

Al Comitato di Presidenza
Alla IX Commissione
Al sig. Segretario Generale

**Il sottoscritto Magistrato Segretario, dott. Carmelo Celentano, trasmette il resoconto avente ad oggetto:
partecipazione della delegazione consiliare alla riunione dello Steering Committee della Rete Europea di Formazione Giudiziaria – Bruxelles 4 ottobre 2004**

La delegazione consiliare, composta dal presidente della IX Commissione dott. Giuseppe MELIADO', dal componente della Commissione dott.ssa Giuliana CIVININI e dal magistrato segretario dott. Carmelo CELENTANO, ha partecipato, in esecuzione della delibera consiliare del 22 settembre 2004, alla riunione dello Steering Committee della Rete Europea di Formazione Giudiziaria, tenutasi il 4 ottobre 2004 in Bruxelles, presso la sede del Conseil Supérieur de la Justice del Belgio.

Ai lavori erano presenti, oltre al Segretario Generale della Rete, dott. Armando D'ALTERIO ed ai rappresentanti del Segretariato Heusel Wolfgang, Maiso Leyre: per la Germania, Michael Gressmann, per il Belgio Hamaide Jacques, Van den Broeck Edith, Warson David; per la Spagna Félix Azón Vilas, Escuela Judicial de España, Alejandro Saiz Arnaiz e Rallo Lombarte Artemi del Centro de Estudios Juridicos de la Administracion de Justicia; per la Finlandia Jorma Hirvonen, Oikeusministeriö; per la Francia Sylvie Ceccaldi dell'Ecole Nationale de la Magistrature, Marie-Luce Cavrois. Gilles Charbonnier e Azibert Gilbert; per l'Olanda Perry C. Quak e Martin Langbroeck dello Stichting Studiecentrum Rechtspleging per

l'Irlanda Brian McCracken per la Gran Bretagna: Inghilterra e Galles Victor Hall.

La riunione del Comitato veniva presieduta dal Belgio ed aveva inizio alle ore 9.30.

Subito la discussione veniva aperta dall'intervento del Segretario Generale, concernente la situazione generale della Rete, all'esito della decisione della Commissione Europea di rigettare le domande di finanziamento strutturale presentate nel gennaio 2004 nell'ambito del programma quadro AGIS, nonché in merito alle domande dei nuovi paesi aderenti all'UE di partecipazione al Network. Il Segretario Generale, peraltro, presentava un rapporto scritto (all. A), nel quale veniva dettagliatamente descritta tutta l'attività svolta. In particolare ricordava ancora una volta come le motivazioni del rigetto del finanziamento strutturale fossero strettamente connesse con la mancanza di trasparenza nei rapporti fra il Network ed i suoi membri. Poiché alla luce del regolamento finanziario generale dell'Unione l'acquisizione della personalità giuridica è condizione indispensabile per il finanziamento, l'esistenza di un autonomo centro di interessi rispetto ai membri non deve essere soltanto formalmente garantito, ma anche sostanzialmente realizzato, senza confusioni patrimoniali. Il dott. D'Alterio, altresì, ricordava come l'autonomia finanziaria attribuita al segretariato della Rete non fosse sufficiente a creare una distinzione netta fra i membri ed il Network, proprio alla luce della disciplina normativa europea surrichiamata. Veniva, ancora, ricordato come la comunicazione n. 36 aveva già affrontato le tesi sostenute dalla Commissione Europea a sostegno del diniego di finanziamento. In tale contesto assumeva l'indispensabilità dell'adozione di una soluzione che rendesse evidente agli occhi della Commissione la sussistenza di autonomia patrimoniale in capo alla persona giuridica costituita, tenendo peraltro nel debito conto delle affermazioni orali di O' Neil circa la posizione di incompatibilità dell'ERA, in quanto membro detentore del Segretariato e contemporaneamente soggetto ad altra linea di finanziamento UE.

Conclusivamente il dott. D'Alterio riteneva necessaria la modifica del regolamento interno della Rete, dovendosi prevedere che I membri debbano rilasciare fattura all'EJTN e che l'EJTN stessa fosse parte nei relativi contratti.

Quanto alle modifiche strutturali il Segretario Generale indicava tre possibilità: lasciare la struttura allo status quo, creare una nuova struttura con un Segretariato indipendente dai membri, ovvero riformare le procedure, premunendosi di ottenere un audit esterno, in ordine alla situazione contabile e finanziaria.

