

Report from the 86th Council Meeting in Sofia on 11th May 2019

Lindsay J. Casey (IE), Editorial Committee

Officers attending the Meeting were The President, Francis Leyder (BE); Vice-Presidents, Heike Vogel-sang-Wenke (DE) and Barbara Kunič Tešovič (SI); Deputy Secretary General, Antonius Tangena (NL); and Treasurer, Peter Thomsen (CH).

The President opened the Meeting and welcomed the participants. The President advised that the Secretary General, João Pereira da Cruz (PT), was unable to attend and the Deputy Secretary General was in his stead.

The Scrutineers for the Meeting were Atanas Tsvetkov (BG) and Valentina Nesheva (BG)

The Agenda was adopted with some slight changes. Topic "Double written approval system" from item 11 was postponed. Item 11 was completed by a motion. Item 16 was re-timed.

Minutes of C85

The Minutes of the 85th Council Meeting were taken as read. The Deputy Secretary General advised that there were no matters arising. The Minutes were approved without amendment.

Report of the Board and President

The President referred to his Report submitted in advance of the Meeting and to the Minutes of the 103rd Board meeting held on 29.03.2019. There followed some discussion on matters in the Report which was subsequently approved.

Committee Elections

The following members were nominated and elected:

Electoral Committee:

Markus Müller (CH); Peter Barrett (GB); and Arni Vilhjalmsson (IS);

Litcom Committee:

Annemie Jaeken (BE) substitute member;

Disciplinary Committee:

Giuseppe Mazzini (IT) and Ferry A.T. van Looijengoed (NL).



Report of the Secretary General

The Deputy Secretary General referred to the Secretary General's Report submitted in advance of the Meeting. On a specific point, he advised that the **epi**'s trademark will be renewed. Following some points of clarification, the Report was approved.

Annual Report 2018

The Deputy Secretary General, in presenting the Report, noted that **epi** is an Institute that brings together almost 12 500 European Patent Attorneys from 38 European countries. The 40-year anniversary of **epi** was celebrated in Malta with many guests from the patent world, including EPO President Benoît Battistelli and the (new) President of the Boards of Appeal, Carl Josefsson. The commemorative booklet with a brief description of all EPC countries with photographs of their Council members was also presented. In relation to the Unitary Patent (UP) and Unified Patent Court (UPC), there were no real developments in 2018. The United Kingdom



ratified the UPC Agreement in 2018, but Germany has not yet deposited its ratification instrument due to the pending complaint before the German Constitutional Court, in which it was argued that the UPC is in violation of the German Constitution.

There followed a brief discussion in relation to the presentation of documents for meetings such as Council meeting. It was agreed that, where a document submitted to the Secretariat was only in pdf format, it would be OCR'd for ease of searching. The Report was approved.

Treasurer's Report

The Treasurer's Report had been made available in advance of the Meeting. The Treasurer noted that the Annual Financial Report for 2018 has been prepared and reviewed by the external and internal auditors. 2018 ended with an overall almost balanced result of +2 k€ compared to a planned budgeted deficit of -42 k€. In relation to financial assets, the Treasurer reported that 2018 had been very difficult lead-

ing to a lower than expected income from interest and similar sources as well as the need for a substantially increased depreciation of financial assets at the end of 2018 on bonds and stocks in an amount of approximately 68 k€. Most of this depreciation arose from not realized losses and as the markets have made a significant recovery since January 2019, the actual value of the financial assets is currently much higher. He noted that Council meetings as well as Board and Presidium expenses have been essentially in line with expectations.

The Treasurer also remarked that there were higher IT costs than had been anticipated. However, there was no need to amend the Budget as agreed at C85.

With the introduction of the new rules relating to the payment of Members' Annual Subscriptions, it was noted that the number of unpaid subscriptions had been significantly reduced.

The Treasurer also advised that the EPO had agreed to continue to pay for EQE travel costs.

