebni podaci za upis licenci

Licenca vezana za evropski patent mora se upisati u Evropski registar patenata:

- a) kao isključiva licenca, ukoliko podnositelj prijave i pribavitelj licence to zahtijevaju;
- b) kao pod-licenca kada je ustupljena od strane pribavioca licence čija je licenca upisana u Evropski registar patenata.

POGLAVLJE IV

POTVRDA O IZLAGANJU

Pravilo 25

Potvrda o izlaganju

Podnositelj prijave mora, u roku od četiri mjeseca od podnošenja evropske prijave patenta, da podnese potvrdu pomenutu u Članu 55 stav 2 koju

- a) za vrijeme izložbe, izdaje organ nadležan za zaštitu industrijske svojine na toj izložbi;
- b) gdje se potvrđuje da je pronalazak tamo zaista bio izložen;
- c) i dalje se navodi dan otvaranja izložbe i, ako je pronalazak izložen poslije otvaranja izložbe, mora se navesti i dan prvog izlaganja;
- d) i praćen je identifikacijom pronalaska koja je ovjerena od strane gore navedenog organa.

POGLAVLJE V

PRONALASCI IZ OBLASTI BIOTEHNOLOGIJE

Pravilo 26

Opšta pravila i definicije

- 1) Za evropske prijave patenata i patente koji se tiču pronalazaka iz oblasti biotehnologije, relevantne odredbe ove konvencije se primjenjuju i tumače u skladu sa odredbama ove glave. Direktiva 98/44/EC od 6. jula 1998. godine o pravnoj zaštiti pronalazaka iz biotehnologije mora se koristiti kao dopunsko sredstvo tumačenja.
- 2) „Biotehnološki pronalasci” su pronalasci koji se tiču proizvoda koji se sastoji od ili sadrži biološki materijal ili od postupka putem kojega se biološki materijal proizvodi, obrađuje ili koristi.
- 3) „Biološki materijal” znači svaki materijal koji sadrži genetske informacije i koji je sposoban da se reprodukuje ili da bude reprodukovano u biološkom sistemu.
- 4) „Biljna sorta” znači grupu biljaka sa jedinstvenom botaničkom taksonomijom najnižeg poznatog ranga, čija grupa, bez obzira na to da li su u potpunosti ispunjeni uslovi za priznanje biljne sorte, može biti:
 - a) definisana izrazom karakteristika koje su rezultat datog genotipa ili kombinacijom genotipova,
 - b) razlikuje se od druge biljne grupe izražavanjem najmanje jedne od pomenutih karakteristika, i

- c) smatra se jedinicom s obzirom na podnesnost da se razmnožava nepromjenjena.
- 5) Postupak za proizvodnju biljaka ili životinja je suštinski biološki ako se sastoji u cjelini od prirodnih pojava kao što su ukrštanje ili selekcija.
- 6) „Mikrobiološki postupak“ znači svaki postupak koji uključuje mikrobiološke materijale ili je na njima izveden ili ih ima kao posljedicu.

Pravilo 27 **Biotehnoški pronalasci koji se mogu štiti patentom**

Biotehnoški pronalasci se takođe mogu štiti patentom ako se tiču:

- a) biološkog materijala koji je izolovan iz svog prirodnog okruženja ili proizveden nekim tehničkim postupkom čak i ako se prethodno javljao u prirodi;
- b) ne dovodeći u pitanje pravilo 28 stav 2, biljaka ili životinja, ako tehnička izvodljivost pronalaska nije ograničena na pojedinačnu biljnu ili životinjsku vrstu;
- c) mikrobioloških ili drugih tehničkih postupaka, ili proizvoda dobijenog takvim postupkom koji nije biljna ili životinjska vrsta.

Pravilo 28 **Izuzeci od patentibilnosti**

- 1) Na osnovu Člana 53(a) evropski patenti neće se priznavati za biotehnoške pronalasci koji se, posebno, tiču sljedećeg:
- a) postupaka za kloniranje ljudskih bića;
- b) postupaka za promjenu genetskog identiteta germitivnih ćelija ljudskih bića;
- c) korišćenja ljudskog embriona u industrijske ili komercijalne svrhe;
- d) postupka za promjenu genetskog identiteta životinja koje će im vjerovatno nanijeti patnju bez značajne medicinske koristi za čovjeka ili životinju, kao i životinje koje su rezultat takvih postupaka.
- 2) Na osnovu Člana 53(b) evropski patenti neće se priznavati za biljke i životinje isključivo dobijene u postupku koji je suštinski biološki.

Pravilo 29 **Ljudsko tijelo i njegovi elementi**

- 1) Ljudsko tijelo, u različitom stadijumu svog formiranja i razvoja i jednostavno otkriće jednog od njegovih elemenata, uključujući sekvencu ili djelimičnu sekvencu gena, ne može činiti pronalasci koji se mogu štiti patentom.
- 2) Neki element izolovan iz ljudskog tijela ili na drugi način proizveden putem nekog tehničkog postupka, uključujući sekvence ili djelimične sekvence gena, može činiti pronalazak koji se može štiti patentom, čak i ako je struktura tog elementa identična onoj od prirodnog elementa.
- 3) Industrijska primjena sekvence ili djelimične sekvence gena mora biti otkrivena u prijavi patenta.

Pravilo 30 **Zahtjevi za evropske prijave patenata koje se odnose na nukleotidne odnosno aminokisjelinske sekvence**

- 1) Ako se nukleotidne ili aminokisjelinske sekvence otkrivaju u evropskoj prijavi patenata, opis prijave mora sadržati popis sekvenci koji je u skladu sa pravilima koja je odredio predsjednik Evropskog zavoda za patente za standardizovano predstavljanje nukleotidnih ili aminokisjelinskih sekvenci.
- 2) Popis sekvenci podnešen poslije datuma podnošenja prijave ne čini dio opisa.
- 3) Kada podnosilac prijave nije podnio popis sekvenci u skladu sa zahtjevima na osnovu stava 1 na dan podnošenja prijave, Evropski zavod za patente će pozvati podnosioca prijave da dostavi takav popis sekvenci i plati taksu za kasno dostavljanje. Ako podnosilac prijave ne podnese zahtijevani popis sekvenci i ne plati taksu za kasno dostavljanje koja se traži u roku od dva mjeseca poslije takvog poziva, prijava će biti odbijena.

Pravilo 31 **Deponovanje biološkog materijala**

- 1) Ako pronalazak obuhvata upotrebu biološkog materijala ili se odnosi na biološki materijal, koji nije dostupan javnosti i koji se ne može opisati u evropskoj prijavi patenta na takav način da omogućava da pronalazak izvede prosječan stručnjak iz odgovarajuće oblasti, pronalazak će se smatrati otkrivenim kao što je propisano u Članu 83 ako se ispuni sljedeće:
- a) uzorak biološkog materijala je deponovan u priznatoj depozitnoj instituciji pod istim uslovima kakvi su navedeni u Budimpeštanskom sporazumu o međunarodnom priznanju depozita mikroorganizama u svrhe postupka patentiranja od 28. aprila 1977. godine, najkasnije do dana podnošenja prijave patenta;

b) prijava kakva je podnešena pruža takve značajne informacije koje su dostupne podnosiocu prijave a tiču se karakteristika biološkog materijala;

c) depozitna institucija i broj za pristupanje deponovanom biološkom materijalu su navedeni u prijavi, i

d) kada je biološki materijal deponovalo lice koje nije podnosilac prijave, ime i adresa lica koje je izvršilo deponovanje su navedeni u prijavi i podnosi se dokument Evropskom zavodu za patente gdje se obezbjeđuju dokazi da je lice koje je izvršilo deponovanje materijala ovlastilo podnosioca prijave da se pozove na deponovani biološki materijal u prijavi i da je dalo svoj bezrezervni i neopozivi pristanak da se deponovani materijal stavi na uvid javnosti u skladu sa pravilom 33.

2) Informacija navedena u stavu 1(c) i (d) može se podnijeti:

a) u roku od 16 mjeseci od datuma podnošenja prijave, ili, ako je zatraženo pravo prvenstva, poslije datuma prvenstva, ovaj period smatra se ispoštovanim ako se ta informacija saopšti prije okončanja tehničkih priprema za objavu evropske prijave patenta;

b) do dana podnošenja zahtjeva na osnovu Člana 93 stav 1(b);

c) u roku od mjesec dana pošto je Evropski zavod za patente saopštio podnosiocu prijave da postoji pravo uvida u spise na osnovu Člana 128 stav 2.

Rok koji se primjenjuje je onaj koji prvi ističe. Sa saopštenjem ove informacije smatraće se da je podnosilac prijave dao bezrezervni i neopozivi pristanak da se deponovani biološki materijal stavi na raspolaganje javnosti u skladu sa pravilom 33.

Pravilo 32 Stručno rješenje

1) Do završetka tehničkih priprema za objavu evropske prijave patenta, podnosilac prijave može da obavijesti Evropski zavod za patente da:

a) sve do objavljivanja obavještenja o priznanju evropskog patenta, ili, kada se to može primijeniti;

b) dvadeset godina poslije datuma podnošenja prijave, ako je prijava odbijena ili povučena ili se smatra povučenom, na osnovu navoda u pravilu 33 deponovani materijal će biti dostupan samo stavljanjem na uvid uzorka nezavisnom stručnjaku koga je imenovalo lice koje ulaže zahtjev.

2) Svako fizičko lice može biti imenovano za stručnjaka, pod uslovom da ispunjava uslove i obaveze propisane od strane predsjednika Evropskog zavoda za patente.

Imenovanje mora biti praćeno izjavom stručnjaka da se obavezuje da će poštovati navedene zahtjeve i obaveze i da ne zna za okolnosti koje bi mogle dovesti do opravdanih sumnji u njegovu nezavisnost ili koje bi na bilo koji drugi način mogle biti u sukobu sa njegovom funkcijom stručnjaka.

Imenovanje mora biti praćeno i izjavom stručnjaka u pogledu podnosioca prijave, u kojoj on preuzima obavezu predviđenu pravilom 33, sve do datuma kada patent ističe u svim naznačenim državama, ili, kada se prijava odbije, povuče, ili se smatra povučenom, do datuma navedenog u stavu 1(b), pri čemu se lice koje ulaže zahtjev smatra trećom stranom.

Pravilo 33 Dostupnost biološkog materijala

1) Biološki materijal deponovan u skladu sa pravilom 31 biće na raspolaganju na zahtjev bilo kog lica od dana objave evropske prijave patenta i svakom licu koje ima pravo uvida u spise na osnovu Člana 128 stav 2 prije tog datuma. Na osnovu pravila 32 takva dostupnost se sprovodi izdavanjem uzorka biološkog materijala licu koje podnosi zahtjev (u daljem tekstu: "tražilac").

2) Pomenuto izdavanje može se učiniti samo ako tražilac u odnosu na podnosioca prijave ili nosioca patenta ne čini biološki materijal ili biološki materijal izveden iz uzorka dostupnim trećoj strani i ako koristi taj materijal samo u eksperimentalne svrhe, do trenutka kada se odbije prijava patenta ili se povuče, ili se smatra povučenom ili prije nego što je evropski patent istekao u svim naznačenim državama, osim ako se podnosilac prijave ili nosilac patenta izričito ne odreknu te obaveze.

Obaveza da se koristi biološki materijal samo u eksperimentalne svrhe ne primjenjuje se ukoliko tražilac koristi biološki materijal na osnovu prinudne licence. Termin "prinudna licenca" treba tumačiti tako da uključuje *ex officio* licence i pravo da se koriste patentirani pronalasci u javnom interesu.

3) U smislu stava 2 izvedeni biološki materijal znači svaki materijal koji još uvijek pokazuje karakteristike deponovanog materijala koje su od suštinskog značaja za izvođenje pronalaska. Obaveza na osnovu stava 2 ne sprječava deponovanje izvedenog biološkog materijala neophodnog u svrhe postupka patentiranja.

4) Zahtjev naveden u stavu 1 mora se podnijeti Evropskom zavodu za patente na formularu koji taj zavod priznaje. Evropski zavod za patente ovjerava na formularu da je podnijeta evropska prijava patenta koja se odnosi na deponovanje biološkog materijala i da tražilac ili stručnjak koga je on nominovao na osnovu pravila 32 imaju pravo da im se izda uzorak tog materijala. Poslije priznanja evropskog patenta, zahtjev se takođe mora podnijeti Evropskom patentnom zavodu.

5) Evropski zavod za patente šalje kopiju zahtjeva, sa ovjerom predviđenom u stavu 4, depozitnoj instituciji i podnosiocu prijave ili nosiocu patenta.

6) Evropski zavod za patente objavljuje u svom Službenom listu spisak depozitnih institucija i priznatih stručnjaka u smislu pravila 31, 33 i 34.

Pravilo 34 **Novo deponovanje biološkog materijala**

Ako biološki materijal deponovan u skladu sa pravilom 31 prestane da bude dostupan u priznatoj depozitnoj instituciji, prekid u dostupnosti smatraće se kao da se nije dogodio ako se izvrši novo deponovanje tog materijala u priznatoj depozitnoj instituciji pod istim uslovima koji su navedeni u Budimpeštanskom sporazumu o međunarodnom priznanju depozita mikroorganizama u svrhe postupka patentiranja od 28. aprila 1977. godine i ako se kopija potvrde o novom deponovanju koju je izdala depozitna institucija uputi Evropskom zavodu za patente u roku od četiri mjeseca od datuma novog deponovanja, gdje je naveden broj evropske prijave patenta ili evropskog patenta.

Treći dio **PROPISI O SPROVOĐENJU TREĆEG DIJELA KONVENCIJE**

Poglavlje I **PODNOŠENJE EVROPSKE PRIJAVE PATENTA**

Pravilo 35 **Opšte odredbe**

- 1) Evropske prijave patenta mogu se podnijeti u pisanoj formi Evropskom zavodu za patente u Minhenu, Hagu ili Berlinu ili organima navedenim u Članu 75 stav 1(b).
- 2) Organ kome se podnosi evropska prijava patenta, unosi na spisima koji sačinjavaju prijavu datum njihovog prijema i izdaje bez odlaganja podnosiocu prijave potvrdu o prijemu, koja mora sadržati broj prijave, vrstu i broj dokumenata i datum njihovog prijema.
- 3) Ako se evropska prijava patenta podnosi organu navedenom u Članu 75 stav 1 tačka (b), onda taj organ bez odlaganja obavještava Evropski patentni zavod o primljenoj prijavi, naročito o vrsti i datumu prijema dokumenata, broju prijave i datumu zahtjevanog prava prvenstva.
- 4) Nakon prijema evropske prijave patenta upućene od strane Centralnog zavoda za industrijsku svojinu države ugovornice, Evropski zavod za patente shodno tome obavještava podnosioca prijave, navodeći datum prijema.

Pravilo 36 **Izdvojene evropske prijave patenata**

- 1) Podnosilac prijave može da podnese izdvojenu prijavu koja se odnosi na bilo koju ranije podnijetu evropsku prijavu patenta koja je i dalje neriješena.
- 2) Izdvojena prijava mora biti na jeziku postupka prvobitne prijave. Ako pomenuta prijava nije podnesena na službenom jeziku Evropskog zavoda za patente, izdvojena prijava može se podnijeti na jeziku ranije prijave; prevod na jezik postupka po ranijoj prijavi se onda podnosi u roku od dva mjeseca od podnošenja izdvojene prijave. Izdvojena prijava podnosi se Evropskom zavodu za patente u Minhenu, Hagu ili Berlinu.
- 3) Taksa za podnošenje prijave i taksa za rešerš uplaćuju se za svaku izdvojenu evropsku prijavu patenta u roku od mjesec dana od njenog podnošenja. Ako se taksa za podnošenje ili taksa za rešerš ne plate blagovremeno, prijava se smatra povučenom.
- 4) Taksa za naznačenje plaća se u roku od šest mjeseci od datuma kada se u Evropskom patentnom biltenu objavi evropski rešeršni izvještaj u pogledu izdvojene prijave. Primjenjuje se pravilo 39 stavovi 2 i 3.

Pravilo 37 **Upućivanje evropskih patentnih prijava**

- 1) Centralni zavod za industrijsku svojinu neke države ugovornice upućuje evropske patentne prijave, Evropskom zavodu za patente u najkraćem vremenu u skladu sa svojim nacionalnim zakonima koji se odnose na tajnost pronalaska u interesu države i preduzima odgovarajuće mjere da obezbijedi takvo slanje u roku od:
 - a) šest nedjelja od podnošenja, gdje predmet prijave evidentno ne podliježe tajnosti na osnovu nacionalnih propisa; ili
 - b) četiri mjeseca od podnošenja, ili, ako se traži pravo prvenstva, četrnaest mjeseci od datuma prvenstva, gdje prijava zahtijeva dalje ispitivanje u pogledu podlijevanja tajnosti.
- 2) Evropska prijava patenta koju nije primio Evropski zavod za patente u roku od četrnaest mjeseci od datuma podnošenja ili, ako se zahtijeva pravo prvenstva, od datuma prvenstva, smatra se povučenom. Sve takse uplaćene po osnovu ove prijave se refundiraju.

Pravilo 38 **Taksa za podnošenje prijave i taksa za rešerš**

- 1) Taksa za podnošenje prijave i taksa za rešerš moraju se platiti u roku od mjesec dana od datuma podnošenja evropske prijave patenta.
- 2) Pravila koja se odnose na takse mogu predvidjeti dodatnu taksu kao dio takse za podnošenje ako prijava sadrži više od 35 stranica.
- 3) Dodatna taksa iz stava 2 se uplaćuje u roku od mjesec dana od datuma podnošenja evropske prijave patenta ili mjesec dana od datuma podnošenja prvog skupa patentnih zahtjeva ili mjesec dana od datuma podnošenja ovjerene kopije iz pravila 40 stav 3, u zavisnosti od toga koji rok ističe posljednji.
- 4) Pravila koja se odnose na takse mogu predvidjeti dodatnu taksu kao dio takse za podnošenje u slučaju podnošenja izdvojene prijave u odnosu na bilo koji raniji zahtjev, ako se ne radi o izdvojenoj prijavi.

Pravilo 39

Takse za naznačenje

- 1) Takse za naznačenje moraju se platiti u roku od šest mjeseci od datuma kada se u Evropskom patentnom biltenu da obavještenje o objavljivanju evropskog rešeršnog izvještaja.
- 2) Ako taksa za naznačenje države ugovornice nije blagovremeno uplaćena ili se naznačenje za tu državu smatra povučenim, evropska prijava patenta će se smatrati povučenom.
- 3) Ne dovodeći u pitanje pravilo 37 stav 2 druga rečenica, takse za naznačenje se ne refundiraju.

Pravilo 40

Datum podnošenja

- 1) Datum podnošenja evropske prijave patenta je datum kada dokumenta koja je podnio podnosilac prijave sadrže:
 - a) zahtjev da se traži evropski patent;
 - b) informaciju u kojoj se identifikuje podnosilac prijave ili se omogućava da se sa podnosiocem prijave stupi u kontakt;
 - i
 - c) opis ili pozivanje na prethodno podnijetu prijavu.
- 2) Prilikom pozivanja na prethodno podnijetu prijavu na osnovu stava 1(c) mora se navesti datum podnošenja i broj te prijave i zavod u kome je podnijeta. U pozivanju se naznačava se da je zamijenjen opis i neki crteži.
- 3) Kada prijava sadrži pozivanje na osnovu stava 2 ovjeren primjerak prethodno podnijete prijave se podnosi u roku od dva mjeseca od datuma podnošenja prijave. Kada prethodno podnijeta prijava nije na službenom jeziku Evropskog zavoda za patente, njen prevod na jedan od ovih jezika se podnosi u istom roku. Pravilo 53 stav 2 primjenjuje se *mutatis mutandis*.

POGLAVLJE II ODREDBE O PRIJAVI

Pravilo 41

Zahtjev za priznanje prava

- 1) Zahtjev za priznanje evropskog patenta podnosi se na formularu koji propisuje Evropski zavod za patente.
- 2) Zahtjev sadrži:
 - a) zahtjev da se prizna evropski patent;
 - b) naziv pronalaska, koji predstavlja kratku i jasnu tehničku suštinu pronalaska, i koji ne sadrži komercijalne nazive;
 - c) ime, adresu, državljanstvo podnosioca prijave i državu u kojoj podnosilac prijave boravi ili ima svoje sjedište. Za fizička lica navodi se prezime i ime, pri čemu prezime mora da stoji ispred imena. Za pravna lica ili društva koja su, shodno mjerodavnom pravu, izjednačena sa pravnim licima, navodi se službeni naziv. Adrese se navode u skladu sa uobičajenim zahtjevima za brzu poštansku dostavu na označenu adresu i moraju obuhvatiti sve relevantne administrativne jedinice, uključujući i broj kuće, ako postoji. Preporučuje se i navođenje brojeva telefaksa i telefona;
 - d) ako je postavljen zastupnik, navođenje njegovog imena i službene adrese kao što je propisano u tački (c);
 - e) ako je potrebno, izjavu da se radi o izdvojenoj evropskoj prijavi patenta, i broj prvobitne evropske prijave patenta;
 - f) u slučajevima iz člana 61 stav 1 tačka (b), broj prve evropske prijave patenta;
 - g) ako se zahtijeva priznanje prava prvenstva neke ranije prijave, odgovarajuća izjava u kojoj se navodi datum te prijave i država u kojoj je ili za koju je ona bila podnijeta;
 - h) potpis podnosioca prijave ili zastupnika;
 - i) spisak dokumenata priloženih uz zahtjev. U tom spisku navodi se broj listova opisa, patentnih zahtjeva, crteža i apstrakta koji se podnose zajedno sa zahtjevom;
 - j) navođenje pronalazača, ako je podnosilac prijave pronalazač.
- 3) Ako ima više podnosilaca prijave, zahtjev treba da sadrži naznačenje jednog podnosioca prijave ili jednog predstavnika kao zajedničkog predstavnika.

Pravilo 42

Sadržina opisa

- 1) U opisu se:

- a) navodi oblast tehnike na koju se pronalazak odnosi;
 - b) navodi stanje tehnike, ukoliko se ono, prema saznanjima podnosioca prijave, može smatrati korisnim za razumijevanje pronalaska, sastavljanje evropskog rešeršnog izvještaja i za ispitivanje evropske prijave patenta, pri čemu je poželjno citirati izvore koji se odnose na opisno stanje tehnike;
 - c) izlaže pronalazak za koji se traži zaštita, i to na način da se tehnički problem čak i ako nije izričito naveden kao takav i njegovo rješenje mogu razumjeti; potrebno je navesti i prednosti pronalaska u odnosu na postojeće stanje tehnike;
 - d) ukratko opisuju slike nacrt, ukoliko ih ima;
 - e) navodi bar jedan način izvođenja pronalaska za koji se traži zaštita; to se, ukoliko je potrebno, čini na primjerima, uz pozivanje na nacrt, ako ga ima;
 - f) izričito navodi, ako to već nije očigledno iz opisa ili prirode pronalaska, način industrijske primjene pronalaska.
- 2) Opis se izrađuje na način i po redosljedu navedenom u stavu 1 izuzev, ako zbog prirode pronalaska, drugačiji način i redosljed obezbjeđuju bolje razumijevanje ili racionalniji prikaz pronalaska.