Interveniva nella discussione Perry Quack, specificando come fosse necessario dotare la struttura di un supporto finanziario, attraverso contribuzioni volontarie. In tale contesto, riteneva che il Network dovesse trovare una vera e propria riorganizzazione, sicchè proponeva che si prevedesse l'elezione di un Segretario Generale per 5 anni, e non per due anni, anche in considerazione dell'aumento dei membri che fra non molto avrebbe coinvolto l'EJTN.

Prendeva la parola, poi, il dott. MELIADO', il quale assumeva come fosse indispensabile istituire un Segretariato autonomo dai membri, provvedendo nel contempo a tutte le modifiche statutarie e di regolamento che si dovessero rendere necessarie, anche alla luce delle posizioni espresse dalla Commissione Europea. In questo contesto, sottolineava come il CSM Italiano fosse pronto ad una contribuzione per la costituzione di un Segretariato Amministrativo.

Victor Hall concordava ricordando come non ci fosse altra via se non quella dell'istituzione di un Segretariato Autonomo per dimostrare alla Commissione la sostanziale autonomia della Rete dai suoi membri.

Interveniva, a questo punto, il francese G. Azibert il quale si dichiarava d'accordo e specificava come l'ERA non avrebbe potuto continuare a detenere il Segretariato, potendo nel futuro conservare un ruolo di partner della Rete.

Wolfgang Heusel spiegava come dal suo punto di vista l'obiettivo a lungo termine dovrebbe essere quello di ottenere una linea di finanziamento stabile dalle istituzioni comunitarie, sicchè sarebbe indispensabile porre in essere un'opera di lobbying sulla Commissione e sul Parlamento Europeo.

Il rappresentante tedesco, Gressmann, precisava che per la Germania l'eventualità di un finanziamento fosse da escludere.

Edith Van den Broeck precisava che l'ammontare del finanziamento di base da attribuire alla Rete poteva essere riassunto in un documento estimativo che faceva circolare, ed in cui si poteva leggere che l'ammontare annuale presumibile era da quantificarsi in 122.109 euro. In particolare specificava che la determinazione delle somme era stata effettuata tenendo conto dell'offerta di alcuni uffici dal locare presenti nello stesso edificio del CSM belga, ed invitava il Comitato ad effettuare una visita.

La visita dei locali si svolgeva, quindi, durante la pausa dei lavori.

Alla ripresa dei lavori interveniva MarieL. Cavrois la quale, ritenendo indispensabile il finanziamento della Rete e la preventiva modifica statutaria, faceva circolare un documento relativo alla costituzione di CEPOL, un organismo di formazione delle forze di polizia europee, nel quale si prevedeva un finanziamento da parte degli stati membri, determinato avendo riguardo al prodotto interno lordo.

I rappresentanti della delegazione spagnola si dichiaravano favorevoli al finanziamento e dichiaravano la disponibilità delle proprie istituzioni di riferimento.

Wolfgang Heusel assumeva come fosse urgente provvedere ad adottare una soluzione di audit interno al fine di partecipare al prossimo bando AGIS, in attesa che la soluzione più radicale fosse adottata dall'assemblea generale dell'Aja.

Interveniva a questo punto la dott.ssa CIVININI, la quale specificava come fosse indispensabile creare una struttura amministrativa di segretariato, alle dipendenze del Segretario Generale, provvedendo quindi a tutte le opportune modifiche statutarie. In particolare evidenziava come l'esempio CEPOL fosse rilevante, ma la Rete avrebbe dovuto tener conto delle differenti situazioni fra la prospettiva intergovernativa delle forze di polizia e la formazione dei magistrati, non potendosi prestare il fianco a commistioni fra politica e formazione. A tal proposito suggeriva di istituire un gruppo di lavoro che si occupasse di individuare le norme da modificare.

Edith Van den Broeck si dichiarava d'accordo, specificando che il gruppo avrebbe dovuto preparare sia le modifiche statutarie che quelle delle regole di procedura.

Silvie Ceccaldi precisava che l'oggetto della modifica avrebbe dovuto riguardare l'abolizione del Segretariato distinto dal Segretario Generale, mantenendo quindi solo quest'ultimo organo.

Interveniva sul punto Mr Langbroek il quale, quanto alla determinazione dell'ammontare del contributo sottolineava come la soluzione che teneva conto del prodotto interno lordo potrebbe essere sufficiente.

