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M I N U T E S

of the
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ADMINISTRATIVE COUNCIL

(Munich, 2 to 6 June 2003)

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The summary of decisions has been distributed separately as CA/71/03.

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The Administrative Council of the European Patent Organisation held its 93rd meeting in Munich from 2 to 6 June 2003, with Roland Grossenbacher (CH) presiding. As Mr Grossenbacher had to leave the meeting to take part in deliberations regarding item 07 on the agenda ("Election of the President of the Office"), the discussions on items 16 ("Community patent; common approach"), 17 ("Organisational autonomy of the boards of appeal of the European Patent Office within the European Patent Organisation"), 18 ("Convening of a diplomatic conference"), 19 ("Report of the Research Fund") and 31 ("Revision of the EPO's Protocol on Privileges and Immunities") were chaired by the deputy chairman, Mogens Kring (DK). The chairman welcomed the participants, especially newcomers to the Council Evangelos Savva (CY), Lex Kaufhold (LU) and Anthony Murphy (GB). He also welcomed the Icelandic delegation, whose request for observer status was on the agenda under item 11.

I. AC AND GENERAL AFFAIRS

01. Adoption of the agenda (CA/11/03 Rev. 1)

1. The chairman pointed out that, contrary to what was indicated in document CA/11/03 Rev. 1, item 04 on the agenda, "Setting up and composition of the Board of the Administrative Council", was for decision, and not just for information.
2. In response to comments by the United Kingdom delegation regarding the implementation of IAS (international accounting standards), which had initially been on the agenda but which had then been removed, the President confirmed that, as announced at the 79th meeting of the Budget and Finance Committee (Mondorf-les-Bains, 13 and 14 May 2003), the Office would be submitting a new document on the subject in the autumn. The document would take into account the comments made by the Swiss and United Kingdom delegations in CA/61/03 and CA/F 12/03. The President once again expressed his thanks to these two delegations for the support they had offered the Office in this undertaking.
3. Under Article 9(5) of the Council's rules of procedure, the President then asked the delegations to decide whether certain documents which had been distributed late should remain on the agenda. The documents in question were CA/18/03 + Add. 1 Rev. 1 (item 45, "Improving synergies within the European patent system - follow-up"), CA/14/03 Rev. 1 (item 36b, "Information on examining capacity"), CA/33/03 (item 19, "Report of the Research Fund"), CA/44/03 (item 32 "Status report on recruitment figures/occupied posts"), CA/62/03 (item 13c "Harmonisation of patent law - SPLT"), CA/64/03 (item 13a "Trilateral strategic issues - fee policy"), CA/66/03 (item 39a "Filing figures - situation at 04/2003") and CA/67/03 (item 31 "Revision of the EPO's Protocol on Privileges and Immunities").

4. The Committee was unanimously in favour of keeping these documents on the agenda (present: 25; for: 25).
5. The President suggested that the procedure of collecting late documents in a red file should be improved. It would be a good idea to provide details of who had drawn up the documents in question, what the subject was, why they had been submitted (for information, opinion or decision), and the reasons why they were late. In many cases the delay was perfectly justifiable.
6. The Council then unanimously adopted the agenda as per CA/11/03 Rev. 1 (present: 25; for: 25).

02. Adoption of the list of A items (see Annex A)
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7. The Council adopted the list of A items in Annex A to CA/11/03 Rev. 1.
8. The Council consequently noted the items listed in Parts I and II of Annex A, and approved the items in Part III, namely:
 - status report on co-operation programmes with the member states (CA/19/03 + Add. 1 and Add. 2) (agenda item 22)
 - co-operation programme on online filing (CA/48/03 Rev. 1) (= item 23)
 - co-operation programme on patent awareness and individual staff training for national offices of member states (CA/49/03 Rev. 1) (= item 24)
 - award to Ingenieursbureau Wolter & Dros BV of a contract to replace the air-handling units in the EPO III building at The Hague, and creation of a EUR 750 000 contingency reserve (CA/18/03) (= item 26)
 - draft decision in Part II of CA/5/03 Rev. 1, fixing the initial contributions of states invited to accede to the EPC on 1 July 2002 (= item 38) [see CA/D 6/03]
 - basic assumptions for the business plan, budget and financial plan (CA/35/03) (= item 39b)
 - revision of the terminology used in the FinRegs (CA/56/03) (= item 40) [see CA/D 7/03]

- update of CA/D 17/93 on the financing of the pension scheme (CA/57/03) (= item 41) [see CA/D 8/03]
- reimbursement of costs incurred by states invited to accede to the EPC attending meetings of the Committee on Patent Law in 2003 (CA/27/03) (= item 43).

03. Approval of the minutes of the Council's 92nd meeting (CA/52/03)

9. The Council approved the minutes of its 92nd meeting as per CA/52/03, with two amendments (to points 10 and 14) requested by the French and Hellenic delegations respectively.

04. Setting up and composition of the Board of the Administrative Council (CA/6/03 + CA/39/03)

10. By way of introduction, the chairman reminded the Council that it had agreed at its last meeting to wait for the new EPO President to be elected before taking a decision on the composition of the Board. Moreover, a successor to the chairman of the Budget and Finance Committee also had to be chosen. However, as the decision to set up a Board under Article 28 EPC had been taken some time ago, he thought it would be unwise to postpone it yet again.
11. The Belgian and Hellenic delegations said they still thought that no decision on the composition of the Board should be taken until a new President had been elected.
12. The United Kingdom and Swedish delegations said that the decision could not be postponed yet again. Everyone had agreed that the Board should be set up.
13. By a show of hands, the Council voted against postponing the decision (present: 27; for: BE, CY, GR; against: 24).
14. The chairman said that he agreed with the proposals put forward by the President in CA/39/03.
15. Replying to questions from the Hellenic, Belgian, Spanish and French delegations, the chairman explained that the members of the Board were elected as individuals, not as representatives of a particular state. In the composition as proposed, account had however been taken of the need to ensure a certain equilibrium between the states, based on the date on which they had acceded to the EPC. The President's powers under Article 10 EPC would not be affected in any way. The Board would be free to organise its work as it wished. However, it had to be quite clear that the Board would

have no powers other than those granted by the EPC to the chairman of the Council. A report on its work would be presented at the start of each Council meeting. A document outlining the tasks which the Board could take on could be drawn up for the Council's October 2003 meeting. The chairman of the Budget and Finance Committee would be a *de facto* - as opposed to a *de jure* - member of the Board.

16. In conclusion, the Council unanimously decided to set up, as from 1 July 2003, a Board under Article 28 EPC, as per the draft decision in Part II of CA/6/03 except for replacing the wording of Article 1(3) by that proposed by the President in CA/39/03 (present: 27; for: 25; abstentions: BE, GR) [see CA/D 4/03]. The following were thus appointed as members of the Board for a term expiring on 30 June 2006:

- Jaime Serrão Andrez (PT)
- Mihaly Ficsor (HU)
- Elmar Hucko (DE)

The Council also noted that as a start the Board could draft a document for the Council meeting in October 2003, setting out the tasks it might be called upon to perform.

05. 2002 Annual Report and President's activities report (CA/28/03)
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17. The President tabled his activities report as per CA/28/03, which the delegations had received in advance in accordance with the new policy, and highlighted the most salient points. There had been a great deal of progress, thanks in particular to the efforts of the staff. The Joint Agenda Building process, or JAB as it was known, had undoubtedly played an important part in this, and an Office-wide review was being held in Munich on 24 June. Production had taken a leap forward, and the number of patents published between January and April 2003 had risen by 10% over the same period in 2002. Measures aimed at reducing the backlog were continuing. New "joint clusters" were going to be created which would take account of the evaluation of the results obtained by the first joint clusters, which had been in existence since 1 January 2003. In addition to its efforts with regard to workload, the Office was also looking at the issue of quality. Recruitment campaigns had been successful, and staff numbers now totalled almost 6 000. The Office was also looking at ways of improving its communications policy, both internal and external. Thus, for example, it had initiated a dialogue with a number of organisations which were critical of its practices. The President then tabled the 2002 Annual Report, with its focus on JAB and mastering the workload. In conclusion, the President thanked the staff of the Office for these excellent results.

18. A number of delegations congratulated the President on the quality of his activities report and thanked him for having arranged for them to receive it in advance of the meeting.
19. The United Kingdom and French delegations said that the informal group comprising representatives from the EPO and the German, French and United Kingdom offices, which had been set up to analyse the role played in innovation by industrial property, and in particular by patent protection, had agreed to launch a number of studies. The Council would be informed of the results of these studies.
20. The Danish delegation was gratified at the satisfactory developments described by the President in his activities report. However, it said that the performance figures would be even more useful if they included information about efficiency, including the relationship between results obtained and the resources used to obtain them. The Danish delegation also said that it was prepared to support the Office in its recruitment efforts, in particular with a view to helping achieve as balanced a distribution of the various nationalities as possible.
21. The French delegation said that, on the whole, it was clear that the Office had pursued with some success the efforts it had launched in 2000. Its results were more in line with both the needs of the users and the capacities of the Office. However, the French delegation still had reservations regarding recruitment, seeing a contradiction between the recruitment figures in the President's activities report, which were fairly realistic, and those in CA/44/03 (see point 32 below), which were completely illusory. Finally, it was a little sceptical about the forecast of double-digit filings growth in 2003. Filing activity around the world was actually stagnating, if not decreasing.
22. Replying to these various comments, the President first of all said that the Office obviously attached the utmost importance to efficiency. Productivity figures, released at regular intervals, were one way of measuring it. Another was represented by trends in unit costs, which had been falling steadily over the last few years. Apart from that, it was always possible to improve on the information available on efficiency. The Office had taken measures, which it would be reporting on in autumn 2003, to reduce the gap between planned and actual recruitment, which had been the subject of recurrent criticism on the part of the French delegation. At the moment, filing figures were stagnating slightly. The Office was following developments very closely, and had undertaken a study to establish if action was necessary. If necessary, concrete proposals would be submitted to the Council by the December 2003 meeting at the latest. In any event, it was important not to slam the brakes on; that could have very serious consequences.