Pravilo 43

Oblik i sadržina patentnih zahtjeva

- 1) Patentni zahtjevi definišu predmet za koji se traži patentna zaštita njegovim tehničkim karakteristikama. Kad god je to svrsishodno, patentni zahtjevi moraju da sadrže:
 - a) izjavu kojom se naznačuje naziv predmeta pronalaska i one tehničke karakteristike koje su neophodne za definisanje predmeta za koji se traži zaštita, a koje, u međusobnoj kombinaciji pripadaju poznatom stanju tehnike;
 - b) karakterišući dio, koji počinje izrazima „karakterisan time” ili „karakterisan po tome”, u kojem se navode karakteristike za koje se u kombinaciji sa karakteristikama navedenim u tački (a), traži zaštita.
- 2) Uz rezervu odredbe Člana 82 evropska prijava patenta može sadržati i više od jednog nezavisnog patentnog zahtjeva u istoj kategoriji (proizvod, postupak, naprava ili primjena), ukoliko predmet prijave uključuje jedno od sljedećeg:
 - a) mnoštvo međusobno povezanih proizvoda;
 - b) različite upotrebe proizvoda ili naprava;
 - c) varijantna rješenja nekog određenog problema gdje se ne mogu sve varijante obuhvatiti samo jedinim patentnim zahtjevom.
- 3) Uz svaki patentni zahtjev u kome su navedene bitne karakteristike pronalaska, mogu biti postavljeni jedan ili više patentnih zahtjeva koji se odnose na pojedine načine ostvarivanja tog pronalaska.
- 4) Svaki patentni zahtjev koji obuhvata sve karakteristike nekog drugog patentnog zahtjeva (zavisni patentni zahtjev) mora, ako je moguće, na početku sadržati poziv na drugi patentni zahtjev, a zatim moraju u njemu biti izložene dodatne karakteristike. Zavisni patentni zahtjev može se pozvati na neki drugi zavisni patentni zahtjev. Svi zavisni patentni zahtjevi koji se pozivaju na jedan ili više prethodnih patentnih zahtjeva moraju biti grupisani na najprikladniji način.
- 5) Broj patentnih zahtjeva mora biti razuman, uzimajući u obzir prirodu pronalaska za koji se traži zaštita. Zahtjevi se numerišu po redu, arapskim brojevima.
- 6) Izuzev kada je apsolutno neophodno, patentni zahtjevi se ne smiju pozivati na opis ili nacрте, da bi precizirali tehničke karakteristike pronalaska. Oni naročito ne smiju sadržati izraze kao što su: "kao što je opisano u dijelu ... opisa" ili „kao što je prikazano na slici ... nacрта”.
- 7) gdje evropska prijava patenta sadrži nacrt sa pozivnim oznakama, tehničke karakteristike navedene u zahtjevima moraju biti praćene pozivnim oznakama sa nacрта, koji se smještaju u zagrade ako to povećava razumljivost patentnih zahtjeva. Pomenute pozivne oznake ne tumače se kao ograničenje patentnog zahtjeva.

Pravilo 44

Jedinstvo pronalaska

- 1) Kad se u evropskoj prijavi patenta traži zaštita za više pronalazaka, smatraće se da je ispunjen uslov jedinstva pronalaska na osnovu člana 82 samo ako postoji tehnička povezanost među pronalascima koja obuhvata jednu ili više odgovarajućih posebnih tehničkih karakteristika. Izraz „posebne tehničke karakteristike” označava one tehničke karakteristike koje određuju doprinos koji svaki od navedenih pronalazaka, posmatran kao cjelina, pruža u odnosu na prethodno stanje tehnike.
- 2) Određivanje da li je neka grupa pronalazaka povezana na takav način da čini jedinstvenu pronalazačku zamisao se vrši bez obzira da li su pronalasci definisani u odvojenim patentnim zahtjevima ili kao varijante u okviru jednog zahtjeva.

Pravilo 45

Patentni zahtjevi za koje se plaća taksa

- 1) Ako evropska prijava patenta, prilikom podnošenja, sadrži više od deset patentnih zahtjeva, onda se za jedanaesti i svaki naredni patentni zahtjev mora platiti taksa za patentne zahtjeve.
- 2) Takse za patentne zahtjeve moraju biti plaćene u roku od mjesec dana od dana podnošenja prvog skupa zahtjeva. Ako se takse za patentne zahtjeve ne plate u odgovarajućem roku, one se još uvijek mogu platiti u naknadnom roku od mjesec dana od dana slanja obavještenja u kome se ukazuje na nepoštovanje roka.
- 3) Ako se taksa za patentni zahtjev ne plati u predviđenom roku, smatra se da se od zahtjeva odustalo.

Pravilo 46

Forma nacрта

1) Na listovima koji sadrže slike nacрта, radna površina ne smije da prelazi 26,2 cm x 17 cm. Listovi ne smiju sadržati nikakve okvire oko površine koja se može koristiti ili koja se koristi. Najmanje margine su:

gornja 2,5 cm

lijeva 2,5 cm

desna 1,5 cm

donja 1 cm

2) Nacrti se izrađuju na sljedeći način:

a) Crteži se izrađuju bez boja, postojanim, crnim, dovoljno izraženim i tamnim linijama ili crticama ravnomjerne debljine i jasnoće;

b) Poprečni presjeci se označavaju šrafitiranjem koje ne smije da umanjuje vidljivost pozivnih oznaka i osnovnih linija;

c) Razmjera slika mora biti takva da se na elektronskoj ili fotografskoj reprodukciji sa linearnim umanjenjem od 2/3 mogu bez teškoća raspoznati sve pojedinosti. Ako je, izuzetno, razmjera data na crtežu, onda se ona mora grafički prikazati;

d) Svi brojevi, slova i pozivne oznake moraju na slikama nacрта biti jednostavni i jasni. Zagrade, krugovi ili navodnici ne smiju se koristiti za brojeve i slova;

e) Generalno, sve linije na slikama nacрта se izrađuju sredstvima za crtanje;

f) Elementi iste slike moraju biti proporcionalni jedan u odnosu na drugi, ukoliko nije neophodno primijeniti neki drugačiji odnos za postizanje jasnoće slike;

g) Brojevi i slova moraju imati visinu od najmanje 0,32 cm. Za ispisivanje po slikama nacрта se koriste latinska i, ako je to uobičajeno, grčka slova;

h) Jedan list nacрта može sadržati više slika. Ako je jedna slika kao cjelina izrađena na dva ili više listova, onda djelove slika na različitim listovima treba tako rasporediti, da se može sastaviti potpuna slika, a da se dio slika ne prekrije na pojedinim listovima. Pojedine slike treba rasporediti na jednom listu ili na više listova bez većeg slobodnog prostora, po mogućnosti u uspravnom položaju, jasno razdvojene jedna od druge. Ako slike nijesu u uspravnom položaju, onda ih treba rasporediti poprečno, sa vrhom slike na lijevoj strani lista. Slike se numerišu po redu, arapskim brojevima, i nezavisno od numeracije listova;

i) Pozivne oznake koje nijesu pomenute u opisu i patentnim zahtjevima ne smiju se pojaviti na nacrtu i obratno. Pozivne oznake na elementima moraju biti dosljedne u cijeloj prijavi;

j) Nacrti ne smiju sadržati nikakve tekstualne djelove. Kada je neophodno za razumijevanje nacrt može da sadrži, nekoliko kratkih ključnih riječi kao što su „voda“, „para“, „otvoreno“, „zatvoreno“ ili „presjek AB“. Bilo koje takve ključne riječi moraju biti tako postavljene da se, ukoliko je neophodno, mogu zamijeniti svojim prevodom a da se ne poremete linije nacрта.

(3) Dijagrami toka i drugi dijagrami smatraju se nacrtima.

Pravilo 47

Oblik i sadržina apstrakta

1) Apstrakt sadrži naziv pronalaska.

2) Apstrakt sadrži kratak sadržaj pronalaska koji je izložen u opisu, patentnim zahtjevima i nacrtima. U kratkom sadržaju se navodi oblast tehnike iz koje je pronalazak i mora biti sastavljen tako da omogući jasno razumijevanje tehničkog problema, suštinu rješenja i osnovni način primjene pronalaska. U apstraktu se, kad je to potrebno, navodi hemijska formula koja, među formulama sadržanim u evropskoj prijavi patenta, najbolje karakteriše pronalazak. Apstrakt ne smije sadržati nikakve tvrdnje o navodnim prednostima ili navodnoj vrijednosti pronalaska ili tvrdnje u vezi sa teorijskim mogućnostima primjene.

3) Apstrakt ne treba da se sastoji od više od 150 riječi.

4) Ako evropska prijava patenta sadrži nacрте, onda podnosilac prijave navodi onu sliku ili, u izuzetnim slučajevima, one slike nacрта koje treba objaviti sa apstraktom. Evropski patentni zavod može objaviti jednu ili više drugih slika, ako smatra da one bolje karakterišu pronalazak. Iza svake bitne karakteristike koja se pominje u apstraktu i prikazuje na nacrtu, u zagradama mora da stoji pozivna oznaka.

5) Apstrakt se formuliše na takav način da predstavlja efikasno sredstvo u svrhu pretraživanja u određenoj tehničkoj oblasti. Naročito treba da omogući ocjenu da li je neophodan uvid u samu evropsku prijavu patenta.

Pravilo 48

Sadržaj koji je zabranjeno navoditi

1) Evropska prijava patenta ne smije da sadrži:

a) navode ili drugi sadržaj protivan javnom poretку ili moralu;

b) omaložavajuće navode o proizvodima ili postupcima bilo kog trećeg lica, ili navode o vrijednosti ili valjanosti prijave ili patenata tog lica. Poređenja sa prethodnim stanjem tehnike ne predstavljaju omaložavanje samo po sebi;

c) navode koji su, u datim okolnostima beznačajni ili nepotrebni.

2) Ako evropska prijava patenta sadrži navode iz stava 1 tačka (a), onda Evropski zavod za patente može da ih izostavi prilikom objavljivanja prijave i naznačava, pri tom, mjesto i broj riječi ili nacрта koji je izostavljen.

3) Ако evropska prijava patenta sadrži izjave u smislu stava 1 tačka (b), onda Evropski zavod za patente može te podatke izostaviti prilikom objavljivanja prijave, naznačavajući pri tom, mjesto i broj izostavljenih riječi. Na zahtjev, Evropski zavod za patente dostavlja prepis izostavljenih mjesta.

Pravilo 49

Opšte odredbe o formi spisa u prijavi

- 1) Svaki prevod podniet na osnovu Člana 14 stav 2 ili pravila 40 stav 3 smatra se spisom koji sačinjava evropsku prijavu patenta.
- 2) Spisi koji sačinjavaju evropsku prijavu patenta se podnose tako da omogućuju elektronsko i neposredno umnožavanje, posebno skeniranjem, fotografisanjem, elektrostatičkim postupkom, foto-ofset tehnikom i mikrofilmovanjem, i to u neograničenom broju primjeraka. Listovi moraju biti glatki, neizgužvani i nesavijeni. Oni smiju biti korišćeni samo sa jedne strane.
- 3) Spisi koji sačinjavaju evropsku prijavu patenta se podnose na savitljivom, čvrstom, bijelom, glatkom, postojanom i mat papiru formata A4 (29,7 cm sa 21 cm). Na osnovu stava 9 i pravila 46 stav 2 tačka (h), svaki list se koristi tako da su njegove uže strane gore i dolje (uspravni format).
- 4) Svaki spis koji sačinjava evropsku prijavu patenta (zahtjev za izdavanje patenta, opis, patentni zahtjev, nacrti i apstrakt) mora počinjati na novom listu. Svi listovi moraju biti povezani tako, da se lako mogu okretati, odvojiti i ponovo sastaviti jedni s drugima.
- 5) Na osnovu pravila 46 stav 1 na listovima se kao minimalne margine moraju ostaviti:
gornja: 2 cm
lijeva: 2,5 cm
desna: 2 cm
donja: 2 cm
Preporučljive maksimalne margine su sljedeće:
gornja: 4 cm
lijeva: 4 cm
desna: 3 cm
donja: 3 cm
- 6) Svi listovi u evropskoj prijavi patenta moraju biti numerisani po redu, arapskim brojevima. Brojevi listova stavljaju se na sredini gornjeg dijela lista, ali ne na gornjoj margini.
- 7) Na svakom listu opisa i patentnih zahtjeva treba da bude numerisan svaki peti red. Brojevi se ispisuju na lijevoj strani lista, desno od margine.
- 8) Zahtjev za priznanje evropskog patenta, opis, patentni zahtjev i apstrakt moraju biti otkucani mašinom ili odštampani. Samo grafički simboli i oznake, hemijske ili matematičke formule mogu, ako je to potrebno, biti iscrtni ili ispisani rukom. Razmak između redova mora iznositi 1,5. Svi tekstovi moraju biti pisani slovima, čija velika slova imaju visinu od najmanje 0,21 cm, i to tamnom, neizbrisivom bojom.
- 9) Zahtjev za priznanje evropskog patenta, opis, patentni zahtjevi i apstrakt ne smiju sadržati nikakve crteže. Opis, patentni zahtjevi i apstrakt mogu sadržati hemijske ili matematičke formule. Opis i apstrakt mogu sadržati tabele. Patentni zahtjevi mogu sadržati tabele samo onda ako je suština pronalaska takva da je poželjno koristiti tabele. Tabele, hemijske ili matematičke formule mogu biti prikazane u poprečnom položaju na listu, ukoliko to nije moguće učiniti na zadovoljavajući način u uspravnom položaju; Tabele, hemijske ili matematičke formule u poprečnom položaju, treba da budu prikazane tako da zaglavje tabele ili formule bude na lijevoj strani lista.
- 10) Vrijednosti se izražavaju u jedinicama usklađenim sa međunarodnim standardima, gdje god je moguće u metričkom sistemu koji koristi SI jedinice. Svi podaci koji ne ispunjavaju ovaj zahtjev izražavaju se takođe u jedinicama koje su u skladu sa međunarodnim standardima. Treba koristiti tehničke izraze, formule, znake i simbole koji su opšte prihvaćeni u toj oblasti tehnike.
- 11) U cijeloj evropskoj prijavi patenta moraju se koristiti jedinstvena terminologija i znakovi.
- 12) Svaki list mora, koliko god je to moguće, biti bez brisanih mjesta i bez izmjena. Nepoštovanje ovog pravila može se prihvatiti ukoliko time autentičnost teksta nije dovedena u pitanje i ako time nijesu ugrožene pretpostavke za kvalitetno umnožavanje.

Pravilo 50

Kasniji podnesci

- 1) Pravila 42, 43 i 46 do 49 primjenjuju se na podneske koji zamjenjuju djelove koji sačinjavaju evropsku prijavu patenta. Pravilo 49 stavovi 2 do 12 primjenjuju se takođe na prevod patentnih zahtjeva, navedenih u pravilu 71.
- 2) Svi podnesci pored onih od kojih se sastoji prijava patenta moraju biti otkucani pisačom mašinom ili odštampani. Na svakom listu se mora ostaviti margina na lijevoj strani lista širine 2,5 cm.
- 3) Podnesci koji se dostavljaju nakon podnošenja evropske prijave patenta moraju biti potpisani, osim ukoliko se ne radi o priložima. Ako neki podnesak nije potpisan, onda Evropski zavod za patente zahtijeva od stranke da potpiše spis u roku koji odredi Evropski zavod za patente. Ako je podnesak blagovremeno potpisan, onda on zadržava prvobitni datum prijema; u suprotnom, smatra se da podnesak nije podniet.

ПОГЛАВЛЈЕ III GODIŠNJA TAKSA

Pravilo 51 Plaćanje godišnjih taksi

- 1) Godišnja taksa za evropsku prijavu patenta za svaku sljedeću godinu dospijeva za naplatu posljednjeg dana u mjesecu koji sadrži datum godišnjice podnošenja te evropske prijave patenta. Godišnja taksa za treću godinu može se uredno platiti najranije šest mjeseci prije njenog dospijeca. Sve ostale godišnje takse mogu se platiti najranije tri mjeseca prije njihovog dospijeca.
- 2) Ako se godišnja taksa ne plati u roku predviđenom u stavu 1, ta taksa se još uvijek može platiti u roku od šest mjeseci od navedenog datuma, pod uslovom da se dopunska taksa takođe plati u tom periodu. Pravna posljedica utvrđena u članu 86 stav 1 nastupiće nakon isteka šestomjesečnog perioda.
- 3) Godišnje takse koje na osnovu prvobitne prijave dospijevaju do datuma kada se podnosi izdvojena evropska prijava patenta, moraju se takođe platiti za izdvojenu prijavu i one dospijevaju u trenutku kada se ova podnosi. Ove takse i sve godišnje takse koje dospijevaju u periodu od četiri mjeseca od datuma podnošenja izdvojene prijave mogu se platiti bez plaćanja dodatne takse u okviru tog perioda. Stav 2 mora se primijeniti.
- 4) Ako je evropska prijava patenta bila odbijena ili se smatrala povučenom zbog nepoštovanja rokova, i ako se prava podnosioca prijave vrate u pređašnje stanje na osnovu Člana 122 godišnja taksa
 - a) koja bi dospijevala na osnovu stava 1 u periodu koji počinje na datum kada se dogodilo gubljenje prava, sve do dana i uključujući i dan obavještanja o odluci da se prava vraćaju u pređašnje stanje, dospijeva za plaćanje tog kasnijeg datuma.Ova taksa i svaka godišnja taksa koja dospijeva u roku od četiri mjeseca od tog kasnijeg datuma može se još uvijek platiti u roku od četiri mjeseca od tog kasnijeg datuma bez plaćanja dopunske takse. Stav 2 se primjenjuje.
 - b) koja, na datum kada se dogodio gubitak prava, je već bila dospjela za plaćanje, ali rok predviđen u stavu 2 još nije istekao, može još uvijek biti plaćena u roku od šest mjeseci od datuma obavještanja o odluci o vraćanju prava u pređašnje stanje, pod uslovom da je dopunska taksa u smislu stava 2 takođe plaćena u tom roku.
- 5) Ako Veliko žalbeno vijeće ponovo pokrene postupak pred žalbenim vijećem u smislu Člana 112a stav 5 druga rečenica, godišnja taksa
 - a) koja bi dospijevala na osnovu stava 1 u periodu koji počinje na datum donošenja odluke žalbenog vijeća na osnovu molbe za reviziju, sve do datuma i uključujući i datum obavještanja o odluci Velikog žalbenog vijeća o ponovnom pokretanju postupka pred žalbenim vijećem, mora da dospijeva tog kasnijeg datuma.Ova taksa i svaka godišnja taksa koja dospijeva u roku od četiri mjeseca od tog kasnijeg datuma može još uvijek biti plaćena u roku od četiri mjeseca od tog kasnijeg datuma bez dopunske takse. Stav 2 se primjenjuje.
 - b) koja, na datum kada je donijeta odluka žalbenog vijeća, je već bila dospjela, ali rok predviđen u stavu 2 još uvijek nije istekao, može još uvijek biti plaćena u roku od šest mjeseci od datuma obavještanja o odluci Velikog žalbenog vijeća o obnavljanju postupka pred žalbenim vijećem, pod uslovom da je dopunska taksa u smislu stava 2 takođe plaćena u tom roku.
- 6) Godišnja taksa se ne može platiti za neku novu evropsku prijavu patenta podnijetu prema Članu 61 stav 1 tačka (b) za onu godinu u kojoj je podnijeta prijava, a ni za bilo koju prethodnu godinu.

ПОГЛАВЛЈЕ IV PRVENSTVO

Pravilo 52 Izjava o pravu prvenstva

- 1) Izjava o pravu prvenstva, navedena u Članu 88 stav 1 mora sadržati datum ranije prijave i državu potpisnicu Pariske konvencije ili članicu Svjetske trgovinske organizacije u kojoj je prijava podnijeta, kao i broj prijave. U slučaju navedenom u Članu 87 stav 5, prva rečenica se primjenjuje *mutatis mutandis*.
- 2) Poželjno je da se izjava o pravu prvenstva podnese u trenutku podnošenja evropske prijave patenta. Ona se još uvijek može podnijeti u roku od šesnaest mjeseci od najranijeg zahtijevanog datuma prvenstva.
- 3) Podnosilac prijave može da ispravi izjavu o pravu prvenstva u roku od šesnaest mjeseci od najranijeg zahtijevanog datuma prvenstva, ili, kada bi ispravka izazvala promjenu u najranijem zahtijevanom datumu prvenstva, u roku od šesnaest mjeseci od ispravljenog najranijeg datuma prvenstva, u zavisnosti od toga koji period od šesnaest mjeseci prvi ističe, pod uslovom da takva ispravka može biti podnijeta do isteka roka od četiri mjeseca od priznatog datuma podnošenja evropske prijave patenta.
- 4) Međutim, izjava o pravu prvenstva ne može se dati ili ispraviti poslije podnošenja zahtjeva na osnovu člana 93 stav 1(b).
- 5) Podaci o izjavi o pravu prvenstva se navode u objavljenoj evropskoj prijavi patenta i u spisu evropskog patenta.

Pravilo 53 Dokumenta o pravu prvenstva

- 1) Podnosilac prijave koji zahtijeva pravo prvenstva mora podnijeti kopiju ranije prijave u roku od šesnaest mjeseci od najranijeg zahtijevanog datuma prvenstva. Ovaj primjerak i datum podnošenja ranije prijave moraju biti ovjereni kao tačni od strane organa kod koga je ta prijava bila podnijeta.
- 2) Kopija ranije prijave smatraće se kao da je podnijeta u skladu sa propisima ako je primjerak te prijave koji je stavljen na raspolaganje Evropskom zavodu za patente uključen u spis evropske prijave patenta pod uslovima koje određuje predsjednik Evropskog zavoda za patente.
- 3) Kada ranija prijava nije na službenom jeziku Evropskog zavoda za patente a važnost prioritnog zahtjeva je relevantna za određivanje patentabilnosti predmetnog pronalaska, Evropski zavod za patente će pozvati podnosioca prijave ili nosioca evropskog patenta da podnese prevod te prijave na jedan od službenih jezika u navedenom roku. Alternativno se može podnijeti izjava da je evropska prijava patenta potpuni prevod ranije prijave. Stav 2 se primjenjuje *mutatis mutandis*. Ako se traženi prevod prethodne prijave ne podnese blagovremeno, gubi se pravo prvenstva za evropsku prijavu patenta ili za evropski patent u vezi sa tom prijavom. Podnosilac prijave ili vlasnik evropskog patenta će shodno tome biti obaviješten.

Pravilo 54 Izdavanje dokumenata o pravu prvenstva

Na zahtjev, Evropski zavod za patente mora da izda podnosiocu prijave ovjerenu kopiju evropske prijave patenta (dokument o pravu prvenstva), pod uslovima koje određuje predsjednik Evropskog zavoda za patente, uključujući i formu dokumenta o pravu prvenstva i okolnosti pod kojima se mora platiti administrativna taksa.

Četvrti dio PROPISI O SPROVOĐENJU ČETVRTOG DIJELA KONVENCIJE

POGLAVLJE I ISPITIVANJE OD STRANE SLUŽBE ZA PRIJEM

Pravilo 55 Ispitivanje prijave prilikom njenog podnošenja

Ako ispitivanje na osnovu člana 90 stav 1 otkrije da evropska prijava patenta ne ispunjava zahtjeve predviđene u članu 40 stav 1(a) ili (c), stav 2 ili stav 3 prva rečenica, Evropski zavod za patente obavještava podnosioca prijave o svim nedostacima i izvještava ga da se sa prijavom neće postupati kao sa evropskom prijavom patenta osim ako se ti nedostaci ne isprave u roku od dva mjeseca. Ako podnosilac prijave ovo učini, biće obaviješten o datumu podnošenja prijave koju je dodijelio Zavod.