There was then a lengthy debate on the relatively new topic of Certificates of Good Standing. In the absence of an agreed procedure, such requests to date have been refused. However, it was believed that they would become a requirement in the future. The Treasurer also proposed that there should be a fee of 120€ for such requests to cover the cost of the research associated with, and the preparation of, a Certificate. There then followed a robust debate including opinions on whether a fee should be levied. The following Motions were placed before the Meeting with their results:

1. *Should Council vote on issuing Certificates of Good Standing? (For:54, Against:46, Abstention:8, Total votes: 108)*
2. *Should **epi** issue Certificates of Good Standing according to which Disciplinary Proceeding under the EPC are or are not pending against a Member requesting the Certificate, the Certificate being made available only to that member? (For: 90, Against: 23, Abstention: 9, Total votes: 122)*
3. *Should **epi** levy a fee and in particular a fee of 120€ for the Certificate? (For: 92, Against: 15, Abstention: 9, Total votes: 116)*

The Treasurer also reported that **epi** is a subsidiary organ of the EPO being accountable to the Administrative Council.

The Treasurer also advised that the legal status of **epi** is still being examined by the Presidium and the legal staff of **epi** the question being: is **epi** an international organisation like, for example, the EPO? An initial opinion would indicate that it is.

The Treasurer advised that approximately 213 members benefited from the Professional Liability Insurance scheme with an annual premium amount of approximately 140 k€.



It was also noted that a contract had been signed with a selected external company offering an online voting tool for use outside physical Council meetings including Council elections. Council Members were advised that a (free) online voting test would take place on 20.05.2019 and that Council members should participate paying particular attention to the instructions provided at that time.

There is to be a review of the Travel Expenses policy and how it operates. A Working Group on the travel expenses (REVEX) has been established (members: Claude Quintelier (BE), Jean Beissel (LU), Timothy Powell (GB), Mihaela Teodorescu (RO), Marco Opresnik (SI) and Francis Leyder (BE) supported by Susanne Ullmann and Helga Krüger (**epi** Secretariat).

Since its inauguration in 2016, **epi** has been an official supporter of the International Inventor Assist Program (IAP). The Treasurer reported that while **epi** members were active in providing pro bono assistance, the relatively high level of official fees for filing such applications before the EPO was a significant negative impact on the success of the program. It was noted that the official fees at USPTO were considerably lower due to the availability of a substantial discount for natural persons and SMEs which reduction can be as high as 75% when compared with the "normal" fee.

The Treasurer's Report was approved.

Internal Auditors' Report 2018

The Internal Auditors' Report (Hansjörg Kley (CH) and Philippe Conan (FR)) was made available in advance of the meeting. The Report noted that the bookkeeping was in order and they expressed their gratitude to the Treasurer and to the accounting team for this achievement despite some unfavourable technical conditions. They especially appreciated the reports made by Helga Krüger (**epi** Secretariat) for the Committees.

epi-Finances Committee Report

The Report had been made available prior to the Meeting. The Chairman, Michael Maikowski (DE), reported that all was well in **epi** and he thanked the Treasurer for his assis-

tance in the preparation of the Report. He also noted that, given the considerable increasing workloads of the Secretary General and the Treasurer, we can no longer expect those positions to operate on an entirely 100% voluntary basis.

In addition, and following on from the Internal Auditors' Report, Council agreed to cancelling the following earlier Council Decisions:

- (a) C73 (Hamburg), Decision 7; and
- (b) C77 (Milan), Decision 14

to be replaced by a new Decision C86 (Sofia), Decision 15 as follows:

