

Report from the 96th Council Meeting

held on 11th November 2023 in Ljubljana (Slovenia)

M. Névant (FR)

To be as complete as possible, it is worth noting that a very interesting seminar entitled “Patent Quality in Europe” took place on the eve of the Council meeting, as reported here¹.

1/ Meeting opening

President Peter THOMSEN opened the meeting at 9 am and welcomed the participants. A test vote was conducted (125 voters were present then) and scrutineers were appointed.



2/ Adoption of the agenda

Proposed changes were made to the provisional agenda to include a discussion on: two motions from the Dutch delegation, a proposal to reform the disciplinary system, a proposal for support for economically weak applicants, and motions on the EQE (first basket). The revised agenda was **adopted**.

3/ Adoption of the minutes of the 94th and 95th Council meetings – matters arising from the decisions and actions recorded during said meetings and previous Council and Board meetings

Council agreed to **postpone the adoption** of the minutes of the 95th meeting until the next Council meeting. The list of decisions taken during C95 was however **adopted**.

A few changes were made to the draft minutes of the 94th Council meeting which were then **adopted**. A reference was made to the accumulated file with respect to matters arising from the previous Council and Board meetings.

4/ Report of the Committees Election Committee (CEC) and validation of the election of the members of the Committees – Report of the Committee Elections’ Objections Committee (CEOC)

The Chair of the CEC, Thomas MARX, first reminded Council of the process and timeline of the elections, and indicated that the implementation of said process included not only the CEC but also the Presidium, the By-Laws Committee and the Secretariat. Mr MARX indicated that it was a challenging task as the CEC was under time pressure to review the results for each Committee and publish them on the website. Mr MARX further mentioned that 3 objections against the results were received (see next item).

Paul-Georg MAUE, speaking on behalf of the CEOC, reported that the objections against the results of the election had been reviewed, and that there was no reason why the election should not be validated.

The election of the members of the Committees was **validated by Council** with 97.5% in favour and 2.5% against.

NB: the composition of the Committees is available on our website :

<https://patentepi.org/en/epi-bodies/epi-committees>

⁴ <https://patentepi.org/r/info-2304-18>



5/ Report of the President and Vice-Presidents

President THOMSEN referred to his (note from the editor: comprehensive) report in the accumulated file, which also included activities of the Vice-Presidents.

6/ Report of the Secretary General – Report of the Executive Director

The Secretary General, Magdalena AUGUSTYNIAK referred to her report and that of the Executive Director in the accumulated file. Ms AUGUSTYNIAK thanked the Secretariat and her Deputy Ann DE CLERCQ for their support since the beginning of her term of office. Ms AUGUSTYNIAK also reported on the progress in IT made since C94.

A discussion followed on whether the minutes of Council meetings should be drafted in English only. Council was in favour of **postponing the decision** on the language version(s) of the Council minutes until the Council meeting in Sofia.

7/ Report of the Treasurer

The Treasurer, Zsolt SZENTPETERI, presented the financial outlook for the 2023 accounting year. In substance, the overall result was expected to be in line with the budget. The income will be significantly lower than expected (planned deviation of – 551 k EUR), in part due to a lower income from educational activities. The expenses will also be lower than expected (planned deviation of – 553 k EUR), in part due to lower costs in the Secretariat and also lower education costs. A planned deficit of – 524 k EUR is expected.

8/ Report of the epi-Finances Committee

The Chair of the **epi**-Finances Committee, Claude QUINTELIER, reported that the Committee has met with the Treasurer, the Deputy Treasurer, the Internal Auditors, the Executive Director and the Head of Finance to review the financial situation of the Institute. Mr QUINTELIER noted that variations in educational event income and expenditure were very hard to predict at the budget planning stage. Overall, the Committee was happy to accept the 2023 financial performance of the Institute to date, and noted the projected performance to the year-end.

9/ Motions of the Dutch delegation – Annual subscription fee – 2024 Budget

a) The following motions were discussed and put to vote.



Motion 1: Does Council agree to invite the Presidium to draft a proposal for reviewing the position of the Executive Director, reviewing the function and powers of the Secretary General and of the Treasurer, reviewing the structure and utilisation of the Secretariat, and a long term financial plan to bring the **epi** finance back to a long term sustainable situation; and to present this proposal on the Council meeting in Autumn 2024, with an interim report in Spring 2024?

The motion was **adopted** with 80% in favour and 20% against.

Motion 2: Does Council agree to work towards a long-term stabilisation or even reduction of the costs of the Secretariat?

The motion was **rejected** with 63.5% against and 36.5% in favour.

b) The planned 2024 budget was presented. The Treasurer explained that the draft was based on the following assumptions:

- Price increases especially for rent (6%) and IT Licences,
- Physical meetings of Council, Presidium, Board and Committees,
- All bodies/Committees will at least be able to meet once physically,
- Considerable use of ViCos by Committees and Presidium,
- Extension of expense arrangement with EPO for EQE-Committees,
- High activity level on educational activities, with new formats aimed at the development of the profession and related topics (AI, setting up a business),
- Stable membership and studentship numbers.

