

direct application of Art. 125 EPC. Since the competent legislator, here the Diplomatic Conference, had made it clear that this was a principle falling under Art. 125 EPC as a matter of interpretation of the law, the EPO was not only empowered to apply this principle but effectively also duty-bound to do so. On one specific point, the Enlarged Board found that it was more instructive to look at the German version of the "travaux préparatoires" than at their English text. The French version conveyed the same meaning as the German (G 4/19, see points 88 et seq. of the Reasons).

In J 8/82 (OJ 1984, 155) the board noted however that it was well recognised that Art. 31 and Art. 32 of the Vienna Convention on the interpretation of treaties merely codified existing public international law. In J 4/91 (OJ 1992, 402), for example, the Legal Board of Appeal drew on historical material relating to the EPC 1973 to support its view, arrived at from a teleological and systematic interpretation of the relevant provisions, regarding the additional period for paying renewal fees. G 1/98 (OJ 2000, 111) discussed the purpose of Art. 53(b) EPC 1973, its relationship to other international treaties and legal texts, and its legislative history. In G 3/98 and G 2/99 (OJ 2001, 62 and 83), the Enlarged Board reached its conclusions on Art. 55(1) EPC 1973 after interpreting the wording and considering also the legislator's intention and the aspects of systematic, historical and dynamic interpretation. In opinion G 3/19 (OJ 2020, A119), the Enlarged Board, having set out all the ways that Art. 53(b) EPC had been interpreted up to G 2/12 (and G 2/13), took account of the developments after G 2/12 and concluded that, in view of the clear legislative intent of the contracting states as represented in the Administrative Council and having regard to Art. 31(4) Vienna Convention, the introduction of R. 28(2) EPC allowed and indeed called for a dynamic interpretation of Art. 53(b) EPC.

1.1.3 Interpretation of exclusions from patentability under the Vienna Convention

In G 1/07 (OJ 2011, 134) the appellant had submitted that exclusions to patentability had to be construed narrowly according to Art. 31 and 32 of the Vienna Convention. The Enlarged Board held that no general principle of narrow interpretation of exclusions from patentability which would be applicable **a priori** to the interpretation of any such exclusions can be derived from the Vienna Convention. Rather, the general rule in Art. 31, point 1, of the Vienna Convention that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose must apply to the exclusion clauses contained in the EPC in the same manner as to any other provision. If the interpretation of the provision concerned according to these principles of interpretation leads to the result that a narrow interpretation is the right approach then and only then is such restrictive meaning to be given to it.

In G 2/12 and G 2/13 the Enlarged Board came to the conclusion that whilst there is no general notion of an obligatorily restrictive construction of exceptions to patentability, for example, such as that adopted by the Court of Justice of the European Union (CJEU) when insisting on a narrow interpretation of exceptions to or derogations from fundamental EC Treaty principles embodied in the four freedoms (Judgment of 21 June 1974, C 2-74, *Jean Reyners v. Belgian State*, ECJ 1974, 631), such a narrow interpretation might well result from applying the general principles of interpretation to a specific provision with