

>>> "benoit.spitaels@curia.be" <benoit.spitaels@curia.be> 14.05.2018 18:44 >>>

Dear Prof Caldéron-Peter,

Statutory analysis – legal risks

Pursuant to article 41.2 of the statutes, the amendments of the statutes require a general assembly (hereafter the "GA") called upon with a 45 day notice. The said article stipulate also that "*Proposed modifications which are not expressly stated in the notice of the convocation may be discussed but not decided upon at the General Assembly*". Given the current timing, it shall therefore not be possible to comply with the notice requirement (45 days notice including the proposed modifications). In addition, the proposal must also be approved by the Board (art. 41.1: "*The proposals shall be approved by the Board and submitted for approval by next General Assembly.*")

This means that the statutes cannot be amended in a manner which is statutory compliant. As result, the appointment of a Vice-rector as Chairman shall also not be possible in a statutory manner. The situation can be summarised as follows:

- Amending the statutes without complying with the 45 day notice:
 - o breach of art. 41.2

=> decision can be nullified in court due to the breach of the statutes.

- Appointment Vice-Rector as President:
 - o breach of art. 17.2

=> decision can be nullified in court due to the breach of the statutes.

In view of the foregoing, there are two options:

- (i) not to engage with decisions which are in breach of the statutes;
- (ii) taking a decision in breach of the statutes, knowing and accepting that such decision can be challenged in court by an interested party with a claim for annulment of the concerned decisions.

Practical way forward

Should CASEE/ the GA still want to proceed with the nomination of the ideal candidate, we propose the following, as this will minimise the legal risks as much as possible (although not excluding them entirely):

1. The GA discusses the proposal to amend the statutes based on which the President can be also a Vice-Rector or Dean, and not only a Rector.
2. The GA appoints the Vice-Rector as President, provided that:
 - o **all members** waive the right to lodge a claim for annulment based on the breach of the statutes.
 - ⇒ It is important that this waiver is signed/delivered by as much as members as possible as the members who do not waive this right will keep the possibility to claim the annulment.
3. The Board prepares a proposal based on which article 17.2 is amended (pursuant to article 41.1 of the statutes).
4. Subsequently, a new GA is held, complying with all the formalities provided in art. 41.
5. As of when the statutes have been amended in accordance with art. 41 of the statutes, the appointment of the Vice-Rector as President will be ratified, and it will no longer be possible to challenge this decision in court.

Text proposal

As for the text proposal. OK:

*The President, Vice-President and Treasurer are appointed by the Board members. In case the President or the Vice-President ceases to be **Rector, Vice-Rector or Dean**, he/she can complete his/her term of office, provided that his/her university still supports him/her in doing so.*

*De Voorzitter, de Ondervoorzitter en de Penningmeester worden door de leden van de Raad benoemd. Indien de Voorzitter of de Ondervoorzitter geen **Rector, Vice-Rector of Decaan** meer zijn, kan hij/zij zijn/haar bestuursstermijn uitzitten op voorwaarde dat zijn/haar universiteit hem/haar hiervoor haar steun verleent.*

Formalities

When adopting new statutes, it will be the Dutch version which shall be published in the Annexes to the Belgian Official Journal.

In order to formalise the change in composition of the board, of the non-Belgian residents, we also require a copy of an official document (passport, drivers license, utility invoice,...) on which their full residence address is mentioned.

Please do not hesitate to contact us should you have any further queries or comments.

Best regards,
Benoit Spitaels

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Van: Marleen Deneff

Verzonden: maandag 14 mei 2018 11:38

Aan: 'Margarita Calderón-Peter'

CC: casee@boku.ac.at; Benoit Spitaels

Onderwerp: RE: Question concerning statutes of the CASEE iVzW

Dear Prof Caldéron-Peter

Thank you for your email.

As I am just quickly in between meetings and have a busy schedule, I cannot dive into your questions immediately.

However, my colleague Benoit Spitaels, member of our team not-for-profit, will follow-up on your email today.

Kind regards

Marleen Deneff

Marleen Deneff



Founding partner



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Verzonden: maandag 14 mei 2018 11:06

Aan: Marleen Deneff

CC: casee@boku.ac.at

Onderwerp: Question concerning statutes of the CASEE iVzW

Dear Mrs. Deneff,

it has been a while since we have been in touch, but I still remember your valuable advice with regard to the establishment of the ICA Regional Organization for Central and South Eastern Europe, in short "CASEE" as IVZW.

Therefore, I contact you again with a question that we have concerning our statutes (see http://www.ica-casee.eu/images/stories/CASEE_pdfs/casee_statutes_01-2014.pdf): in Article 17.2. of this document, second sentence, it is stated that "The President and the Vice-President should hold the position of Rector".

For the upcoming Board elections that will take place on June 8th, we do however an excellent candidate for President who is "just" Vice-Rector.

According to the statutes, we have already sent out within the given deadlines the agenda for the General Assembly where these elections will take place ; but the question now is the following:

1) can we still modify the agenda for the GA and add one item "decision on modification of statutes" to the agenda which takes place before the planned Board elections?

2) Can we then ask the GA to first approve the following change of the statutes before they elect the Board members? 17.2. should then have the following new text:

The President, Vice-President and Treasurer are appointed by the Board members. In case the President or Vice-President ceases to be Rector / Vice-Rector / Dean, he/she can complete his/her term of office, provided that his/her university still supports him/her in doing so.

Is this legally OK?

3) Is it then sufficient to submit the English text of the modified statutes to the Belgium authorities (together with the names of the new Board members, their passport copies and private address), or do we also have to provide an updated text in Dutch of the statutes?

If it has to be in Dutch, is the following text OK:

De Voorzitter, de Ondervoorzitter en de Penningmeester worden door de leden van de Raad benoemd. Indien de Voorzitter of de Ondervoorzitter geen Rector / Vice-Rector of Decaan meer zijn, kan hij/zij zijn/haar bestuurstermijn uitzitten op voorwaarde dat zijn/haar universiteit hem/haar hiervoor haar steun verleent.

Is there anything else we have to consider with regard to the planned changes in the Board?

With kind regards

Margarita Calderón-Peter

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