Pravilo 56 Djelovi opisa koji nedostaju ili nacrti koji nedostaju

- 1) Ako ispitivanje na osnovu člana 90 stav 1 otkrije da izgleda da nedostaju djelovi opisa ili nacrti na koje se poziva u opisu ili patentnim zahtjevima, Evropski zavod za patente će pozvati podnosioca prijave da podnese djelove koji nedostaju u roku od dva mjeseca. Podnosilac prijave ne može da se poziva na nedostatak takvog saopštenja.
- 2) Ako se djelovi opisa ili nacrti koji nedostaju podnesu kasnije od datuma podnošenja, ali u roku od dva mjeseca od datuma podnošenja, ili, ako je izdato saopštenje na osnovu stava 1 u roku od dva mjeseca od tog saopštenja, u prijavi će biti promjenjen datum podnošenja na datum kada su podnijeti djelovi opisa koji su nedostajali ili nacrti koji su nedostajali. Evropski zavod za patente shodno tome obavještava podnosioca prijave.
- 3) Kada se djelovi opisa koji nedostaju ili djelovi nacrti koji nedostaju podnesu u roku predviđenom u stavu 2 i u prijavi se zahtijeva pravo prvenstva iz ranije prijave, u slučaju kada podnosilac prijave to zahtijeva za datum podnošenja smatraće se datum kada su ispunjeni zahtjevi iz pravila 40 stav 1, pod uslovom da su svi djelovi opisa koji nedostaju i djelovi nacrti koji nedostaju u potpunosti sadržani u ranijoj prijavi, ako u roku navedenom u stavu 2 podnese:
 - a) primjerak ranije prijave, osim ako je taj primjerak dostupan u Evropskom zavodu za patente na osnovu pravila 53 stav 2;
 - b) kada ranija prijava nije na službenom jeziku Evropskog zavoda za patente, njen prevod na jedan od ovih jezika, osim ako takav primjerak je već dostupan u Evropskom zavodu za patente na osnovu pravila 53 stav 3; i
 - c) naznačenje gdje su djelovi opisa ili nacrti koji nedostaju u potpunosti sadržani u ranijoj prijavi i, kada se to može primijeniti, u njenom prevodu.
- 4) Ako podnosilac prijave:
 - a) ne podnese djelove opisa ili nacrti koji nedostaju u roku propisanom stavovima 1 i 2 ili
 - b) povuče na osnovu stava 6 bilo koji dio opisa koji nedostaje ili nacrt koji nedostaje podnijet na osnovu stava 2, sva pozivanja u smislu stava 1 smatraće se poništenim, i smatraće se nepostojećim svako podnošenje djelova opisa koji nedostaju ili nacrti koji nedostaje. Evropski zavod za patente shodno tome obavještava podnosioca prijave.
- 5) Ako podnosilac prijave ne ispuni zahtjeve navedene u stavu 3 tač. (a) do (c) u roku iz stava 2 prijava će dobiti novi datum podnošenja sa datumom kada su podnijeti djelovi opisa koji nedostaju ili nacrti koji nedostaju. Evropski zavod za patente obavještava shodno tome podnosioca prijave.

6) U roku od mjesec dana od obavještenja pomenutog u stavovima 2 do 5 posljednja rečenica, podnosilac prijave može da povuče djelove opisa koji nedostaju ili nacрте koji nedostaju, koje je podnio, u kom slučaju se smatra da nije izvršena promjena datuma podnošenja prijave. Evropski zavod za patente shodno tome obavještava podnosioca prijave.

Pravilo 57 **Ispitivanje usklađenosti sa formalnim zahtjevima**

Ako je za evropsku prijavu patenta utvrđen datum podnošenja, Evropski zavod za patente mora da ispita, u skladu sa članom 90 stav 3 da li je ispunjeno sljedeće:

- a) prevod prijave zahtijevan na osnovu Člana 14 stav 2, na osnovu pravila 36, stav 2, druga rečenica ili na osnovu pravila 40 stav 3 druga rečenica, podnijet je blagovremeno;
- b) zahtjev za priznanje evropskog patenta zadovoljava uslove iz pravila 41;
- c) prijava sadrži jedan ili više patentnih zahtjeva u skladu sa članom 78 stav 1(c), ili pozivanje na prethodno podnijetu prijavu u skladu sa pravilom 40 stavovi 1(c), 2 i 3 gdje je naznačeno da su takođe izmijenjeni i zahtjevi;
- d) prijava sadrži apstrakt u skladu sa članom 78 stav 1(e);
- e) taksa za podnošenje prijave i taksa za rešerš su plaćene u skladu sa pravilom 17 stav 2, pravilom 36 stav 3 ili pravilom 38;
- f) navođenje pronalazača je učinjeno u skladu sa pravilom 19 stav 1;
- g) gdje je to odgovarajuće, zahtjevi navedeni u pravilima 52 i 53 koji se tiču zahtjeva za priznanje prava prvenstva su zadovoljeni;
- h) gdje je odgovarajuće, zahtjevi iz člana 133 stav 2 su zadovoljeni;
- i) prijava ispunjava zahtjeve navedene u pravilu 46 i pravilu 49 stavovi 1 do 9 i 12.
- j) prijava ispunjava zahtjeve navedene u pravilu 30.

Pravilo 58 **Ispravljanje nedostataka u prijavi**

Ako evropska prijava patenta ne ispunjava uslove iz pravila 57(a) do (d), (h) i (i), Evropski zavod za patente to saopštava podnosiocu prijave i poziva ga da ispravi uočene nedostatke u roku od dva mjeseca. Opis, patentni zahtjevi i crteži mogu se izmijeniti samo u mjeri u kojoj je to potrebno da bi se otklonili takvi nedostaci.

Pravilo 59 **Nedostaci u zahtijevanju prava prvenstva**

Ako broj ranije prijave u smislu pravila 52 stav 1 ili primjerak te prijave u smislu pravila 53 stav 1 nijesu blagovremeno podneseni, Evropski zavod za patente obavještava shodno tome podnosioca prijave i poziva ga da ih podnese u naznačenom roku.

Pravilo 60 **Naknadno navođenje pronalazača**

- 1) Ako navođenje pronalazača nije bilo učinjeno u skladu sa pravilom 19 Evropski zavod za patente će obavijestiti podnosioca prijave da će evropska prijava patenta biti odbijena osim ako se ne dostavi navođenje u roku od šesnaest mjeseci od datuma podnošenja prijave ili, ako se zahtijeva pravo prvenstva, od datuma prvenstva, ovaj rok se smatra ispoštovanim ako se to navođenje saopšti prije okončanja tehničkih priprema za objavu evropske prijave patenta.
- 2) Ako se radi o izdvojenoj evropskoj prijavi patenta ili o novoj evropskoj prijavi patenta, podnijetoj prema članu 61 stav 1 tačka (b), i navođenje pronalazača nije učinjeno u skladu sa pravilom 19, Evropski zavod za patente će pozvati podnosioca prijave da dostavi navođenje u navedenom roku.

POGLAVLJE II **EVROPSKI REŠERŠNI IZVJEŠTAJ**

Pravilo 61 **Sadržina evropskog rešeršnog izvještaja**

- 1) U evropskom rešeršnom izvještaju navode se dokumenti koji su bili dostupni Evropskom zavodu za patente u trenutku izrade izvještaja, i koji se mogu uzeti u obzir prilikom ocjene da li je pronalazak, na koji se odnosi evropska prijava patenta, nov i inventivan.
- 2) Dokumenta koja se citiraju navode se sa patentnim zahtjevima na koje se odnose. Prema potrebi, bliže se obilježavaju relevantni djelovi svakog dokumenta.

- 3) U Evropskom rešeršnom izvještaju pravi se razlika između dokumenata objavljenih prije datuma zatraženog prava prvenstva, između datuma prvenstva i datuma podnošenja prijave, i na dan ili nakon podnošenja prijave.
- 4) Svaki dokument koji se odnosi na usmeno otkrivanje pronalaska, upotrebu ili drugi način otkrivanja prije datuma podnošenja evropske prijave patenta, mora se navesti u evropskom rešeršnom izvještaju sa naznakom datuma eventualnog objavljivanja tog dokumenta i datumom nepisanog otkrivanja pronalaska.
- 5) Evropski rešeršni izvještaj se izrađuje na jeziku postupka.
- 6) U Evropskom rešeršnom izvještaju se navodi klasifikacija predmeta evropske prijave patenta prema međunarodnoj klasifikaciji.

Pravilo 62

Prošireni evropski rešeršni izvještaj

- 1) Uz evropski rešeršni izvještaj prilaže se mišljenje o tome da li predmetni zahtjev i pronalazak naizgled ispunjavaju zahtjeve iz ove konvencije, osim ako se može izdati saopštenje na osnovu pravila 71 stav 1 ili 3.
- 2) Mišljenje na osnovu stava 1 ne objavljuje se zajedno sa rešeršnim izvještajem.

Pravilo 62a

Prijave koje sadrže više nezavisnih patentnih zahtjeva

- 1) Ako Evropski patentni zavod smatra da podneseni zahtjevi nijesu u skladu sa pravilom 43 stav 2, pozvaće podnosioca prijave da u roku od dva mjeseca naznači one zahtjeve koji su u skladu s pravilom 43 stav 2 na osnovu kojih treba da se izvrši provjera. Ako podnosilac prijave ne dostavi takvo naznačenje na vrijeme, ispitivanje za svaku od kategorija će se izvršiti na osnovu prvobitnih zahtjeva.
- 2) Odsjek za ispitivanje će pozvati podnosioca prijave da ograniči zahtjeve na predmet koji se ispituje, osim ako ne utvrdi da prigovor iz stava 1 nije opravdan.

Pravilo 63

Nepotpuni rešerš

- 1) Ako Evropski patentni zavod smatra da evropska prijava patenta nije u skladu sa ovom konvencijom u toj mjeri da nije moguće sprovesti cjelishodan rešerš stanja u pogledu svih ili pojedinih predmeta patentnih zahtjeva, pozvaće podnosioca zahtjeva da u roku od dva mjeseca podnese izjavu u kojoj će naznačiti predmet koji se ispituje.
- 2) Ako izjava podnosioca rešeršnog zahtjeva na osnovu stava 1 nije blagovremeno podnešena ili nije dovoljna za prevazilaženje nedostataka u smislu stava 1, Evropski patentni zavod će izdati obrazloženu izjavu u kojoj će navesti da, u skladu s ovom konvencijom, u datom slučaju evropska prijava patenta nije uspjela u mjeri u kojoj se ne može sprovesti cjelishodan rešerš stanja tehnike na osnovu svih ili pojedinih zahtijevanih predmeta ili, ako je izvodljivo, sastaviti djelimični rešeršni izvještaj. Obrazložena izjava ili djelimični rešeršni izvještaj važe u daljem postupku kao evropski rešeršni izvještaj.
- 3) Nakon što sačini djelimični rešeršni izvještaj, odsjek za ispitivanje će pozvati podnosioca prijave da ograniči zahtjeve na predmet ispitivanja, osim ako se ne utvrdi da prigovor iz stava 1 nije opravdan.

Pravilo 64

Evropski rešeršni izvještaj u slučaju nedostatka jedinstva pronalaska

- 1) Ako, prema mišljenju Evropskog zavoda za patente, evropska prijava patenta ne odgovara zahtjevima u pogledu jedinstva pronalaska, onda se izrađuje djelimičan evropski rešeršni izvještaj za one djelove prijave koji se odnose na pronalazak ili grupu pronalazaka u smislu člana 82, koji su prvi navedeni u patentnim zahtjevima. On saopštava podnosiocu prijave da za svaki naredni pronalazak, ukoliko evropski rešeršni izvještaj treba da obuhvati i te druge pronalaskе, mora da se uplati dodatna taksa za rešerš za svaki pojedini pronalazak, u predviđenom roku od 2 mjeseca. Evropski rešeršni izvještaj izrađuje se za djelove prijave koji se odnose na pronalaskе za koje su plaćene takse za rešerše.
- 2) Taksa za rešerše, plaćena prema stavu 1 biće vraćena ako u toku ispitivanja evropske prijave patenta, podnosilac prijave podnese zahtjev za povraćaj i ako odsjek za ispitivanje konstatuje da saopštenje u smislu stava 1 nije bilo opravdano.

Pravilo 65

Dostavljanje evropskog rešeršnog izvještaja

Odmah poslije sastavljanja, evropski rešeršni izvještaj dostavlja se podnosiocu prijave zajedno sa kopijama svih citiranih dokumenata.

Pravilo 66

Konačna sadržina apstrakta

Istovremeno sa izradom evropskog rešeršnog izvještaja, Evropski zavod za patente određuje konačnu sadržinu apstrakta i dostavlja je podnosiocu prijave zajedno sa evropskim rešeršnim izvještajem.

POGLAVLJE III OBJAVA EVROPSKE PRIJAVE PATENTA

Pravilo 67 Tehničke pripreme za objavu

- 1) Predsjednik Evropskog zavoda za patente određuje kada se tehničke pripreme za objavljivanje evropske prijave patenta smatraju završenim.
- 2) Prijava se neće objaviti ako je prije završetka tehničkih priprema za objavu konačnom odlukom odbijena ili povučena ili ako se smatra povučenom.

Pravilo 68 Forma objave evropske prijave patenta i evropskog rešeršnog izvještaja

- 1) Objava evropske prijave patenta sadrži opis, patentne zahtjeve, sve crteže koji su podnijeti i apstrakt ili, ako ova dokumenta koja čine prijavu nijesu podnijeta na službenom jeziku Evropskog zavoda za patente, prevod na jezik postupka i, u prilogu, evropski rešeršni izvještaj, gdje je moguće, prije okončanja tehničkih priprema za objavljivanje. Ako rešeršni izvještaj ili apstrakt nijesu objavljeni u isto vrijeme kad i prijava, biće posebno objavljeni.
- 2) Predsjednik Evropskog zavoda za patente odlučuje o formi objave prijave i podataka koje treba uključiti. Isto se primjenjuje kada se evropski rešeršni izvještaj i apstrakt objavljuju odvojeno.
- 3) U objavljenoj prijavi navode se naznačene države ugovornice.
- 4) Ako patentni zahtjevi nijesu podnijeti na datum podnošenja prijave, ovo će biti naznačeno kada se prijava objavljuje. Ako su prije završetka tehničkih priprema za objavu prijave, promjenjeni patentni zahtjevi prema pravilu 137 stav 2 onda se u objavi, osim prvobitno podnijetih patentnih zahtjeva, navode i novi ili izmjenjeni patentni zahtjevi.

Pravilo 69 Obavještenje o objavi

- 1) Evropski zavod za patente dužan je da podnosioca prijave obavijesti o datumu kada je u Evropskom patentnom biltenu navedena objava evropskog rešeršnog izvještaja i skrene njegovu pažnju na pravilo 70 stav 1, Član 94 stav 2 i pravilo 70a stav 1.
- 2) Ako je u saopštenju na osnovu stava 1 naveden datum objave koji je kasniji od stvarnog datuma objave, onda se kasniji datum uzima kao odlučujući u pogledu rokova navedenih u pravilu 70 stav 1 i pravilu 70a stav 1, izuzev ako se očigledno radi o grešci.

Pravilo 70 Zahtjev za ispitivanje

- 1) Podnosilac prijave može da podnese zahtjev za ispitivanje evropske prijave patenta do šest mjeseci poslije datuma kada Evropski patentni bilten objavi evropski rešeršni izvještaj. Zahtjev ne može da se povuče.
- 2) Ako je zahtjev za ispitivanje podnjet prije nego što je evropski rešeršni izvještaj poslat podnosiocu prijave, Evropski zavod za patente poziva podnosioca prijave da naznači, u određenom roku, da li želi da nastavi postupak po prijavi, i omogućava mu da iznese svoje primjedbe o rešeršnom izvještaju i da, prema potrebi, izmijeni opis, zahtjeve i crteže.
- 3) Ako podnosilac prijave ne odgovori blagovremeno na poziv u smislu stava 2 prijava se smatra povučenom.

POGLAVLJE IV ISPITIVANJE OD STRANE ODSJEKA ZA ISPITIVANJE

Pravilo 70a Odgovor na prošireni evropski rešeršni izvještaj

- 1) U mišljenju koje se prilaže uz evropski rešeršni izvještaj, Evropski patentni zavod dužan je da podnosiocu zahtjeva za ispitivanje omogući da iznese svoje primjedbe na prošireni evropski rešeršni izvještaj i po potrebi ga pozove da ispravi nedostatke iznijete u mišljenju koje se prilaže uz evropski rešeršni izvještaj, te da izmijeni opis, tvrdnje i crteže u roku predviđenom u pravilu 70 stav 1.

2) U slučaju zahtjeva iz pravila 70 stav 2, ili kada se sačini dopunski rešeršni izvještaj u slučaju Euro-PCT zahtjeva, Evropski patentni zavod dužan je da podnosiocu prijave omogući da iznese svoje primjedbe na prošireni evropski rešeršni izvještaj i, ako je potrebno, pozove ga da ispravi nedostatke uočene u mišljenju koje se prilaže uz evropski rešeršni izvještaj, te da izmjeni opis, tvrdnje i crteže u roku naznačenom da se podnosilac izjasni da li želi da nastavi sa prijavom.

3) Ako se podnosilac zahtjeva ne odazove na poziv niti iznese svoje primjedbe u skladu sa stavom 1 ili 2, prijava se smatra povučenom.

Pravilo 70b **Zahtjev za prepis rešeršnog izvještaja**

1) Ako, u vrijeme kad Odsjek za ispitivanje preuzima odgovornost, Evropski patentni zavod izvjesti da podnosilac prijave nije podnio prepis iz pravila 141 stav 1, te da se ne smatra da je prepis uredno podnešen u skladu sa pravilom 141 stav 2, pozvaće podnosioca prijave da u roku od dva mjeseca, dostavi prepis ili izjavu o tome da mu rezultati ispitivanja iz pravila 141, stav 1 nijesu dostupni.

2) Ako podnosilac prijave ne odgovori blagovremeno na poziv iz stava 1, evropska prijava patenta se smatra povučenom.

Pravilo 71 **Postupak ispitivanja**

1) Ako to smatra potrebnim, u svakom saopštenju prema članu 94 stav 3, odsjek za ispitivanje poziva podnosioca prijave da otkloni konstatovane nedostatke i izmijeni opis, patentne zahtjeve i nacрте u predviđenom roku.

2) Svako saopštenje prema članu 94 stav 3 mora sadržati obrazloženu izjavu koja obuhvata sve razloge protiv priznanja evropskog patenta.

3) Prije nego što Odsjek za ispitivanje donese odluku o priznanju evropskog patenta, podnosilac prijave se obavještava o tekstu u kom se izražava namjera priznavanja evropskog patenta i o vezanim bibliografskim podacima. U ovom obavještenju, od podnosioca se zahtjeva da uplati takse za priznanje prava i štampanje i dostavi prevod zahtjeva na dva službena jezika Evropskog zavoda za patente pored jezika postupka u roku od četiri mjeseca.

4) Ako je tekstem o priznanju evropske prijave patenta obuhvaćeno više od petnaest zahtjeva, odsjek za ispitivanje poziva podnosioca prijave da uplati takse za šesnaesti i svaki naredni zahtjev u roku predviđenom u stavu 3, osim ako navedene takse već nijesu uplaćene u skladu s pravilom 45 ili pravilom 162.

5) Ako podnosilac prijave uplati takse iz stava 3 i, prema potrebi, stava 4, i podnese prevode iz stava 3 u roku koji se predviđenom u stavu 3, smatra se da se on saglasio sa dostavljenim saopštenjem u skladu sa stavom 3, te da je verifikovao bibliografske podatke.

6) Ako u roku predviđenom u stavu 3, podnosilac prijave zahtijeva obrazložene izmjene ili ispravku grešaka u vezi sa dostavljenim tekstem ili se drži posljednjeg teksta koji je dostavio, odsjek za ispitivanje izdaje novo saopštenje o saglasnosti u skladu sa stavom 3; u suprotnom se postupak ispitivanja nastavlja.

7) Ako se taksa za priznanje i objavu patenta ili taksa za podnošenje patentnog zahtjeva ne plate u predviđenom roku, ili ako se prevodi ne podnesu blagovremeno, evropska prijava patenta se smatra povučenom.

Pravilo 71a **Zaključenje postupka za priznavanje patenta**

1) Odluka o priznanju evropskog patenta donosi se ako su uplaćene sve takse i ako se dostavi prevod zahtjeva na dva zvanična jezika Evropskog zavoda za patente koji nijesu jezici na kojima se vodi postupak i ako postoji sporazum o tekstu koji se priznaje. U odluci kojom se priznaje evropski patent, navodi se koji tekst evropske prijave patenta koji čini osnov za tu odluku.

2) Do donošenja odluke o priznanju evropskog patenta, odsjek za ispitivanje može u bilo kom trenutku nastaviti postupak ispitivanja.

3) Ako taksa za naznačenje dospijeva poslije obavještenja u skladu sa pravilom 71 stav 3, priznanje evropskog patenta se neće objaviti dok se ne plati taksa za naznačenje. Podnosilac prijave se shodno tome obavještava.

4) Ako taksa za produženje važenja dospijeva poslije obavještenja iz pravila 71 stav 3, a prije narednog mogućeg datuma za objavljivanje navoda o priznanju evropskog patenta, priznanje patenta neće se navesti u objavi sve dok taksa za produženje važenja ne bude uplaćena. Podnosilac prijave se shodno tome obavještava.

5) Ako je na osnovu poziva iz pravila 71 stav 3 podnosilac prijave već platio taksu za priznanje i objavljivanje patenta ili taksu za podnošenje patentnog zahtjeva, uplaćeni iznos će se knjižiti ako se uputi takav poziv.

6) Ako se evropska prijava patenta odbije ili se povuče prije obavještenja o odluci o priznanju evropskog patenta ili se za to vrijeme smatra povučenom, taksa za priznanje i objavu patenta se refundira.

Pravilo 72 **Priznanje evropskog patenta različitim podnosiocima prijave**

Ako je u evropski Registar patenata upisano više različitih lica kao podnosilaca prijave za različite države ugovornice, onda Evropski zavod za patente priznaje evropski patent za svaku državu ugovornicu shodno tome.

Poglavlje V EVROPSKI PATENTNI SPIS

Pravilo 73 Sadržaj i forma evropskog patentnog spisa

- 1) Patentni spis evropskog patenta mora da uključuje opis, patentne zahtjeve i nacrt ako postoji. Na njemu mora da bude naznačen i rok u kome se može uložiti opozicija protiv evropskog patenta.
- 2) Predsjednik Evropskog zavoda za patente određuje formu objave spisa i sadržaj koji treba uključiti.
- 3) Naznačene države ugovornice moraju biti navedene na spisu.

Pravilo 74 Isprava o evropskom patentu

Odmah po objavljivanju evropskog patentnog spisa, Evropski zavod za patente izdaje nosiocu patenta ispravu o evropskom patentu. Predsjednik Evropskog zavoda za patente propisuje sadržaj i način dostavljanja isprave i odlučuje o okolnostima u kojima se plaća administrativna taksa.

Peti dio PROPISI O SPROVOĐENJU PETOG DIJELA KONVENCIJE

Poglavlje I POSTUPAK PO OPOZICIJI

Pravilo 75 Odustanak ili istek patenta

Postupak po opoziciji može se pokrenuti čak i ako se od evropskog patenta odustalo u svim naznačenim državama ugovornicama ili je istekao u svim ovim državama.

Pravilo 76 Forma i sadržina opozicije

- 1) Podnesak kojim se ulaže opozicija mora biti podnjet u pisanoj obliku sa obrazloženjem.
- 2) Podnesak kojim se ulaže opozicija mora da sadrži:
 - a) pojedinosti o podnosiocu opozicije kao što je predviđeno u pravilu 41, stav 2 (c);
 - b) broj evropskog patenta, protiv koga se ulaže opozicija, kao i ime nosioca patenta i naziv pronalaska;
 - c) izjavu o tome u kom obimu se ulaže opozicija protiv evropskog patenta, razloge na koje se oslanja opozicija, kao i činjenice i dokaze iznijete u prilog tih razloga;
 - d) ako je opozicija odredila predstavnika, podatke kao što je predviđeno u pravilu 41, stav 2 (d).
- 3) Dio III Pravilnika o sprovođenju primjenjuje se *mutatis mutandis* i na podnesak kojim se ulaže opozicija.

Pravilo 77 Odbacivanje opozicije kao nedopuštene

- 1) Ako odsjek za opoziciju konstatuje da opozicija nije u skladu sa Članom 99, stav 1 ili pravilom 76, stav 2 (c), ili da ne identifikuje dovoljno evropski patent protiv koga je uložena opozicija, onda odbacuje opoziciju kao nedopuštenu, ukoliko ovi nedostaci ne budu otklonjeni do isteka roka za opoziciju.
- 2) Ako odsjek za opoziciju konstatuje da opozicija nije u skladu sa drugim odredbama, osim onih navedenih u stavu 1, onda on to saopštava podnosiocu opozicije i zahtijeva od njega da otkloni nedostatke u navedenom roku. Ako se nedostaci ne otklone blagovremeno, onda odsjek za opoziciju odbacuje opoziciju kao neprihvatljivu.
- 3) Svaka odluka kojom se opozicija odbija kao neprihvatljiva, saopštava se nosiocu patenta, kome se dostavlja i prepis opozicije.