La dott.ssa Civinini avvertiva della necessità di sapere quanti membri avrebbero dovuto contribuire al finanziamento, prima di determinare l'ammontare pro capite.

Wolfgang Heusel dichiarava che per una questione di dignità avrebbe dovuto consentirsi a tutti di partecipare, anche solo con un ammontare minimo, ad es. 5000 euro.

Il rappresentante belga Hamaide evidenziava come sarebbe stata necessaria anche la modifica della norma statutaria relativa alle contribuzioni annuali, in modo da renderle obbligatorie.

Successivamente gli interventi di Marie L. Cavrois e di G. Azibert sottolineavano ancora una volta la questione dell'incompatibilità dell'ERA e della sua posizione di ente sovvenzionato dalle istituzioni Europee. A fronte di tali interventi Wolfgang Heusel si opponeva alla discussione, non essendo stato posto all'ordine del giorno alcun punto riguardante lo status di membro ricoperto dall'ERA. Convenivano sul punto Irlanda e Inghilterra, le cui delegazioni si dimostravano convinte di dover rinviare tale tipo di argomento ad una futura occasione, previa inserzione all'ordine del giorno.

Con riferimento alla proposta di modifica statutaria ed alla formazione di un relative gruppo di lavoro, si decideva che il gruppo sarebbe stato composto da Francia, Belgio e JSB di Inghilterra e Galles. Veniva fissata la data della prossima riunione in Bruxelles il 25 ottobre 2004 alle ore 14.00. Con riferimento alle attività del gruppo, alle modifiche statutarie da studiare ed alla forma di finanziamento, si decideva di

procedere all'autofinanziamento e che, in tale contesto, che il gruppo di lavoro, previa acquisizione delle informazioni necessarie presso i vari membri, si sarebbe occupato anche della verifica teorica dei vari sistemi di finanziamento, siano essi volontari od obbligatori, nonché della determinazione del criterio per individuarne l'ammontare.

Si decideva altresì di convocare un nuovo comitato direttivo in Bruxelles per il giorno 16 novembre 2004, così come si convocava una riunione del Gruppo programmi per il successivo 17 novembre 2004.

Si passava, poi alla discussione in ordine all'adesione dei nuovi membri, ed il Segretario Generale illustrava la situazione relativa alle diverse domande pervenute ed ai problemi che l'allargamento comporta. Interveniva Wolfgang Heusel, il quale, sottolineava l'impossibilità di procrastinare ulteriormente questa fase, poiché già alcuni Ministri dei nuovi membri avevano richiesto la partecipazione all'Assemblea Generale. Inoltre, con riferimento al numero dei nuovi membri, proponeva di esaminare la possibilità di porre un numero massimo di componenti del comitato direttivo.

Victor Hall evidenziava come si sarebbe dovuta posporre la decisione sull'allargamento, anche per consentire ai nuovi membri di comprendere la ristrutturazione in atto del Network. A tale proposito il rappresentante olandese Mr Langbroeck proponeva di invertire l'ordine del giorno dell'Assemblea Generale, riservando al primo giorno l'approvazione delle modifiche statutarie e all'attività successiva l'ammissione dei nuovi membri.

Si discuteva poi dell'assetto ordinamentale dei nuovi membri e delle problematiche connesse anche con riferimento alla posizione del pubblico ministero.

Edith Van den Broeck proponeva di compilare un report a cura del Segretario Generale sui nuovi membri per i quali si potrebbe porre un problema di appartenenza del Pubblico Ministero all'Ordine Giudiziario. Si decideva, quindi, di accogliere le proposte avanzate da ultimo da Mr Hall, Mr Langbroeck e Miss Van den Broeck. IN

particolare si dava mandato al Segretario Generale di approfondire le questioni ordinamentali con riferimento alla Lettonia, all'Estonia ed alla Lituania.

Successivamente il comitato si occupava delle questioni attinenti alla programmata assemblea generale dell'Aja, in relazione alla quale veniva distribuita una bozza di ordine del giorno (All. B).

Mr Hamaide avvertiva che a norma delle legge belga, riguardante le persone giuridiche senza scopo di lucro, l'agenda dell'assemblea generale avrebbe dovuto indicare specificamente gli articoli soggetti a modifica statutaria, e ciò anche per il controllo di legalità da parte del Ministero competente per il riconoscimento giuridico.

