

# Introduction

## Report from the 92<sup>nd</sup> Council Meeting held in Munich on 7<sup>th</sup> May 2022

M. Névant (FR)



### 1/ Meeting opening

**P**resident Leyder opened the meeting at 9.10 am and welcomed all participants. A test vote was conducted and scrutineers were appointed.

### 2/ Adoption of the agenda

The agenda was adopted with changes, namely

- A discussion on the situation in Ukraine will take place after item 23
- Under item 25, the report from EPPC will include a discussion on the proposed amendment of Rule 132 EPC.

### 3/ In memoriam

President Leyder informed Council of the passing away of Dr Helen Papaconstantinou (GR), a former Council member and former Secretary General of **epi**. President Leyder and Ms. Yazitzoglou (GR) reminded Council of Dr Papaconstantinou's career and achievements. A minute of silence was observed by Council.

### 4/ Confirmation of the list of nominations for Committees by-election

The Secretary General, Ms. Sirakova, confirmed the name of members having applied for a position in the By-Laws Committee and in the Electoral Committee.

### 5/ Adoption of the minutes of the 91<sup>st</sup> Council meeting – matters arising from said minutes and all previous Council and Board meetings

The minutes of the last Council meeting (C91) were approved. The document listing the action points arising from previous meetings and their status was noted.

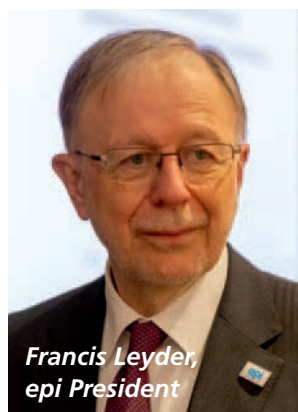
### 6/ Report of the President and Vice-Presidents

President Leyder referred to his report in the accumulated file, which included activities of both Vice-Presidents. President Leyder also indicated that he was disappointed that a chamber of the Disciplinary Committee issued a decision after the time limit imparted to do so.

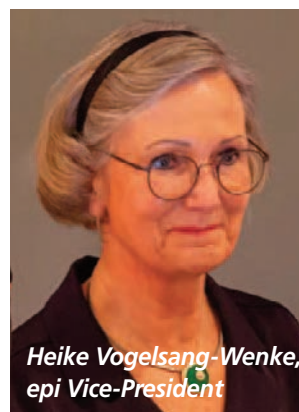
In response to a letter sent by the Dutch delegation, President Leyder noted that the agenda for the meeting had been designed such that internal matters would be discussed in the morning and more substantial, external matters would be discussed in the afternoon.

### 7/ Report of the Secretary General

The Secretary General, Ms. Sirakova, referred to her report in the accumulated file, and thanked the Deputy Secretary General, Ms. Augustyniak for her help. Ms. Sirakova then briefly highlighted the following information:



**Francis Leyder,**  
**epi President**



**Heike Vogelsang-Wenke,**  
**epi Vice-President**



- **epi** has 13,143 members as of 1st May 2022;
- the 2021 online **epi** artists exhibition drew about 12,000 visits;
- the next Council meeting (C93) will take place on 22nd October 2022;
- it is planned that Montenegro will join the EPOrg later this year.

## 8/ Report from the Executive Director

The Executive Director, Ms. Lissak, reported progress in the Secretariat, notably on accounting, cybersecurity and the organisational chart.

Ms. Lissak informed Council that further steps would focus on accounting, IT projects and RACI matrices (RACI stands for Responsible/Accountable/Consulted/Informed).

## 9/ Annual report

The 2021 annual report was presented by the Secretary General and Mr Névant (Chair of the Editorial Committee). Mr Névant mentioned that the report had a format and layout comparable to those of the 2020 report, and thanked all those having contributed to the preparation of the report, in particular Ms. Liebig from the Secretariat. Mr Névant also indicated that the report would be illustrated with photographs taken during the Council meeting. The annual report was approved by Council.