Pravilo 78**Postupak kada nosilac patenta nije ovlašćen**

- 1) Ako treća strana obezbijedi dokaze, tokom postupka po opoziciji ili u roku za opoziciju, da je on pokrenuo postupak protiv nosioca evropskog patenta, tražeći odluku u smislu Člana 61, stav 1, postupak po opoziciji miruje, osim ako treća strana saopšti Evropskom zavodu za patente u pisanom obliku svoj pristanak da se nastavi takav postupak. Takav pristanak je neopoziv. Međutim, postupak ne miruje dok odsjek za opoziciju ne dođe do zaključka da je opozicija dopustiva. Pravilo 14, stavovi 2 do 4 se primjenjuju *mutatis mutandis*.
- 2) Kada je treća strana, u skladu sa članom 99, stav 4, zamijenila prethodnog nosioca patenta za jednu ili neke naznačene države ugovornice, patent kakav se održi u postupku po opoziciji može, u ovim državama, sadržati zahtjeve, opis i nacрте različite od onih za druge naznačene države.

Pravilo 79**Priprema za ispitivanje opozicije**

- 1) Odsjek za opoziciju dostavlja nosiocu patenta podnesak kojim se ulaže opozicija, i pruža mu mogućnost da dostavi svoj stav i da, gdje to odgovara, izmijeni opis, patentne zahtjeve i nacрте u navedenom roku.
- 2) Ako je uloženo više opozicija, onda ih odsjek za opoziciju saopštava svim podnosiocima opozicija istovremeno sa saopštenjem iz stava 1.
- 3) Odsjek za opoziciju saopštava sve primjedbe i izmjene koje je dostavio nosilac patenta drugim stranama i poziva ih, ukoliko to smatra efikasnim, da odgovore na to u predviđenom roku.
- 4) U slučaju postojanja miješanja u postupak na osnovu Člana 105, odsjek za opoziciju može odustati od primjene stavova 1 do 3.

Pravilo 80**Izmjena evropskog patenta**

Ne prejudicirajući pravilo 138, opis, patentni zahtjevi i nacрти mogu da se izmijene pod uslovom da su izmjene unijete usljed razloga za opoziciju u smislu Člana 100, čak i ako se lice koje je uložilo opoziciju nije pozvalo na taj razlog.

Pravilo 81**Ispitivanje opozicije**

- 1) Odsjek za opoziciju mora da ispita osnove za opoziciju na koje se poziva u izjavi lice koje je uložilo opoziciju na osnovu pravila 76, stav 2 (c). Osnov za opoziciju na koji se nije pozvao podnosilac opozicije može da bude ispitan od strane odsjeka za opoziciju po službenoj dužnosti ako predstavlja prepreku održavanju evropskog patenta.
- 2) Saopštenja na osnovu Člana 101, stav 1, druga rečenica i svi odgovori na to moraju se poslati svim stranama. Ako Odsjek za opoziciju to smatra efikasnim, pozvaće sve strane da odgovore u naznačenom roku.
- 3) U svakom saopštenju na osnovu Člana 101, stav 1, druga rečenica, nosiocu evropskog patenta, gdje god je neophodno, daje se mogućnost da izmijeni opis, patentne zahtjeve i nacрте. Gdje je to neophodno, saopštenje mora da sadrži obrazloženu izjavu koja obuhvata osnov protiv održavanja evropskog patenta.

Pravilo 82**Održavanje evropskog patenta u izmijenjenom obliku**

- 1) Prije nego što odsjek za opoziciju odluči o održavanju u važnosti evropskog patenta u izmijenjenom obliku, on obavještava stranke o tekstu kojim namjerava da održi patent u važnosti i poziva ih da podnesu svoje primjedbe u roku od dva mjeseca ako nijesu saglasni sa tim tekstom.
- 2) Ako neka stranka nije saglasna sa tekstom saopštenim od strane Odsjeka za opoziciju, postupak po opoziciji se može nastaviti. U suprotnom, Odsjek za opoziciju po isteku roka navedenog u stavu 1 zahtijeva od nosioca patenta da plati propisanu taksu i da podnese prevod izmijenjenih patentnih zahtjeva na službene jezike Evropskog zavoda za patente pored jezika postupka, u roku od tri mjeseca. Kada se, u usmenim postupcima, odluke iz člana 106 stav 2 ili člana 111 stav 2 zasnivaju na dokumentima koji nijesu u skladu sa pravilom 49 stav 8, nosilac patenta će biti pozvan da podnese izmijenjeni tekst u formi koja je saglasna sa Pravilom 49 stav 8, u roku od tri mjeseca.
- 3) Ako se radnje, koje su tražene prema stavu 2 ne izvrše blagovremeno, onda one još uvijek mogu biti izvršene još u roku od dva mjeseca nakon dostave obavještenja u kojem se ukazuje na propust roka, pod uslovom da se u tom roku uplati dodatna taksa. U suprotnom, patent će biti poništen.

4) U odluci kojom se evropski patent održava u važnosti u izmijenjenom obliku, navodi se tekst evropskog patenta koji čini osnov za odluku.

Pravilo 83 **Zahtjev za dostavu dokumenta**

Dokumenti na koje se poziva neka stranka u postupku po opoziciji se podnose zajedno sa podneskom kojim se ulaže opozicija ili pisanom dostavom. Ako se takvi dokumenti ne prilože ili ne podnesu u odgovarajućem roku na poziv Evropskog zavoda za patente, može se donijeti odluka da se ne uzimaju u obzir bilo kakvi argumenti koji se na njima zasnivaju.

Pravilo 84 **Nastavak postupka po opoziciji kod Evropskog zavoda za patente službenim putem**

1) Ako je nosilac patenta odustao od evropskog patenta za sve naznačene države ugovornice, ili ako je evropski patent prestao da važi u svim tim državama, onda se postupak po opoziciji može nastaviti na zahtjev podnosioca opozicije, koji se mora podnijeti u roku od dva mjeseca nakon datuma kada je Evropski zavod za patente saopštio podnosiocu opozicije da se od patenta odustalo ili da je prestao da važi.

2) U slučaju smrti ili gubitka poslovne sposobnosti podnosioca opozicije, postupak po opoziciji se može službenim putem nastaviti i bez učešća njegovih nasljednika ili zakonskih zastupnika. Postupak se može nastaviti i ako se povuče opozicija.

Pravilo 85 **Prenos evropskog patenta**

Pravilo 22 se primjenjuje na prenos evropskog patenta za vrijeme trajanja roka za opoziciju ili za vrijeme trajanja postupka po opoziciji.

Pravilo 86 **Dokumenti u postupku po opoziciji**

Propisi iz trećeg dijela Pravilnika o sprovođenju primjenjuju se *mutatis mutandis* na dokumente podnijete u postupku po opoziciji.

Pravilo 87 **Sadržaj i oblik novog spisa evropskog patenta**

Novi spis evropskog patenta uključuje opis, patentne zahtjeve i nacрте, onako kako su izmijenjeni. Pravilo 73, stavovi 2 i 3 i pravilo 74 se primjenjuju.

Pravilo 88 **Troškovi**

1) Troškovi se raspoređuju u odluci o opoziciji. U obzir se uzimaju samo oni troškovi koji su bili neophodni za svrhu očuvanja prava. U troškove se računa i naknada za zastupnike stranaka.

2) Odsjek za opoziciju mora, na zahtjev, da utvrdi iznose troškova koje treba platiti na osnovu konačne odluke kojom se oni dosuđuju. Račun sa troškovima, uz dokaz koji ih podržava, biće priključen zahtjevu. Troškovi mogu biti utvrđeni kada se utvrdi njihova vjerodostojnost.

3) Zahtjev za odluku Odsjeka za opoziciju može se podnijeti u roku od mjesec dana od dostave obavještenja o utvrđenju troškova u smislu stava 2. Zahtjev, mora biti podnjet pisanim putem i osnov na kome se zasniva mora biti naveden. Zahtjev se smatra podnešenim kada je plaćena propisana taksa.

4) Odsjek za opoziciju odlučuje o zahtjevu na osnovu stava 3 bez usmene rasprave.

Pravilo 89 **Intervencija pretpostavljenog prekršioca prava**

1) Obavještenje o intervenciji se podnosi u roku od tri mjeseca od datuma kada je započeo postupak naveden u Članu 105.

2) Obavještenje o intervenciji podnosi se sa pisanim obrazloženjem; pravila 76 i 77 se primjenjuju *mutatis mutandis*. Obavještenje o intervenciji se ne smatra podnijetim dok se ne plati taksa za opoziciju.

Poglavlje II **POSTUPAK ZA OGRANIČENJE ILI OGLAŠAVANJE NIŠTAVIM**

Pravilo 90 Predmet postupka

Predmet postupka ograničenja ili oglašavanja ništavim na osnovu Člana 105a je evropski patent kakav je priznat ili izmijenjen u postupku po opoziciji ili postupku za ograničenje pred Evropskim zavodom za patente.

Pravilo 91 Odgovornost za postupak

Odluke na zahtjeve za ograničenje ili oglašavanje ništavim evropskog patenta na osnovu Člana 105a mora donijeti Odsjek za ispitivanje. Član 18, stav 2 primjenjuje se *mutatis mutandis*.

Pravilo 92 Uslovi u pogledu zahtjeva

1) Zahtjev za ograničenje ili oglašavanje ništavim evropskog patenta podnosi se pisanim putem na jednom od službenih jezika Evropskog zavoda za patente. Zahtjev takođe može biti podnjet na službenom jeziku države ugovornice, pod uslovom da je prevod podnjet na jednom od službenih jezika Evropskog zavoda za patente u roku navedenom u pravilu 6 stav 2. Dio III Pravilnika o sprovođenju primjenjuje se *mutatis mutandis* na dokumenta podnijeta u postupku za ograničenje ili oglašavanje ništavim.

2) Zahtjev mora da sadrži:

- a) podatke o nosiocu evropskog patenta koji podnosi zahtjev (tražilac) kao što je predviđeno u pravilu 41, stav 2 (c) i naznaku država ugovornica u kojima je tražilac nosilac patenta;
- b) broj patenta čije se ograničenje ili oglašavanje zahtjeva ništavim i listu država ugovornica u kojima je patent stupio na snagu;
- c) gdje to odgovara, imena i adrese nosilaca patenta za one države ugovornice u kojima tražilac nije vlasnik patenta i dokaz da tražilac ima pravo da nastupa u njihovo ime u postupku;
- d) gdje se zahtjeva ograničenje patenta, potpuna verzija izmijenjenih patentnih zahtjeva i, zavisno od slučaja, izmijenjeni opis i nacrti;
- e) kada je tražilac imenovao zastupnika, podaci kao što je predviđeno u pravilu 41, stav 2 (d).

Pravilo 93 Prednost postupka po opoziciji

1) Zahtjev za ograničenje ili oglašavanje ništavim neće se smatrati podnijetim ako postupak po opoziciji za taj patent nije okončan u trenutku podnošenja zahtjeva.

2) Ako, u trenutku podnošenja opozicije za evropski patent, nije okončan postupak za ograničenje u pogledu tog patenta, Odsjek za ispitivanje mora da okonča postupak za ograničenje i naredi naknadu takse za ograničenje. Naknada će takođe biti dosuđena za taksu navedenu u pravilu 95, stav 3, prva rečenica, ako je tražilac već platio ovu taksu.

Pravilo 94 Odbacivanje zahtjeva kao nedopustivog

Ako Odsjek za ispitivanje dođe do zaključka da zahtjev za ograničenje ili oglašavanje ništavim ne ispunjava zahtjeve iz pravila 92, poziva tražioca da ispravi primjećene nedostatke u navedenom roku. Ako se nedostaci ne isprave blagovremeno, Odsjek za ispitivanje odbija zahtjev kao nedopustiv.

Pravilo 95 Odluka o zahtjevu

1) Ako je zahtjev za oglašavanje ništavim dopustiv, Odsjek za ispitivanje oglašava patent ništavim i saopštava to tražiocu.

2) Ako je zahtjev za ograničenje dopustiv, odsjek za ispitivanje ispituje da li izmijenjeni patentni zahtjevi predstavljaju ograničenje imajući u vidu patentne zahtjeve kakvi su priznati ili izmijenjeni u postupku po opoziciji ili postupku za ograničenje i u skladu sa članom 84 i članom 123, stavovi 2 i 3. Ako zahtjev nije u skladu sa ovim uslovima, Odsjek za ispitivanje pruža tražiocu jednu mogućnost da ispravi sve primjećene nedostatke i da izmijeni patentne zahtjeve, i, kada je to odgovarajuće, opis i nacrti u predviđenom roku.

3) Ako je zahtjev za ograničenje dopustiv na osnovu stava 2, odsjek za ispitivanje saopštava ovo tražiocu i poziva ga da plati propisanu taksu i da podnese prevod izmijenjenih patentnih zahtjeva na službene jezike Evropskog zavoda za patente pored jezika postupka, u roku od tri mjeseca; pravilo 82, stav 3, prva rečenica se primjenjuje *mutatis mutandis*. Ako tražilac blagovremeno obavi ove radnje, odsjek za ispitivanje ograničava patent.

4) Ako tražilac ne odgovori blagovremeno na saopštenje izdato u smislu stava 2, ili ako zahtjev za ograničenje nije dopustiv, ili ako tražilac ne obavi blagovremeno radnje zahtijevane na osnovu stava 3, Odsjek za ispitivanje odbacuje zahtjev.

Pravilo 96
Sadržaj i oblik izmijenjenog spisa evropskog patenta

Izmijenjeni spis evropskog patenta uključuje opis, patentne zahtjeve i nacрте како су измijenjeni. Pravilo 73, stav 2 i 3 i pravilo 74 се примjenjuju.

Šesti dio
PROPISI O SPROVOĐENJU ŠESTOG DIJELA KONVENCIJE

Poglavlje I
ŽALBENI POSTUPAK

Pravilo 97
Žalba protiv dodjeljivanja i utvrđivanja troškova

- 1) Dodjeljivanje troškova u postupku po opoziciji ne može biti jedini predmet žalbe.
- 2) Protiv odluke kojom се određuje iznos troškova iz postupka po opoziciji ne može се uložiti žalba osim ako svota prelazi iznos takse za žalbu.

Pravilo 98
Odustanak ili istek patenta

Protiv odluke odsjeka za opoziciju može се uložiti žalba čak i ako се odustalo od evropskog patenta u svim naznačenim državama ugovornicama ili ako је on istekao u svim tim državama.

Pravilo 99
Sadržina žalbe i obrazloženje

- 1) Žalba sadrži:
 - a) ime i adresu žalioca, shodno pravilu 41, stav 2 (c);
 - b) naznaku odluke koja се napada, i
 - c) zahtjev u kome се definiše predmet žalbe.
- 2) U obrazloženju žalbe, žalilac mora да наведе разлоге odbacivanja odluke koja се napada, ili obim u kome bi trebalo да она bude izmijenjena, kao i činjenice i dokaze na kojima се žalba zasniva.
- 3) Dio III Pravilnika o sprovođenju primjenjuje се *mutatis mutandis* на žalbu, obrazloženje i dokumenta podnijeta u žalbenom postupku.

Pravilo 100
Ispitivanje žalbe

- 1) Ukoliko nije određeno drugačije, одредбе koje се оnose на поступак pred organom koji је donio odluku napadnutu žalбом, primjenjuju се u žalbenom postupku.
- 2) U postupku ispitivanja žalbe, žalbeno vijeće poziva strane, koliko је god potrebno, да dostave primjedbe, u naznačenom roku, o saopštenjima koje је izdalo ili primjedbama koje је podnijela druga strana.
- 3) Ako podnosilac prijave ne uspije да одговори blagovremeno на позив на основу stava 2, evropska prijava patenta smatra се povučenom, osim ako napadnutu odluku preuzme pravno одjeljenje.

Pravilo 101
Odbacivanje žalbe kao nedopuštene

- 1) Ako žalba nije u skladu sa članovima 106 do 108 kao i sa pravilom 97 ili pravilom 99, stav 1 (b) ili (c) ili stav 2, onda је žalbeno vijeće odbija kao nedopuštenu, osim ukoliko nijesu otklonjeni njeni nedostaci prije isteka relevantnog roka određenog u članu 108.
- 2) Ako žalbeno vijeće utvrdi да žalba nije u skladu sa pravilom 99, stav 1 (a), onda оно to saopštava podnosiocu žalbe i traži od njega да, u predviđenom roku, otkloni utvrđene nedostatke. Ako се nedostaci ne otklone blagovremeno, žalbeno vijeće odbija žalbu kao nedopuštenu.

Pravilo 102 **Forma odluke žalbenog vijeća**

Odluku ovjerava predsjednik žalbenog vijeća i nadležni službenik sekretarijata žalbenog vijeća potpisom ili na drugi adekvatan način. Odluka sadrži:

- a) konstataciju da je izdata od strane žalbenog vijeća;
- b) datum donošenja odluke;
- c) imena predsjednika i ostalih članova žalbenog vijeća koji su učestvovali u donošenju odluke;
- d) imena stranaka i njihovih zastupnika;
- e) zahtjeve stranaka;
- f) kratak prikaz činjeničnog stanja;
- g) razloge za donošenje odluke;
- h) naredbu žalbenog vijeća, uključujući, ako je potrebno, odluku o troškovima.

Pravilo 103 **Naknada za žalbu**

1) Naknada za žalbu se vraća u cjelosti:

- a) u slučaju međusobne revizije ili ako ukoliko žalbeno vijeće smatra da je žalba dopuštena, ako je takav povraćaj pravičan iz znatne povrede postupka, ili
- b) ako se žalba povuče prije podnošenja izjave o žalbi i prije isteka roka za podnošenje te izjave.

2) Naknada za žalbu nadoknađuje se u visini od 75% ako se, kao odgovor na obavještenje žalbenog vijeća u kome se navodi da namjerava da započne suštinsko ispitivanje žalbe, žalba povuče u roku od dva mjeseca od dostave tog saopštenja.

3) Naknada za žalbu nadoknađuje se u visini 50% ako je žalba povučena nakon isteka roka iz stava 1 (b), pod uslovom da se povlačenje dogodi:

- a) ako je određen datum usmenog postupka, u roku od mjesec dana od dostave saopštenja koje je izdalo žalbeno vijeće u pripremi za ove usmene postupke;
- b) ako nije određen datum usmenog postupka, a žalbeno vijeće je izdalo saopštenje kojim poziva žalioca da podnese svoja zapažanja, prije isteka roka koji je odredio Vijeće za podnošenje zapažanja;
- c) u svim ostalim slučajevima prije donošenja odluke.

4) Naknada za žalbu nadoknađuje se u visini od 25%

- a) ako se žalba povuče nakon isteka roka iz stava 3 (a), ali prije nego što se odluka objavi u usmenom postupku;
- b) ako je žalba povučena nakon isteka roka iz stava 3 (b), ali prije donošenja odluke;
- c) ako se neki zahtjev za usmeni postupak povuče u roku od mjesec dana od dostave saopštenja koje je izdalo vijeće za žalbe u pripremi za usmeni postupak, i ne usmjerava se usmeni postupak.

5) Naknada za žalbu nadoknađuje se prema samo jednoj od gore navedenih odredaba. Kada se primjenjuje više od jedne stope nadoknade, nadoknada će biti po višoj stopi.

6) Odjeljenje čija se odluka pobija, određuje naknadu ukoliko revidira svoju odluku i smatra da je nadoknada pravična zbog značajne povrede postupka. U svim ostalim slučajevima, o pitanjima nadoknade odlučuje vijeće za žalbe.

Poglavlje II **MOLBA ZA REVIZIJU OD STRANE VELIKOG ŽALBENOG VIJEĆA**

Pravilo 104 **Dalji fundamentalni proceduralni nedostaci**

Fundamentalni proceduralni nedostaci na osnovu Člana 112 a stav 2 (d), mogli su se dogoditi ako žalbeno vijeće

- a) u suprotnosti sa Članom 116 ne uspije da ugovori održavanje usmenog postupka koji zahtijeva tražilac, ili
- b) donese odluku o žalbi bez odluke po zahtjevu relevantnom za tu odluku.

Pravilo 105 **Nezakonita djela**

Molba za reviziju može biti zasnovana na Članu 112 a, stav 2 (e), ako je nadležan sud ili organ konačno ustanovio da je došlo do nezakonitog djela; presuda nije neophodna.

Pravilo 106 **Obaveza da se izjavi opozicija**

Molba na osnovu Člana 112 a, stav 2 (a) do (d) je dopuštena samo kada se opozicija u pogledu proceduralne nepravilnosti izjavi tokom postupka po žalbi i odbaci se od strane žalbenog vijeća, izuzev u slučajevima kada takva opozicija ne bi mogla biti izjavljena tokom žalbenog postupka.

Pravilo 107 **Sadržaj molbe za reviziju**

1) Molba mora da sadrži:

a) ime i adresu podnosioca molbe kao što je predviđeno u pravilu 41, stav 2 (c);
b) navođenje odluke koju treba revidirati.

2) U molbi se moraju navesti razlozi za odbacivanje odluke žalbenog vijeća i činjenice i dokazi na kojima se temelji takva molba.

3) Dio III Pravilnika o sprovođenju primjenjuje se *mutatis mutandis* na molbu za reviziju i dokumenta podnijeta u tom postupku.

Pravilo 108 **Ispitivanje molbe**

1) Ako molba ne ispunjava uslove iz člana 112a, stavova 1, 2, ili 4, pravila 106 ili 107, stav 1 (b) ili 2, Veliko žalbeno vijeće je odbacuje kao nedopustivu, osim ako se svi propusti ne isprave prije isteka relevantnog roka na osnovu člana 112 a, stav 4.

2) Ako Veliko žalbeno vijeće primijeti da molba ne ispunjava uslove iz pravila 107, stav 1 (a), on saopštava ovo podnosiocu molbe i poziva ga da ispravi primijećene nedostatke u navedenom roku. Ako se nedostaci ne isprave blagovremeno, Veliko žalbeno vijeće odbija molbu kao nedopustivu.

3) Ako je molba dopustiva, Veliko žalbeno vijeće odbacuje odluku žalbenog vijeća i naređuje ponovno pokretanje postupka pred nadležnim žalbenim vijećem u smislu pravila 12b, stav 4. Veliko žalbeno vijeće može da naredi da se članovi žalbenog vijeća koji su učestvovali u donošenju odbačene odluke zamijene drugim.

Pravilo 109 **Postupak sa molbama za reviziju**

1) U postupku na osnovu člana 112a, primjenjuju se odredbe koje se tiču postupka pred žalbenim vijećem, osim kada je drugačije predviđeno. Pravilo 115, stav 1, druga rečenica, pravilo 118, stav 2, prva rečenica i pravilo 132, stav 2, se ne primjenjuju. Veliko žalbeno vijeće može da odredi rok koji odstupa od pravila 4, stav 1, prva rečenica.

2) Veliko žalbeno vijeće

a) koje se sastoji od dva člana pravnika i jednog tehničkog lica ispituje sve molbe za reviziju i odbacuje one koje su jasno nedopustive ili neprihvatljive; za takvu odluku potrebna je jednoglasnost;

b) koje se sastoji od četiri pravnika i jednog tehničkog lica odlučuje o svakoj molbi koja nije odbačena na osnovu podstava (a).

3) Veliko žalbeno vijeće sastavljeno u skladu sa stavom 2 (a) odlučuje bez uključjenja drugih strana i na osnovu molbe.

Pravilo 110 **Naknada taksi za molbe za reviziju**

Veliko žalbeno vijeće narediće naknadu takse za molbu za reviziju ako se ponovo otvara postupak pred žalbenim vijećem.

Sedmi dio **PROPISI O SPROVOĐENJU SEDMOG DIJELA KONVENCIJE**

Poglavlje I **Odluke i saopštenja evropskog zavoda za patente**

Pravilo 111 **Forma odluka**

1) Ako se održava usmena rasprava pred Evropskim zavodom za patente, onda se odluka može usmeno izricati. Ta odluka se, kasnije, sastavlja i u pisanom obliku dostavlja strankama.