Successivamente la delegazione spagnola e quella francese illustravano le questioni relative al rigetto dei progetti rispettivamente presentati e relativi al cd. Formu di Barcellona ed al programma di scambio dei magistrati sub. Volet A del bando oggi rinnovato dalla Commissione.

La dott.ssa CIVININI evidenziava che informazioni non ufficiali consentivano di ritenere ragionevolmente che il progetto presentato dal CSM italiano sub volet C era stato selezionato positivamente dalla Commissione.

Da ultimo il Segretario Generale illustrava la proposta di partnership avanzata dal European Network for Life Sciences Health and the Courts nel campo della biomedica, delle relative banche dati e delle controversie relative. La proposta veniva respinta.



European Judicial Training Network

The Secretary General
Brussels October 4th, 2004
Report to the Steering Committee

a. Introduction **b. The enlargement of the Network to new members**(Identity and Nature of the Institutions concerned . Points to be considered in the Steering Committee: General conditions for rejection. Legal form of the applicant organization. Conditions of membership pursuant to article 7 of the Articles of association. Application formalities). **c. Assuring the capacity of the Network** (The written grounds of the rejections. The oral explanation from the competent Unit D5 - Agis Programme-.The direct analysis of the E.U. Financial Regulations). **d. Proposals of reform** (Setting up a new independent administrative structure; or Setting up an external audit control, with or without further reforms).

a. Introduction

Dear Colleagues, the most relevant issues on which is on the S.G. to report during this meeting are, according to our agenda:

a) The enlargement of the Network to the Judicial Training Institutions from the new E.U. Member States.

b) The final proposals to be made to the General Assembly as to the issue of providing the Network with financial capacity.

Of course, according to my competencies, I make proposals concerning also:

c) The promotion of further activities of the Network, under the perspective of important partnerships; these concern primarily the new application regarding the Exchange Programme – to be renewed in the terms already approved by WG1-and also the partnership we are invited to assure to the training initiative about biotechnologies, run by Università di Pavia, European Centre for Life, Sciences, Health and the Courts (see attachment n. 5, already sent to you with request of opinion, by my email on September 18th).

b§ The enlargement of the Network to new Members.

We are honoured by the application from many and important national institutions for EJTN membership.

Recalling the text of my email of May 2nd, The European Union is now bigger and, moreover, greater than before, thank to the accession of New Members; and we, as EJTN Members, have the privilege, as a few organizations can have, to implement, at once, the collaboration that will put the premises for a real, not only legal, European Union.

I think that this will be the most important goal at which we will aim in next year. In fact, if we are able, just from now and, more deeply, after the accession in EJTN of New Members, to provide them, since the very first moment, comfortable and full participation in all activities, concerning both the contents of our cooperation and the institutional issues, we will give a very important contribution to European Institutions in their difficult mission.

From another side, the need for providing them with equal possibilities to exercise their rights and equal opportunities, after the accession, for the purpose of playing a full, active and well prepared role is not only an aim to be pursued according to our statutes, but also a moral obligation, as we ourselves have taken the initiative to invite them to enter EJTN.

At the same time, the experience that New Members can provide us will certainly help EJTN and its present Members to make further steps ahead as to judicial training methodologies and contents.

For this purpose, you know very well that, in the Barcelona meeting of WG3, we approved a precise, even if not binding, time schedule, that allows us to implement the enlargement to new members in the next General Assembly.

After the request we sent to the Ministers of Justice of those Countries, we have addressed the Institutions that were either been pointed out in the answers, or have directly applied, because taking part in the structure of the same Ministry.

You will read the specific denomination of the Institutions that up till now have applied, with the respective legal representative for each of them, in the report from the Secretariat, that describe also very well the procedure and the results; to this report we must make reference as source of precious information.

The purpose of my report is now that of offering framework evaluations concerning the applications.

The first of them is a preliminary remark to be made in the light of the wishes of comfortable and positive interaction to be granted to new Members as underlined above: the time schedule of the issue “Assuring the financial capacity of the Network” should have been made compatible with the time schedule of the issue” “Enlargement”.

Unfortunately, the E.U. Commission raised the financial issue after the other time schedule had already been decided.

I mean that the grievous structural problems of an organization pursuing aims of public interest like EJTN should have been solved before such an important enlargement, so meaningful for the achievement of the aims of the E.U. and of such a big scale, for the purpose of granting the new Members the entry in a body that be up to the public aims pursued both by EJTN and the new Members and of granting also the important possibility of getting reimbursements for new expenses.