The Treasurer also noted that there were still a number of uncertainties for next year, such as the high inflation rate in Germany, IT investments and the downstream impact of "MyEPO" rollout on **epi** IT.

In the planned budget, total revenues were projected to be 3640 k EUR and total expenses were projected to be 4131 k EUR, resulting in a deficit of – 491 k EUR.

The Treasurer then stressed that while **epi** has a comfortable reserves position at present, continuing with

the current level of losses, will change this position. The consequence of a worsening position would leave no room for future investments and reduce **epi**'s flexibility in case of risk situations. The Treasurer then presented a graph showing that if **epi**'s annual subscription fee had been adjusted each year since 2016 in line with the inflation rate in Germany, its current amount would be close to 240 EUR. In order to bring **epi**'s finances back to an even break position, it would make sense to increase the annual subscription fee by 50 EUR, i.e. from 190 EUR to 240 EUR.

At this point, Mr QUINTELIER indicated that the **epi**-Finances Committee had explored in depth the reasons for needing an increase in the subscription fee, and after



extensive debate the Committee supported an increase in the annual subscription fee to €240.

This proposal was debated within Council and a motion was then tabled by Laurent NUSS to increase the annual subscription fee from 190 EUR to 250 EUR, with a late payment surcharge fee of 50% (i.e. 125 EUR). The motion was **adopted** with 68% in favour and 32% against. The studentship annual subscription fee was accordingly set at 125 EUR (50% of the "normal" subscription fee).

c) A revised planned 2024 budget was presented, taking into account the new amount of the annual subscription fee. In the revised budget, total revenues were projected

to be 4538 k EUR and total expenses were projected to be 4131 k EUR, resulting in a surplus of 407 k EUR. The revised budget was **adopted** with 92.5% in favour and 7.5% against.

10/ Report from the Diversity & Inclusion Working Group

Fatema SARDHARWALA, John GRAY and Marc NEVANT presented the activities of the WG since C94, which included: (i) an analysis of the statistics provided in the 2023 EQE survey report with respect to D&I questions; (ii) writing an article on the prerequisites to sit the future EQE, which was published in issue 3/23 of **epi** Information; (iii) attending various events notably giving a pre-



sentation at the event organized on 13 October 2023 by **epi** ("Half a century of EPC, 44 Years of EQE and opening a New Chapter").

Council **agreed** that the WG continues their work until at least the 2024 ordinary Spring Council meeting.

11/ Amendment of the Code of Conduct – Motions for establishing a new Working Group

a) The Chair of the Professional Conduct Committee, Giorgio CHECCACCI, presented proposals to amend the CoC. The scope of the proposed revision included:

- updating and improving some wording (to be as gender neutral as possible);
- addressing Continuing Professional Education;
- improving the definition of conflicts;
- giving indications about keeping files;
- addressing members' concerns during **epi** internal elections.

More specifically, the following proposals were put to vote.

Amendments of article 4, paragraphs (d), (e) and (f) dealing with conflicts

The amendments were **adopted** with 84.3% in favour and 16.7% against.

Introduction of new article 4, paragraph (h) dealing with the keeping of files

This was **rejected**: 50.4% were in favour and 49.6% were against; the required 2/3 majority was not obtained.

*Introduction of new article 8 dealing with the conduct of internal **epi** elections*

This was **adopted** with 74.4% in favour and 25.6% against.

General updates not impacting the substance of articles

This was **adopted** with 91.4% in favour and 8.6% against.

NB: the revised CoC will be soon available on our website

b) Mr CHECCACCI also presented the following motions intended to establish a Working Group aimed at studying whether our disciplinary system can be improved.

Motion 1: Does the Council approve establishing a WG ("DS WG"), with the task of studying the present disciplinary system and considering possible proposals to improve it?

The motion was **adopted** with 66.7% in favour and 33.3% against.

*Motion 2: Does the Council authorize the WG to address the EPO (and in particular the competent Principal Director) under the direction of the **epi** President or his delegate, to share opinions and proposals, with the understanding that the WG will report to the Council?*

The motion was **adopted** with 70.6% in favour and 29.4% against.



Motion 3: Does the Council approve populating the WG with the following list of members: Tim Powell; Martina Stork; Francis Leyder; Jonna Sahlin; Bart van Wezenbeek; Giorgio Checcacci; Magdalena Krekora; Jim Boff?

The motion was **adopted** with 60.3% in favour and 39.7% against.

12/ Motions on database of professional representatives

Council was informed that the EPO intends to no longer publish information about professional representatives in the OJ. The list will still be available online, and the EPO is contemplating to improve the search tool within the database. Different motions were discussed and voted on:

Motion 1: Does Council agree to include in the database of professional representatives available online the name of any association according to Rule 152(11) EPC?

The motion was **rejected** with 63.2% against and 36.8% in favour.

Motion 2: Does Council agree to include the nationality in the database of professional representatives available online?
The motion was **adopted** with 54.7% in favour and 45.3% against.

Motion 3: Does Council agree to include the place of business or employment in the database of professional representatives available online?

The motion was **adopted** with 73.6% in favour and 26.4% against.