- 1 *the main currency of epi is the Euro. epi can invest up to 500 000€ in one or more currencies other than the Euro. When determining the maximum amount of the admissible foreign currency investments, a netted consideration taking into account counterbalancing foreign currency hedging transactions is admissible. However, the netting may only be taken into account for the duration and amount in respect of which effective hedging of the foreign currency risk is guaranteed. Since the conclusion of any hedging transactions entails an additional counterparty default risk in the event of the insolvency of a business partner, the maximum amount of the underlying and hedging transactions in foreign currencies is limited to 1 000 000,00€ before netting;*
- 2 *epi can invest up to 1 500 000,00€ in a professionally managed asset management system of which the main aim is a constant level of return and in which risks of volatility are low;*
- 3 *the assets invested through a professional asset manager are not subject to the limits on maximum foreign currency investments set out under Section 1;*
- 4 *the treasurer is responsible year-round for compliance with the above conditions set out in sections 1 and 2. The Treasurer must report at least by 30 June and 31 December annually to the Board.*

For:	95
Against:	3
Abstention:	19
Total votes:	117





Board and Treasurer's liabilities

The Annual Accounts were approved and the liability of the Board and of the Treasurer were discharged.

By-Laws Committee's Report

The Chairman, Pascal Moutard (FR), presented his Report. The Committee recommended that Article 10.11 of the By-Laws be amended to read:

In accordance with Articles 9(2) and 10(2) of the Discipline Regulation respectively, it shall draw up respective lists of Professional Representatives and submit them as appropriate to the President of the European Patent Office and to the Chairman of the Administrative Council.

Council approved this amendment.

Report of the Reporting Groups

The Chairman, Luis Alfonso Durán Moya (ES), reported that, inter alia, the amount of time, effort and dedication required of both the Secretary General and the Treasurer has increased significantly. It is perceived that it may be difficult in the future to find suitable Secretary General and Treasurer candidates who will have the time and expertise to fulfil the current and future requirements of these offices. The voluntary nature of the office of Secretary General and/or Treasurer has the effect of substantially delaying the implementation of significant changes/improvements resulting in an undesirable effect in the overall performance of the Secretariat. Thus, the Committee recommends that the Secretariat should include the post of Executive Director (ED). The ED should have the necessary skills and experience to have overall responsibility for the running of the Secretariat and report directly to the Presidium.

There then followed discussion in which Chris Mercer (GB) advised as to how CIPA functioned. Olga Sirakova (BG) noted as to how AIPPI functioned. It was important that for the successful recruitment of the ED, the job description was clearly of considerable relevance and the individual should be outside the profession. Council approved the recruitment of an ED.

Amendment of the Terms of Reference of the Nominations Committee

The Chairman, Claude Quintelier (BE), outlined the perceived problems associated with the Rules for Election to Council

and in particular moving the deadline date defining the right to vote and the number of seats per state. Following discussion, Council agreed to amend the Rules so that all persons entered in the list of Professional Representatives on the last working day before 01.12 of the year preceding the voting (the pre-election year) will have the right to vote.

Election of the Nominations Committee

The Terms of Reference for the Committee included, inter alia, the requirement that the Committee would consist of a maximum of 6 members being current or former members of the Presidium, be elected by the Council, and not standing for election to the Board. In addition, the Nominations Committee should be active in the selection process and ensure that the candidates for Vice-President and Deputy Secretary General and Deputy Treasurer have the capacity and availability to succeed in their respective positions thus ensuring continuity within the Board.

Following a brief discussion the following were deemed elected to the Nominations Committee: Sylvain Le Vaguerèse (FR), Paul Georg Maué (CH), Chris Mercer (GB), Laurent Nuss (FR), Claude Quintelier (BE), Mihaela Teodorescu (RO)

EPPC Report

The Chairman, Chris Mercer (GB), noted that the EPPC is the largest committee of **epi** with the broadest remit: it has to consider and discuss all questions pertaining to, or connected with, practice under (1) the EPC, (2) the PCT and (3) the future EU Patent Regulation, including any revision thereof, except all questions reserved for the Biotech Committee.

Pieter Vandersteen (BE) has resigned from all committee memberships including the EPPC and the Pharma The-

A very interesting, entertaining and thought provoking Seminar entitled „Inventive step and recent case law at the EPO“ was held on Friday, 10 May, with approximately 140 attendees and presented by Daniel Xavier Thomas. Details of the presentation can be found on the **epi** website for **epi** members after login as follows: <https://patentepi.com/r/pre-council-seminar>



matic Group. The Chairman expressed his appreciation for Pieter's contributions.