Furthermore, whatever be the solution we find for the issue “Financial capacity”, it should always result also in further contributions to be paid by Members, in contrast with the information we have always given in the presentation of the Network,

pursuing to the present provisions of our statutes (art. 12 of the Charter “Members are not required to pay annual membership fees”).

For this reason, it would have been better that the needed reform had been made- and the consequent contributions had been paid - well before the accession.

Add to this the overcharge of responsibilities for new Members, invited to take part in decisions concerning the existence of EJTN in the same time they enter it, and also the overcharge of the agenda of the next General Assembly.

The fact that these problems cannot be easily solved does not exclude that we must be conscious of their existence, at least for the purpose of solving part of them; that will be achieved at least granting by all of us the respect of the implementation timetable of the GA, under the direction of the DUTCH Presidency, and overall by making the strongest efforts to meet in the General Assembly in the light of the favourable wishes of a unanimous decision of this Steering Committee as to the financial capacity.

This unanimous decision would accelerate the rhythm of the GA, lighten its burdens and grant successful results.

In the hope to get commonly shared solution I offer to you the results of the activities implemented up till now as the two issues, in the order of the agenda.

I. Identity and Nature of the Institutions concerned.

The Institutions concerned are of various natures:

- 1) Supreme Court (Cyprus);**
- 2) National Council for the Justice (Hungary);**
- 3) Ministry of Justice (Estonia, in representation of the Prosecutor General, Lithuania, Poland);**
- 4) Judicial Studies Committee, appointed jointly by the Minister of Justice and the Chief Justice (Malta);**
- 5) Offices of the General Prosecutor (Hungary, Lithuania);**

6) Centres of Judicial Training (Latvia, Slovenia).

As you can see, there are Countries that are going to be represented by more than one Institution (Hungary and Lithuania), as it already happens in EJTN.

II. Issues to be considered in the Steering Committee

They are the following:

- 1) General condition for rejection**
- 2) Legal form of the applicant organization**
- 3) Conditions of membership pursuant to article 7 of the Articles of association**
- 7) Application formalities**

- 1) General condition for rejection

Pursuing to our statutes (art. 5 of the Charter) the entry of new Members requires a unanimous decision.

It is anyway my opinion that any opposition should be provided with an explanation of the related grounds and followed by a consequent discussion aiming at a shared decision.

2) Legal form of the applicant organization.

According to our statutes, the public legal form of the Member Institutions is absolutely not a requisite for membership; in fact, according to art. 5 of our Charter “Membership is available to all national institutions of the Member States specifically responsible for the training of the professional judiciary and for the training of Prosecutors where they form part of the Judiciary. Those institutions in Member States which are involved in judicial training at the level of the European Union – particularly in Community Law – may also be members”.

Anyway, in our application form, approved by the Barcelona meeting of WG3, we have expressly invited the Applicant Institutions to clarify this point (public or private legal form) under the voice “Legal form” as explained in the related note.

And in fact the private nature of a training institution has been the main reason why EJTN, in the past, rejected a proposal of enlargement to one new member.

The result is that this issue might be discussed, of course in the light of the provisions under n. 1; it might concern one or more of the Judicial Training Centre.

It is my opinion that the sole private nature of the applicant institution should not, absolutely, invite us to make oppositions to the accession (from the perspective of the opportunity) when we deal, as in the present case, with institutions acting at a national and international level, are in charge of the Judicial Training after a decision of public national authorities and, as it may be easily foreseen, under their supervision.

3) Conditions of membership, pursuant to article 5 of the Charter.

The issue should come in consideration for one or more of the applying General Prosecution Offices (Hungary, Estonia, Lithuania) except for Hungary, considering that the General Prosecutor of Hungary expressly clarifies, beyond any doubt, that the Hungarian Prosecution Office is independent and is part of the Judiciary.

So we should consider whether kindly asking Estonia and Lithuania to clarify this point and take then a consequent decision; the alternative possibility is that of reforming our Statutes.

4) Application formalities

The issue might come in consideration for Cyprus (Cyprus Law Centre) Hungary (National Council for the Justice) and Slovenia.

Cyprus Law Centre

The Ministry of Justice of Cyprus has recently expressed the wish of this institution to be Member; but we have no further information about this institution and we couldn't yet invite it to apply.