## 10/ Report on financial annual accounts 2021

The Annual Financial Report for 2021 was prepared and reviewed by the external and internal auditors and was discussed with the **epi**-Finances Committee. **epi** concluded 2020 with a positive result of +135 kEUR (whereas the budget had a planned deficit of -197 kEUR).

The Treasurer, Mr. Thomsen, noted that since the 2020 EQE had to be cancelled and the first eEQE took place in 2021,

**epi** welcomed more than 1000 new members in 2021, which was in line with the budget. In addition, subscription in **epi** studentship was above expectations.

Mr. Thomsen explained that as the pandemic was ongoing in 2021, **epi** continued its practice to offer most educational webinars for free to members and students. Some educational events could also be organized with a participation fee, that led to an income of +172 kEUR; this income covered the overall external expenses of -170 kEUR for organizing the educational webinars.

On the expenses side, spending on Council, Board, Presidium and Committee meetings was much lower than expected because no physical meeting took place and both Council meetings took place virtually. Other usual expense lines included salaries, IT and finance & law.

## 11/ Report of the epi-Finances Committee

The Chair, Mr. Quintelier, referred to his report in the accumulated file, in which notably:

- the income, expenditure and budget figures for 2021 reported by the Treasurer were approved;
- proposals by the Treasurer to establish post-pandemic hybrid working protocols for **epi** committees were approved.

## 12/ Report of the Auditors

The auditors, Messrs Conan and Kley, referred to their report and annexes in the accumulated file. The auditors were overall happy with the handling of the assessment of cost centres and the dunning process, but were concerned with the increase in the extra working hours in 2021. They made suggestions to manage overtime and to improve the payroll process, and again proposed to introduce a double signature system. The auditors also tabled motions concerning (i) the release of the Treasurer from liability for the accounting year 2021 and (ii) possible amendments of the By-Laws.

A round of exchanges followed between the Presidium, the auditors and the Chair of the By-Laws Committee. A vote on the motions then ensued.

#### Motion 1

Does Council agree in one vote:

- to approve of the accounts for 2021,
- to approve the administration of assets,
- the adherence to the planned budget,
- to release the Treasurer from liability for the accounting year 2021?

Council approved the motion (105 in favour, 3 against, 7 abstentions).

#### Motion 2

Does Council agree that an amendment of the By-Laws of the Institute is prepared being ready for vote at the Council Meeting C93, which amendment has the following objectives:

- a clear separation of powers and duties between the Treasurer, the Secretary General and the Executive Director.
- a clear definition of the powers and duties of the Executive Director regarding the employees.
- an amendment of Article 22 as proposed by the Auditors?

The motion was denied (36 in favour, 52 against, 26 abstentions).

### 13/ Release of the members of the Board from liability

Council released the members of the Board, and in particular the Treasurer, from liability (107 in favour, 4 against, 4 abstentions).

### 14/ Report on the situation of the 2022 budget

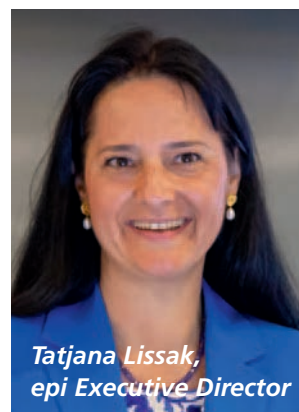
The Treasurer, Mr. Thomsen, presented a snapshot of the financial situation at the beginning of April 2022. The situation (income and expenses) seems to be in line with what was expected. There are however a number of uncertainties due especially to the high level of inflation in Europe and the effect of the ongoing war in Ukraine. An increase in energy costs and travel expenses is already noticeable.

The Treasurer also mentioned that the educational activities will focus this year on:

- the UP/UPC system with
  - essential online training (for free for members and students)
  - intermediate physical/online training
  - possibly advanced level for UPC
- a mixture of free and 'for pay' webinars
- ongoing support courses for EQE candidates.



