In **T 154/04** (OJ 2008, 46) the board stated that in the proceedings before the European Patent Office, such considerations do not exonerate a board of appeal from its duty as an independent judicial body to interpret and apply the EPC and to decide in the last instance in patent granting matters. In addition, despite harmonised legal regulations it is not self-evident that their interpretation is also harmonised among different national courts, let alone courts of different contracting states, so that the boards of appeal would be at a loss as to which interpretation to follow if they did not exercise their own independent judgment.

In **J 14/19**, the Legal Board observed that R. 14(1) EPC did not specify when national proceedings were deemed to have been instituted. Nor was it independently defined anywhere else in the EPC when national court proceedings became pending. The issue of when they became pending was therefore to be assessed under the procedural law of the country whose courts had been asked to take a decision within the meaning of Art. 61(1) EPC (see **J 7/00**, **J 2/14**; see also **T 1138/11**). Art. 8 of the Protocol on Recognition supported this interpretation. In the interests of a **uniform European standard of interpretation**, recourse could be had to the case law of the Court of Justice of the European Union on Art. 21 of the Brussels Convention (which both matched Art. 8 of the Protocol on Recognition in content and preceded it). In the context of that provision too, when proceedings were deemed to be pending was to be assessed for each court in line with its own national procedural law (ECJ, Case 129/83).

4.2. Effects on the case law due to the differences between national legislation and the EPC

In **J 9/07** the board stated that according to Art. 1 EPC 1973 the EPC established a system of law common to the contracting states for the grant of patents for inventions. This common system of law is applicable to all European patent applications irrespective of which contracting states have been designated in the European patent application. Although in general a high degree of harmonization between the EPC and national laws is desirable and has indeed been achieved, differences between national legislation and the EPC are not ruled out by Art. 2(2) EPC 1973 or Art. 66 EPC 1973 in this regard. The board stated that, save to the extent that the Convention expressly provides otherwise, the EPO is not allowed to take into consideration with respect to the designated state concerned a specific national legal provision which would be more favourable for the applicant than the provisions of the EPC. This is because this would have the consequence of giving European applications unequal treatment as regards the requirements for grant depending on which state or states have been designated, contrary to Art. 1 EPC 1973. It would also go against the principle of the unity of the application enshrined in Art. 118 EPC 1973 since, if a more favourable national provision were to be applied in relation to the designated state concerned, distinguishing between a case in which the designated state concerned is the only one designated and a case in which further states have been designated as well would appear arbitrary and unjustifiable.

As regard Art. 31(3)(a) to (b) Vienna Convention, legislative and administrative developments in a quarter of the contracting states did not amount to a subsequent agreement or practice (**G 3/19**).