

## Reporting Group on the Reform of epi

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### Report to Council in Cologne November 14, 2015

Since the last Council Meeting in Barcelona on April 25, 2015, the Reporting Group has met in Munich on June 22, 2015 and in Porto on September 18, 2015 in order to discuss a new set of proposals for reform to be presented to the Council in Cologne.

In the first meeting in Munich, the Reporting Group met with the Editorial Committee, members of the **epi** Secretariat and the company which is responsible for the **epi** website. We reviewed together the changes proposed for the website and made several remarks to implement some of the decisions adopted by Council in Milan.

Afterwards, the Reporting Group discussed the current structure of **epi**, including the Presidium, the Board, the Council, the Secretariat and the several Committees, the current **epi** working methods and the workflow of **epi** decision-making processes.

After considering the current situation, several proposals for improvement were discussed and it was agreed to prepare a questionnaire for obtaining the views of Council members on several proposals.

The questionnaire was prepared and sent to all Council members on August 20, 2015, establishing a deadline for reply of September 14, 2015.

In the second meeting in Porto, the Reporting Group analyzed the replies to that questionnaire with the intention of presenting a new set of proposals for reform to the Council on November 14, 2015 in Cologne.

A presentation of the replies to the questionnaire was made to the Board in Porto on September 15, 2015 and we had an exchange of views with the members of the Board.

In consideration of all that the Reporting Group would like to make the following proposals to Council:

### 1. The Board

#### 1.1. Size

Currently the Board consists of 42 members. In addition to the costs that organizing Board meetings imply, most of the work done in Board meetings is duplicated in Council meetings.

It therefore appears, that the resources spent in organizing Board meetings with a large number of members could be dedicated to cover other needs of the Institute.

On the other hand, having a reduced Board would permit managing the Institute more efficiently and organizing meetings more often, mostly in Munich, using the current premises of the Institute and eventually using modern means of communication like teleconferences, videoconferences, etc.

A majority of Council members (66.85 %) who replied the questionnaire were in favour of a reduction of the size of the Board.

#### 1.2. Composition of the Board

The composition of the Board is defined in Article 8.2 of the Founding Regulation indicating that it should include the President, two Vice-Presidents, the Secretary-General and the Treasurer. The Board may include a deputy for the Secretary-General, a deputy for the Treasurer and further members. Article 7 of the By-Laws, states that the Board shall comprise, at least the President, two Vice-Presidents, the Secretary General, the Treasurer (members of the Presidium, according to Article 10A By-Laws), a Deputy Secretary General and a deputy for the Treasurer.

Therefore, Council has ample freedom in deciding on the composition of the Board to reduce its size.

A majority (66.6 %) of Council members are in favour of maintaining as members of the Board the Deputy Secretary General and the Deputy Treasurer. Their presence will ensure continuity for the Board when there will be renewed in the positions of Secretary General and Treasurer.

In addition to the 7 members fixed by Article 7 of the By-Laws i. e.:

President  
Two Vice-Presidents  
Secretary General  
Treasurer  
Deputy Secretary General  
Deputy Treasurer

a majority of Council members who replied to the questionnaire were in favour of adding invited guests (16.07 %) or Chairs of Selected Committees (66.07 %).

The Chairs of the Committees who received most support to be in the Board were:

EPPC/PEC (84.27 %)  
By-Laws (62.92 %)  
**epi**-Finances (60.67 %)

After hearing the members of the Board, our suggestion would be to have a Board composed of:

- The 7 members established by Article 7 of the By-Laws, i. e. President, Two Vice-Presidents, Secretary General, Treasurer, Deputy Secretary General, Deputy Treasurer. They will have a right to vote.
- Invited guests who would not have voting rights.

The Chairs of the EPPC, PEC, By-Laws and **epi**-Finances would have the right to participate in any Board meeting, irrespectively of whether there are items in the agenda on which they will have to report.

The methodology for inviting other guests could be the following: the President will send a letter to all other Chairs of Committees announcing the intention to convene a meeting of the Board, including a tentative agenda and asking whether any of the Chairs have any item from their respective Committees to be discussed and an interest in participating in the Board meeting. The President would then decide on whether any such request should be allowed.

In light of the replies, the President will adopt the agenda and invite those Chairs who have items to be discussed at that particular meeting.

As at present, the President could also invite to any Board meeting anyone who, due to his/her expertise, could contribute to the discussion of a topic at the Board meeting.

In order to implement any decision taken by Council, there is no need to change the By-Laws. This proposal was approved by Council.

### 1.3. Delegated powers of the Board

In light of the responses of the Council members, we do not propose that further powers of the Council should be delegated to the Board. This will also permit to gain experience under the new composition.

## 2. Designation of a Rapporteur in Committees

Council was consulted about a proposal to establish the position of Rapporteur in Committees when the Committee have to start a discussion on a new topic.

Each Rapporteur would be in charge of preparing a working document (WD) including:

- a summary of the topic;
- the background;
- an explanation of why the topic needs to be studied;
- the main problems and questions; and
- an eventual proposal for decision.

Each rapporteur would:

- attach any related documentation and
- indicate deadlines, if any.

This WD would be distributed among all members of the Council so that they would be alerted as soon as the new topic is under discussion and would ensure that the members of the respective Committee are better informed and able more effectively to conduct the study of the new topic.