*Olga Sirakova,  
Secretary General*



*Tatjana Lissak,  
epi Executive Director*

### 15/ Election of Committee Members

Mr. Michael Liebetanz (CH) was elected as full member of the By-Laws Committee. Mr. Peter Barrett (GB), Mr. Markus Müller (CH) and Mr. Árni Vilhjálmsson (IS) were elected as members of the Electoral Committee. Congratulations to them!

As a reminder, the detailed and up-to-date composition of all Committees is available on the **epi** website (<https://patentepi.org/en/epi-bodies/epi-committees>) and at the end of each issue of this journal.

### 16/ Amendment of the rules governing epi studentship

The amendment presented by Mr. Chris Mercer (Chair of the Studentship Admission Committee) was aimed at filling an unintended gap. At present, If an **epi** Student completely passes the EQE, their Studentship is automatically terminated. However, they do not automatically become full **epi** members. They need to apply to the EPO for entry onto the list and then the EPO needs to carry out the procedure for entering them onto the list. As we have noticed recently, the EPO can take some time to enter an applicant on the list. In the time between passing the EQE completely and being entered on the list, they are neither **epi** Students nor full members. In order to ensure that, at all times, they are part of **epi**, an amendment of Rule 8(1) and Rule 13 was proposed.

Council approved the amendment (108 in favour, 1 against, 4 abstentions).



## 17/ Amendment of Decision 3.3.4, deletion of Decision 3.3.5, adoption of ToR of a new committee, amendment of ToR of the Nominations Committee

In anticipation of the elections to Committees in the fall next year, the Secretary General and the Deputy Secretary General worked in liaison with the By-Laws Committee (as decided by Council during C91) to propose an amendment of Decision 3.3.4 which governs the election of Committee members. As a result of the amendment, Decision 3.3.5 would have to be deleted. A new Committee, called the Committees Election Committee, would be in charge of the election of Committee members. The remit of such a Committee would need to be defined in its terms of reference (ToR). In addition, the ToR of the Nominations Committee would need to be amended to take into account the remit of the new Committee.

A proposal (amended Decision 3.3.4 + ToR of the Committees Election Committee) was made available to Council members in advance of the meeting. Several comments were posted in the Forum before the meeting, and a number of other points were discussed during the meeting, resulting in a final proposal (amendment of Decision 3.3.4 + ToR of the Committees Election Committee + ToR of Nominations Committee; deletion of Decision 3.3.5) being presented for a vote.



**Marc Nevant, Editorial Committee Chair**



**Peter Thomsen, epi Treasurer**



Council approved the amendment of Decision 3.3.4 (89 in favour, 9 against, 16 abstentions), the ToR of the Committees Election Committee (86 in favour, 5 against, 7 abstentions), and the amendment of the ToR of the Nominations Committee (unanimous).

An updated version of the Collection of Decisions will be available on the website as soon as possible.

## 18/ Substantive patent law harmonisation

There is high pressure on Europe to adopt measures such as e.g. a grace period. In this respect a survey has been conducted by the EPO to collect the feedback of interested parties including NPOs. This topic was last addressed by Council in 2013.

During the meeting Mr. Brown (Chair of the Harmonisation Committee) reviewed the pros and cons of the various systems and proposals on the table (Rule 55 EPC, IT3<sup>1</sup> proposal, AIPPI proposal, FICPI proposal). A lively discussion ensued and the following motions were eventually voted on.

### Motion 1

**epi** is opposed to any kind of grace period.

Council voted in favour of this motion (68 in favour, 32 against, 13 abstentions).

### Motion 2

However, **epi** could consider a grace period as a safety net as part of a harmonised system.

Council voted in favour of this motion (88 in favour, 18 against, 5 abstentions).