The ICT Thematic Group met with the EPO's Directors in the area of ICT on 30.10.2018. The meeting continued to strengthen the already good relationship of the Directors with **epi** in the area of ICT. **epi** was represented by a total of 15 members; the EPO was represented by 19 members, including the COO in the ICT field, Grant PHILPOTT.

Other aspects of the activities of the EPPC were presented and can be seen in its Report.

The Chairman also noted the possibility of filing 4 amicus curiae briefs in relation to G1/19 (The exclusion of certain aspects of computer-implemented inventions from protection to be studied by the ICT Thematic Group); G2/19 (Is Haar, where the BoA is located, in or outside Munich to be studied by a Working Group within the EPPC); G3/19 (Patent-eligibility of plants obtained by essentially biological processes to be studied by a joint Working Group of Biotech and EPPC); and Double Patenting (which may be assigned the EPO reference G4/19 to be studied by the joint Working Group of Biotech and EPPC).

It was agreed that The Secretariat would shortly open 4 new threads for discussion on **epi** Forum in relation to these briefs.

Council approved the election of Michel Gilio (BE) to the EPPC and Alain Werner (FR) to the EPPC Pharmaceutical Thematic Group.

Editorial Committee

In the absence of the Chairman, Lindsay J. Casey (IE) submitted an oral Report on the activities of the Committee including reporting on some of the results of a recent **epi** Information Survey. Briefly, from a membership of approximately 12500, 817 replies were received. More input, and in particular regular input, from members was requested. However, Cees Mulder (NL) noted, with some concern and disappointment, that he had submitted articles for possible publication without receiving an acknowledgement. It was agreed that this would be examined and resolved as quickly as possible and an apology for this oversight was offered and which was graciously accepted. In addition, a new format for **epi** Information would be presented in the next edition of the Journal.

Professional Education Committee (PEC)

The chairman, Paolo Rambelli (IT) presented his Report. Among the items in the Report, the PEC largely shares the conclusions and comments in the position paper issued by the **epi** Members of the EQE Examinations Board (EB), that favours abandonment of the pre-Examination. However, it would appear that abandonment, at present, is not a real option and the following PEC view on this issue is driven by the assumption that the pre-Examination is to stay. The cur-

rent pre-Examination could be improved to better test the knowledge of the candidates. The PEC Report gives suggestions for such changes including the desire to have a syllabus for the pre-Examination that would reflect the true knowledge requirements required by a candidate.

The Future of the Profession

The Deputy Secretary General provided some comments noting that a number of the ideas discussed in C65 (Helsinki) are in the response presented to the EPO strategic plan. The following in particular were noted:

- specialized training for specific technical areas, like pharma, chemistry, telecom, ICT etc.;
- how to do the follow-up of the Candidate Support Programme, i.e. make a permanent training programme available for all EPC countries;
- work with EPO, local patent attorneys and national patent offices on the promotion of the patent system primarily to companies with emphasis on how to obtain patent information using, for example, esp@cenet; and to increase collaboration with, and training of, academics on how to use the IP system.



A work sharing platform could help to establish networks across countries to help those who have too much work by employing those who have not enough work.

The Deputy Secretary General then presented a list of the Decisions that had been taken which are available for **epi** Members on the **epi** website (after login).

The President then closed the Meeting having thanked our Bulgarian colleagues Samuil Gabriel Benatov, Milena Lubenova Georgieva-Tabakova, Ivanka Slavcheva Pakidanska and Radislava Andreeva Kosseva.

After the Meeting, Council Members adjourned to the Restaurant Chevermeto for an evening of good food, wine and a demonstration of Bulgarian folk dancing in which many members and guests enthusiastically participated.

The following day, some members and guests enjoyed a very interesting and informative morning tour of Sofia entitled *Serdika is my Rome*.