23. In conclusion, the Council noted the President's activities report.

II. NOMINATIONS/ELECTIONS

06a. Election of the deputy chairman of the Administrative Council

24. The chairman explained that Mogens Kring (DK), whose term as deputy chairman of the Council was due to end on 4 December 2003, was prepared to continue to serve on the Council beyond 31 August 2003, the date of his departure as head of the Danish Patent Office.
25. In the light of these explanations, the Council thanked Mr Kring for making himself available, and agreed to postpone the election of its deputy chairman to its October 2003 meeting.

06b. Election of the chairman of the Budget and Finance Committee

26. The chairman explained that Serge Allegrezza, head of the Luxembourg delegation and chairman of the Budget and Finance Committee, had informed him that he had been appointed Director of the Luxembourg National Statistics Office and would therefore be stepping down as head of delegation with effect from 9 June 2003. His term as chairman of the BFC was in any case due to end in September 2003.
27. The Council unanimously elected Maria Ludovica Agrò (IT) as chairman of the Budget and Finance Committee for a term of three years as from 10 June 2003.
28. In a speech (reproduced in Annex II), the chairman, on behalf of the Council, warmly thanked Mr Allegrezza for his invaluable contribution to the work of the Organisation, and wished him all the best for the future.

07. Election of the President of the Office/nomination phase (CA/C 11/03 + Addenda + CA/38/03 Rev. 1)

29. Following lengthy discussions in closed session, in the absence of observers, staff representatives and representatives of the Office (except the President), and after numerous votes had been taken, the Council noted that the procedure for appointing a president laid down in CA/38/03 Rev. 1 had failed to yield a result, none of the candidates in contention having obtained the required qualified majority, and decided to terminate that procedure.
30. The Council decided to initiate the new appointment procedure described in CA/69/03 Rev. 2, and keep this item on its agenda for the October 2003 meeting.

31. The Council also unanimously decided to extend the term of office of the serving president, Ingo Kober, by six months, until 30 June 2004, and authorised its chairman to negotiate and conclude a new contract with Mr Kober on behalf of the Organisation.

08. Vice-presidency DG 2

32. The chairman explained that the term of office of the current Vice-President DG 2 was due to expire on 30 September 2004. As the procedure for selecting and nominating vice-presidents could take up to a year, he would be submitting for the October 2003 meeting a document which might propose, after consulting the President under Article 11(2) EPC, the reappointment of the serving Vice-President DG 2.
33. The Council noted this information.

09. Appointments/reappointments of chairmen and members of the boards of appeal and of the Enlarged Board of Appeal (CA/C 3/03 + CA/C 5/03)

34. The Council, meeting in restricted composition without the observers and staff representatives, approved the appointments and reappointments proposed in CA/C 3/03 and CA/C 5/03:
- **Gabriele De Crignis (IT)**, appointed technically qualified member of a board of appeal with effect from 1 October 2003
 - **Armin Johannes Madenach (DE)**, appointed technically qualified member of a board of appeal with effect from 1 October 2003
 - **William E. Chandler (GB)**, appointed technically qualified member of a board of appeal with effect from 1 October 2003
 - **David H. Rees (GB)**, appointed technically qualified member of a board of appeal with effect from 1 October 2003
 - **Fred van der Voort (NL)**, appointed technically qualified member of a board of appeal with effect from 1 October 2003
 - **Gabriele Alt (DE)**, appointed technically qualified member of a board of appeal with effect from 1 October 2003
 - **Maria Rosario Vega Laso (ES)**, appointed technically qualified member of a board of appeal with effect from 1 October 2003
 - **Konrad Bumers (DE)**, appointed technically qualified member of a board of appeal with effect from 1 January 2004

- **Alessandra Pignatelli (IT)**, appointed legally qualified member of the boards of appeal with effect from 1 October 2003
- **Jean-Claude Saisset (FR)**, reappointed legally qualified member of the Enlarged Board of Appeal, the boards of appeal and the Disciplinary Board of Appeal with effect from 1 July 2003
- **Alice Pezard (FR)**, appointed external legally qualified member of the Enlarged Board of Appeal with effect from 1 July 2003
- **Paul Michel (GB)**, reappointed technically qualified member of a board of appeal with effect from 1 September 2003.

III. LEGAL AND INTERNATIONAL AFFAIRS

10. Progress of ratification procedures (CA/29/03)

35. The Council noted CA/29/03.

11. Request by Iceland for observer status on the Administrative Council (CA/65/03)

36. The chairman reminded the meeting that Iceland had taken part in the 1973 Diplomatic Conference, which had culminated in the adoption of the European Patent Convention, and was therefore entitled to become a full member of the European Patent Organisation at any time, without prior invitation. As he had been sure that there would no objection to its request for observer status, he had invited the Icelandic delegation to be present from the start of the meeting.
37. The Council unanimously decided to give Iceland observer status (present: 25; for: 25).
38. On behalf of its government, the Icelandic delegation thanked the Council for granting its request for observer status. It was gratified by the success of the European patent system, and expected Iceland to become a full member of the Organisation some time in 2004.

12. Report of the chairman of the Committee on Patent Law on its 21st meeting

39. The chairman of the Committee on Patent Law said that its 21st meeting, held in Munich on 29 and 30 April 2003, had been devoted entirely to work being carried out at WIPO with a view to the harmonisation of patent law. The aim was for the member states of the Organisation to reach a common position for discussions at WIPO. The

meeting had started off with a discussion based on a document tabled by the Office and posing a number of important questions regarding strategy and policy. The Office had expressed its concern at the slow pace of negotiations at WIPO. The delegations had reiterated the importance they attached to the harmonisation of patent law. Negotiations at WIPO had indeed not been progressing as they should, but the delegations did not share the Office's pessimism. They had accepted the United Kingdom delegation's suggestion that it might be better to target discussions at WIPO more specifically, and to concentrate on topics where progress might be possible. Discussions at the committee's meeting had also concerned the grace period, a highly controversial issue which had been a matter of debate for some time. It had become apparent that the member states could agree on a common approach, and that Europe could, subject to certain conditions, accept the introduction of a grace period. Armed with this result, the Presidency of the European Union had been able on behalf of Europe to make a declaration before WIPO on the subject of the grace period. The committee also discussed the concepts of "industrial applicability", a criterion for patentability under the EPC, and "industrial utility", the criterion applied in the United States. The delegations had agreed that the differences between the two concepts were not major, and should not be an obstacle to the conclusion of a treaty harmonising patent law (SPLT). The EU Presidency had also expressed that view in his WIPO declaration.

40. The Council noted this report (see the draft minutes of the committee's 21st meeting - CA/PL 9/03).

13a. Trilateral strategic issues - fee policy (CA/64/03)

41. This document was tabled by the President. The Office's aim was to reinforce the impact of the measures already taken with regard to fees, which had led to a significant reduction in the cost of patenting in Europe, and hence easier access to the system, as well as influencing the behaviour of applicants. The EPO's two trilateral partner offices, the JPO and the USPTO, were also considering a reform of their respective fee systems. It was hoped that the three offices would be able to find a common approach regarding PCT fees. The Office would be submitting its initial ideas to the SACEPO annual conference at the end of June. On the basis of the response from SACEPO, and from the member states of the Organisation, it would draw up concrete proposals for a structural reform of its fee system, which would be put to the Administrative Council at its meeting in October 2003.
42. The United Kingdom delegation said that CA/64/03 showed a judicious approach to the issue of fees. It was a very delicate issue since, while the offices needed the resources obtained by way of fees, the level of these fees could not be allowed to be

so high as to act as an obstacle to innovation. The fees for entering the system should be relatively modest so as not to deter applicants. Annual renewal fees, on the other hand, had to be quite high in order to prevent the maintenance of patents without value and unjustified monopolies. The idea of using fees as a means of influencing applicant behaviour and of dissuading them in particular from filing applications containing too many claims, or claims which were too long or confused, was also pertinent. Whatever the case, any modification to the fee structure would have to be approached with caution, and with a view to the introduction of IAS, which could substantially change the way in which the Office's finances were presented.