National Council for the Justice of Hungary

According to the information given by its representative as observer, the application should be signed very soon.

Slovenia

Through a letter signed on behalf of the Ministry of Justice and of the Supreme Court, Slovenia has expressed high interest in the participation, pointing out the Slovenian Judicial Training Centre as Institution in charge of judicial training.

Anyway the Judicial training Centre has made no application.

In my opinion, all the three said institutions should be given the possibility to send their formal application

c§ Assuring the financial capacity of the Network in the perspective of E.U. grants.

The basis for the decision to be taken by the Steering Committee is the previous one of the Dublin Steer. Comm., in which we decided to comply with the requests made by the DG JAI.

The space for legal actions against the rejections we have suffered (operating Grant 2004; Open actions 2004) is then excluded by this decision.

Furthermore, the new call for proposal as to the Exchange Programme, that allow us to propose again the application already approved, in which EJTN plays the role of an important partner, with important functions of coordination, is the definite demonstration of the extremely positive attitude of the DG JAI and the European Commission towards EJTN

So the issues we were anyway considering, concerning our justifiable reliance on the previous achievement of the 2003 Grant, and related also to the principle of proportionality between the rejections and the related grounds, are now totally swept away; we can on the contrary rely on an extraordinary fruitful future collaboration with the JAI DG, in the field of creating the European space of Freedom, Justice and Security, thank to the very important role we keep on being invited to play, through the managing and implementing of the big scale exchange programme we have approved and we are going to present soon again.

But, for this purpose, we must be up to deserving the definition accorded us by the European Parliament (an NGO with the essence of a public institution: see the presentation of EJTN made by the Secretary of the European Parliament, Commission for civil rights and public freedoms, dr. Ernesto De Capitani, on September 8th 2003, in occasion of the audition in the same day accorded to Gilles Charbonnier and me, in the respective representation of Programmes Working Group of the Administration of the Network).

The instruments aiming at this result come from the three sources we have to refer to:

- 1) The written grounds of the rejections.
- 2) The oral explanation from the competent Unit D5 (Agis Programme).
- 3) The direct analysis of the E.U. Financial Regulations.

1) The written grounds of the rejections

We must consider the text of the first rejection, signed by Mr. Jonathan Faull, Director of the Directorate General JAI of which the Unit D5 (competent for Agis Programmes) is part.

The rejection refers to the application for structural funding (*European Judicial Training Network application for AGIS funding, reference AI/2004/AGIS/OOIOp*)

The complete text is in attachment n. 1, in which the relevant part is the following:

Abstract from the First rejection

*“Brussel, 29 JUIN2004
DG JAI /D4/RS/JON D (2004) 4060”*

“..The fact that the Commission cannot legally fund the Network under AGIS 2004- demonstrates that there is a lack of transparency in the relationships between the Network and its members. In particular, the means provided to the Network from the Community budget are used to finance the components of the Network and not the Network proper. This does not provide sufficient visibility for the Network or a clear-cut distinction between it and its members. Therefore I would like to stress the necessity for the Network to acquire a proper financial structure (including an accountant paid for directly by the Network), which could allow the Commission to check the use of EU funds.

Even if the EJTN is not able in the short term to rectify the shortcomings which prevented it receiving an operating grant for 2004 under the AGIS programme, I hope that it would wish to participate in the pilot programme in said capacity. It could, for example, consider being associated as a partner with proposals submitted by another, perhaps by one of its members. It might even be possible for some of the plans which the EJTN had wished to pursue with the support of the operating grant to be repackaged as projects and proposed by a member body for cofinancing under the pilot programme. Submission of projects in the name of member bodies is, of course, suggested only as a pragmatic solution to a temporary organisational difficulty for the network. The Commission’s wish and preference is to work directly with the EJTN as soon as the network is in a position to do so.

Jonathan Faull (Gen. Director JAI)”

Contents of the second rejection

The written rejection on 30.6.2004, concerning the application n. 151/2004 (open actions; see attachment n. 2) makes reference to the persisting lack of eligibility criteria, this one signed by Mr. Joseph ‘O Neill, Head of the Unit D5 (Agis Programme).

2) The oral explanation from the competent Unit D5 (Agis Programme).