The majority of the members of Council (93.98 %) were in favour of this proposal and of the early distribution of the WD to the members of Council (91.57 %).

The Rapporteurs should preferably be elected from the members of the relevant Committee. In the absence of any candidate, a legal adviser should play this role and eventually, in case of need, the Chair of the Committee may invite and appoint a person, with appropriate experience on the topic, even if, that person is not a member of the Committee.

No change of the By-Laws seems necessary. This proposal was approved by Council.

## 3. The Council

### 3.1 Unitary and non-unitary constituencies

As members of Council will recall, Council decided to request a legal opinion about the non-unitary constituencies in **epi**. This legal opinion has been requested to Prof. Ulrich Battis, a German lawyer expert in these kind of matters. The legal opinion is enclosed in its original German version together with a translation of the summary into English and French.

As it can be seen, the opinion concludes that there is no legal basis for requiring a compulsory establishment of non-unitary jurisdictions in **epi** member states.

Currently there are 8 EPC member states with non-unitary constituencies, i.e.:

Austria  
Belgium  
Switzerland  
Germany  
Denmark  
France  
Italy  
Luxembourg

The remaining 30 EPC member states have unitary constituencies.

Given the fact that those member states who have non-unitary constituencies would have to decide if they wish to change to unitary, and this will require time, this Reporting Group suggests not to make a decision on the reduction of the size of the Council dependent of this fact.

In order to adapt the representation in Council in a more flexible and proportional way, it would be advisable to have uneven number of seats.

This, in the view of the Reporting Group, might be possible under the current reading of Article 7 (4) of the Founding Regulation, since the division of the seats in non-unitary constituencies can be done in two halves, considering together the representatives and the substitutes. The addition of an uneven member of representatives and of an uneven member of substitutes will always give an even total number.

Our proposal would be that when there are X seats for a non-unitary state (where X is an uneven number),  $(X-1)/2$  of those seats would be divided between the two constituencies as at present. The remaining one seat for that state would be taken by the member from that state, apart from the members already elected, receiving the most votes. In a similar manner, the substitute members would be elected except that the remaining substitute position would be taken by a member from the other constituency.

Example I: 1 seat.

Industry: 5 votes – Member

Private practice: 4 votes – Substitute Member

Example II: 3 seats.

Industry: 1<sup>st</sup>: 200 – 2<sup>nd</sup> Member  
 2<sup>nd</sup>: 100 – 1<sup>st</sup> Substitute Member  
 3<sup>rd</sup>: 50 – 3<sup>rd</sup> Substitute Member  
 Private practice: 1<sup>st</sup>: 300 – 1<sup>st</sup> Member  
 2<sup>nd</sup>: 150 – 3<sup>rd</sup> Member  
 3<sup>rd</sup>: 75 – 2<sup>nd</sup> Substitute Member

### 3.2 Size and Composition of the Council

Currently, the Council has 142 members. The size of the Council is due to the fact that the number of EPC member states has grown considerably over the years. Currently there are 38 EPC member states.

The high number of Council members creates problems of efficiency, since it is difficult to debate and take decisions with such a large number of people and also it consumes a significant amount of the **epi** resources in, for example, organization of the meetings, the reimbursement process, travelling, accommodation and meal expenses, etc.

The resources of the Institute are limited and therefore, it may be more useful for **epi** members if a reduction of the Council meeting expenses could be used for other matters, always provided that with the reduction it is ensured an adequate representation in Council of EPC member states, and that the Council can fulfill its role with a smaller number of people in a more efficient way.

Currently the allocation of seats is the following:

1 to 25 members: 2  
 26 to 500 members: 4  
 over 500: 6

This is the result of a reduction that took place 16 years ago, in May 1999.

Any proposal that could be made is necessarily to a certain extent subjective, but it is important to try to find a compromise that is as balanced as possible.

In the questionnaire we asked about a number of principles and the result was the following:

- a majority (60.38 %) are in favour of all EPC members having, at least, one representative.
- a majority of 33 % would be in favour that a minimum number of 50 members should be required to have a second seat. 16 % were in favour of requiring 100 for a second seat and 10.8 % were in favour of requiring 25.

Our first proposal is the following:

#### *Proposal I*

1 to 25 : 1  
 26 to 400 : 2  
 401 to 1000 : 3  
 1001 to 2000 : 4  
 2001 to 3000 : 5  
 over 3001 : 6

With this structure, with the current number of members Council would be of 78 persons instead of the current 142 (45 % reduction).

Our second proposal is the following:

#### *Proposal II*

1 to 30 : 1  
 31 to 100 : 2  
 101 to 300 : 3  
 301 to 1000 : 4  
 1001 to 3000 : 5  
 over 3001 : 6

With this structure, the Council would consist of 85 members (40 % reduction).

Our third proposal is the following:

#### *Proposal III*

1 to 30 : 1  
 31 to 50 : 2  
 51 to 300 : 3  
 301 to 500 : 4  
 501 to 3000 : 5  
 over 3001 : 6

With this structure, the Council would consist of 95 members (33 % reduction).

If Council decides to change the size of the Council, the By-Laws Committee will have to prepare a proposal for changing Article 7 (3) of the Founding Regulation. Such a change must be approved by the Administrative Council of the EPO.

After a discussion, a majority of the members of the Council was in favour to reduce the size of the Council. The Reporting Group will now prepare new proposals for consideration in the next meeting of the Council.