43. Agreeing with the last point, the Swiss delegation expressed its reservations with regard to any modification of the fees while it was still unclear how the Office's finances would appear once IAS had been introduced.
44. The Luxembourg delegation drew attention to the fact that, even if the Office was still overloaded with work, filings growth was levelling off. This meant that, with the old way of presenting accounts, income and, consequently, the surplus would drop. The drop in surplus would be even more marked if the accounts were presented in accordance with IAS. The Office's margin for manoeuvre was thus becoming more restricted. Moreover, in its document the Office proposed compensating for the decrease in some fees by increasing others. The global impact of such a modification would have to be studied, as would the elasticity of the number of filings with respect to costs. It would be a useful exercise to compare the cost of patenting in Europe with the equivalent cost in the United States and Japan. Whatever else, very careful thought would have to be given to the issue of modifying the fee structure.
45. The Belgian delegation was gratified at the Office's proposals, which in its opinion were fully in line with the aim of mastering the workload. For the first time, fees were being seen not simply as sources of finance, but also as a means of giving applicants more responsibility.
46. The Swedish delegation also thought that CA/64/03 held out interesting prospects, particularly the idea of a progressive claims fee, which it had been advocating for some time. However, there had to be full and open understanding of all the implications attached to any modification of the fee structure.
47. The Netherlands delegation wondered why it was necessary for the Office's fee policy to be in line with those of the JPO and USPTO. Even if one of the underlying aims of the proposed reform was to limit the flow of filings so as to help the Office master its workload, the fact still remained that fees were resources, and it was important for the budget to be balanced. Finally, account had to be taken of the effect on the national offices of any modification of the fee structure.

48. The French delegation said the fee structure had to fulfil a dual purpose. On the one hand, the fees charged had to cover expenditure; in this respect, it would be necessary to wait and see how the Office's financial situation looked once IAS had been introduced. On the other hand, fees could be used as a means of influencing applicant behaviour. As the Luxembourg delegation had pointed out, the question was the elasticity of demand with respect to price. In France, the 50% reduction in the amount of the search fee had not really had any effect. Nor should it be forgotten that the Office only had control over a part of its fee system; it did not have control over the annual renewal fees. Another factor which would play a role would be the arrival of the Community patent. To sum up: the Office was right to open up a debate on the subject of fees, but a large number of points still needed to be studied.
49. The Spanish delegation wanted to know why it was planned to increase the amount of the search fee.
50. The *epi* representative said that, subject to more detailed information, the proposals in CA/64/03 were acceptable. Generally speaking, any reform of the fee structure should be more than merely financially neutral; it should bring about a clear reduction in the cost of patenting, for the benefit of the users.
51. Replying to all these comments, the President said he was gratified at the overall positive reception given to the ideas in CA/64/03. As to whether a reduction in entry fees could have an impact on demand, he himself was convinced that public services - and the Office was a kind of public service - did not legally have the option to use their fees to influence the size of their workload. The Office also had to make sure it had enough resources. The effect of the introduction of IAS should not be exaggerated; they would change the presentation of the Office's financial situation, not the financial situation itself. Of course, that did not mean that the issue could be neglected. One frequently heard argument - that the fee structure should be so designed as to avoid penalising SMEs - was indeed pertinent. But really its design should be such as to penalise applicants whose behaviour was inappropriate, whether SMEs or not. It was planned to increase the search fee because the extended search report which was going to be introduced would be of much greater value to applicants than the old search report. Regarding relations with the USPTO and the JPO, it had to be said that attempts to compare the cost of patent protection in Europe, Japan and the United States had always failed; the systems were too different. It was nevertheless clear that it would not be constructive if each of the three offices were to reform its own fee system individually, without considering what the other two might do. For this reason,

the Office would be continuing discussions with the other two offices in order to find out their intentions with regard to fees. Nevertheless, he did not think true harmonisation of the fee systems would be possible until substantive patent law itself had been harmonised.

52. Summarising the discussions, the chairman noted that while the Office's proposals could on the whole be seen as going in the right direction, a large number of delegations took the view that fee reform should be approached with care, taking into account the possible impact of implementing IAS.
53. In conclusion, the Council noted this information.

13b. Trilateral strategic issues - PCT reform (CA/47/03)

54. Tabling the document, the President began with a brief summary of the changes already agreed as part of the PCT reform process. So far, the three trilateral offices had been able co-ordinate their positions, thus enabling the working party charged with PCT reform to make good progress. Discussions on future developments were continuing, with some countries - such as the United States - wanting to address issues which would fundamentally alter the PCT system and others - grouped around the European Patent Office - which thought the time was not yet ripe for radical change. The latter group's view was that in the medium term the discussions should focus on specific measures to improve the functioning of the PCT system as it stood, rather than enter into a general debate about what kind of reform was needed.
55. The chairman stressed the importance of the EPO member states going into the WIPO discussions with a cohesive position.
56. The United Kingdom delegation agreed that whilst the measures so far taken should certainly be evaluated, the users' main concern was that the momentum of PCT reform should be kept up. It too, like the International Bureau in PCT/R/WG/4/7, thought the main thing at this stage was to agree on basic principles. Apart from a few nuances, it could endorse most of the Office's comments on the International Bureau's proposals. It was not in favour of ending the limitation on the EPO's competence as a PCT international searching authority for applications of US origin; the EPO's main job was to serve the interests of users in Europe.

57. The Danish delegation said it agreed overall with the Office's views in CA/47/03, but like the United Kingdom delegation did not want the pace of reform to slow down.
58. The Swedish delegation said CA/47/03 was extremely important, both for the EPO and at international level, but not completely clear. For example, not knowing the exact date of drafting, did it really reflect the latest state of play? The Swedish delegation agreed with the EPO on some points, but had reservations about others. For example, whilst there was no gainsaying the desirability of *"avoiding unnecessary duplication in the work carried out by the PCT authorities and national and regional offices"*, some of the document's proposals were bound, if implemented, to increase the workload and use up more resources.
59. The French delegation said it supported the EPO's central thesis that before embarking on further substantive reform the first thing was to take stock of the steps already taken. That contrasted with the position of the US and several developing countries. The French delegation was otherwise in broad agreement with the EPO's views, subject to one or two minor reservations. It wondered for example how long the EPO could maintain its opposition to multiple and top-up searches and to international (re-)examination in the national phase, in the face of strong user demand for such procedures.
60. The *epi* representative agreed with the EPO that one should take a good look at the impact of the changes made to date, and embark on the second stage after mature reflection. Any new PCT reforms should go hand in hand with harmonisation of patent law at international level.
61. The President thanked the delegations for their positive reactions to CA/47/03, from which he had concluded that they felt the reform process needed to be consolidated, ie that it should not be stopped but should move forward in stages. The slight differences of opinion which existed were about how fast to proceed from one stage to the next. In any event, it was not yet time to take decisions.
62. In conclusion, the Council gave a unanimous favourable opinion on the strategy set out in CA/47/03 (present: 27; for: 27).

13c. Harmonisation of patent law (SPLT) (CA/62/03 + CA/68/03)

63. The chairman said there was a document from UNICE (CA/68/03) as well as the Office's paper (CA/62/03).
64. Tabling CA/62/03, the President explained that WIPO's patent law harmonisation work was marking time at present, with countries tending to fall back on national interests. The Committee on Patent Law had discussed whether the work should continue in such circumstances - and, if so, how. Its conclusion had been that harmonisation of substantive patent law remained desirable, but not at any price. It had also asked itself whether perhaps the harmonisation project's goals were unrealistically ambitious, and should therefore be revised downwards. The European patent system, itself the outcome of such a project, could serve as a model for harmonisation at a global level. Trilateral co-operation could be a suitable framework for pursuing the discussions. If the Council gave a favourable opinion on the proposals made in CA/62/03, the Office, as spokesman for the EPO member states, could discuss them with the USPTO and JPO, its two partners. But discussing the "balanced package" in a trilateral framework certainly did not mean entering into negotiations about it.
65. The UNICE representative then tabled CA/68/03. The EPO's ideas in Section IV of CA/62/03 ("balanced package") were to the point, but it was perhaps over-optimistic to think they could form the basis for a breakthrough, given that they were the largely the same as the objectives defined when the work to harmonise substantive patent law had been relaunched. And some of the Office's suggestions should be analysed in depth, because they involved a departure from habitual procedures under the European patent system and *a priori* UNICE was reluctant to discontinue proven practices. To sum up: the Office's balanced package was worth considering, along with UNICE's alternative "PCT patent" proposal - which might have some prospects of success, especially with the United States.
66. Overall, the delegations were *a priori* in favour of the Office's "balanced package" proposal, some however pointing out that it still had to be discussed by their domestic government and user circles, so they reserved the right to return to specific aspects in due course.
67. The Finnish delegation said the basis for harmonisation had to be realistic. That meant moving forward gradually, step by step. The proposal for a limited grace period could be a trump for Europe vis-à-vis the United States.

68. The United Kingdom delegation said it shared the general disappointment at the lack of results to date. Informal discussions within trilateral co-operation, as the President had suggested, might help to get things moving again. But it was essential that Europe should speak with a single voice. The Irish delegation endorsed this.
69. The Danish delegation said the Office's ideas in CA/62/03 were broadly in line with Denmark's views. However, it had reservations on one point: public-interest exceptions. It had been agreed at WIPO to defer discussion of this fundamental issue until the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore had reported.
70. The Belgian delegation said it was in favour of the Office's balanced package, subject again to the outcome of the domestic consultation process. As to methodology, ambitions should be limited to what was achievable. But a "balanced" solution would certainly not be one which was detrimental to established EPC practices. Negotiations at WIPO should therefore continue, but not in an effort to achieve results at all costs. The aim should be to persuade the United States to drop the first-to-invent system, and any harmonised grace period created at world level should be very strictly regulated. The focus, as the Office suggested, should be on inventive step and novelty.
71. The Swiss delegation said it had been calling for substantive patent law harmonisation at international level for some time, and wanted to see the discussions continue within trilateral co-operation, which gave Europe the best platform to defend its position. This meant that the Council had to remain actively involved in the discussions.
72. The Netherlands delegation thanked the Office for CA/62/03, which set out the issues very fully and clearly. On UNICE's CA/68/03, it would be useful if the Committee on Patent Law could take a position in time for the Council's next meeting, indicating whether it could be incorporated into the Office's basis for discussion. Generally, the Office had done its utmost to harmonise with the JPO and the USPTO, and one wondered how much longer this quest for harmonised patent law was going to take. It would certainly facilitate discussions with the USPTO and JPO if Europe could present a united front.

