

4. Obligation to draw attention to easily remediable deficiencies

4.1. General principle

In accordance with the principle of good faith, the EPO is obliged to warn users of the European patent system of omissions or errors which could lead to a final loss of rights. A warning would always be necessary when one could be expected in all good faith (G 2/97, OJ 1999, 123). This would presuppose that the deficiency could be **easily identified** by the EPO and the applicant was in a position to **correct the deficiency** and thereby avoid the impending loss of rights (J 13/90, OJ 1994, 456). In other words, the EPO can only be expected to warn a party of a deficiency if the deficiency is readily identifiable by the EPO, and the party can still correct it within the relevant time limit (G 2/97, J 13/11, T 703/19).

The principle of good faith does not impose an obligation to warn a party of deficiencies **within the area of the party's own responsibility** (G 2/97; see in this chapter III.A.4.3.1).

4.1.1 Deficiency correctable within the relevant time limit

In J 13/11 the appellant requested re-establishment in respect of the time limit for paying the third renewal fee on the last day for doing so and after EPO office hours. The board held that there was no time for the EPO to warn the appellant about the non-payment of the third renewal-fee and surcharge even if the EPO had been in a position to spot this deficiency. The board distinguished the case in hand from T 14/89 (OJ 1990, 432) (on which see G 2/97) where the EPO had had ample time, about six weeks before the expiry of the time limit for requesting re-establishment, in which to inform the proprietor of the deficiencies of his request. See T 1633/18 and T 703/19 for examples of cases in which the board held that the relevant party would still have had time to correct the deficiency at issue if it had been informed of it.

See also T 1764/08 (concerning the electronic filing of the notice of appeal on the last day of the time limit) and the cases referred to therein, in this chapter III.A.4.2.3. See also in this chapter III.A.4.2.2 (missing or insufficient fee payments).

4.1.2 Obligation to set new time limit

The Legal Board held in J 13/90 (OJ 1994, 456) that if the applicant could expect to receive a communication warning him of an impending loss of rights, but that communication was not issued in due time, the EPO must set a new period allowing the applicant to remedy the deficiency and perform the omitted procedural act in due time (see also T 14/89). However, this only applies to non-absolute time limits, as an absolute time limit (such as the one year time limit under Art. 122(2), third sentence, EPC 1973, now R. 136(1) EPC), by definition, is non-extendable (J 34/92, but see also J 6/08).