See, for the complete report, my email on June 13th-

In short, according to the Unit D5 and in particular to Mr. 'O Neill clarifications:

- a) All the activities done in the EJTN framework are not legally referred to it, but to its members, that in fact are parties in contracts which, on the contrary, should be signed by the Network;
- b) consequently, the activity of the Network as legal person concerns only the reimbursement of the expenses made by members;
- c) In this framework, notwithstanding the fact that members finance the Network, bearing also big expenses without any reimbursement, the Network, from the legal point of view, is acting as an instrument aiming just at providing members with funding for their activities.

According to Mr. Neill, notwithstanding the real financial effort made by members, there are legal provisions concerning the E.U. budget (Council regulations 1605/2002, 25 June, 2002 and Commission Regulation 2342/2001 23 December 2002) that do not allow to accept the present framework of EJTN activities, in view of getting E.U. financial contributions.

Then, as to the activities necessarily carried on by members, according to Mr. 'O Neill:

The Network should be party in the contracts concerning its peculiar competencies of general coordination and administration; as to other different expenses, made by members in the direct implementation of their activities, the same members should issue the related invoices, addressing them to the Network.

This would provide the Network with financial autonomy.

There is no possibility of interim financial solutions.

The only way to solve the problem is to set up a secretariat independent from members, considering over all that the member presently in charge is already provided with a special yearly structural E.U. funding of almost two million Euros.

There is incompatibility of double administration of E.U. funding between the yearly special structural funding received as institution and the administration of E.U. funding to EJTN.

The activities run shall be provided with a final external Audit certification. Also in this case Era can never present its activities in the framework of

EJTN as contribution in kind to be considered in the EJTN budget, because these are activities that must be considered already financed by its structural European funding

This solution must be already implemented at the moment of the future applications, being not enough neither that it be realized at the moment of the contract, nor at the moment the grant be issued (about this point a precise question had been posed by the EJTN representative).

3) The E.U. Financial Regulations.

As you can imagine, this legal sources are in line with the written and oral grounds for the rejection.

You have the full text of these sources in Attachment n. 3 and 4 to this report.

They are:

- a) The “Council Regulation n.1605/2002 of 25 June 2002 on the Financial Regulation applicable to the budget of the European Commission”.
- b) The “Commission Regulation n. 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Erratum) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities.

Continuous reference to these sources of regulations (to be furthermore referred to as “the Council Regulation” and “the Commission Regulation”) have been made by the Head of the competent Agis Unit, Mr. ‘O Neill, during the meeting we had in June, about which you already received my communication.

Anyway there is no doubt that this rules applies perfectly to EJTN, in the light of the joint consideration of art. 108 of the Council Regulation and art. 162 of the Commission Regulation.

Relevant rules are the following:

- 1) Article 109 of the Council Regulation.

It provides:

“ 1. The award of grants shall be subject to the principles of transparency and equal treatment. They may not be cumulative or awarded retrospectively and they must involve co-financing.”

2) Article 173 of the Commission Regulation

...

“2. The application shall show that the applicant exists as a legal person and has the financial and operational capacity to complete the proposed action or work programme, subject to Article 176(4)”.

2) Article 176 of the Commission Regulation

...

2. The applicant must have stable and sufficient sources of funding to maintain his activity throughout the period during which the action is being carried out or the year for which the grant is awarded and to participate in its funding.

The direct analysis of this rules, should invite us to accept the written grounds of the decision and the related oral explanation without further discussion and frankly discuss just about one issue: ”Which is the best solution for a real problem that endangers the EJTN future activities and perhaps its same existence?”

And in this discussion the word transparency might come back again from Rome to Brussels.

I am sure that the concept is definitely shared, and definitely not susceptible of misunderstanding, being not replaced, but on the contrary furthermore supported, by the praiseworthy, though not complete interpretation “To mean what you say, to say what you mean” that, at a certain moment, bounced back during the last GA.

For this reason, let’s forget about “political” issues (of course always considered in the abstract and noble meaning of the word) and let’s think about the legal perspectives we all are used to deal with.

d) Proposal of reform

The following two points should not be disputed, in the light of the E.U. regulations and the rejections of applications:

- 1) The Network is invited by its S.G. to decide to be party in the contracts concerning its peculiar competencies of general coordination and administration and any other expense for which the E.U. contribution is required (Website not excluded);
- 2) as to other different expenses, made by members in the direct implementation of their non-spontaneous contribution to the Network, the Network is invited to decide that the same members will issue the related invoices, addressing them to the Network.

The following third point is more controversial

3) The invitation we received by E.U. Agis representatives to reform the administrative organization of the Network must be followed by consequent decisions, and coherent initiatives must be taken for the purpose of granting a control of our transparency independent of our bodies and Members.