73. The Hungarian delegation thought the Office's document was a good basis for further discussions at WIPO.
74. Taking up the Hungarian delegation's comment, the French delegation said that WIPO's ad hoc working party would not be set up before November 2004. So the member states could think things over until then, and continue their discussions on the Office's "balanced package". Overall, the package seemed acceptable, if perhaps not entirely realistic - eg about the likelihood of the USPTO dropping "first-to-invent" in return for European agreement to a grace period system. Other technical aspects also needed to be settled. Lastly, whilst France was quite happy for the Office to act as the EPO member states' spokesman in trilateral co-operation, it was certainly not prepared to give it a mandate to negotiate in that forum.
75. The *epi* representative said his organisation fully supported efforts to identify a cohesive European perspective for international harmonisation of substantive patent law. He endorsed the document's list of "non-negotiable" points. For the *epi*, introducing a grace period would be problematical and possibly counter-productive. Generally, "best practices" were very often those followed in Europe.
76. The Romanian delegation thought WIPO was the most suitable forum for harmonisation work, and the most likely to lead to a global agreement. Such an agreement was highly desirable, but not at any price. It was therefore essential to pursue and intensify the European approach on these substantive issues.
77. Replying to the various speakers, the President thanked the delegations for their positive response to the ideas set out in CA/62/03. International harmonisation of patent law was difficult, mainly because the issues were complex in themselves but also because all three main players - the EPO, USPTO and JPO - were starting from very different positions. There was certainly no reason for the Office to give anything away to the US without getting something back in return. But it was also important that the US should stay in the WIPO discussions; otherwise, it would try to pursue bilateral talks, and that was bound to lead to divisions within Europe. It was indeed vital, as many earlier speakers had said, that Europe should speak with a single voice. CA/62/03 was not to be regarded as a final outcome designed to serve as a firm basis for WIPO discussions. More thought would be given to the "balanced package". But whilst it was perfectly legitimate for delegations to want to consult their user circles, a uniform position for Europe had to be reached within reasonable time - ie fairly soon.

78. The chairman took up the President's point that with WIPO's SPLT discussions at a standstill the United States might well be tempted to pursue such talks elsewhere, making it all the harder to reach a European consensus - which, however, was indispensable. He felt that trilateral co-operation could be the best venue for pursuing these discussions, although the three heads of office would not all have the same negotiating powers.
79. In conclusion, the Council gave a unanimous favourable opinion on the "balanced package" put forward by the Office in CA/62/03, and on the views expressed by UNICE in CA/68/03. It also stressed that whilst discussions about patent law harmonisation might usefully be continued under trilateral co-operation, the Office had no mandate within that framework to negotiate on the SPLT on behalf of the Organisation's member states.

14. Establishment of a European industrial property academy (EIPA) (CA/36/03)
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80. Tabling CA/36/03, the President explained that this proposal should be seen as a contribution on the part of the European Patent Organisation to safeguarding Europe's R&D investments by broadening and deepening expertise in the protection and management of IP rights.
81. The Danish delegation thought the creation of a corps of highly qualified IP professionals was essential for promoting a knowledge-based economy in Europe. It was therefore in favour of the proposal in CA/36/03 - including the feasibility study, which should take account of experience with similar initiatives, including Denmark's.
82. The German delegation thought the establishment of an EIPA was an excellent idea meeting genuine needs. The question however was whether such an initiative went beyond the Office's remit under the EPC. The financing arrangements would also need to be examined. On the face of it, it looked as if the EIPA would be financed indirectly by the applicants - ie European industry - who might not necessarily want their patent fees to finance other activities. The feasibility study should bear that in mind.
83. The Spanish delegation welcomed the proposal, subject however to a careful analysis of all the implications. It would also be useful to consider this initiative in parallel with others, and to enable the EIPA's role to go beyond that described in the document. For example, it could operate as a forum for solving certain problems of countries whose official language was not an EPO one.

84. The Italian delegation warmly congratulated the President on his proposal. Such a "temple of IP knowledge" was indispensable, and also fitted into the communications policy the President had mentioned in his activities report (see item 05, point 17 above).
85. The Hellenic delegation was not against a feasibility study, but did have some doubts. There were clear practical obstacles to implementing the Office's proposal: not just the legal basis (as the German delegation had pointed out) but also the similar institutions already in existence, which meant there was a risk of duplication. The EPO should be cautious about embarking on an adventure which might well prove unproductive. The project also seemed very ambitious, perhaps too much so, and could not be launched until various aspects had been studied in great detail. The Hellenic delegation could not imagine that in just three months (as the document suggested) such a study could provide proper answers to all the questions arising (responsibility for managing the EIPA, financing, recruitment of tutors, quality and value of diplomas awarded, etc.). If the three-month deadline remained, it would be abstaining from the vote.
86. The Finnish delegation said it was fully in favour of a feasibility study. However, the German and Hellenic delegations' comments were very much to the point. Its final position on setting up the EIPA would depend on the outcome of the study.
87. The United Kingdom delegation endorsed what earlier speakers had said. A feasibility study was essential. As much time as necessary should be devoted to an in-depth examination of the issues, so it might well be December 2003 before the results could be submitted to the Council.
88. The French delegation said it had no difficulty at all in giving the President the mandate requested in CA/36/03. IP specialist training had been neglected for too long. The EIPA would have to be autonomous, and the subject-matter to be taught needed to be specified. Training should not be confined to patent law; it should cover other areas of industrial and intellectual property. In view of all the issues to consider, the proposed deadline for the feasibility study did indeed seem rather short.
89. The Austrian delegation thought the Office's proposal an excellent one which it fully supported. All the points raised by delegations should be looked at, and it was willing to wait until December 2003 for the outcome of the feasibility study.

90. The Czech delegation said it was in favour of creating an EIPA as proposed in CA/36/03, and was ready to pool its country's experience with the training institute set up in 1963.
91. The Swiss delegation said it appreciated the importance of harmonising IP training at European level, and the Office clearly had a role to play here. It had some doubts about whether this was achievable, but had no objection to a feasibility study. It could not really take a position at this stage. The feasibility study should perhaps include as EIPA activities those planned under the co-operation programme put forward in CA/49/03 Rev. 1 (= agenda item 24 ("A" item)).
92. The Netherlands delegation too was in favour of a feasibility study. This should not only address the issues raised by different delegations but also start by asking if there really was a lack of training. Then there was the question of where the EIPA should be located.
93. The representative of the EU Commission said the Commission agreed that thought should be given to this matter.
94. The Belgian delegation said the feasibility study would have to answer numerous questions, including the very important issue of whether the EIPA's activities should be centralised (as CA/36/03 seemed to suggest) or decentralised. The advantages and disadvantages of both options should be weighed up carefully. And when the feasibility study was submitted, the Council should not be obliged to approve or reject its conclusions en bloc; since it was very unlikely they would satisfy all its members, it should be able to discuss them.
95. The Romanian, Portuguese, Irish and Luxembourg delegations said they fully supported the proposal in CA/36/03 and a feasibility study of the various aspects raised.
96. The President thanked the delegations for a very fruitful exchange of views, which had left him with the impression that there were no real doubts as to the usefulness of the proposed initiative. The perfectly legitimate doubts expressed were more about how realistic and achievable the project was. The feasibility study would answer that very question. In his opinion, it was mainly a matter of will, and he had the will to set up an EIPA as outlined in CA/36/03. The feasibility study would analyse various possible scenarios, in the light of all aspects involved. It might indeed not be ready for the

Council's next meeting, in which case it would be submitted for the one after that. No doubt the debate would not always run smooth; views within the Council were bound to differ. Regarding financing, it would seem logical for the students to contribute. As to whether the EIPA should be centralised or decentralised, he saw no reason why it should not be a little of both, with a central core and a number of local offshoots. That would mean finding premises, but clearly that would not be the hardest problem to overcome. And there was no doubt that an EIPA would meet a genuine need; Europe might have many different training institutions, but none tailored to meeting patent professionals' actual requirements.

97. In conclusion, the Council gave a basically favourable opinion on the idea put forward in CA/36/03, and authorised the President to conduct a feasibility study covering the proposed EIPA's legal, statutory, organisational and financial aspects, with the outcome to be submitted to the Council's October (or December) 2003 meeting as the basis for a possible decision.

15. Enhanced co-operation among Nordic patent offices (CA/46/03)

98. The Swedish delegation explained that since the Council's previous (March 2003) meeting, when it had reported on discussions about setting up a Nordic PCT authority (see CA/PV 92, Section IX and Annex III), the offices of the countries concerned had considered the matter further. It had transpired that such an authority would have to be set up by decision of the national parliaments, so it had been decided to pursue the discussions at government level. Just the previous day, an initial preparatory meeting had taken place, with very positive results. The discussions would continue, and the Swedish delegation would report on developments at the Council's next (October 2003) meeting.
99. The Council noted this information.