2) Odluke Evropskog zavoda za patente protiv kojih se može izjaviti žalba, moraju biti obrazložene i sa poukom o tome da je dopuštena žalba protiv odluke i strankama se skreće pažnja na članove 106 do 108, čiji se tekstovi moraju dostaviti. Stranke ne mogu zasnivati nikakva prava iz propusta pouke.

Pravilo 112 **Konstatovanje gubitka prava**

- 1) Ако Evropski zavod za patente primijeti da je nastupio gubitak prava, a da nije donešena odluka o odbijanju evropske prijave patenta ili o priznanju patenta, o oglašavanju ništavim ili održavanju u važnosti evropskog patenta, ili o pribavljanju dokaza, onda on to saopštava zainteresovanim licima.
- 2) Ako zainteresovano lice smatra da nije tačna konstatacija Evropskog zavoda za patente, onda ono može u roku od dva mjeseca nakon dostave saopštenja iz stava 1 zatražiti odluku po ovom pitanju. Evropski zavod za patente će donijeti takvu odluku samo onda, ako ne dijeli mišljenje podnosioca zahtjeva; u suprotnom, samo obavještava podnosioca zahtjeva.

Pravilo 113

Potpis, ime, službeni pečat

- 1) Odluke, pozivi i saopštenja Evropskog zavoda za patente moraju biti snabdjeveni potpisom i imenom nadležnog službenika.
- 2) Ako nadležni službenik izrađuje spise navedene u stavu 1 uz pomoć računara, onda se potpis može zamijeniti službenim pečatom. Ako se ti spisi izrađuju automatski računarom, onda može izostati i ime nadležnog službenika. To važi i za unaprijed štampana tipska obavještenja i saopštenja.

Poglavlje II

PRIMJEDBE TREĆIH STRANA

Pravilo 114

Primjedbe trećih strana

- 1) Sve primjedbe treće strane moraju biti podnijete u pisanom obliku na nekom od službenih jezika Evropskog zavoda za patente i navesti osnov na kome se zasnivaju. Primjenjuje se pravilo 3, stav 3.
- 2) Sve takve primjedbe moraju se saopštiti podnosiocu prijave ili nosiocu patenta, koji može da odgovori na njih.

Poglavlje III

USMENA RASPRAVA I DOKAZIVANJE

Pravilo 115

Poziv na usmenu raspravu

- 1) Stranke se pozivaju na usmenu raspravu na osnovu Člana 116, uz ukazivanje na stav 2 ovog pravila. Rok za poziv iznosi najmanje dva mjeseca, ukoliko stranke nijesu saglasne sa nekim kraćim rokom.
- 2) Ako neka uredno pozvana strana nije došla na usmenu raspravu pred Evropskim zavodom za patente, onda se postupak može nastaviti bez te strane.

Pravilo 116

Priprema usmenog postupka

- 1) Kada šalje pozive, Evropski zavod za patente skreće pažnju na pitanja o kojima treba diskutovati, po njegovom mišljenju, u svrhe donošenja odluke. Istovremeno se određuje konačni rok za slanje pismenih podnesaka u pripremi saslušanja stranaka. Pravilo 132 se ne primjenjuje. O novim činjenicama i dokazima podnijetim poslije tog datuma se ne mora raspravljati, osim ako su dopušteni na temelju činjenice da se promenio predmet postupka.
- 2) Ako je podnosilac prijave ili nosilac patenta obaviješten o osnovu koji prejudicira priznanje ili održavanje patenta, on može biti pozvan da podnese, do datuma navedenog u stavu 1, druga rečenica, dokumenta koja ispunjavaju zahtjeve iz Konvencije. Stav 1, treća i četvrta rečenica se primjenjuju *mutatis mutandis*.

Pravilo 117

Odluka o izvođenju dokaza

Ako Evropski zavod za patente smatra da je potrebno da sasluša stranku, svjedoka ili vještaka, ili da izvrši izvođenje dokaza, onda on donosi odluku o tome, u kojoj se navodi postupak izvođenja dokaza koji namjerava da sprovede, relevantne činjenice koje treba dokazati, datum, vrijeme i mjesto istrage, kao i da li će biti sproveden putem video konferencije. Ako saslušanje svjedoka ili vještaka zahtijeva neka stranka, u odluci je potrebno navesti period u okviru koga stranka koja je podnijela zahtjev mora objaviti ime i adresu bilo kog svjedoka ili vještaka o kojima se radi.

Pravilo 118

Poziv za izvođenje dokaza pred Evropskim zavodom za patente

- 1) Poziv za izvođenje dokaza pred Evropskim zavodom za patente izdaje se stranama u postupku, svjedocima i vještacima kojih se tiče.

- 2) Rok za poziv stranaka, svjedoka ili vještaka da svjedoče iznosi najmanje dva mjeseca, osim ukoliko su dogovorili neki kraći rok. Poziv mora sadržati:
- Izvod iz odluke na osnovu pravila 117, gdje su naznačeni dan, čas i mjesto izvođenja naloženog dokaznog postupka, uz navođenje da li će postupak biti sproveden putem video konferencije i navođenje činjenica u vezi sa strankama, svjedocima ili vještacima koje je potrebno saslušati;
 - Imena strana i pojedivosti prava koja pripadaju svjedocima ili vještacima prema pravilu 122, stavovi 2 do 4;
 - Naznaku da stranka, svjedok ili vještak koji su pozvani da se pojave pred Evropskim zavodom za patente u njegovim prostorijama, mogu, na zahtjev, biti saslušani putem video konferencije;
 - Naznaku da stranka, svjedok ili vještak mogu da zahtijevaju saslušanje pred nadležnim sudom države gdje imaju mjesto boravka, na osnovu pravila 120, kao i poziv da saopšti Evropskom zavodu za patente, u navedenom roku, da li je spreman da se pred njim pojavi.

Pravilo 119

Ispitivanje dokaza pred Evropskim zavodom za patente

- Odsjek za ispitivanje, odsjek za opoziciju ili žalbeno vijeće mogu zadužiti jednog od svojih članova da ispita iznijete dokaze.
- Stranama u postupku, svjedocima ili vještacima će prije njihovog saslušanja biti ukazano na to da Evropski zavod za patente može zamoliti nadležni sud u njihovom mjestu boravka da ponovi njihovo saslušanje pod zakletvom ili na jednako obavezujući način.
- Stranke mogu da prisustvuju dokaznom postupku i upućuju svrsishodna pitanja strani u postupku, svjedoku ili vještaku koji se saslušava.

Pravilo 120

Saslušanje pred nadležnim nacionalnim sudom

- Strana u postupku, svjedok ili vještak koji je pozvan da dođe u Evropski zavod za patente može od njega zahtijevati dozvolu da ga sasluša nadležni sudski organ države na čijoj teritoriji prebiva. Ako se ovo zahtijeva, ili ako nije primljen odgovor u naznačenom roku u pozivu, Evropski zavod za patente može, u skladu sa Članom 131, stav 2, tražiti od nadležnog suda da uzme izjavu od dotičnog lica.
- Ako je strana u postupku, svjedok ili vještak dao izjavu kod Evropskog zavoda za patente, ovaj može, ako smatra potrebnim da izjava bude data pod zakletvom ili u drugom obavezujućem obliku, izdati zahtjev na osnovu člana 131, stav 2, u kome traži od nadležnog sudskog organa države na čijoj teritoriji prebiva dotično lice da ponovo sasluša njegovo svjedočenje pod ovim okolnostima.
- Ako Evropski zavod za patente traži od nadležnog suda da uzme izjavu, može zahtijevati od suda da tu izjavu uzme pod zakletvom ili u drugom obavezujućem obliku i da dozvoli jednom od članova instance u pitanju da prisustvuje saslušanju i postavlja pitanja strani u postupku, svjedoku ili vještaku, bilo posredstvom suda ili neposredno.

Pravilo 121

Vještačenje

- Evropski zavod za patente odlučuje u kojem obliku će vještak, koga on ovlasti, izraziti svoje mišljenje.
- Nalog vještaka mora sadržati:
 - tačan opis naloga;
 - rok naznačen u pozivu za izradu mišljenja;
 - naznačenje stranaka u postupku;
 - uputstvo o pravima koja mu pripadaju prema pravilu 122, stavovi 2 do 4.
- Stranke dobijaju primjerak pisanog mišljenja vještaka.
- Stranke mogu da ne prihvate vještaka. O neprihvatanju vještaka odlučuje organ Evropskog zavoda za patente koji je nadležan za davanje naloga vještaku.

Pravilo 122

Troškovi dokaznog postupka

- Evropski zavod za patente može učiniti dokazni postupak zavisnim od toga da li je stranka, koja ga zatraži, deponovala kod njega akontaciju, čija se visina određuje putem procjene budućih troškova.

- 2) Svjedoci ili vještaci koje pozove Evropski zavod za patente i koji se pojave pred njim, imaju pravo na odgovarajuću naknadu troškova puta i boravka. Njima se može dati akontacija za te troškove. Ovo se takođe primjenjuje i na svjedoke i vještake koji se bez poziva pojave pred Evropskim zavodom za patente i bivaju saslušani kao svjedoci ili vještaci.
- 3) Svjedoci kojima pripada pravo na naknadu prema stavu 2 imaju pravo na primjerenu naknadu izgubljene zarade; vještaci imaju pravo na naknadu za svoju djelatnost. Ova plaćanja se vrše svjedocima i vještacima tek pošto su oni izvršili svoje dužnosti ili zadatke.
- 4) Upravni savjet utvrđuje pojedinosti za primjenu stavova 2 i 3. Evropski zavod za patente isplaćuje sve iznose dospjele prema stavovima 2 i 3.

Pravilo 123

Obezbjeđenje dokaza

- 1) Na zahtjev, Evropski zavod za patente može smjesta da preduzme mjere da sačuva dokaze činjenica koje mogu uticati na odluku koja se odnosi na evropsku patentnu prijavu ili na evropski patent ukoliko postoji bojazan da će naknadno biti teže ili nemoguće izvesti dokaze. Datum dokaznog postupka mora se podnosiocu prijave ili nosiocu patenta saopštiti blagovremeno, tako da on može da učestvuje u njemu. On može da postavlja relevantna pitanja.
- 2) Zahtjev mora sadržati:
 - a) podatke o podnosiocu zahtjeva kao što je predviđeno u pravilu 41, stav 2 (c).
 - b) dovoljnu identifikaciju evropske patentne prijave ili evropskog patenta;
 - c) navod činjenica koje treba dokazati;
 - d) naznačenje dokaznog sredstva;
 - e) navod razloga koji čine opravdanom bojazan da će dokazni postupak u nekom kasnijem trenutku biti otežan ili onemogućen.
- 3) Smatra se da zahtjev nije podnešen ako nije plaćena propisana taksa.
- 4) Za odluku o zahtjevu, kao i za dokazni postupak koji uslijedi nakon toga nadležan je onaj organ Evropskog zavoda za patente, koji treba da donese odluku za koju bi mogle biti od značaja činjenice koje treba dokazati. Isto tako se primjenjuju odredbe o dokaznom postupku u postupcima pred Evropskim zavodom za patente.

Pravilo 124

Zapisnik o usmenoj raspravi i dokaznom postupku

- 1) O usmenoj raspravi ili dokaznom postupku pravi se zapisnik koji mora sadržati suštinu usmene rasprave ili dokaznog postupka, pravno relevantne izjave stranaka i iskaze stranaka, svjedoka ili vještaka, kao i rezultat uviđaja na licu mjesta.
- 2) Zapisnik o iskazu svjedoka, vještaka ili stranke mora tim licima biti pročitani ili dat na uvid tako da ga mogu ispitati ili, kada je snimljen tehničkim sredstvima, mora biti prikazan, osim ako se oni ne odreknu tog prava. U zapisniku se navodi da je on sačinjen i odobren od strane lica koje je dalo iskaz. Ako neko lice ne odobri zapisnik, onda se pravi zabilješka o prigovoru. Nije neophodno prikazati zapisnik ili dobiti odobrenje za njega ako je svjedočenje zabilježeno doslovno i direktno korišćenjem tehničkog sredstva.
- 3) Zapisnik potpisuje službenik koji ga je sačinio i službenik koji je vodio usmenu raspravu ili dokazni postupak.
- 4) Stranke dobijaju prepis zapisnika.

Poglavlje IV

DOSTAVE

Pravilo 125

Opšte odredbe

- 1) Evropski zavod za patente, kao dio standardne procedure, obavještava stranke koje su zainteresovane za odluke i pozive, kao i za sva obavještenja ili druga saopštenja iz kojih se računa vremenski rok, ili o kojima dotični treba da budu obaviješteni na osnovu Konvencije ili dostave koje je naredio predsjednik Evropskog zavoda za patente. Dostavljaju se originalni dokumenti, ili prepis tog dokumenta ovjeren od strane Evropskog zavoda za patente ili snabdjeven službenim pečatom, ili primjerak odštampan sa računara, snabdjeven službenim pečatom ili elektronski dokument, snabdjeven takvim pečatom ili koji je ovjeren na neki drugi način. Kopije dokumenata koje podnose stranke, ne moraju biti ovjerene.
- 2) Dostava se vrši:
 - a) poštom u skladu sa pravilom 126;
 - b) sredstvima elektronske komunikacije u skladu sa pravilom 127;
 - c) predajom u prostorijama Evropskog zavoda za patente u skladu sa pravilom 128 ili
 - d) javnim obavještavanjem, u skladu sa pravilom 129.
- 3) Dostava posredstvom centralnog zavoda za industrijsku svojinu jedne od država ugovornica vrši se prema zakonu koji taj zavod primjenjuje u nacionalnom postupku.
- 4) Tamo gdje je dokument stigao do primaoca, ako Evropski zavod za patente ne može da dokaže valjanu dostavu dokumenta, ili ako je spis dostavljen uz povredu propisa o dostavi, onda dokument važi kao dostavljen onoga dana koji Evropski zavod za patente odredi kao dan dostave.

Pravilo 126

Dostava poštom

- 1) Sve dostave putem poštanskih usluga vrše se preporučenim pismom.
- 2) Kada se dostava sprovede u skladu sa stavom 1, takvo pismo se smatra isporučenim na adresovanog desetog dana poslije slanja, osim ako ne stigne uopšte na adresu primaoca ili stigne do njega nekog kasnijeg datuma; u slučaju bilo kakvog spora, obaveza je Evropskog zavoda za patente da ustanovi da je pismo stiglo na odredište ili da utvrdi datum kada je pismo isporučeno primaocu, zavisno od slučaja.
- 3) Dostava u skladu sa stavom 1 čak i ako je odbijen prijem pisma.
- 4) Ukoliko dostava poštom nije regulisana stavovima 1 do 3, primjenjuje se pravo države na čijoj teritoriji se vrši dostava.

Pravilo 127

Dostava sredstvima elektronske komunikacije

- 1) Dostava može biti sprovedena putem elektronske komunikacije koju odredi predsjednik Evropskog zavoda za patente i pod uslovima koje on odredi.
- 2) Ako se dostava vrši sredstvima elektronske komunikacije, smatra se da je elektronski dokument dostavljen primaocu desetog dana od datuma slanja, osim ako dokument nije stigao do odredišta ili je stigao na odredište sa kašnjenjem; u slučaju bilo kakvog spora, obaveza Evropskog zavoda za patente je da ustanovi da je elektronski dokument stigao na odredište ili da utvrdi datum kada je stigao na odredište, zavisno od slučaja.

Pravilo 128

Dostava neposrednom predajom

Dostava se može izvršiti u službenim prostorijama Evropskog zavoda za patente neposrednom predajom dokumenata primaocu koji, pri tom, mora da potvrdi prijem. Dostava se smatra sprovedenom i onda kada primalac odbije prijem dokumenta ili potvrđivanje prijema.

Pravilo 129

Javno obavještenje

- 1) Ako se adresa primaoca ne može utvrditi, ili ako se dokaže da je nemoguća dostava u skladu sa pravilom 126, stav 1, čak i poslije drugog pokušaja, dostava će se izvršiti putem javnog obavještanja.
- 2) Predsjednik Evropskog zavoda za patente određuje na koji način će se vršiti javno obavještanje i kada počinje da teče rok od mjesec dana nakon čijeg isteka dokument važi kao dostavljen.

Pravilo 130

Dostava zastupnicima

- 1) Ako je postavljen zastupnik, onda se dostava adresira zastupniku.
- 2) Ako je postavljeno više zastupnika za jednu stranku, onda je dovoljna dostava jednom od njih.
- 3) Ako više stranaka ima zajedničkog zastupnika, onda je dovoljna dostava samo jednog dokumenta zajedničkom zastupniku.

Poglavlje V

ROKOVI

Pravilo 131

Računanje rokova

- 1) Rokovi se računaju u cijelim godinama, mjesecima, nedjeljama ili danima.
- 2) Računanje rokova počinje od dana koji dolazi nakon datuma kada se odigrao događaj koji je relevantan za početak roka; taj događaj može da bude neka radnja u postupku ili istek nekog ranijeg roka. Ako se radnja u postupku sastoji u dostavi dokumenta, onda je mjerodavan događaj prispjeća dostavljenog dokumenta, ukoliko nije određeno drugačije.
- 3) Ako je kao rok utvrđena jedna godina ili neki broj godina, onda se rok završava u odgovarajućoj narednoj godini, u mjesecu i na dan koji svojim imenom ili brojem odgovaraju mjesecu i danu kada je nastupio događaj; ako odgovarajući mjesec nema dan sa odgovarajućim datumom, onda rok ističe posljednjeg dana tog mjeseca.
- 4) Ako je kao rok određen jedan mjesec ili nekoliko mjeseci, onda se rok završava u odgovarajućem narednom mjesecu, onoga dana koji svojim brojem odgovara danu kada je nastupio događaj; ako odgovarajući mjesec nema dan sa odgovarajućim datumom onda rok ističe posljednjeg dana tog mjeseca.

5) Ако је као рок одређена недjelja или неколико недjelja, онда се рок завршава у одговарајућој наредној недjelji, оног дана који својим именом одговара дану када је наступио догађај.

Pravilo 132

Rokovi koje je predvidio Evropski zavod za patente

- 1) Ако се у Конвенцији или у Правилнику о спровођењу поминје рок наведен као „предвиђени рок“ овај рок мора да утврди Европски завод за patente.
- 2) Осим када је другачије одређено, рок који треба да утврди Европски завод за patente, не смије бити краћи од два мјесеца, нити дужи од четири мјесеца; ако се ради о посебним околностима, рок може да буде до шест мјесеци. У посебним случајевима рок се може на основу захтјева продужити, под условом да се захтјев поднесе прије истека тог рока.

Pravilo 133

Kasniji prijem dokumenata

- 1) Документ који је касно стигао у Европски завод за patente, сматраће се као да је стигао благовремено, ако је послат или испоручен одговарајућој поштанској служби прије истека рока у складу са условима које propisuje predsjednik Evropskog zavoda za patente, осим ако је документ прispio са више од три мјесеца закашњења по истеку тог рока.
- 2) Став 1 се примjenjuje *mutatis mutandis* на сваки рок за радње које су извршене код надлежног органа у складу са чланом 75, ставови 1 (b) или 2 (b).

Pravilo 134

Produžavanje rokova

- 1) Ако рок истиче оног дана када служба за пријем Evropskog zavoda za patente, у смислу правила 35, став 1, није отворена за пријем докумената, или када обичне поштанске пошиљке из било којег разлога, изузев оних наведених у ставу 2, не буду достављене, рок се продужава до првог слjедећег дана када су отворене све службе за пријем докумената и када се достављају обичне поштанске пошиљке. Прва реченица се примjenjuje *mutatis mutandis* ако не могу да се prime dokumenta podnijeta sredstvima elektronske komunikacije које odobrava predsjednik Evropskog zavoda za patente на основу правила 2, став 1.
- 2) Ако рок истиче оног дана када је дошло до општег застоја и poremećaja у испорuci поште у некој држави уgovornici или прослједивању поште између државе уgovornice и Evropskog zavoda za patente, рок ће се продужити до првог дана послjе okončanja prekida или smetnje за странке које имају своје боравиште или сједиште у тој држави или за странке које су именовале заступнике са пословним сједиштем у тој држави. Ако је ријеч о држави у којој Европски завод за patente има сједиште, ова се одреба примjenjuje на све заинтересоване стране и њихове заступнике. Овај став се примjenjuje *mutatis mutandis* на рок наведен у правилу 37, став 2.
- 3) Ставови 1 и 2, примjenjuju се *mutatis mutandis* на рокове када треба предузети радње код надлежног органа у смислу Члана 75 став 1(b) или 2(b).
- 4) Датум започињања и краја било kog застоја или poremećaja у испорuci поште у смислу става 2, objavljuje Evropski zavod za patente.
- 5) Не nanoseći štetu члановима 1 до 4 страна у поступку може да поднесе доказ да је било kog trenutka у периоду од десет дана прије истека рока испорука или прослједивање поште било у застоју или poremećeno због непредвидивих догађаја као што су природне катастрофе, рат, грађански немiri, општи слом техничких средстава комуникације чију употребу dopušta predsjednik Evropskog zavoda za patente за patente на основу правила 2, став 1, или из других разлога који су pogodili mjesto boravišta странке или пословно сједиште njenog заступника. Ако подnijети доказ uvjeri Evropski zavod za patente, документ primljen касније сматраће се као да је primljen благовремено под условом да је поштанска испорука или технички пренос извршен најкасније петог дана послjе завршетка застоја или poremećaja у испорuci.

Pravilo 135

Nastavak postupka

- 1) Наставак поступка на основу члана 121, став 1, захтјева се уз плаћање propisane takse у року од два мјесеца од саопштења или о непоштовању рокова или о губитку права. Propuštena радња мора се извршити у року за подношење захтјева.
- 2) Наставак поступка је искључен у погледу рокова наведених у члану 121, став 4, и рокова у смислу правила 6, став 1, правило 16, став 1 (a), правило 31, став 2, правило 36, став 2, правило 40, став 3, правило 51, ставови 2 до 5, правило 52, став 2 и 3, правила 55, 56, 58, 59, 62 a, 63, 64, правило 112, став 2 и правило 164, ставови 1 и 2.
- 3) Одjeljenje је надлежно да одлучује о propuštenoj радњи и donosi odluku о захтјеву за наставак поступка.

Pravilo 136

Vraćanje u pređašnje stanje

- 1) Сваки захтјев за враћање у пређашње стање на основу члана 122, став 1, подноси се у писаном облику у року од два мјесеца од уклањања разлога за непоштовање рока, али најкасније у року од godinu дана од истека рока који се

nije ispoštovao. Međutim, zahtjev za vraćanje u pređašnje stanje u pogledu bilo kog roka navedenog u Članu 87, stav 1, i Članu 112 a, stav 4, podnosi se u roku od dva mjeseca od isteka pomenutog roka. Zahtjev za povraćaj u pređašnje stanje ne smatra se podnijetim dok se ne plati propisana taksa.

2) U zahtjevu se navodi osnov na kome se zasniva i iznose se činjenice na koje se oslanja. Propuštena radnja mora se izvršiti u relevantnom roku za podnošenje zahtjeva prema stavu 1.

3) Vraćanje u pređašnje stanje je isključeno za bilo koji rok gdje je moguć nastavak postupka prema članu 121, kao i u pogledu perioda za podnošenje zahtjeva za vraćanje u pređašnje stanje.

4) Odjeljenje nadležno da odluči o propuštenoj radnji odlučuje o zahtjevu za vraćanje u pređašnje stanje.

Poglavlje VI IZMJENE I ISPRAVKE

Pravilo 137 Izmjena evropske prijave patenta

1) Prije prijema evropskog rešeršnog izvještaja podnosilac prijave ne smije da mijenja opis, patentne zahtjeve ili nacрте evropske prijave patenta, osim ukoliko nije propisano drugačije.

2) Zajedno sa bilo kakvim komentarima, ispravkama ili dopunama koje su načinjene kao odgovor na saopštenje Evropski zavoda za patente u skladu sa pravilom 70 a, stav 1 ili 2, ili pravilom 161, stav 1, podnosilac prijave može sam da izmijeni opis, patentne zahtjeve i nacрте po sopstvenoj volji.

3) Ne mogu se izvršiti bilo kakve dalje dopune bez pristanka Odsjeka za ispitivanje.