And this decisions must anyway also take in consideration the possible future developments of the decision of Rome GA, as to the financial capacity of the Secretariat.

While point 1 and 2, in my opinion, do not pose peculiar problems, then on the contrary point 3 is more delicate and apparently open to various solution.

In fact, three seems to be the alternative possible **solution to solve point 3:**

- a) Leaving things as they are, as to our statutes, and setting up an external audit control, explaining in the meantime to the E.U. authorities that, according to our Statutes, the Secretariat has no financial autonomy.

In fact, we know that the unanimous decision of the Rome General Assembly, aiming at according this autonomy, was just and interim solution, as alleged in its records, valid only for the 2004 budget.

This would solve the problem of incompatibility of ERA, but on the other side, this solution would not suit our wish of getting for EJTN a Communitarian legal instrument, whose setting up would face the problem of the lack of an administration independent of EJTN Members, anyway demanded by E.U. Authorities.

b) Reforming the Statutes, setting up a new structure, independent of EJTN Members, competent for administration and accounts, and responsible in front of the Steering Committee and the S.G.

This would solve any problem, and would be in line with our wish to get a communitarian instrument for EJTN.

The negative aspects are related to the needs to set up a financial fund, to get contributions from Members, and to implement other consequent activity (hiring personnel, rooms, furniture, logistic etc.)

This structure would of course be responsible in front of the Steering Committee, while the attributions of the Secretary General in front of the structure should be specified under the different mainlines of powers of direction and competencies of simple control.

c) Reforming the Statutes, giving the Secretariat the financial autonomy, setting up an external audit control to grant transparency, abolishing the figure of the Secretary General.

Positive aspects:

This solution would be in line with the contribution given by ERA to EJTN since its very first birth.

It would necessarily result in the abolition of the Secretary General (Whose competencies would be absorbed by those of the Secretariat and the audit organization) so it would grant more agility to the structure of EJTN (and also grant less boring future reports to the Steering Committee, whoever will do them).

Negative aspects This solution would solve the problem of transparency but would not solve the problem of incompatibility.

Both solutions a) and c) would pose a further common problem:

1) From the point of view of the financial capacity, setting up and external constant guardianship on EJTN by another external and private organization (that is different from the limited final Audit control on the budget, concerning just the use of funding from E.U.) might, on the contrary, legally mean and testify our structural lack of autonomous financial capacity, notwithstanding our different intention (see the above underlined rules of the EU Council and Commission Regulations).

2) Both solution a) and c) should not, however, avoid the need to set up a financial fund, formed by members (both for the purpose of paying for this constant guardianship and for the purpose of granting some financial capacity, if not from the administrative point of view, at least from the economic one).

3) In both cases the rule establishing that Members are not requested to give any financial contribution to the Network should be reformed, as in the b) solution; also other reforms of statutes, even though of less impact, would be necessary.

Rome, 29.9.03

**The Secretary General
Armando D'Alterio**

Bozza di ordine del giorno per l'Assemblea Generale dell'Aja

Tuesday, 7th of December 2004

- From 15.00:** Registration
19.00: Transport to 'Oude Stadhuis' for reception
19.30: Reception, offered by the Mayor of The Hague

Wednesday, 8th of December 2004

- 09.00:** Opening by Minister of Justice
09.30: **1) Approval of the agenda and the minutes of the General Assembly in Rome, announcements**
10.00: **2) Admittance of new members (introductions and report of the Steering Committee)**
11.15: Coffee break
11.45: **3) Reports of the Secretary General and the Secretariat**
12.45: Lunch
14.15: **Debate**
15.00: **4) Reports on financial issues:**
a) possible structural consequences of the AGIS grant refusal
b) draft administrative budget of the EJTN for 2005
15.30: Break
16.00: **Debate**
17.00: End of works
18.00: Aperitif
19.30: Dinner

Thursday, 9th of December 2004

- 09.30:** **5) Reports by the Working Groups**
10.30: **Debate**
11.00: Coffee break
11.30: **6) EJTN Charter – possible amendments**
12.30: Lunch
14.00: **7) Elections (to enter into force from March 14, 2005):**
- Secretary General
- Secretariat
- Working Group Conveners
- Member of the working groups and the Steering Committee
16.00: End of works
17.30: Cultural event (for those who stay the night)