16. Community patent; common approach

100. Taking the chair for this item, the deputy chairman began by pointing out how important the Community patent project was for the Organisation. The previous day, there had been a co-ordination meeting of EU member state representatives.
101. The Hellenic delegation, representing the state holding the EU presidency during the first half of 2003, said that for the Community patent to become operational following adoption of the common approach by the Competitiveness Council in March 2003, an

EU regulation on the Community patent would have to be adopted, and then the EPC revised - which in turn would mean holding a diplomatic conference. The draft regulation was currently being studied by a Brussels working party on intellectual property. At the same time, the EU Presidency, working closely with the Commission, was currently drafting a proposal to revise the EPC, taking account of comments from the Organisation's non-EU member states and the EPO President. This proposal would shortly be submitted to the EU Council, and there was a good chance it could be presented at the October 2003 meeting of the Administrative Council. The holding of a diplomatic conference to revise the EPC should therefore stay on the agenda for the October meeting. With that in mind, the EU Presidency requested the Council to plan for meetings of its Committee on Patent Law, and the Office to mobilise all resources necessary to hold a diplomatic conference in 2004 as foreseen.

102. The Swiss delegation said this report had put its mind at rest; it had had reservations about convening a diplomatic conference at the present meeting. Revising the EPC to incorporate the Community patent would be nothing like the 2000 revision exercise, which had been mainly technical, with study of all the amendments getting under way well beforehand so there had been ample time to assess their consequences. Incorporating the Community patent into the EPC would have political and financial repercussions, and it would be dangerous to plough ahead too quickly without clearly evaluating them first. In conclusion, the Swiss delegation congratulated the EU on the progress made with this issue, and assured it of Switzerland's continued constructive co-operation.
103. The UNICE representative said his organisation was pleased that agreement had been reached at political level; however, there were still numerous problems to solve. First, there was the substantial financial impact of having to translate all the claims into all languages, and the litigation likely to arise with translations in non-EPO official languages. The litigation system was no clearer than the language arrangements. In any event, UNICE was ready to help achieve progress, and hoped its contributions would be welcome.
104. The Finnish delegation said the momentum built up with the adoption of the common approach should be maintained. The common approach was a compromise and should not be watered down. Not adhering to this compromise would cause problems. Also, the Community patent system would have to dovetail well with the EPC one; for Europe to have different patent systems operating in parallel would be disastrous.

105. The *epi* representative said his organisation was very pleased that the common approach had been adopted; however, a number of gaps remained. The *epi* was ready to help fill them in. The system had to work in practice, not just on paper, because otherwise it would not be used.
106. Taking up that remark, the President said it was essential to bear in mind what the users needed and were prepared to accept; otherwise the establishment of the Community patent system would be a Pyrrhic victory which Europe could ill afford. The "common approach" was a unanimous statement of intent by the 15 EU member states, whereas the European Patent Organisation had 27 member states and would soon have 30. So solutions had to be found which not only addressed all the users' concerns but also were in keeping with the possibilities and ideas of the Organisation taken as a whole. Technical co-operation between the Office, the Commission and the EU Presidency was both useful and necessary. Some matters could in any case only be dealt with by the Office, which alone had the necessary expertise. The Office would be a loyal partner for the Commission, giving it all the technical support it needed.
107. Summing up, the chair thanked the European Commission and the Hellenic EU Presidency for the progress achieved on the Community patent, and hoped that in October 2003 the Council could take a definitive decision about holding a diplomatic conference.
108. The Council noted this information.

17. Organisational autonomy of the boards of appeal of the European Patent Office within the European Patent Organisation (CA/59/03)

109. The document was introduced by the Vice-President DG 3, who explained that the current structural integration of the boards of appeal into the Office sometimes led to questions in certain circles about their independence. One solution, which would dispel any lingering doubts, was to detach the boards from the Office and establish them as a third "pillar" of the Organisation, alongside its "legislative" and "executive" pillars (the Administrative Council and the Office), following the model of all democratic states. Such restructuring would necessitate a revision of the EPC. At this stage, the Office was not asking the Council for a decision; its aim was merely to sound out opinion among the delegations. On the basis of their response, a document with details of the practical arrangements for making the boards autonomous could be drawn up and presented to the Council at its 94th meeting, in October 2003.

110. The German delegation felt that the Office, with CA/59/03, was trying to solve a problem which in reality did not arise. The boards of appeal enjoyed a very high reputation, and no one was seriously denying their complete independence in judicial decisions. The approach taken in Germany, where the boards of appeal had been detached from the patent office and regrouped under the Federal Patents Court as an autonomous body, was not necessarily the right example to follow, remembering that the separation had led, in particular, to numerous organisational problems. Regarding the contents of the document, the German delegation was not in favour of appointing board members on a permanent, ie "lifetime", basis. There was a risk that, in certain cases, the motivation of lifetime employees would gradually wane, which could have a serious impact on the quality of decisions. At all events, with the impending introduction of the Community patent and the possible revision of the Protocol on Privileges and Immunities, the Organisation and the Office already had enough issues to tackle, and at this juncture there was no point in initiating a further discussion by trying to resolve a problem which did not really exist.
111. The UK delegation said it attached great importance to the principle of the separation of powers, as the very basis of democracy, and congratulated the Office on the ideas expressed in CA/59/03. However, making the boards of appeal autonomous would require more than a simple revision of the EPC. The financial and administrative implications had to be considered, and the issue of monitoring would also have to be examined. The monitoring of the financial aspects could probably be done by the Budget and Finance Committee, but supervising the judicial activities of the boards of appeal posed far more complex problems. It was not clear that the Administrative Council had the necessary competence for such a task. In conclusion, the UK delegation felt that the presentation of CA/59/03 was a significant first step in the right direction, but in view of the many aspects still to be considered, the road to organisational autonomy of the boards of appeal remained long.
112. The Swedish delegation emphasised that it had no doubts whatever as to the independence of the boards of appeal under the existing arrangements, but declared its full support, on the basis of the democratic principle of the separation of powers, for the proposals set out in CA/59/03, including the suggestion that appointments to the boards be made permanent.
113. The Danish delegation largely shared the views of the Swedish delegation. The revision of the EPC to establish the organisational autonomy of the boards of appeal would require a diplomatic conference. However, the Danish delegation had reservations about appointing board members on a permanent basis.

114. The Hellenic delegation, quoting the adage that Caesar's wife must not only be virtuous, but above suspicion, expressed its unreserved support for the Office's proposals as a major improvement on the existing situation.
115. The Italian delegation shared the very positive view of the Hellenic delegation, but nevertheless felt that CA/59/03 failed to explore the financial and administrative implications of the proposed reform in sufficient detail, and called for a more comprehensive document, with a full analysis of these issues, to be presented to the Council at its October meeting.
116. The Netherlands delegation said that obviously it, too, was in favour of the principle of judicial independence, so in general it could only support the proposal set out in CA/59/03. Nevertheless, the proposal raised a number of questions. The Netherlands delegation wondered, in particular, whether the boards of appeal would continue to be answerable to the Administrative Council once they were separated from the Office, and whether their members would still be appointed by the Council as at present. If so, doubts would arise as to whether the boards really had full independence.
117. The Finnish delegation said that the independence of the boards of appeal was beyond doubt under the present system, but that it took a favourable view – *a priori* and in principle – of the proposal for organisational autonomy. It still had doubts about a number of practical aspects which were insufficiently explained in CA/59/03; further discussion was therefore needed.
118. The Austrian delegation said that it, too, like most of the delegations which had spoken so far, took a positive view of the principle underlying the Office's proposal. However, it was necessary to take account of the progress made with the Community patent, and to study the possible ways of linking the boards of appeal of the European Patent Organisation with the jurisdictional system to be set up for the Community patent. In the view of the Austrian delegation, it was too early to consider including the issue of autonomy for the boards of appeal in the agenda for the next Diplomatic Conference. The Austrian delegation also had doubts about appointing board members on a permanent basis.
119. The Swiss delegation shared the favourable basic view of the other delegations. However, it, too, had doubts about the financial implications, and about the permanent appointment of board members. The Working Party on Litigation had concluded that appointing judges for a renewable six-year term would not limit their independence in any way. The discussion of these fundamental issues would have to continue, leading

to the elaboration of concrete proposals enabling this very important initiative to be translated into action as quickly as possible.