4) Prilikom podnošenja bilo kakvih izmjena iz stavova 1 do 3, podnosilac prijave će ih identifikovati i navesti osnovu za njih u podnešenoj prijavi. Ako odsjek za ispitivanje primijeti da nije ispunjen nijedan zahtjev, može da zatraži ispravku tog nedostatka u roku od mjesec dana.

5) Izmijenjene tvrdnje se ne mogu odnositi na neistraženi predmet koji se ne kombinuje sa prvobitno navedenim pronalaskom ili grupom pronalazaka da bi stvorio jedinstven opšti pronalazački koncept. Takođe se ne mogu odnositi na predmet koji nije tražen u skladu sa pravilom 62 a, ili pravilom 63.

Pravilo 138 Različiti patentni zahtjevi, opis i nacрте za različite države

Ako je Evropski zavod za patente obaviješten o postojanju prethodnog prava na osnovu člana 139, stav 2, evropska prijava patenta ili evropski patent za tu državu ili za te države mogu sadržati patentne zahtjeve i, ako je neophodno opis i nacрте koji su različiti od onih za druge naznačene države.

Pravilo 139 Ispravka grešaka u dokumentima podnijetim Evropskom zavodu za patente

Jezičke greške, greške u pisanju i neispravnosti u dokumentima podnijetim Evropskom zavodu za patente mogu biti ispravljene na osnovu zahtjeva. Ako se zahtjev za ispravku, međutim, odnosi na opis, patentne zahtjeve ili nacрте, onda ispravka mora biti tako očigledna da se odmah može uočiti da ne postoji nikakva drugačija namjera od one koja je sadržana u prijedlogu ispravke.

Pravilo 140 Ispravka grešaka u odlukama

U odlukama Evropskog zavoda za patente mogu se ispravljati samo jezičke greške, greške u pisanju i evidentne neispravnosti.

Poglavlje VII OBAVJEŠTENJE O STANJU TEHNIKE

Pravilo 141 Obavještenje o stanju tehnike

1) Podnosilac prijave koji zahtjeva prioritet u smislu člana 87 dužan je da dostavi kopiju rezultata svake pretrage koju je izvršio organ sa kojim je podnijeta prethodna prijava zajedno sa evropskom prijavom patenta, u slučaju Euro-PCT zahtjeva za ulazak u evropsku fazu, ili bez odlaganja nakon što mu se takvi rezultati stave na raspolaganje.

2) Kopija iz stava 1 smatra se uredno podnijetom ako je dostupna Evropskom zavodu za patente i ako je uključena u spis evropske prijave za patente pod uslovima koje odredi predsjednik Evropskog zavoda za patente.

3) Ne dovodeći u pitanje stavove 1 i 2, Evropski zavod za patente može pozvati podnosioca prijave da, u roku od dva mjeseca, obavještjenje o stanju tehnike u smislu člana 124, stav 1.

Poglavlje VIII PREKID POSTUPKA

Pravilo 142 Prekid postupka

(1) Postupak pred Evropskim zavodom za patente prekida se:

(a) u slučaju smrti ili nedostatka poslovne sposobnosti podnosioca prijave ili nosioca evropskog patenta ili lica koje je, prema domaćem pravu podnosioca prijave ili nosioca patenta, ovlašćeno da ga zastupa. Sve dok navedeni događaji ne utiču na ovlašćenja zastupnika koji je postavljen prema Članu 134, prekid postupka nastaje samo na zahtjev tog zastupnika;

(b) ako je podnositelj prijave ili nositelj patenta, usljed postupka koji je pokrenut protiv njegove imovine, spriječen iz pravnih razloga da nastavi postupak;

(c) ako zastupnik podnosioca prijave ili nosioca patenta umre, izgubi svoju poslovnu sposobnost ili je, usljed postupka koji je pokrenut protiv njegove imovine, iz pravnog razloga spriječen da nastavi postupak.

(2) Ako je, u slučajevima navedenim u stavu 1 (a) ili (b), Evropski zavod za patente obavješten o identitetu lica koje je ovlašćeno za nastavak postupka, onda obavještava to lice i, po potrebi, treću stranu, da će se postupak nastaviti od naznačenog datuma. Ako nakon tri godine od objave datuma prekida postupka u Evropskom patentnom biltenu, Evropski zavod za patente ne dobije obavještjenje o identitetu lica koje je ovlašćeno za nastavak postupka, može samoinicijativno odrediti datum kada namjerava da nastavi postupak.

(3) U slučaju stava 1, tačka (c), postupak se nastavlja kada Evropski zavod za patente dobije obavještjenje o imenovanju novog zastupnika podnosioca prijave ili kada Evropski zavod za patente ostalim strankama dostavi obavještjenje o imenovanju novog zastupnika nosioca patenta. Ako Evropski zavod za patente ne dobije obavještjenje o imenovanju novog zastupnika u roku od tri mjeseca od početka prekida postupka, on saopštava podnosiocu prijave ili nosiocu patenta:

(a) u slučaju primjene člana 133, stav 2, da se evropska prijava patenta smatra povučenom ili da će evropski patent biti oglašen ništavim ukoliko, u roku od dva mjeseca od dostave saopštenja, ne prispije obavještjenje o imenovanju novog zastupnika, ili

(b) u drugim slučajevima, da će postupak biti nastavljen sa podnosiocem prijave ili nosiocem patenta od dana dostave tog saopštenja.

(4) Svi rokovi, osim onih u kojima se zahtijeva ispitivanje i uplata godišnjih taksi koji teku u trenutku prekida postupka, počinju da teku ponovno onog dana, kada se postupak nastavi. Ako taj dan pada manje od dva mjeseca prije isteka roka za podnošenje zahtjeva za ispitivanje, onda se zahtjev za ispitivanje može podnijeti još do isteka roka od dva mjeseca od tog dana.

Poglavlje IX INFORMISANJE JAVNOSTI

Član 143 Upisi u Evropski registar patenta

1) U Evropski registar patenta moraju biti upisani sljedeći podaci:

a) broj evropske prijave patenta;

b) datum podnošenja prijave;

c) naziv pronalaska;

d) klasifikacioni simboli dodijeljeni prijavi;

e) naznačene države ugovornice;

f) podaci o podnosiocu prijave ili nosiocu patenta, kao što je predviđeno u pravilu 41, stav 2 (c);

g) prezime, ime i adresa pronalazača navedenog od strane podnosioca prijave ili nosioca patenta, ukoliko on nije, prema pravilu 20, stav 1, odustao od prava da bude naveden;

h) podaci o zastupniku podnosioca prijave, ili nosioca patenta kao što je predviđeno u pravilu 41, stav 2 (d); u slučaju da ima više zastupnika, navode se samo podaci prvog navedenog zastupnika, a zatim slijede riječi „i drugi“; i za slučaj da su zastupnici udruženi, shodno pravilu 152, stav 11, upisuju se samo naziv i adresa udruženja;

i) podaci o pravu prvenstva (datum, država i broj ranije prijave);

j) u slučaju izdvojene prijave, brojevi svih izdvojenih evropskih prijava patenta;

k) kod izdvojene prijave ili nove evropske prijave patenta podnijete prema Članu 61, stav 1, tačka (b), podaci predviđeni u tačkama (a), (b) i (i) za prvobitnu prijavu;

l) dan objave prijave i eventualno, datum zasebne objave evropskog rešeršnog izvještaja;

m) datum podnošenja zahtjeva za ispitivanje;

- n) datum kada je prijava odbijena ili povučena ili od kada se smatra povučenom;
 - o) datum objavljivanja obavještenja o priznanju evropskog patenta;
 - p) datum prestanka evropskog patenta u jednoj od država ugovornica tokom roka za opoziciju i eventualno, do konačne odluke o opoziciji;
 - q) datum ulaganja opozicije;
 - r) datum i vrsta odluke po opoziciji;
 - s) datum mirovanja i nastavka postupka u slučajevima navedenim u pravilima 14 i 78;
 - t) datum prekida i nastavka postupka u slučaju pravila 142;
 - u) datum povraćaja u pređašnje stanje, ukoliko je upis izvršen shodno odredbama iz tačke n ili tačke r;
 - v) podnošenje zahtjeva za pretvaranje, shodno članu 135, stav 3;
 - w) prava i prenos prava koji se odnose na prijavu ili na evropski patent, ukoliko je izvršen njihov upis shodno odredbama ovog Pravilnika o sprovođenju.
 - x) datum i vrsta odluke po zahtjevu za ograničenje ili oglašavanje evropskog patenta ništavim;
 - y) datum i vrsta odluke Velikog žalbenog vijeća o molbi za reviziju.
- 2) Predsjednik Evropskog zavoda za patente može odrediti da se u Evropski registar patenata upisuju i drugačiji podaci od onih koji su predviđeni u stavu 1.

Pravilo 144

Djelovi spisa koji se ne mogu razgledati

Djelovi spisa koji se, shodno članu 128, stav 4, ne mogu razgledati, su:

- a) akti koji se odnose na pitanje isključenja ili neprihvatanja članova žalbenog vijeća ili velikog žalbenog vijeća;
- b) nacrti odluka i obavještenja, kao i ostali dokumenti koji služe za pripremu odluka i obavještenja, a koji se ne saopštavaju strankama;
- c) navođenje pronalazača, ako je pronalazač, prema pravilu 20, stav 1, odustao od svog prava da bude naveden;
- d) ostali dokumenti čije je razgledanje zabranio predsjednik Evropskog zavoda za patente, jer njihovo razgledanje ne služi u svrhe obavještanja javnosti o evropskoj prijavi patenta ili o evropskom patentu.

Pravilo 145

Postupak razgledanja spisa

- 1) Razgledanje spisa evropskih prijava patenata ili evropskih patenata se vrši pregledom originala ili kopija, ili putem tehničkih sredstava za skladištenje informacija ako se spisi čuvaju na ovaj način.
- 2) Predsjednik Evropskog zavoda za patente odlučuje o svim aranžmanima za razgledanje spisa, uključujući i okolnosti u kojima se plaćaju administrativne takse.

Pravilo 146

Saopštavanje informacija sadržanih u spisima

Uz rezervu ograničenja navedenih u članu 128, stavovi 1 do 4, i pravilu 144, Evropski zavod za patente može, na zahtjev i uz naplatu administrativne takse, davati informacije iz spisa evropske prijave patenta ili iz evropskog patenta. Evropski zavod za patente može, međutim, da zahtjeva da se iskoristi mogućnost razgledanja predmeta, ako ocjenjuje da je to svrshodno s obzirom na obim informacija koje treba dati.

Pravilo 147

Formiranje, održavanje i čuvanje spisa

- 1) Evropski zavod za patente formira, održava i čuva spise evropskih prijava patenata i patenata u elektronskom formatu.
- 2) Predsjednik Evropskog zavoda za patente određuje sve potrebne tehničke i administrativne procedure koje se odnose na upravljanje elektronskim dokumentima u skladu sa stavom 1
- 3) Dokumenti inkorporirani u elektronski dokument smatraju se originalnim. Početna papirna verzija takvih dokumenata uništava se tek nakon najmanje pet godina. Ovaj period čuvanja počinje krajem godine u kojoj je dokument inkorporiran u elektronski dokument.
- 4) Svi spisi čuvaju se najmanje pet godina od kraja one godine, u kojoj je:
 - a) prijava odbijena, povučena ili se smatra povučenom,
 - b) patent oglašen ništavim od strane Evropskog zavoda za patente, ili
 - c) patent ili odgovarajuća zaštita na osnovu člana 63, stav 2, prestala da važi u posljednjoj od naznačenih država.
- 5) Nezavisno od stava 4, čuvaju se svi spisi evropskih prijava patenata, koji su bili osnov za podnošenje izdvojenih prijava prema Članu 76, ili novih prijava prema Članu 61, stav 1, tačka (b) najmanje onoliko dugo koliko i bilo koji od spisa takve izdvojene ili nove prijave. To isto važi za spise patenata koji se odnose na sve evropske patente.

Poglavlje X

SUDSKA I UPRAVNA SARADNJA

Pravilo 148**Komuniciranje Evropskog zavoda za patente sa organima država ugovornica**

- 1) U pogledu saopštenja koja proizlaze iz sprovođenja Konvencije, Evropski zavod za patente i centralni zavodi za zaštitu industrijske svojine država ugovornica komuniciraju međusobno direktno. Evropski zavod za patente i sudovi, kao i ostali organi država ugovornica mogu međusobno kontaktirati posredstvom pomenutog centralnog zavoda za zaštitu industrijske svojine.
- 2) Troškove nastale davanjem saopštenja navedenih u stavu 1, snosi organ koji je izdao saopštenje; za ta saopštenja ne plaća se taksa.

Pravilo 149**Razgledanje spisa od strane sudova ili organa država ugovornica direktno ili njihovim posredstvom**

- 1) Razgledanje spisa evropske prijave patenta ili evropskog patenta od strane sudova ili organa država ugovornica vrši se na originalnim primjercima ili na kopijama; pravilo 145 se ne primjenjuje.
- 2) Sudovi i tužilaštva država ugovornica mogu, u postupcima koji se kod njih vode, omogućiti trećim licima razgledanje originala ili kopija spisa dobijenih od strane Evropskog zavoda za patente. Razgledanje predmeta omogućuje se prema članu 128; za razgledanje predmeta ne plaća se administrativna taksa.
- 3) Evropski zavod za patente, prilikom dostavljanja spisa, ukazuje na ograničenja kojima podliježe odobrenje razgledanja spisa od strane trećih lica prema članu 128, stavovi 1 i 4.

Pravilo 150**Postupak prilikom zahtjeva za pravnu pomoć**

- 1) Svaka država ugovornica određuje jedan centralni organ koji prima zahtjeve za pravnu pomoć od Evropskog zavoda za patente i prosljeđuje ih na postupak nadležnom sudu ili nadležnom organu.
- 2) Evropski zavod za patente sastavlja zahtjeve za pravnu pomoć na jeziku nadležnog suda ili nadležnog organa, ili zahtjevima za pravnu pomoć prilaže njihov prevod na tom jeziku.
- 3) Uz rezervu odredbi iz stavova 5 i 6, nadležni sud ili nadležni organ, postupajući prema zahtjevu, primjenjuje sopstveno procesno pravo.
- 4) Ako zamoljeni sud ili zamoljeni organ nijesu nadležni, onda se zahtjev za pravnu pomoć odmah službeno vraća centralnom organu navedenom u stavu 1. Centralni organ prosljeđuje zahtjev za pravnu pomoć, ukoliko je nadležan drugi sud ili drugi organ u toj državi, tom sudu ili tom organu, ili, ako nijedan sud ili organ u toj državi nijesu nadležni, prosljeđuje ga Evropskom zavodu za patente.
- 5) Evropski zavod za patente je potrebno unaprijed obavijestiti o vremenu i mjestu sprovođenja dokaznog postupka ili drugih radnji koje se preduzimaju sudskim putem, a on, sa svoje strane, obavještava stranke, svjedoke i vještake.
- 6) Na molbu Evropskog zavoda za patente, nadležni sud ili organ dopušta učešće članova zainteresovanog organa Zavoda i dozvoljava im da preko suda ili organa, ili neposredno, upućuju pitanja licima koja se saslušavaju.
- 7) Za postupanje po zahtjevima za pravnu pomoć ne smiju se naplaćivati takse ni troškovi bilo kakve vrste. Zamoljena država ima, međutim, pravo da od Organizacije zahtjeva naknadu izdataka za vještake ili tumače, kao i troškova koji su nastali u postupku prema stavu 6.
- 8) Ako, prema pravu koje primjenjuje nadležni sud ili nadležni organ, stranke moraju same da se pobrinu za prikupljanje dokaza, a sud ili organ nemaju mogućnosti da postupe po zahtjevu za pravnu pomoć, onda sud ili organ, uz saglasnost Evropskog zavoda za patente, može da ovlasti podesno lice da to obavi. Prilikom pribavljanja saglasnosti Evropskog zavoda za patente, nadležni sud ili nadležni organ navode približnu visinu troškova koji će nastati tim postupkom. Saglasnošću Evropskog zavoda za patente, Organizacija se obavezuje da nadoknadi nastale troškove; bez takve saglasnosti Organizacija nije obavezna da plati troškove.

**Poglavlje XI
ZASTUPANJE****Pravilo 151****Imenovanje zajedničkog zastupnika**

- 1) Ako više lica podnose evropsku prijavu patenta, i ako u zahtjevu za priznanje evropskog patenta nije naznačen zajednički predstavnik, onda podnosilac prijave, koji je u zahtjevu naveden kao prvi, važi za zajedničkog predstavnika. Ako je neko od podnosilaca prijave, međutim, obavezan da postavi profesionalnog zastupnika, onda taj zastupnik važi kao zajednički zastupnik, ukoliko podnosilac prijave, naveden u zahtjevu kao prvi, nije postavio profesionalnog zastupnika. Isto pravilo važi i za treća lica, zajedničke nosioce patenta ili više lica koja zajednički podnose opoziciju ili zahtjev za mijesanje.
- 2) Ako u toku postupka dođe do prenosa prava iz evropske prijave patenta na više lica, i ako ta lica nijesu naznačila zajedničkog predstavnika, primjenjuje se stav 1 *mutatis mutandis*. Ako nije moguća njegova primjena, onda Evropski

zavod za patente zahtjeva od navedenih lica da postave zajedničkog predstavnika u predviđenom roku. Ukoliko se ne udovolji ovom zahtjevu, Evropski zavod za patente određuje zajedničkog predstavnika.

Pravilo 152 Punomoć

- 1) Predsjednik Evropskog zavoda za patente određuje slučajeve u kojima se potpisana punomoć podnosi od strane zastupnika koji istupa pred Evropskim zavodom za patente.
- 2) Kada zastupnik ne podnese takvu punomoć, Evropski zavod za patente ga poziva da to učini u predviđenom roku. Punomoć može važiti za jednu ili više evropskih prijava patenta ili za jedan ili više evropskih patenata, i podnosi se u odgovarajućem broju primjeraka.
- 3) Kada nijesu ispunjeni zahtjevi iz člana 133, stav 2, isti rok se postavlja za imenovanje zastupnika i podnošenje punomoći.
- 4) Može se dostaviti opšta punomoć koja ovlašćuje jednog zastupnika u svim pitanjima koja se tiču patenta neke stranke. Opštu punomoć potrebno je dostaviti samo u jednom primjerku.
- 5) Predsjednik Evropskog zavoda za patente može odrediti oblik i sadržinu:
 - a) punomoćja koje se odnosi na zastupanje lica u smislu člana 133, stav 2, i
 - b) opšteg punomoćja.
- 6) Ako zahtijevano punomoćje ne bude dostavljeno blagovremeno, onda, nezavisno od drugih pravnih posljedica predviđenih u ovoj konvenciji, radnje zastupnika, sa izuzetkom podnošenja evropske prijave patenta, smatraju se nepostojećim.
- 7) Stavovi 2 i 4 primjenjuju se na dokumenta o povlačenju punomoćja.
- 8) Zastupnik se smatra ovlašćenim zastupnikom sve dok se prestanak ovlašćenja na zastupanje ne prijavi Evropskom zavodu za patente.
- 9) Ukoliko punomoćje ne određuje izričito nešto drugo, ono, u odnosu na Evropski zavod za patente, ne prestaje sa smrću davaoca punomoćja.
- 10) Ako je stranka imenovala nekoliko zastupnika, onda oni mogu da djeluju kako zajednički, tako i pojedinačno, nezavisno od odredbe koja predviđa nešto drugo u obavještenju o njihovom imenovanju ili punomoći.
- 11) Punomoć data udruženju zastupnika važi kao punomoć data svakom zastupniku koji podnese dokaz o tome da je zaposlenje u tom udruženju.

Pravilo 153 Zastupnikova privilegija očuvanja povjerljivosti

- 1) Kada se traži mišljenje od profesionalnog zastupnika u njegovom službenom svojstvu, sva saopštenja između zastupnika i njegovog klijenta ili nekog drugog lica, koja se odnose na to pitanje i potpadaju pod Član 2 Pravilnika o disciplini profesionalnih zastupnika, su trajno zaštićena od otkrivanja u postupku pred Evropskim zavodom za patente, osim ako se klijent nije izričito odrekao te privilegije.
- 2) Takva privilegija očuvanja povjerljivosti primjenjuje se, naročito, na sva saopštenja ili dokumenta koja se odnose na:
 - a) procjenu patentabilnosti pronalaska;
 - b) pripremu ili postupak u vezi sa evropskom prijavom patenta;
 - c) svako mišljenje koje se tiče validnosti, obima zaštite ili povrede prava evropskog patenta ili evropske prijave patenta.

Pravilo 154 Izmjene u spisku profesionalnih zastupnika

- 1) Upis profesionalnog zastupnika u spisku profesionalnih zastupnika briše se, ako to zatraži profesionalni zastupnik ili ako on, uprkos opomeni, ne plati godišnju pretplatu Institutu u roku od pet mjeseci, bilo od:
 - a) 1. januara za članove na spisku tog datuma; ili
 - b) datuma upisa za članove koji su upisani na listu poslije 1. januara u godini za koju se plaća pretplata
- 2) Upis profesionalnog zastupnika može se brisati ex officio bez obzira na disciplinske mjere preduzete na osnovu člana 134 a, stav 1, tačka (c) samo:
 - a) u slučaju smrti ili pravne nesposobnosti;
 - b) ako profesionalni zastupnik nema više državljanstvo države ugovornice, osim ako mu nije priznato izuzeće na osnovu člana 134, stav 7 (a);
 - c) ako profesionalni zastupnik nema više svoje službeno sjedište ili zaposlenje u nekoj državi ugovornici.
- 3) Svako lice upisano na spisak profesionalnih zastupnika na osnovu člana 134, stavovi 2 ili 3, čiji je upis brisan, biće na svoj zahtjev opet upisano na tu listu ako su prestali razlozi za brisanje.

Osmi dio

PROPISI O SPROVOĐENJU OSMOG DIJELA KONVENCIJE**Pravilo 155****Podnošenje i prenos zahtjeva za pretvaranje**

- 1) Zahtjev za pretvaranje iz člana 135, stav 1 (a) ili (b), podnosi se u roku od tri mjeseca od povlačenja evropske prijave patenta ili od saopštenja da se prijava smatra povučenom ili od odluke kojom se odbija prijava ili oglašava ništavim evropski patent. Dejstvo evropske prijave patenta na osnovu člana 66 ističe ako zahtjev nije blagovremeno podnijet.
- 2) Kada se prenosi zahtjev za pretvaranje centralnim zavodima za industrijsku svojinu država ugovornica navedenim u zahtjevu, nadležni centralni zavod za industrijsku svojinu ili Evropski zavod za patente priključuje zahtjevu primjerak dokumenta koji se odnosi na evropsku prijavu patenta ili evropski patent.
- 3) Član 135, stav 4, primjenjuje se ako zahtjev za pretvaranje naveden u članu 135, stavovi 1 (a) ili 2 nije prenijet prije isteka roka od dvadeset mjeseci od datuma podnošenja ili, ako se zahtjeva prvenstvo, od datuma prvenstva.

Pravilo 156**Obavještanje javnosti prilikom pretvaranja prijave**

- 1) Dokumenti koji se prilažu uz zahtjev za pretvaranje prema pravilu 155, stav 2, moraju se od strane centralnog zavoda za zaštitu industrijske svojine učiniti dostupnim javnosti pod istim uslovima i u istom obimu, kao i dokumenti koji se odnose na nacionalni postupak.
- 2) Na štampanim patentnim spisima nacionalnih патената koji nastanu iz pretvaranja evropske prijave patenta, navodi se ta prijava.

