

In T 324/90 (OJ 1993, 33) the board held that **evidence** proving the facts set out in the application could be filed after expiry of the two-month time limit laid down in Art. 122(2) EPC 1973. Only the grounds and a statement of the facts had to be filed within the two-month period. It was not necessary to indicate in an application for re-establishment the means (e.g. medical certificates, sworn statements and the like) by which the facts relied on would be proved. Such evidence could be submitted after the time limit, if so required (see also T 667/92 of 10 March 1994, T 261/07, T 1764/08).

In J 8/95 the appellants argued that the German-language version of Art. 122(3) EPC 1973 did not stipulate that the statement of grounds for an application for re-establishment of rights had to be filed within the time limit laid down in Art. 122(2) EPC 1973. The Legal Board decided that Art. 177(1) EPC 1973 assumed a uniform legislative intent, which could only be identified on the basis of all three texts of the EPC 1973 (see also T 324/90, OJ 1993, 33).

4.5. Number of re-establishment fees due where more than one time limit is missed

In J 26/95 (OJ 1999, 668) the Legal Board held that where time limits expiring independently of one another have been missed by the applicant, each resulting in the application being deemed withdrawn, a request for re-establishment has to be filed in respect of each unobserved time limit. In accordance with Art. 122(3), second sentence, EPC 1973, a fee for re-establishment has to be paid in respect of each request. It is irrelevant whether the requests for re-establishment are filed in the same letter or in different letters and whether they are based on the same or different grounds.

In T 2017/12 (OJ 2014, A76) the appellant had missed the time limits for filing the appeal and the statement of grounds of appeal. It had paid the fee for re-establishment of rights twice, once for each missed time limit. The board refused the request for refund of one of the fees. There were no explicit provisions in the EPC dealing with the case in which several time limits had been missed. This was an indication that each time limit had to be considered separately and that, in the absence of any hint to the contrary, for the number of fees to be paid the number of missed time limits was decisive. In line with decision J 26/95, the board considered that the corresponding time limits expired independently of one another, notwithstanding the fact that they were triggered by the same event. In addition, the failure to meet either of these time limits individually results in a loss of the right to appeal. Failure to comply with either one of the two time limits would cause the appeal to be rejected as inadmissible, provided that the appeal fee was paid. Consequently, two fees for re-establishment were indeed due.

In T 1823/16 despite missing both the time limit for filing the notice and the time limit for filing the statement of grounds of appeal, the applicant only paid one re-establishment fee. However, the board held that both periods were triggered by the same event, i.e. the notification of the decision, and the hindrance to complying with them was based on one unitary factual basis. The board stated that re-establishment in respect of both periods had to be examined together and that the result would inevitably be the same. In this situation,