120. The French delegation said it had absolutely no doubts about the decisional independence of the boards of appeal. The essential problem was therefore one of image. The aim of the proposed reform was to bring the situation into line with the democratic principle of the separation of powers and make it clear to the outside world that the boards of appeal were genuinely independent, which no one seriously denied under the present system. It was necessary, however, to be aware of the risk that such a message, designed to reinforce the perception of the boards as independent, could be misinterpreted by critics of the patent system and serve to strengthen the conviction in these circles that the boards' independence at present was merely a pretence. The French delegation also shared the misgivings of other delegations about certain aspects of the proposal. With regard to the financial aspect, the French delegation felt that, in the light of the explanations given in CA/59/03, the separation of the boards of appeal from the Office would not involve extra costs. Nevertheless, the fact that a number of delegations had raised this question pointed to a need for clarification. Other aspects also required more detailed consideration, starting with the issue of appointing board members on a permanent basis. It would also be necessary to examine the compatibility of the proposed reform with the Community patent system. Introduction of the reform, if it came to pass, would certainly require a diplomatic conference.
121. The Luxembourg delegation agreed with the view of the French delegation that the independence of the boards of appeal was essentially a question of image. From this, it followed that some form of geographical separation was needed, as well as budgetary autonomy. It might therefore be helpful to consider siting them in a place which symbolised the very idea of independence. The Luxembourg delegation felt, moreover, that the jurisdictional system for the Community patent should be taken into account in considering the position of the boards of appeal.
122. The Irish delegation agreed with the views expressed by the other delegations. Independence of the boards of appeal was not currently a problem. The Irish delegation was not convinced of the need for any change in the current arrangements for appointing members of the boards. Certain aspects also needed clarification, in particular the issues of finance, but also the statutory position of support staff working for the boards.
123. The Spanish delegation regarded the whole debate on the position of the boards of appeal within the Organisation as premature, since the jurisdictional arrangements for

the Community patent still remained to be elaborated. Considering, moreover, that the independence of the boards of appeal was not seriously in doubt, the matter was not urgent. The Spanish delegation therefore suggested that the discussion be postponed.

124. The Belgian delegation said the reform proposals set out in CA/59/03 were excellent. However, it was necessary to take account of the doubts expressed by some delegations as to the urgency of the reform, and also of the reservations about various practical aspects. The Office should give a detailed reply in a document for the Council's next meeting.
125. The Portuguese delegation expressed its support in principle for the proposal set out in CA/59/03. In its view, the key issue was not independence of the boards of appeal but the evolution of the entire system. The Organisation had grown, and it was only natural that the different components of the system should become structurally autonomous. The pragmatic solution proposed by the Office could offer a sound initial basis for this. However, there was a need for further elaboration of some points – particularly those on which several other delegations had expressed reservations, which the Portuguese delegation shared.
126. The Turkish delegation declared its full support for the reform proposed in CA/59/03.
127. The representative of the European Commission pointed out that European bodies were currently working on a jurisdictional system for the Community patent, with the aim of bringing the arrangements into operation by January 2010. At the same time, discussions were continuing on the protocol on the settlement of litigation concerning patents in Europe. In addition to these efforts, there was now the proposal for organisational autonomy of the boards of appeal within the European Patent Organisation. The work in each of these three major fields inevitably had implications for the other two. It was necessary to study these implications more closely, and to improve the co-ordination of efforts in the three areas. The Commission was certainly willing to co-operate more closely with the Organisation. At present, however, the idea of revising the EPC to modify the position and role of the boards of appeal within the Organisation, as proposed in CA/59/03, appeared premature.
128. The *epi* representative began by emphasising that the *epi* was entirely satisfied with the excellent work done by the boards of appeal, and had no doubts about their independence. However, this was not the case with the general public, and quite a few people who were not implacably opposed to the patent system felt that the boards' independence might be impaired by their excessive proximity to the Office and the Administrative Council. There was certainly an "image problem", as pointed out by the French delegation. For this reason, the *epi* generally supported the reforms proposed

in CA/59/03. However, like the delegations, the *epi* felt that the proposals needed further elaboration and clarification. It was also too early to be thinking in terms of a diplomatic conference. At all events, the *epi* firmly opposed the principle of appointing board members on a permanent basis.

129. The German delegation emphasised that, until the architecture of the entire jurisdictional system for patents had been established, and the relationship between its components and their respective responsibilities clearly defined, it would be inadvisable to modify any of the elements involved, such as – in the present case – the boards of appeal of the European Patent Organisation.
130. The President noted that, contrary to the view of the previous speakers, the independence of the boards of appeal was not a simple question of "image" but had been the subject of frequently voiced doubts, specifically because of the close links between the boards and Office management. The President cited several examples of such misgivings. Regarding the financial aspect, the proposed reform would not involve further costs of anything more than a marginal nature. The boards of appeal would continue to be financed from the general budget: their own budget would simply be shown clearly within this framework. Strictly speaking, furthermore, the proposed reform had nothing to do with the plans for the Community patent. There was no question of redefining the role of the boards of appeal or of giving them new responsibilities. They would continue to function as at present, the only difference being that they would have organisational autonomy. Certainly, given that the current situation had persisted for many years, the need for change might not be desperately urgent. However, it was essential to realise that implementation of the proposed reform would be impossible without revising the EPC, which would entail holding a diplomatic conference. Diplomatic conferences were infrequent events, and since there were already plans to organise one in the fairly near future, it seemed advisable to take this opportunity of dealing with the question of the boards of appeal, alongside a number of other major issues. In conclusion, the President pointed out that the Council was not being asked at this meeting to take a decision on convening a diplomatic conference to revise the EPC with a view to conferring organisational autonomy on the boards of appeal, but merely to give an opinion on the ideas set out in CA/59/03. Taking account of this opinion, and of the comments made by the delegations, the Office would draw up a more detailed document, for submission to the Council at its meeting in October 2003, which could serve as a basis for deciding to convene a diplomatic conference.
131. In conclusion, whilst welcoming the Office's proposal in principle, the Council thought that a fair number of important points still required clarification. It therefore invited the Office to elaborate on the proposal in a document for submission to its October 2003 meeting, and agreed that it would then decide whether or not a revision of the boards'

position within the Organisation should be put on the agenda of a future diplomatic conference.

18. Convening a diplomatic conference

132. Taking the chair for this item, the deputy chairman observed that not all the various subjects earmarked for the agenda of a diplomatic conference had reached the same level of maturity. Sufficient progress would have to be made before the convening of a diplomatic conference could seriously be envisaged.
133. The Hellenic delegation, representing the country which held the EU Presidency, said that the member states wanted the issue of convening a Diplomatic Conference to be placed on the agenda of the Council's meeting in October 2003. The Hellenic delegation therefore invited the Office to set aside the necessary resources for such a conference in 2004, and for meetings of the Patent Law Committee.
134. The Council agreed to return to this matter at its October or December 2003 meeting.

19. Report of the Research Fund (CA/33/03)

135. The President presented CA/33/03.
136. The Council noted this report.

IV. CO-OPERATION/TECHNICAL INFORMATION

20. Report of the chairman of the ad hoc *epoline* Working Party on its 9th meeting

137. The ad hoc working party chairman gave an oral report on its ninth meeting, held at The Hague on 8 April 2003 (see draft minutes in CA/T 22/03).
138. The Council noted this report.

21. Report of the chairman of the Working Party on Technical Information on its 57th meeting

139. The working party chairman gave an oral report on its 57th meeting, held at The Hague on 9 and 10 April 2003 (see draft minutes in CA/T 23/03).

140. The Council noted this report.

22. Status report on co-operation programmes with member states (CA/19/03 + Add. 1 and Add. 2)

141. "A" item – see item 02 above.

23. Co-operation programme on online filing (CA/48/03 Rev. 1)
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142. "A" item – see item 02 above.

24. Co-operation programme on patent awareness and individual staff training for national offices of member states (CA/49/03 Rev. 1)

143. "A" item – see item 02 above.

25. Technical co-operation activities by EPO member states in 2002 and 2003 (planned) (CA/32/03 + Add. 1)
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144. The Vice-President DG 5 introduced the two documents. This year, for the first time, all the member states – including those which did not participate in technical co-operation – had responded to the Office's questionnaire. Thanks were due for this. As a general rule, there were no priority regions; technical co-operation activities benefited every part of the world, without exception. These activities were also taking on an increasingly multilateral character. At the invitation of the DPMA, the Office would be presenting its technical co-operation activities, particularly in the fields of automation and training, at a meeting in Berlin at the end of June 2003.

145. The Italian delegation said it had noted the information in CA/32/03 and Add. 1 with great interest. Technical co-operation was very important for the world economy, and the financial allocation for these activities should be increased.

146. The Council noted the information given in CA/32/03 and its addendum.

V. AWARD OF CONTRACTS

26. Tender for replacing the air-handling units at The Hague (CA/18/03)
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147. "A" item – see item 02 above.

VI. BUILDING MATTERS

27. Questioning the size and sort of the building projects in Rijswijk (CA/55/03)

148. The staff representatives introduced the document. In their view, any major investment in The Hague had to be approached with great caution until the problems with the Netherlands authorities had been fully resolved.
149. Replying to questions from the Swedish and Danish delegations, the President pointed out that he alone was authorised to speak on the Office's behalf, and that any comments by others were merely statements of personal opinion. He confirmed that encouraging progress had been made in revising the Seat Agreement with the Netherlands. For the rest, there were always requests for transfers between the Office's various sites. These were generally treated favourably, subject to the needs of the service.
150. The staff representatives commented that whilst there were many requests to transfer from the Netherlands to Germany, there were rather fewer in the opposite direction.
151. The Council noted this information.