Deveti dio**PRAVILNIK O SPROVOĐENJU DESETOG DIJELA KONVENCIJE****Pravilo 157****Evropski zavod za patente kao zavod primalac**

- 1) Evropski zavod za patente nadležan je da djeluje kao zavod primalac u smislu PCT ako je podnosilac prijave stanovnik ili državljanin neke države ugovornice ove konvencije i PCT ugovora. Bez obzira na odredbe stava 3, ako podnosilac prijave izabere Evropski zavod za patente kao zavod primalac, međunarodna prijava mora se podnijeti direktno u Evropskom zavodu za patente. Član 75, stav 2, primjenjuje se *mutatis mutandis*.
- 2) Ako, shodno Ugovoru o saradnji u oblasti патената, Evropski zavod za patente djeluje kao zavod primalac, onda se međunarodna prijava podnosi na engleskom, francuskom ili njemačkom jeziku. Predsjednik Evropskog zavoda za patente može odrediti da se međunarodna prijava i svaki spis u vezi sa njom podnose u više od jednog primjerka.
- 3) Ako se međunarodna prijava podnosi organu države ugovornice radi prosljeđivanja Evropskom zavodu za patente kao zavodu primaocu, onda država ugovornica mora da se stara o tome da prijava stigne Evropskom zavodu za patente najkasnije dvije sedmice prije isteka trinaestog mjeseca od njenog podnošenja ili, ako se zahtjeva pravo prvenstva, od datuma prvenstva.
- 4) Taksa za prenos međunarodne prijave plaća se u roku od mjesec dana od podnošenja prijave.

Pravilo 158**Evropski zavod za patente kao organ za međunarodni rešerš ili kao organ za međunarodno preliminarno ispitivanje**

- 1) U slučaju člana 17, stav 3 (a) Ugovora o saradnji u oblasti патената (PCT), potrebno je uplatiti dopunsku taksu za međunarodni rešerš za svaki sljedeći pronalazak za koji treba sprovesti međunarodni rešerš.
- 2) U slučaju člana 34, stav 3 (a) Ugovora o saradnji u oblasti патената (PCT), potrebno je uplatiti dopunsku taksu za međunarodno preliminarno ispitivanje za svaki sljedeći pronalazak za koji je potrebno sprovesti međunarodno preliminarno ispitivanje.
- 3) Kada se plaća dodatna taksa uz protest, Evropski zavod za patente mora da preispita protest u skladu sa pravilom 40, stav 2 (c) do (e) ili pravilom 68, stav 3 (c) do (e) Ugovora o saradnji u oblasti патената (PCT) u smislu plaćanja dodatne takse za protest. Dalje detalje koji se tiču postupka određuje predsjednik Evropskog zavoda za patente.

Pravilo 159**Evropski zavod za patente kao naznačeni zavod ili kao izabrani zavod – zahtjevi za stupanje u evropsku fazu**

- 1) Kada se radi o međunarodnoj prijavi u smislu člana 153, podnosilac prijave ima rok od 31 mjeseca od datuma podnošenja prijave ili, ako je zatraženo pravo prvenstva, od dana prava prvenstva, da izvrši sljedeće obaveze:
 - a) da podnose, u određenim slučajevima, prevod međunarodne prijave koji se zahtjeva na osnovu člana 153, stav 4, ove konvencije;
 - b) da navede dokumenta iz prijave, kakva su originalno podnijeta ili izmijenjena, na kojima se zasniva procedura priznanja evropskog patenta;

- c) da plati taksu za podnošenje prijave na osnovu člana 78, stav 2;
 - d) da plati taksu za naznačenje ako je rok u smislu pravila 39 istekao ranije;
 - e) da plati taksu za rešerš, kada mora da se izradi dopunski evropski rešeršni izvještaj;
 - f) da podnese zahtjev za ispitivanje u skladu sa članom 94 ove konvencije, ako ranije istekne vremenski rok u smislu pravila 70, stav 1;
 - g) da plati godišnju taksu za treću godinu u smislu člana 86, stav 1 ove konvencije, ako bi taksa dospijevala ranije u skladu sa pravilom 51, stav 1;
 - h) da podnese, gdje je to prigodno, sertifikat sa izložbe u smislu člana 55, stav 2 i pravila 25 ove konvencije.
- 2) Odsjek za ispitivanje je nadležan da donosi odluke Evropskog zavoda za patente, na osnovu člana 25, stav 2 (a) Ugovora o saradnji u oblasti patenata (PCT).

Pravilo 160

Posljedice neispunjavanja izvjesnih zahtjeva

- 1) Ako prevod međunarodne prijave ili zahtjev za ispitivanje nijesu podnijeti blagovremeno, ili ako taksa za podnošenje prijave ili taksa za rešerš nijesu blagovremeno plaćeni ili ako taksa za naznačenje nije blagovremeno plaćena, evropska prijava patenta smatraće se povučenom.
- 2) Ako Evropski zavod za patente primijeti da se prijava ili naznačenje smatraju povučenim na osnovu stava 1, obavijestice podnosioca prijave o tome. Pravilo 112, stav 2, primjenjuju se *mutatis mutandis*.

Pravilo 161

Izmjena prijave

- 1) Ako je Evropski patentni zavod djelovao kao organ za međunarodni rešerš i, gdje je podnešen zahtjev u skladu sa Članom 31 ugovora o saradnji u oblasti patenata (PCT), takođe kao organ za međunarodno preliminarno ispitivanje za Euro-PCT prijavu, on daje mogućnost podnosiocu predstavljanja da da komentar na pisano mišljenje o organu za međunarodni rešerš ili organu za međunarodno preliminarno ispitivanje i, gdje je to potrebno, poziva ga da ispravi nedostatke koji su uočeni u pisanom mišljenju ili u organu za međunarodno preliminarno ispitivanje i da izmijeni opis, zahtjeve i nacрте u roku od šest mjeseci od odgovarajuće komunikacije. Ako je Evropski zavod za patente sastavio dopunski izvještaj o međunarodnoj potrazi, poziv u skladu sa prvom rečenicom izdaje se u vezi s objašnjenjima datim u skladu s pravilom 45, stav 7 (e) ugovora o saradnji u oblasti patenata (PCT). Ako se podnosilac zahtjeva ne pridržava ili ne daje komentar na poziv u skladu sa prvom ili drugom rečenicom, prijava se smatra povučenom.
- 2) Kada Evropski zavod za patente sastavi dopunski evropski izvještaj o pretrazi za Euro-PCT prijavu, prijava se može izmijeniti jednom u roku od šest mjeseci od objavljivanja o kome se podnosilac zahtjeva obavijesti. Prijava sa izmjenama poslužiće kao osnova za dodatni evropski rešerš.

Pravilo 162

Zahtjevi za koje se plaćaju takse

- 1) Ako se prijava, na kojoj treba da se zasniva postupak priznanja evropskog patenta, sastoji od više od petnaest zahtjeva, taksa za zahtjeve mora da se plati za šesnaesti i svaki naredni zahtjev kako je to utvrđeno u Pravilima o naknadama, u roku koji predviđa pravilo 159, stav 1.
- 2) Ako se takse za zahtjeve ne plate blagovremeno, one se i dalje mogu plaćati u roku iz pravila 161, stav 1 ili stav 2, u zavisnosti od slučaja. Ako se u ovom roku podnesu izmijenjeni zahtjevi, takse za zahtjeve koje dospijevaju biće sračunate na osnovu takvih izmijenjenih zahtjeva.
- 3) Sve takse za zahtjeve plaćene u roku iz stava 1, a koje prevazilaze one koje dospijevaju na osnovu stava 2, druga rečenica, biće refundirane.
- 4) U slučajevima kada taksa za zahtjeve nije plaćena blagovremeno, smatra se da je taj zahtjev napušten.

Pravilo 163

Ispitivanje izvjesnih formalnih zahtjeva od strane Evropskog zavoda za patente

- 1) Kada još uvijek nije naveden pronalazač na osnovu pravila 19, stav 1, u roku u smislu pravila 159, stav 1, Evropski zavod za patente poziva podnosioca prijave da navede pronalazača u roku od dva mjeseca.
- 2) Kada se zahtjeva pravo prvenstva iz ranije prijave, a još uvijek nijesu podnijeti broj prethodne prijave i njen primjerak, kako je predviđeno pravilom 52, stav 1 i pravilom 53 u roku predviđenom u pravilu 159, stav 1, Evropski zavod za patente poziva podnosioca prijave da dostavi taj broj ili primjerak u roku od dva mjeseca. Pravilo 53, stavovi 2 se primjenjuje.
- 3) Kada, po isteku roka iz pravila 159, stav 1, popis sekvenci koji je u skladu sa standardom koji predviđaju Administrativne instrukcije iz Ugovora o saradnji u oblasti patenata (PCT) nije dostupan Evropskom zavodu za patente, podnosilac prijave se poziva da dostavi popis sekvenci u skladu sa pravilima koje je odredio predsjednik Evropskog zavoda za patente u roku od dva mjeseca. Pravilo 30, stavovi 2 i 3 se primjenjuju *mutatis mutandis*.

4) Kada, po isteku roka iz pravila 159, stav 1, nedostaju adresa, nacionalnost ili država u kojoj se nalazi boravište ili poslovno sjedište za bilo kog podnosioca prijave, Evropski zavod za patente poziva podnosioca prijave da dostavi ove podatke u roku od dva mjeseca.

5) Kada, po isteku roka iz pravila 159, stav 1, zahtjevi iz člana 133, stav 2, nijesu zadovoljeni, Evropski zavod za patente poziva podnosioca prijave da imenuje profesionalnog zastupnika u roku od dva mjeseca.

6) Ako nedostaci primijećeni na osnovu stavova 1, 4 ili 5 nijesu ispravljani blagovremeno, evropska prijava patenta se odbija. Ako nedostatak primijećen u smislu stava 2 nije ispravljen blagovremeno, prijava gubi pravo prvenstva.

Pravilo 164

Jedinstvo pronalaska i dalji rešerš

1) Ako Evropski zavod za patente smatra da dokumentacija o prijavi koja će služiti kao osnova za dopunski evropski rešerš ne udovoljava zahtjevu jedinstva pronalaska, treba da:

a) sastavi djelimični dodatni rešeršni izvještaj za one djelove prijave koji se odnose na pronalazak ili grupu pronalazaka u smislu Člana 82, prvi pomenuti u patentnim zahtjevima;

b) obavijesti podnosioca predstavke da za dodatni evropski rešeršni izvještaj koji pokriva ostale izume, mora da se plati dodatna rešeršna taksa, za svaki uključeni pronalazak, u roku od dva mjeseca; i

c) sastavi dodatni dodatni rešeršni izvještaj za djelove prijave koji se odnose na pronalaskes za koje su rešeršne takse plaćene.

2) Ako se izostavi dodatni evropski rešeršni izvještaj, a odsjek za ispitivanje smatra da se u prijavnoj dokumentaciji koja treba da služi kao osnova za ispitivanje traži zaštita pronalaska ili grupe pronalazaka u smislu Člana 82, a koji Evropski zavod za patente nije pretraživao u svojstvu organa međunarodnog rešerša ili organa specijalizovanog za dodatni međunarodni rešerš, odsjek za ispitivanje dužan je da:

a) obavještava podnosioca prijave da će se izvršiti rešerš po bilo kom takvom pronalasku za koji se uplati taksa za rešerš u roku od dva mjeseca;

b) izdaje rezultate svake rešerša izvršenog u skladu sa stavom (a) zajedno sa:

- obavještenjem prema Članu 94, stav 3 i pravilu 71, stavovima 1 i 2, u kojoj podnosilac zahtjeva daje mogućnost da komentariše te rezultate i izmijeni opis, zahtjeve i nacрте, ili

- obavještenjem u skladu sa pravilom 71, stav 3, i

c) u obavještenju objavljenom u skladu sa stavom (b), pozove podnosioca zahtjeva da ograniči prijavu na jedan pronalazak ili grupu pronalazaka u smislu Člana 82, za koji je sačinjen rešeršni izvještaj koji je izradio Evropski zavod za patente u svojstvu organa za međunarodni rešerš ili kao specijalizovani organ za dodatni međunarodni rešerš, ili za koji je pretraga izvršena u skladu s postupkom iz stava (a).

3) U postupku prema stavu 2 (a), pravila 62a i 63 primjenjuju se mutatis mutandis.

4) Pravilo 62 i pravilo 70, stav 2, ne primjenjuju se na rezultate pretraga izvršenih u skladu sa stavom 2.

5) Svaka taksa plaćena u skladu sa stavovima 1 ili 2 vraća se, ako podnosilac zahtjeva povraćaj novca i odsjek za ispitivanje zaključi da saopštenja iz stavova 1 (b) ili 2 (a) nijesu bila opravdana.

Pravilo 165

Euro-PCT prijava kao konfliktna prijava na osnovu Člana 54, stav 3

Euro-PCT prijava se smatra sadržanom u stanju tehnike na osnovu Člana 54, stav 3, ako je, pored uslova navedenih u Članu 153, stavovi 3 ili 4, plaćena taksa za podnošenje na osnovu pravila 159, stav 1 (c).

Protokol

kojim se tumači član 69 Konvencije o evropskom patentu od 5. oktobra 1973.

Član 1

Opšti principi

Član 69 ne treba tumačiti u tom smislu da je obim zaštite, koji je pružen evropskim patentom, usko određen doslovnim značenjem teksta patentnih zahtjeva, a da opis i nacrti služe samo da se otklone nejasnoće u patentnim zahtjevima. Takođe, njega ne treba tumačiti tako da patentni zahtjevi služe samo kao smjernica, a da zaštita obuhvata i ono što je u opisu i na nacrtima, po mišljenju prosječnog stručnjaka iz odgovarajuće oblasti, nosilac patenta htio da zaštititi. Nasuprot tome član 69 treba tumačiti na način koji je između tih krajnosti, tako da se istovremeno obezbijedi pravična zaštita nosiocu patenta sa razumnim stepenom sigurnosti trećim licima.

Član 2

Ekvivalenti

U svrhu određivanja obima zaštite koju pruža evropski patent, treba voditi računa o svakom elementu koji je ekvivalentan elementima navedenim u zahtjevima.

Protokol
o centralizaciji evropskog patentnog sistema i njegovom uvođenju (Protokol o centralizaciji) od 5. oktobra 1973. godine

Odjeljak I

1) a) Prilikom stupanja na snagu Konvencije, države članice, koje su istovremeno članice Međunarodnog instituta za patente, osnovanog Haškim sporazumom od 6. juna 1947. godine, preduzeće potrebne mjere kako bi obezbijedilo da se sva imovina i novčane obaveze, kao i svo osoblje Međunarodnog instituta za patente prenesu na Evropski zavod za patente najkasnije u momentu predviđenom u članu 162 stav 1 Konvencije. Ovaj prenos će se izvršiti shodno sporazumu između Međunarodnog instituta za patente i Evropske organizacije za patente. Gore navedene države i ostale države članice Konvencije preduzeće potrebne mjere kako bi se obezbijedilo da se ovaj sporazum počne primjenjivati najkasnije u trenutku predviđenom u članu 162 stav 1 Konvencije. Države članice Međunarodnog instituta za patente, koje su istovremeno države članice Konvencije, obavezuju se, dalje, da će da prestanu sa svojim članstvom u Haškom sporazumu sa momentom primjene ugovora.

b) Države članice Konvencije će preduzeti sve potrebne mjere kako bi se obezbijedilo da se imovina i novčane obaveze, kao i svo osoblje Međunarodnog instituta za patente preuzmu od strane Evropskog zavoda za patente u skladu sa sporazumom navedenim u tački (a). Od trenutka primjene sporazuma, Evropski zavod za patente preuzima zadatke koje Međunarodni institut za patente vrši na dan otvaranja Konvencije za potpisivanje, a posebno one koje je Institut u tom trenutku obavljao za svoje države članice, pri čemu je nebitno da li će te države postati države članice Konvencije ili neće, kao i zadatke na čije se izvršenje prilikom stupanja na snagu ove konvencije obavezao prema državama koje su u tom trenutku kako države članice Međunarodnog instituta za patente, tako i države članice Konvencije. Upravni savjet Evropske patentne organizacije može, osim toga, na Evropski zavod za patente prenijeti druge zadatke u oblasti rešerša.

c) Gore navedene obaveze primjenjuju se *mutatis mutandis* i na agencije osnovane prema Haškom sporazumu pod uslovima predviđenim u sporazumu između Međunarodnog instituta za patente i vlade odnosno države članice. Ta vlada se obavezuje da sa Evropskom organizacijom za patente zaključi novi sporazum koji će zamijeniti postojeći sporazum sa Međunarodnim institutom za patente, kako bi se odredbe o organizaciji, djelatnosti i finansiranju agencije uskladile sa ovim protokolom.

2) Uz rezervu odredbi iz odjeljka III, države članice Konvencije odustaju, u trenutku navedenom u članu 162 stav 1 Konvencije, od aktivnosti svojih centralnih službi za industrijsku svojinu kao organa za međunarodni rešerš prema Sporazumu o saradnji u oblasti patenata, u korist Evropskog zavoda za patente.

3) a) U trenutku navedenom u članu 162 stav 1 Konvencije osnovaće se u Berlinu Agencija Evropskog zavoda za patente. Ova agencija posluje pod direkcijom ogranka u Hagu.

b) Upravni savjet utvrđuje ovlašćenja agencije u Berlinu, uzimajući u obzir opšte razloge i potrebe Evropskog zavoda za patente u oblasti rešerša.

c) Bar na početku perioda postepenog širenja oblasti djelovanja Evropskog zavoda za patente, obim poslova prenesenih na tu agenciju mora omogućavati punu zaposlenost osoblja koje radi ispitivanje, zaposlenog kod Berlinskog odjeljenja Njemačkog zavoda za patente u trenutku otvaranja Konvencije za potpisivanje.

d) Savezna Republika Njemačka preuzima dopunske troškove koje Evropska organizacija za patente bude imala zbog osnivanja i rada agencije u Berlinu.

Odjeljak II

Uz rezervu odredbi iz odjeljaka III i IV, države članice Konvencije odustaju od djelatnosti svojih centralnih službi za zaštitu industrijske svojine kao organa za međunarodno preliminarno ispitivanje prema Sporazumu o saradnji u oblasti patenata, u korist Evropskog zavoda za patente. Ova obaveza će djelovati samo u onom obimu u kojem Evropski zavod za patente, prema članu 162 stav 2 Konvencije, može da sprovodi ispitivanje evropskih prijava patenata; ovo dejstvo stupa na snagu dvije godine nakon trenutka u kojem Evropski zavod za patente, na osnovu svog petogodišnjeg plana kojim se postepeno proširuje nadležnost zavoda na sve oblasti tehnike, i koji može biti izmijenjen samo rješenjem Upravnog savjeta, proširi svoju djelatnost na međunarodne prijave koje podnose državljani te države, lica sa mjestom boravka ili sjedištem na teritoriji te države, državljana jedne susjedne zemlje koja je članica Konvencije ili lica koja u jednoj takvoj susjednoj državi imaju mjesto boravka ili sjedište. Upravni savjet može rješenjem dopustiti centralnoj službi za zaštitu industrijske svojine jedne države članice da navedenu djelatnost proširi na međunarodne prijave koje podnose državljani ili lica sa mjestom boravka ili sjedištem na teritoriji neke države nečlanice, koja ima isti službeni jezik kao i odnosna država članica, i na prijave koje su sačinjene na tom jeziku.

Odjeljak III

1) Centralna služba za zaštitu industrijske svojine svake države članice Konvencije, čiji službeni jezik nije jedan od službenih jezika Evropskog zavoda za patente, ima pravo da djeluje kao organ za međunarodni rešerš i kao organ za međunarodno preliminarno ispitivanje prema Ugovoru o saradnji u oblasti patenata. Korišćenje ovog prava pretpostavlja obavezu odnosno države da ograniči ovu djelatnost na međunarodne prijave koje podnose državljani te države, lica sa mjestom boravka ili sjedištem na teritoriji te države, državljana jedne susjedne zemlje koja je članica Konvencije ili lica koja u jednoj takvoj susjednoj državi imaju mjesto boravka ili sjedište. Upravni savjet može rješenjem dopustiti centralnoj službi za zaštitu industrijske svojine jedne države članice da navedenu djelatnost proširi na međunarodne prijave koje podnose državljani ili lica sa mjestom boravka ili sjedištem na teritoriji neke države nečlanice, koja ima isti službeni jezik kao i odnosna država članica, i na prijave koje su sačinjene na tom jeziku.

2) U cilju usklađivanja djelatnosti rešerširanja u okviru sistema predviđenog Ugovorom o saradnji u oblasti патената sa sistemom priznanja evropskih патената, uspostaviće se saradnja između Evropskog zavoda za patente i centralnih službi za zaštitu industrijske svojine, koje su ovlašćene prema odredbama ovog odjeljka. Ova saradnja će se bazirati na posebnom sporazumu koji se, na primjer, može proširiti na postupak i metode rešerša, uslove za postavljanje i obučavanje ispitivača, smjernice za razmjenu usluga u oblasti rešerša i drugih djelatnosti između organa, kao i na druge mjere potrebne za obezbjeđenje neophodne kontrole i nadzora.

Odjeljak IV

1) a) Da bi se nacionalnim zavodima za patente država članica Konvencije olakšalo prilagođavanje evropskom patentnom sistemu, Upravni savjet može, ako to smatra poželjnim, pod niže navedenim uslovima da prenese na centralne službe za zaštitu industrijske svojine onih država u kojima se može voditi postupak na jednom od službenih jezika Evropskog zavoda za patente, da ispituju evropske prijave патената koje su sačinjene na tom jeziku, što se, shodno članu 18 stav 2 Konvencije, u pravilu povjerava jednom ispitivaču u odsjeku za ispitivanje. Ovi zadaci obavljaju se u okviru postupka za priznanje патената, predviđenog u Konvenciji; odluku o tim prijavama donosi odsjek za ispitivanje u sastavu koji je predviđen u članu 18 stav 2.

b) Poslovi prenijeti shodno tački (a) ne smiju se odnositi na više od 40% ukupnog broja podnijetih evropskih prijava патената; poslovi prenijeti na svaku pojedinu državu ne smiju se odnositi na više od jedne trećine svih podnijetih evropskih prijava патената. Ovi poslovi se prenose za period koji iznosi 15 godina od početka rada Evropskog zavoda za patente, a tokom 5 posljednjih godina se postepeno (u načelu za 20% godišnje) smanjuju na nulu.

c) Imajući u vidu odredbe tačke (b), Upravni savjet odlučuje o vrsti, porijeklu i broju evropskih prijava патената, koje može da obrađuje centralna služba za zaštitu industrijske svojine jedne od navedenih država članica.

d) Naprijed navedene odredbe o sprovođenju biće unijete u poseban sporazum koji će se zaključiti između centralne službe za zaštitu industrijske svojine dotične države članice i Evropske organizacije za patente.

e) Nacionalni zavod, sa kojim je zaključen takav poseban sporazum, može do isteka perioda od 15 godina da obavlja poslove kao organ za međunarodno preliminarno ispitivanje, u skladu sa Ugovorom o saradnji u oblasti патената.

2) a) Ako Upravni savjet smatra da je to spojivo sa dobrim funkcionisanjem Evropskog zavoda za patente, onda on može, u cilju prevladavanja teškoća koje neke države članice mogu imati primjenjujući odjeljak 1 stav 2 da na centralne službe za zaštitu industrijske svojine tih država prenese zadatak sprovođenja rešerša za evropske prijave патената ukoliko je njihov službeni jezik jedan od službenih jezika Evropskog zavoda za patente i ukoliko te službe ispunjavaju uslove da budu određene kao organ za međunarodni rešerš, u skladu sa Ugovorom o saradnji u oblasti патената.

b) U tim poslovima, koji se obavljaju pod odgovornošću Evropskog zavoda za patente, dotična centralna služba se mora pridržavati smjernica koje važe za izradu evropskog rešeršnog izvještaja.

c) Odredba stava 1 tačka (b), druga rečenica, i tačka (d) ovog odjeljka, primjenjuju se na ovaj stav.

Odjeljak V

1) Agencija navedena u odjeljku 1 stav 1 tačka (c), ima pravo da za evropske prijave патената koje podnose lica koja imaju boravište ili sjedište u državi u kojoj agencija ima svoje sjedište, i koje su podnijete na službenom jeziku te države, sprovodi rešerš na osnovu dokumentacije koja joj stoji na raspolaganju. Ovim se ne smije usporiti postupak priznanja evropskog патената, niti smiju biti prouzrokovani dodatni troškovi za Evropsku organizaciju za patente.