Motion 4: Does Council agree to request the EPO that the database of professional representatives available online

includes, for each and any representative in the list provided by Art. 134(1) EPC, at least the name and the data mentioned in Art. 134(2) EPC, i.e. nationality and place of business, with no exceptions?

The motion was **adopted** with 54.7% in favour and 45.3% against.

Council was further of the opinion that there is no need for an OJ EPO publication at all because all information (concerning representatives) will be available in the searchable database.

13/ EQE Reform 1st Basket – Motions by Martina STORK

a) Vice President Tiem REIJNS presented the latest changes on the reform of the new EQE. VP REIJNS reminded Council that the REE and IPREE needed to be amended only to the extent that amendments were occasioned by the implementation of the new EQE concept. VP REIJNS also mentioned that the outcome of the eC95 motions and forum comments were shared with the EPO Lawyers. In a nutshell, the so-called “first basket” amendments were made to the article and rules shown below:



REE/IPREE amendments

- | | |
|----------------------------|--|
| 1. Art 1(5) REE | - Define papers in REE |
| 2. Art 3(7) and NEW Art 26 | - codify epi consultation for REE/IPREE |
| 3. Art 11 and 14 REE | - training period for examiners |
| 4. Rule 6(6) IPREE | - pass mark definition |
| 5. Rule 10(2) IPREE | - clarification |
| 6. Rule 10(3) IPREE | - exemptions for sitting F |
| 7. Art 25(6) REE | - cancelation of the pre-exam after 2024 |
| 1. NEW Art 27(3) | - sunrise period |

The following motion was then tabled:

Does Council support the present version of the new eEQE package as presented during C96?

The motion was **adopted** with 62.2% in favour and 37.8% against.

Council also **decided** that an extra Council meeting dedicated to the EQE was no longer necessary (94.5% in favour, 5.5% against).

b) A number of motions tabled by Martina STORK were then discussed and voted on.

Motion 1: Council does not agree to Art. 11(2)(b) REE, which would abolish the four-year minimum period of service as an examiner at the EPO, and to Article 14(2) REE, which would reduce the period of practice for examiners from two years to one year, in the form as presented on



November 4, 2023.

The motion was **adopted** with 73.3% in favour and 26.7% against.

Motion 2: Council strongly rejects the justification in the form as presented on November 4, 2023 along the amendments of Art. 11(2)(b)(iii) REE and Art. 14(2) REE, seemingly alleging that the skill levels of a European Patent Attorney and an EPO Examiner are more or less the same.

The motion was **adopted** with 78.1% in favour and 21.9% against.

Motion 3: Council does not agree to Rule 6(6) IPREE in the form as presented on November 4, 2023, because the introduction of setting a grade threshold for passing within a range of between 25% and 75% of the total achievable marks is not a sufficient definition of a pass level and because Rule 6(6) IPREE does not specify a very limited variation of the pass level according to the criterion of fitness-to-practice (see decision 6 of C95).

The motion was **adopted** with 64.5% in favour and 35.5% against.

14/ EQE Reform 2nd Basket

A short presentation was given by Anna VALBORG GUDMUNSDOTTIR on the topics to be addressed as part of a “2nd basket”, including: early registration and definition of training (Art.11 REE). No detailed discussion on these topics has taken place yet.

15/ Report from the Online Communications Committee

The Chair of the Online Communications Committee, John GRAY, informed Council that the EPO will decommission a number of services in 2024:

- No new smart cards will be issued (except for representatives using smart cards to access national

office systems – the service will be available until September 2024). Smart cards users should therefore get familiar with the new 2FA (two-authentication factor) system which is already working.

- Fax and Web form filing are going too. Representatives are encouraged to find the Contingency Upload Service to have a “Plan B” when things go wrong in their systems or EPO systems.

16/ Proposal for support for economically weak applicants

A new proposal from the EPO is on the table, which is to provide for a reduction in all fees for eligible entities, but with a reduced scope for eligibility. Eligibility would differ from the current criteria:

- natural persons
- micro-entities (< 10 persons, turnover and/or balance sheet < EUR 2 M, no more than 25% of capital held by another company);
- universities or not-for-profit research institutes.

Eligibility would thus not be restricted geographically; entities worldwide would benefit (e.g. a billionaire filing his first 5 European patent applications in his own name, or a micro-entity in China filing his first 5 European patent applications; by contrast a SME with 10 employees would pay the full cost).

The reduction would be cumulative with existing fee reductions.

The following motion was put to vote.





*“Support for economically weak applicants to obtain European patents is a useful thing, and a range of support is available from governmental sources. The EPO is not a government, but some support is provided through fee reductions in specific circumstances. However, if support is to be provided by the EPO, by fee reduction or otherwise, **epi** considers that it should be support that:*

- *Efficiently reaches deserving applicants*
- *Is not liable to distort applicant behaviour with a view to gathering that support; and*
- *Does not significantly increase costs for other applicants.”*

The motion was **adopted** with 93.1% in favour and 6.9% against.

17/ Closing of meeting

Secretary General AUGUSTYNIAK read the list of decisions and actions taken during the meeting, and President THOMSEN then officially closed the meeting at 6:45 pm.

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