VII. RESERVE FUNDS FOR PENSIONS AND SOCIAL SECURITY (RFPSS)

28. Report of the chairman of the RFPSS Supervisory Board on its 44th meeting (FRP/CS PV 42, FRP/CS PV 43 + CA/53/03 + Corr. 1 e)

152. The report was presented by the Supervisory Board's deputy chairman, its chairman being unable to attend. The situation remained disturbing, with market losses obviously affecting the performance of the RFPSS, which had lost another 6.4% of their value in the first quarter of 2003. However, owing to the Administrator's judicious management, this loss was considerably less dramatic than the fall in the benchmark portfolio. According to the projections, the pension reserve fund would not need to be drawn on before 2019, but the Supervisory Board wanted to find ways of ensuring that the target rate of return (German inflation + 3.5%) was maintained. A study had been initiated with the aim of identifying possibilities of investment diversification. The Supervisory Board itself was strongly in favour of diversifying into property investment. On the basis of this study, the Administrator would be presenting proposals for a corresponding modification of the investment guidelines. The Administrator had also

presented a progress report on the risk management study carried out by an external consultant. The Supervisory Board was very keen to ensure that Fund Administration had an effective risk management system, and felt that the study should be continued.

153. The head of the Luxembourg delegation, speaking in his capacity as chairman of the Budget and Finance Committee, said that at its 79th meeting the committee had warmly congratulated the Fund Administrator, Silvio Vecchi, on his success in limiting, through skilful management, the damage caused by the deteriorating situation on the financial markets.
154. The chairman also congratulated the Fund Administrator, on behalf of the whole Council.
155. The Council noted the report given by the board's deputy chairman.

29. Quarterly management reports (3/2002 + 4/2002) (CA/21/03 + CA/22/03)

156. "A" item – see item 02 above.

30. Quarterly budget reports (4/2002 + 1/2003) (CA/23/03 + CA/24/03)

157. "A" item – see item 02 above.

VIII. PERSONNEL/POLICY MATTERS

31. Revision of the EPO's Protocol on Privileges and Immunities (CA/7/03 + CA/67/03)

158. Tabling CA/7/03, the President reminded the Council of the authorisation it had given him at its 91st meeting in December 2002 (see CA/PV 91, point 103). Now that the Council of the European Union had agreed a common approach for the introduction of the Community patent, the European Patent Organisation would, in the words of the Commission, work in perfect symbiosis with the EU. Part of the EU's work would be delegated to the Office since it would be responsible for processing Community patent applications. Under the circumstances, it was only reasonable that it be on a par with the other Community bodies.
159. The German delegation then tabled CA/67/03, which it had produced in conjunction with the delegations of Austria and the Netherlands, the two other EPO host countries. It congratulated the President on CA/7/03, which was very exhaustive. The PPI issue

was highly complex and politically sensitive. In Germany, the relevant bodies had not yet had time to study CA/7/03 in depth, and needed to consult their Austrian and Netherlands counterparts. It would therefore require more time to form its views. In any case, it was not essential that the diplomatic conference to revise the PPI take place in December 2003, given that another diplomatic conference to incorporate the Community patent into the EPC was scheduled for 2004. It would make more sense to revise the PPI then.

160. The Austrian delegation observed that the PPI revision was a good way of resolving some of the problems facing Office employees, tax matters in particular. At the moment it was not in a position to give an opinion on convening a diplomatic conference.
161. The Netherlands delegation offered to help the Office implement the measures proposed in CA/7/03. The problems set out in the document were, however, very complex and it suggested setting up an ad hoc working party to give full consideration to the issues. Having said this, it would be unrealistic to expect this working party to have concluded its study in time for a diplomatic conference in December 2003.
162. The Swedish delegation explained that the relevant Swedish bodies had not yet had the time to study the problems set out in CA/7/03 or the proposed remedial action, and thus advocated deferring a decision on convening a diplomatic conference to revise the PPI. The Swedish delegation's opinion was endorsed by the Danish, Finnish and Irish delegations.
163. The United Kingdom delegation said that it appreciated the problems of Office staff described in CA/7/03, but was not absolutely sure that changing the law was the answer. It would also be useful to know how relations currently stood between the Organisation and the Netherlands government, because this was what had given rise to the proposal to revise the PPI in the first place. There was also the question of the extent to which the Office could be assimilated into EU bodies. In any event, given that the relevant UK bodies had not had the time to study CA/7/03, the UK delegation also favoured postponing the decision on convening a diplomatic conference.
164. Responding to the various comments made, the President first thanked the delegations for the overall favourable response they had given CA/7/03, although there was no denying their reservations about some points. As things stood, Office staff already found it difficult to understand why they were treated any differently to their colleagues at the OHIM in Alicante. The situation would become quite untenable once

they started processing applications for Community patents. He appreciated, however, that the national administrations needed time to consider the question. As far as the Seat Agreement with the Netherlands was concerned, progress had been made and it could be hoped that a new agreement would be concluded before his term of office ended.

165. The staff representatives thanked the German, Austrian and Netherlands delegations for their views. They had, however, been surprised by their joint paper (CA/67/03) because the problems of Office staff in the Netherlands had been aired on numerous occasions and were nothing new. Like the President, they were happy with the progress made on the Seat Agreement issue with the Netherlands but did not share his optimism that the negotiations could be brought to a swift conclusion. While they appreciated the delegations' desire to give serious consideration to the problems the PPI revision was supposed to resolve, they were disappointed that the decision to convene a diplomatic conference had been postponed. Rapid revision of the PPI was desirable in the interests of the Organisation itself, given the Office's recruitment problems.

166. In conclusion, the Council noted CA/7/03 and CA/67/03, and agreed that at its October 2003 meeting it would return to this point and to the possible convening of a diplomatic conference.

IX. PERSONNEL/OPERATIONAL MATTERS

32. Status report on recruitment figures/occupied posts (CA/44/03)

167. This document was tabled by the Vice-President DG 4.

168. The Council noted the document.

33. Report on home loans (CA/26/03)

169. "A" item – see item 02 above.

X. PERSONNEL/APPEALS

34. Internal appeals (IA/1/02 + IA/2/02) (CA/C 7/03 + CA/C 8/03)

170. The Council, meeting in restricted composition without the observers and staff representatives, decided to follow the opinions delivered by its appeals committee in CA/C 7/03 and CA/C 8/03, and to reject as unfounded internal appeals IA/1/02 and IA/2/02.

XI. FINANCIAL MATTERS/BUDGET/PLANNING

35. Report of the chairman of the Budget and Finance Committee on its 79th meeting

171. The (outgoing) chairman of the committee reported on its 79th meeting, held on 13 and 14 May 2003 in Mondorf-les-Bains (Grand-Duchy of Luxembourg).
172. The Council noted this oral report and praised the outgoing chairman's hard work throughout his term of office. The length of the list of "A" items on the agenda for today's meeting testified eloquently to the effectiveness of his stewardship of the committee.

36a. Quarterly financial statements (4/2002 + 1/2003) (CA/12/03 + CA/13/03)

173. "A" item – see item 02 above.

36b. Information on examining capacity (CA/14/03 Rev. 1)

174. "A" item – see item 02 above.

36c. Productivity figures reached at the end of 2002 (CA/34/03)

175. "A" item – see item 02 above.

~~37. IAS: amendments to the FinRegs (CA/41/03 + Corr. 1e and CA/61/03)~~

38. Initial contributions by the new member states (CA/5/03 Rev. 1)

176. "A" item – see item 02 above.

39a. Filing figures - situation at 4/2003 (CA/66/03)

177. This document was tabled by the Office, which pointed out that because it had not received WIPO's April figures in time, the Euro-PCT data was based on estimates. At all events, the Office expected this figure to be down for the first four months of 2003 compared with the same period in 2002. There was little point comparing January-April figures for 2003 with those of the same period in 2002; in April 2002, there had been a surge in US filing figures following the anthrax scare. The Office saw no need to change the basic assumptions underlying CA/35/03, which had been approved by the Budget and Finance Committee at its 79th meeting.

178. The Council noted this information.

39b. Basic assumptions for the business plan, budget and financial plan (CA/35/03)

179. "A" item – see item 02 above.

39c. Revised plan 2003 and historical data 1998-2002 (CA/35/03 Add. 1)

180. "A" item – see item 02 above.

40. Revision of the terminology used in the FinRegs (CA/56/03)

181. "A" item – see item 02 above.

41. Update of CA/D 17/93 on the financing of the pension scheme (CA/57/03)

182. "A" item – see item 02 above.

42. Collection of renewal fees (CA/58/03)

183. "A" item – see item 02 above.

43. Reimbursement of costs incurred by states invited to accede to the EPC attending meetings of the Committee on Patent Law in 2003 (CA/27/03)

184. "A" item – see item 02 above.

44. Progress report on quality in search and examination (CA/45/03)

185. The President recalled that when he had tabled CA/132/02 at the 90th Council meeting (The Hague, October 2002), he had referred to the connection between quality and mastering the workload. As Europe's patent granting body, the Office set the standards that ensured fair competition on the European market. A team of EPO under the supervision of the Vice-President DG 2 had undertaken to study all aspects of the European patent system to see how every part of the process, including the post-grant phase, could be optimised to respond better to user needs. The national offices and the user community would be consulted on the study, which was due to be concluded in early autumn 2003, and the findings put to the Council at its December meeting.