## 19/ EQE

Mr. Reijns (member of the EQE Examination Board and of the joint EPO-**epi** Working Group on eEQE, both on behalf of **epi**) presented the proposed new concept of the EQE. The Working Group has analysed the specific competences required for each paper, to identify recurring and/or common features within the various papers. Model papers have been prepared by **epi** and EPO members, which are suitable for an online examination and which meet the current high standard. A goal is to test different types of knowledge which are expected from a professional representative, with increasing complexity over time reflecting a gradual development of competences: 2 papers could be sat after about 12 months experience, another set of 2 papers after 18/24 months, and a final set of 2 papers after 24/36 months.

Detailed information on the new EQE is available at <https://www.epo.org/learning/eqe/new-eqe.html>.

<sup>1</sup> IT3 stands for Industry Trilateral



It is possible to test the model papers until 15 July 2022 using the Wiseflow platform.

## 20/ Proposed amendments of the Code of Conduct in particular for ensuring that it covers activities before the UPC

An amendment to the Code of Conduct (CoC) was proposed to include the fact that professional representatives are bound to the CoC when representing their clients before jurisdictions including the EPO and the UPC.

Council approved the amendment (106 in favour, 2 against, 7 abstentions).

The revised CoC will normally be published in the June edition of the EPO Official Journal.

## 21/ Diversity and Inclusion

A proposal to adopt a policy on diversity and inclusion (D&I) was presented by the Working Group on D&I. A draft proposal had been sent to Council members in advance of the meeting, and the comments collected were taken into account to revise the text intended to be adopted. The Working Group also requested permission to continue its work until at least C93.

Council adopted the policy (85 in favour, 12 against, 10 abstentions) and agreed that the Working Group continue its work (86 in favour, 15 against, 6 abstentions).

The text of the D&I policy is available on the **epi** website (<https://patentepi.org/en/diversity-and-inclusion.html>).

## 22/ Request from the Dutch delegation concerning the situation in Ukraine

The Dutch delegation proposed to inform European patent attorneys how to deal with Russian and Belarusian patents and patent applications in view of the economic sanctions imposed on these countries. A draft recommendation was prepared by Mr. Checcacci (Chair of the Professional Conduct Committee), who could unfortunately not join the meeting. Council amended the proposal and adopted the recommendation (98 in favour, 3 against, 7 abstentions).

The text of the recommendation is available on the **epi** website (<https://patentepi.org/r/info-2202-09>).

## 23/ Update on the UPC

Mr. Thomsen (Chair of the Litigation Committee) briefly summarised what happened since the beginning of the year (entry into force of the Protocol on Provisional Application, thus of certain parts of the UPC Agreement, on 19 January 2022; inaugural meeting of the Administrative Committee on 22 February 2022; Advisory Committee established on 24 February 2022). Mr. Thomsen also reminded the audience that (i) the sunrise period (3-4 months) will be triggered by the deposit of the instrument of ratification of Germany, (ii) the UPC will become operational on the 1st day of the 4th month after Germany's ratification, and (iii) it will be possible for European Patent Attorneys with additional qualification to register as full representative under Art. 48(2) UPCA.

## 24/ Report from the European Patent Practice Committee

The Chair of that Committee, Mr. Mercer, referred to his report in the accumulated file, and presented a motion requesting Council to approve a statement in relation to Rule 132 EPC, to the effect that:

- **epi** appreciates that the European Patent Office (EPO) has taken note of the objections raised by **epi**'s delegates to the SACEPO-WPR and at a meeting between **epi**'s European Patent Practice Committee and DG1 against the EPO's proposal to amend Rule 132 EPC to reduce the minimum time limit from 2 months to 1 month;
- **epi** agrees with the decision of the European Patent Office (EPO) not to proceed with this proposal;
- the Council of **epi** considers that no such proposal should be reintroduced by the EPO;
- the Council of **epi** will forward this statement to the Administrative Council of the European Patent Organisation, its Committee on Patent Law and the EPO.

Council unanimously approved the motion.

## 25/ Review of decisions and actions and closing of meeting

The Secretary General listed all decisions made and actions taken during the meeting. President Leyder then thanked the participants and the support team before closing the meeting at 7 pm.



*The D&I Working Group with the President*