2) Agencija navedena u stavu 1 ima pravo da, po izboru i na trošak podnosioca evropske prijave патената, izradi rešerš za njegovu prijavu na osnovu dokumentacije predviđene u stavu 1. Ovo ovlašćenje važi sve dok se rešerš predviđen u članu 92 Konvencije ne proširi, shodno odjeljku VI, na tu dokumentaciju, pri čemu se ne smije usporiti postupak priznanja evropskog патената.

3) Upravni savjet može proširiti ovlašćenja predviđena u stavovima 1 i 2 pod uslovima predviđenim u navedenim stavovima i na centralne službe za zaštitu industrijske svojine država članica, čiji službeni jezik nije jedan od službenih jezika Evropskog zavoda za patente.

Odjeljak VI

Rešerš predviđen članom 92 Konvencije proširiće se, u načelu, za sve evropske prijave патената, na objavljene patente, objavljene prijave патената, kao i na ostale odgovarajuće spise država članica, koji, u trenutku navedenom u članu 162 stav 1 Konvencije, nisu sadržani u rešeršnoj dokumentaciji Evropskog zavoda za patente. Upravni savjet utvrđuje obim, bliže uslove i dinamiku pomenutog proširivanja, na osnovu rezultata studije koja mora obraditi posebno tehničke i finansijske aspekte.

Odjeljak VII

U slučaju sukoba između odredbi Konvencije i ovog Protokola, Protokol ima prvenstvo.

Odjeljak VIII

Odluke predviđene u ovom Protokolu donose se tročetvrtinskom većinom (član 35 stav 2 Konvencije). U vezi s tim, primjenjuju se odredbe o brojanju glasova (član 36 Konvencije).

**Protokol
o sudskoj nadležnosti i priznavanju odluka o pravu na evropski patent (Protokol o priznavanju) od 5. oktobra
1973. godine**

**Odjeljak I
NADLEŽNOST**

Član 1

- 1) Za tužbe protiv podnosioca prijave, kojima se traži utvrđenje prava na evropski patent za jednu ili više država naznačenih u evropskoj prijavi patenta, određuje se nadležnost sudova država članica prema članovima 2 do 6.
- 2) Sa sudovima, u smislu ovog protokola, izjednačeni su organi koji su prema nacionalnom pravu države članice nadležni za odluke o tužbama navedenim u stavu 1. Države članice saopštavaju Evropskom zavodu za patente nazive organa koji imaju takvu nadležnost; Evropski zavod za patente obavještava ostale države članice o tome.
- 3) Kao države članice u smislu ovog protokola podrazumijevaju se samo one države članice koje nisu isključile primjenu ovog Protokola u skladu sa odredbom člana 167 Konvencije.

Član 2

Uz rezervu odredbi iz članova 4 i 5 protiv podnosioca prijave koji ima mjesto boravka ili svoje sjedište u jednoj od država članica, podnosi se tužba sudovima te države članice.

Član 3

Uz rezervu odredbi iz članova 4 i 5 ako podnosilac prijave ima svoje mjesto boravka ili sjedište izvan države članice, a lice koje traži da se utvrdi njegovo pravo na evropski patent ima mjesto boravka ili svoje sjedište u jednoj državi članici, onda su nadležni sudovi te države članice.

Član 4

Ako je predmet evropske prijave patenta pronalazak radnika, onda su, uz rezervu odredbi iz člana 5 za sudski spor između radnika i poslodavca nadležni isključivo sudovi države članice, po čijem se pravu određuje pravo na evropski patent, shodno Članu 60 stav 1 druga rečenica Konvencije.

Član 5

- 1) Ako su stranke koje učestvuju u sporu o pravu na evropski patent, pismenim dogovorom, ili usmenim dogovorom koji je pismeno potvrđen, odredile da jedan sud ili sudovi jedne određene države članice treba da odluče u tom sporu, onda su nadležni isključivo taj sud ili sudovi te države.
- 2) Ako su stranke u sporu radnik i njegov poslodavac, onda se stav 1 primjenjuje samo ukoliko nacionalno pravo koje je mjerodavno za ugovor o radu dopušta takav dogovor.

Član 6

U slučajevima koji nisu regulisani članovima 2 do 4 i članom 5 stav 1 nadležni su isključivo sudovi Savezne Republike Njemačke.

Član 7

Sudovi država članica, kojima se podnose tužbe shodno članu 1 ispituju po službenoj dužnosti svoju nadležnost prema članovima 2 do 6.

Član 8

- 1) Ako se sudovima raznih država članica podnese tužba za utvrđenje istog prava između istih stranaka, onda se sud kojem je tužba kasnije podnijeta službenim putem mora oglasiti nenadležnim, u korist suda kojem je tužba ranije podnijeta.
- 2) Sud koji se, shodno stavu 1 mora oglasiti nenadležnim, mora prekinuti postupak do konačne odluke suda kome je tužba ranije podnijeta, ukoliko postoje prigovori na nadležnost tog drugog suda.

Одјелјак II PRIZNAVANJE

Član 9

- 1) Uz rezervu odredbe iz člana 11 stav 2 konačne odluke o pravu na evropski patent za pojedine ili sve u evropskoj prijavi patenta naznačene države članice, koje su donijete u jednoj državi članici priznaju se u drugim državama članicama bez ikakvog posebnog postupka.
- 2) Nadležnost suda čija odluka treba da bude priznata i zakonitost te odluke ne smiju biti naknadno ispitivani.

Član 10

Član 9 stav 1 se ne primjenjuje ako:

- a) podnosilac prijave koji se nije upustio u spor, dokaže da mu dokument kojim je započet taj spor nije uredno ili nije blagovremeno bio uručen, kako bi se on mogao braniti;
- b) podnosilac prijave dokaže da je donijeta odluka nespojiva sa jednom drugom odlukom koja je donijeta po tužbi između istih stranaka u jednoj državi članici, s tim da je ta tužba podnijeta prije nego tužba koja je dovela do odluke koja se treba priznavati.

Član 11

- (1) U međusobnom odnosu država članica odredbe ovog protokola imaju prvenstvo u odnosu na odredbe drugih sporazuma koji regulišu sudsku nadležnost ili priznavanje odluka, a koji su u suprotnosti sa odredbama ovog protokola.
- (2) Ovaj protokol ne utiče na primjenu sporazuma između država članica i države koju Protokol ne obavezuje.

Protokol

o povlasticama i imunitetima Evropske organizacije za patente (Protokol o povlasticama i imunitetima) od 5. oktobra 1973. godine

Član 1

- 1) Prostorije Organizacije su nepovredive.
- 2) Organi vlasti država u kojima Organizacija ima svoje prostorije neće ulaziti u njih ako nemaju saglasnost predsjednika Evropske organizacije za patente. Takva saglasnost se pretpostavlja u slučaju požara ili druge nesreće koja zahtijeva brzu zaštitnu akciju.
- 3) Uručenje tužbe ili drugog akta koji se odnosi na neki postupak koji je pokrenut protiv Organizacije, u prostorijama Organizacije, ne predstavlja radnju uperenu protiv nepovredivosti prostorija.

Član 2

Arhiva Organizacije i svi dokumenti koji pripadaju Organizaciji ili koje Organizacija drži, nepovredivi su.

Član 3

- 1) U okviru svojih zvaničnih djelatnosti, Organizacija ima sudski i izvršni imunitet, osim:
 - a) ukoliko se Organizacija izričito odrekne takvog imuniteta u pojedinačnom slučaju;
 - b) u slučaju da treće lice tuži Organizaciju za naknadu štete prouzrokovane udesom koji je izazvan motornim vozilom koje pripada Organizaciji ili koje je korišćeno za potrebe Organizacije, ili u slučaju saobraćajnog prekršaja u kojem je učestvovalo takvo vozilo;
 - c) u slučaju izvršenja arbitražne odluke, u skladu sa Članom 23.
- 2) Svojina i druge materijalne vrijednosti Organizacije, bez obzira gdje se nalaze, uživaju imunitet od svake vrste rekvizicije, konfiskacije, eksproprijacije i prinudne uprave.
- 3) Svojina i druge materijalne vrijednosti Organizacije uživaju, takođe, imunitet od svake vrste administrativnog ili sudskog privremenog ograničenja, osim u slučaju da je to neophodno radi sprječavanja ili istrage udesa u kojem je učestvovalo vozilo koje pripada Organizaciji ili je korišćeno za potrebe Organizacije.
- 4) Pod zvaničnom djelatnošću Organizacije podrazumijevaju se, za potrebe ovog protokola, one djelatnosti koje su neophodne za izvođenje njenih administrativnih i tehničkih zadataka, koji su predviđeni Konvencijom.

Član 4

- 1) U okviru njene zvanične djelatnosti, Organizacija, njena imovina i njeni prihodi izuzeti su od svake vrste direktnog oporezivanja.
- 2) Ukoliko su, prilikom većih kupovina za potrebe zvanične djelatnosti Organizacije, u cijenu uračunati porezi ili druga davanja, država članica će, u svakom slučaju u kojem je to moguće, preduzeti odgovarajuće mjere da se Organizaciji obezbijedi popust ili povraćaj sredstava u visini poreza ili drugog davanja.
- 3) Ne postoji izuzeće od poreza ili drugih davanja koji predstavljaju naknadu za javne usluge.

Član 5

Roba koja se uvozi ili izvozi za potrebe Organizacije radi vršenja njenih zvaničnih djelatnosti izuzeta je od carina ili drugih davanja prilikom uvoza ili izvoza, sa izuzetkom onih davanja koja predstavljaju naknadu za pružene usluge, kao i od svih drugih uvoznih ili izvoznih zabrana ili ograničenja.

Član 6

Ne postoji izuzeće u smislu članova 4 i 5 u pogledu robe koja se kupuje ili uvozi radi ličnih potreba zaposlenih u Organizaciji.

Član 7

- 1) Roba koja pripada Organizaciji, i koja je kupljena ili uvezena prema članovima 4 i 5 smije se prodavati ili otuđivati samo u saglasnosti sa uslovima koje propisuje država članica, koja je odobrila izuzeće.
- 2) Kretanje robe i usluga između raznih službenih zgrada Organizacije izuzeto je od svake vrste naplata ili ograničenja; ukoliko je to svrsishodno, države članice preduzimaju podesne mjere da obezbijede popust prilikom plaćanja ili povraćaj plaćenih iznosa, ili da potpuno ukinu takva ograničenja.

Član 8

Pošiljke publikacija ili drugog informacionog materijala od strane Organizacije, ili upućene Organizaciji ne podliježu bilo kakvim ograničenjima.

Član 9

Države članice odobravaju Organizaciji devizne povlastice koje su neophodne za vršenje njene zvanične djelatnosti.

Član 10

- 1) U pogledu zvanične komunikacije Organizacije, i kretanja svih njenih dokumenata u državi članici, Organizacija uživa najveće povlastice koja država članica pruža drugim međunarodnim organizacijama.
- 2) Zvanična komunikacija Organizacije, bez obzira na sredstvo komunikacije, ne podliježe cenzuri.

Član 11

Države članice preduzimaju odgovarajuće mjere da olakšaju službenicima Evropskog zavoda za patente ulazak, boravak i napuštanje zemlje.

Član 12

- 1) Predstavnici država članica, njihovi zamjenici i njihovi savjetnici ili stručnjaci uživaju, tokom sjednica Upravnog savjeta ili sjednica drugih organa koji su osnovani od strane Upravnog savjeta, kao i za vrijeme putovanja na mjesto i od mjesta sjednice, sljedeće povlastice i imunitete:
 - a) imunitet od hapšenja ili pritvora i od zaplijene ličnog prtljaga, osim u slučaju da su uhvaćeni u vršenju prestupa;
 - b) sudski imunitet, čak i poslije završetka njihove misije, u pogledu radnji koje su djelom ili pisanom ili izgovorenom riječi počinili u vršenju svoje funkcije; ovaj imunitet, međutim, ne važi u slučaju da pomenuto lice počinio saobraćajni prekršaj, kao ni u slučaju da vozilo koje mu pripada ili kojim ono upravlja izazove štetu;
 - c) nepovredivost svih njihovih službenih papira i dokumenata;
 - d) pravo da se koriste šiframa i da primaju dokumenta ili poštu posredstvom specijalnog kurira ili u zapečaćenoj torbi;
 - e) izuzeće njih samih, kao i njihovih bračnih partnera od svih ograničenja i obaveza vezanih za ulazak stranaca u zemlju i njihovo prijavljivanje;
 - f) iste olakšice u pogledu novčanih i deviznih propisa, koje uživaju predstavnici stranih vlada prilikom njihovih vremenski ograničenih misija.

2) Povlastice i imuniteti se licima pomenutim u stavu 1 ne daju radi njihove lične prednosti, već da bi im se obezbijedila potpuna nezavisnost u vršenju njihovih dužnosti u vezi sa Organizacijom. Stoga, država članica ima dužnost da uskrati imunitet u svim slučajevima kada, po mišljenju te države, takav imunitet ometa djelovanje pravosudnog sistema, ili kada se on može uskratiti bez štete za svrhu zbog koje je priznat.

Član 13

1) Uz rezervu odredbe iz Člana 6 predsjednik Evropskog zavoda za patente uživa povlastice i imunitete koji se priznaju diplomatama na osnovu Bečke konvencije o diplomatskim odnosima, zaključene 18. aprila 1961.

2) Međutim, sudski imunitet ne djeluje u slučaju kada predsjednik Evropskog zavoda za patente počini saobraćajni prekršaj, ili kad vozilo koje pripada predsjedniku ili kojim predsjednik upravlja izazove štetu.

Član 14

Lica koja su zaposlena u Evropskom zavodu za patente:

a) imaju, čak i po prestanku njihove službe, sudski imunitet u pogledu radnji koje su djelom ili pisanom ili izgovorenim riječi počinili u vršenju svoje službe; ovaj imunitet, međutim, ne važi u slučaju da pomenuta lica počine saobraćajni prekršaj, kao ni u slučaju da vozilo koje im pripada ili kojim ona upravljaju izazove štetu;

b) izuzeta su od svake obaveze u pogledu vojne vježbe;

c) uživaju nepovredivost za sve svoje službene papire i dokumenta;

d) uživaju, zajedno sa članovima svoje porodice koja čini domaćinstvo, iste one olakšice u pogledu ograničenja i obaveza vezanih za ulazak stranaca u zemlju i njihovo prijavljivanje, koje se obično priznaju zaposlenima u međunarodnim organizacijama;

e) uživaju iste one povlastice u pogledu deviznih propisa, koje se obično priznaju zaposlenima u međunarodnim organizacijama;

f) uživaju, zajedno sa članovima svoje porodice koja čini domaćinstvo, u slučaju međunarodne krize, iste povlastice u pogledu repatrijacije, kao i diplomatsko osoblje;

g) imaju pravo da, prilikom započinjanja njihove službe u određenoj državi članici, bez plaćanja carine uvezu predmete za domaćinstvo i svoje lične stvari, i da, prilikom napuštanja svoje službe u toj državi, bez plaćanja carine izvezu te predmete i stvari; vlada pomenute države, u tom pogledu, može propisati uslove koje smatra potrebnim, kao i izuzetke u pogledu robe koja je nabavljena u toj državi, a koja podliježe izvoznim ograničenjima.

Član 15

Stručnjaci koji izvršavaju poslove u ime Organizacije ili za Organizaciju, uživaju sljedeće povlastice i imunitete, u mjeri u kojoj su oni neophodni za izvršavanje njihovih poslova, uključujući i putovanja prilikom izvršavanja njihovih poslova:

a) sudski imunitet u pogledu radnji koje su djelom ili pisanom ili izgovorenim riječi počinili u vršenju svoje službe; ovaj imunitet, međutim, ne važi u slučaju da ekspert počini saobraćajni prekršaj, kao ni u slučaju da vozilo koje mu pripada ili kojim on upravlja izazove štetu; eksperti nastavljaju da uživaju ovaj imunitet i poslije prestanka njihove djelatnosti u Organizaciji;

b) nepovredivost za sve svoje službene papire i dokumenta;

c) olakšice u pogledu deviznih propisa, koje su neophodne za transfer njihove naknade.

Član 16

(1) Lica navedena u članovima 13 i 14 podliježu obavezi plaćanja poreza u korist Organizacije, na platu i prihode isplaćene od strane Organizacije, a pod uslovima koje propisuje Upravni savjet u roku od jedne godine od stupanja na snagu Konvencije. Od dana kad se počne primjenjivati taj porez, pomenute plate i prihodi se izuzimaju od plaćanja nacionalnog poreza na prihod. Međutim, države članice mogu uzeti u obzir te plate i prihode prilikom određivanja iznosa poreza koji se mora platiti na prihode iz drugih izvora.

(2) Stav 1 se ne primjenjuje na penzije koje plaća Organizacija bivšim zaposlenima u Evropskom zavodu za patente.

Član 17

Upravni savjet odlučuje o kategorijama zaposlenih na koje se primjenjuje Član 14 u cjelini ili djelimično, i Član 16 kao i o kategorijama eksperata na koje se primjenjuje Član 15. Imena, titule i adrese zaposlenih i stručnjaka koji su obuhvaćeni tim kategorijama saopštavaju se, s vremena na vrijeme, državama članicama.

Član 18

Uz rezervu sporazuma sa državama članicama, sačinjenih na osnovu Člana 25 u slučaju da Organizacija ustanovi sopstveni sistem socijalnog osiguranja, zaposleni u Evropskom zavodu za patente biće oslobođeni od obaveze plaćanja doprinosa za nacionalni sistem socijalnog osiguranja.

Član 19

- 1) Povlastice i imuniteti, koji su predviđeni ovim Protokolom, ne postoje zato da zaposlenima u Evropskom zavodu za patente i stručnjacima koji rade u ime Organizacije ili za Organizaciju, pruže ličnu prednost. Oni su predviđeni isključivo da bi obezbijedili, u svim okolnostima, nesmetano funkcionisanje Organizacije i potpunu nezavisnost lica kojima su priznati.
- 2) Predsjednik Evropskog zavoda za patente ima dužnost da uskrati imunitet kada ocijeni da on ometa normalno funkcionisanje pravosudnog sistema i kad njegovo uskraćivanje ne ugrožava interese Organizacije. Upravni savjet može uskratiti imunitet predsjedniku iz istih razloga.

Član 20

- 1) Organizacija saraduje u svako doba sa nadležnim organima država članica u cilju olakšanja vršenja pravosudne funkcije, poštovanja propisa o javnom redu i sigurnosti, propisa o zdravstvenoj zaštiti, zaštiti na radu i sličnih propisa, kao i sprječavanja zloupotrebe povlastica, imuniteta i olakšica koji su predviđeni ovim Protokolom.
- 2) Pojediniosti saradnje pomenute u stavu 1 mogu se urediti dopunskim sporazumima koji se pominju u Članu 25.

Član 21

Svaka država članica zadržava pravo da preduzima sve mjere predostrožnosti, koje su potrebne u interesu njene bezbjednosti.

Član 22

Nijedna država članica nije obavezna da prizna povlastice i imunitete koji su predviđeni u članovima 12, 13, članu 14 tačke (b), (e) i (g) i članu 15 tačka (c):

- a) sopstvenim državljanima;
- b) licima koja, prilikom započinjanja svoje djelatnosti u Organizaciji, imaju prebivalište u toj državi, i koja nisu zaposlena u nekoj drugoj međunarodnoj organizaciji čije osoblje je preuzeto u Organizaciju.

Član 23

- 1) Svaka država članica može da iznese pred međunarodni arbitražni sud svaki spor u vezi sa Organizacijom, ili licem koje je zaposleno u Organizaciji, ili ekspertom koji radi u ime Organizacije ili za Organizaciju, ukoliko su Organizacija ili zaposleno lice ili ekspert imali pravo na povlasticu ili imunitet prema ovom protokolu, pod uslovom da taj imunitet nije bio povučen.
- 2) Ukoliko država članica ima namjeru da iznese spor pred arbitražni sud, saopštiće to predsjedavajućem Upravnom savjetu, koji će odmah zatim obavijestiti sve države članice o tom saopštenju.
- 3) Postupak koji je predviđen u stavu 1 ovog člana neće se primjenjivati na sporove između Organizacije i njenih zaposlenih ili eksperata u pogledu opštih akata o radnom odnosu i uslovima zaposljavanja, ili propisima o penzijskom osiguranju.
- 4) Odluka arbitražnog suda je konačna i obavezujuća za stranke, te se protiv nje ne može uložiti pravni lijek; u slučaju spora o značenju i obimu odluke, dužnost je arbitražnog suda da, na zahtjev jedne od stranaka, pruži tumačenje svoje odluke.

Član 24

- (1) Arbitražni sud, pomenut u Članu 23 sastoji se od tri člana; jednog arbitra imenuje jedna država - stranka ili više država koje su stranke u sporu, drugog arbitra imenuje Upravni savjet, a trećeg arbitra, koji je istovremeno predsjedavajući, imenuju prva dva arbitra.
- (2) Arbitri se imenuju izborom sa spiska koji sadrži imena najviše šest arbitara određenih od strane svake države članice, i šest arbitara određenih od strane Upravnog savjeta. Ovaj spisak će se ustanoviti u najkraćem mogućem roku po stupanju na snagu ovog Protokola, i biće revidiran svaki put kad se to pokaže potrebnim.
- (3) Ukoliko, u roku od tri mjeseca od datuma saopštenja pomenutog u članu 23 stav 2 jedna od stranaka ne imenuje arbitra u skladu sa stavom 1 ovog člana, na zahtjev druge stranke će imenovanje sa pomenute liste izvršiti predsjednik Međunarodnog suda pravde. Ista odredba će se primijeniti na zahtjev jedne od stranaka i u slučaju da, u roku od jednog mjeseca od imenovanja drugog arbitra, prvi i drugi arbitar ne mogu da se slože o imenovanju trećeg. Međutim, ukoliko je, u ova dva slučaja, predsjednik Međunarodnog suda pravde spriječen da izvrši imenovanje, ili je državljanin jedne od država stranaka u sporu, potpredsjednik Međunarodnog suda pravde će izvršiti pomenuto imenovanje, pod uslovom da on nije državljanin jedne od država strana u sporu; ukoliko je to slučaj, imenovanje će izvršiti član Međunarodnog suda pravde, koji nije državljanin države stranke u sporu, i koji je, za tu svrhu, određen od strane predsjednika ili

potpredsjednika Međunarodnog suda pravde. Državljanin države koja iznosi spor pred arbitražni sud ne može biti arbitar koga imenuje Upravni savjet; takođe, lice koje je na predlog Upravnog savjeta upisano u spisak, ne može biti imenovano za arbitra od strane države koja iznosi spor pred arbitražni sud, i čiji je to lice državljanin. Lice koje pripada nekoj od ovih kategorija lica ne može biti izabrano za predsjedavajućeg arbitražnog suda.

Član 25

Organizacija može, na osnovu odluke Upravnog savjeta, da zaključuje sa državama članicama dopunske sporazume u cilju sprovođenja ovog protokola u tim državama; kao i druge sporazume radi obezbjeđenja efikasnog rada Organizacije i čuvanja njenih interesa.

Protokol o dopuni zaposlenih Evropskog zavoda za patente u Hagu (Protokol o dopuni zaposlenih) od 29. novembra 2000. godine

Evropska organizacija za patente će obezbijediti da proporcija radnih mjesta u Evropskom zavodu za patente dodijeljena filijali u Hagu, kao što je definisano planom o osnivanju 2000. godine i sistematizacijom ostane suštinski nepromijenjena. Bilo kakva promjena u broju radnih mjesta u filijali u Hagu koja ima za rezultat odstupanja više od 10% u proporciji, koja se ukaže neophodnom za ispravno funkcionisanje Evropskog zavoda za patente, mora se donijeti na osnovu odluke Upravnog savjeta organizacije na predlog Predsjednika Evropskog zavoda za patente poslije konsultacija sa vladama Savezne Republike Njemačke i Kraljevine Holandije.

Član 3

Ovaj zakon stupa na snagu osmog dana od dana objavljivanja u "Službenom listu Crne Gore - Međunarodni ugovori".

Broj: 07-3/21-1/4

EPA 214 XXVII

Podgorica, 29. decembar 2021. godine

Skupština crne gore 27. Saziva

Predsednik,

Aleksa Bečić, s.r.s