186. The Council noted this report.

45. Improving synergies within the European patent system; follow-up (CA/8/03 + Add. 1 Rev. 1)

187. The President tabled CA/8/03 and its addendum. CA/147/02, which had been put to the Council at its 90th meeting (The Hague, October 2002) and involved improving the synergies within the European patent system, had given rise to a process of joint agenda building ("JAB") with the national offices, and this process was ongoing. It had emerged from the initial talks between the Office, national offices and the user community that there was broad consensus on the system's *raison d'être*: the IP protection system in Europe was there to support innovation and be an instrument to serve the European economy. The world had changed a lot since the system governed by the EPC had been set up in 1973, and that system would have to change. In the JAB process, numerous ideas had been put forward about what course to take; in many cases these differed radically from each other, depending on the particular situation of each member state. The Office had decided to concentrate its efforts on the six points of the action plan in Section X of CA/8/03. A report on the status of work in these six areas would be put to the Council in December 2003.
188. The German delegation felt that CA/8/03 was a definite improvement on the first document on this subject (CA/147/02). It reaffirmed the principle that the Office and national offices all formed part of the same system in which each had a role to play. This role was interpreted differently by the different national offices, but this was perfectly normal as the situation varied from country to country. It was happy that this aspect had been taken into account. The German delegation was also pleased that the notion of complementary roles between the different offices no longer featured. Certain offices such as the German Patent and Trade Mark Office managed the entire chain leading up to patent grant. This did not, however, mean that the Office and national offices should not work in co-operation. On the contrary, this was essential. As such, CA/8/03 marked a very promising start to an era of fruitful co-operation between the Office and the different national offices.
189. The Danish delegation endorsed all the points made by the German delegation and was also pleased with the Office's initiative to enhance co-operation with the national offices. The measures proposed in CA/8/03 could have been further-reaching but were a step in the right direction.
190. The French delegation thought that CA/8/03 represented a fresh, original and interesting approach, in particular because it took account of the cultural diversity in Europe, which its country had always held dear. The Finnish delegation endorsed this. The French delegation wholeheartedly supported the six-point action plan in CA/8/03.

191. The United Kingdom delegation said that the bilateral meetings between the Office and each of the national offices had been very productive because they had made it possible to analyse on a case-by-case basis what needed to be done and what was possible. Furthermore, like the German delegation, it believed that co-operation was absolutely essential even for the larger offices that handled the entire procedure.
192. The Monegasque and Italian delegations were very pleased with co-operation with the Office and hoped it could be intensified.
193. The UNICE representative regarded CA/8/03 as a good sign because it affirmed that there should not be competition between the different patent systems in Europe. The points looked at would benefit users greatly, particularly SMEs. UNICE was willing to co-operate with the Office.
194. The President said that the delegations' very positive reactions could only reassure the Office that it was on the right track. Responding to a question from the Irish delegation, he made it clear that the level of technical co-operation outlined in CA/87/01 would be maintained and even stepped up. Every state could become involved in any of the projects referred to in CA/8/03 at any time, provided this did not affect the project itself.
195. In conclusion, the Council noted with satisfaction the information in CA/8/03 and its addendum, and the President's explanations.

46. 2004 budget of the European School Munich (CA/15/03 + Add. 1 f)
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196. "A" item – see item 02 above.

XII. MISCELLANEOUS

47. Work programme for the meetings of the Council during the second half of 2003 (CA/1/03 Rev. 2 + Add. 1)
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197. The Council noted the work programme proposed in CA/1/03 Rev. 2 and Addendum 1.

48. Informal exchange of views with Greenpeace representatives

198. Introducing this point, the chairman explained that at the last meeting Greenpeace had requested an opportunity to address the Council. In conjunction with the President, he had invited representatives of Greenpeace Germany for an informal exchange of views at the present meeting.

199. After thanking the chairman for his invitation, the Greenpeace representatives gave a PowerPoint presentation setting out the views of their organisation. They also provided the delegations with a brochure. Greenpeace was not against biotechnological patents generally but it was opposed to patents on gene sequences or living organisms for ethical, scientific and socio-economic reasons. Very clearly defined exceptions should be written into the TRIPS agreement, whilst the EU biotechnology directive – and Council decision CA/D 10/99 incorporating it into the EPC – should be repealed. All these issues be properly debated publicly, and dealt with at a diplomatic conference.
200. The Danish delegation was pleased that Greenpeace had accepted the invitation. The concerns voiced by its representatives were legitimate and did in fact relate to very serious problems, not least the patentability of life. This issue was the stuff of endless debate but a decision would have to be taken sooner or later. The decision in Denmark had been taken after democratic debate.
201. The European Commission representative pointed out that the biotechnology directive criticised by Greenpeace had been initiated by the Commission. This directive had been adopted following a democratic process and then been incorporated into national legislation and the EPC. The Commission attached the greatest importance to ethical questions and was keeping a close eye on how the directive was working in practice.
202. In conclusion, the Council noted the presentation given by the Greenpeace representatives.

BETRIFFT: Teilnehmerliste der 93. Sitzung des Verwaltungsrats
(München, 2. bis 5. Juni 2003)

SUBJECT: List of participants of the 93rd meeting of the Administrative Council
(Munich, 2 to 5 June 2003)

OBJET : Liste des participants de la 93^e réunion du Conseil d'Administration
(Munich, du 2 au 5 juin 2003)

VERFASSEN: Ratssekretariat

DRAWN UP BY: Council Secretariat

ORIGINE : Le Secrétariat du Conseil

EMPFÄNGER: Verwaltungsrat (zur Unterrichtung)

ADDRESSEES: Administrative Council (for information)

DESTINATAIRES : Le Conseil d'administration (pour information)

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Mr Brian DERBY	Lawyer (5.2.5)
Herr Gerhard ULLRICH	Hauptdirektor (5.3)
Ms Marianna FUCCI	Director (5.3.1)

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Speech given by Roland Grossenbacher, chairman of the Council, in honour of Serge Allegrezza, outgoing head of the Luxembourg delegation and outgoing chairman of the Budget and Finance Committee.

Ladies and gentlemen,

We have just elected a new chairman for the Budget and Finance Committee, but perhaps we should have said farewell to his predecessor first.

Dear Mr Allegrezza, in a few days it will be exactly ten years since my own distant predecessor, Mr Combaldieu, welcomed you at that meeting in Paris that is engraved in the memory of all who were there. You were then one of the youngsters on the Council [are you not still?], but you very soon proved that age is not everything. Your pithy contributions also showed that, in an organisation like ours, the word of countries often referred to, a touch condescendingly, as "little" carries just as much weight as that of countries who like to think of themselves as "big". That was why the Council in 1997 chose you to chair the Working Party on Statistics, a body with two essential missions: to sift the Office's statistical data, and to analyse its filing forecasts. You tirelessly goaded the Office on to better performance in both fields. Nothing is ever perfect, of course, but the fact is that your tenacity largely paid off. Thanks to your suggestions, especially the famous "key-data chart", an idea indissociably linked with your name, the statistics the Office presents to us are now more readable. As for forecasting, a vital exercise but oh so tricky - especially, as you used to joke, when it relates to the future - it has become far more reliable.

Feeling that under your leadership the Working Party on Statistics had successfully accomplished its mission, the Council decided to wind it up at the end of your term of office, in December 2000. Yet wishing to make further use of your talents, it did not let you rest on your laurels, electing you as chairman of the Budget and Finance Committee with effect from September 2000. Over the past three years, drawing on your complete understanding of the documents, you have helped the BFC to work quickly but highly efficiently. Under your chairmanship the committee, which in the past had sometimes experienced meetings lasting nearly a whole week, has mostly managed to get through its agenda in two days, while always adopting clear positions described to us afterwards in your reports to the Council, thus perfectly performing its function in the decision-making chain. This efficiency was again demonstrated at the most recent meeting at Mondorf-les-Bains, a magnificent setting more conducive to relaxation, where you nevertheless managed with flying colours

to combine business with pleasure. While the changes made to the Financial Regulations in the last two years - the higher thresholds in particular - have clearly helped to streamline the committee's work, it is doubtful that such a result would have been achieved without your professionalism and without that ability to mix and match which, while it may be a national characteristic in a country like yours at the crossroads of many different cultures, is certainly one of your many great qualities. I should also like to add that your courtesy, your uncomplicated nature and your undeniable sense of humour have always helped to keep things running smoothly.

This review of the ten years in which your professional career has been closely bound up with the destiny of our Organisation, and of the European patent system as a whole, would be incomplete if I failed to mention your prominent role as one of the three co-chairs - with Mr Landferman and myself - of the Working Party on Litigation set up in 1999 at the Paris IGC. Your talent for enlivening the debate and keeping it moving was particularly in evidence when the working party met in your country in June 2000.

We are losing you as chairman of the BFC; but, sad to say, we are also losing you as a member of the Council. On 1 April you were appointed director-general of the Luxembourg National Institute for Statistics and Economic Research. This appointment, on which we congratulate you, is in a sense putting you back in touch with your first loves: economics - I forgot to mention your doctorate in applied economics - and of course statistics. For your old colleagues in the Luxembourg Intellectual Property Service, the farewells have all in all been purely symbolic, as I hear you will be working on the other side of the street. For us here, though, they are all too real, as these past few days have been your last among us as head of the Luxembourg delegation. We all hope our paths will occasionally cross at some future international gathering.

Dear Mr Allegrezza, I shall conclude by thanking you on behalf of all the Council for the outstanding services you have rendered to our Organisation and to the European patent system as a whole, and wishing you all the best in your future career.

Ladies and gentlemen, let us give a round of applause to express our gratitude to Serge Allegrezza and our best wishes for his future.

At the same time, allow me to reiterate the welcome I extended at the starting of the meeting to Lex Kaufhold, who will be taking up the torch passed on by Mr Allegrezza as head of the Luxembourg delegation.