

SUMMARY OF CONCLUSIONS

2nd MEETING OF THE GENERAL ASSEMBLY (GA)

3 December 2010, starting at 9.30 hours

Rome, “Consiglio Nazionale delle Ricerche” (National Research Council) Sala Sivestri, P.le Aldo Moro 7.

1. Opening, attendance and agenda

Professor Francesco Fedi, President of the Administrative Board (AB) and of the General Assembly (GA), welcomes the participants and expresses the gratitude of the COA GA to the Italian National Research Council and to its President Professor Luciano Maiani for the kind hospitality. According to Art. 7 of the Statutes the European Commission DG Research and the General Secretariat of the EU Council were invited to participate as observers. Other observers were also invited to attend. Participants in the meeting are listed in Annex I GA. The quorum (Art.9 of the Statutes) of half of the GA members is present. The Agenda is reported in Annex II GA.

2. Members of COA

All COST countries were informed about the procedures to be followed for the application to join COA with the letter of the COA President dated 22 September 2010 and its attachments.

According to Art.5 of the Statutes, considering that the Statutes have been duly signed by the applicants, the GA approves the following applications for membership of COA : Greece and Israel. The President welcomes the new members of GA.

3. Situation of COA

With the publication on 17 September 2010 in the Moniteur Belge of the Statutes and of the names of the members of the AB, COA is officially established and the board is officially designated and with powers to act and represent the Association.

The documents related to the establishment of COA and to the subsequent applications for membership are kept in the legal office Simmons& Simmons, Ave. Louise 149, Bruxelles.

The future steps of COA are the following:

- a) COA as an AISBL to carry out the activities envisaged in Art.3 of its Statutes on behalf of the Member States which are members of COA. Members of GA and AB are expected to send proposals to the COA President.
- b) COA and the legal Status of COST. To achieve a legal Status for COST, COA should be officially appointed by the COST CSO as the legal representative of COST.
- c) COA as COST Implementing Agent. The appointment of COA as the COST Implementing Agent will require a separate subsequent decision of the COST CSO if and when COST will deem this appropriate.

According to Art. 2 of the Statutes the registered office of COA is located in 149, Av. Louise, Bruxelles, at the legal office Simmons&Simmons.

4. Funds of COA. Accounts for 2010 and budget for 2011.

The GA approves the report of the 1st meeting of the Administrative Board (Annex III GA), the proposed accounts for 2010 and budget 2011 which, under the present circumstances, are :

accounts for 2010 :

zero income and zero expenditures.

budget for 2011 :

zero income and zero expenditures.

Taking into consideration the content of Art.18 of the Statutes which states that:

“The funds of the Association come from contracts, grants, subsidies, gifts and donations from any natural person or legal entity (including the European Union), after acceptance by the General Assembly”

the GA invites all members of COA AB and GA to investigate on such possibilities.

5. Financial viability of COA

The GA approves the decisions of the 1st meeting of COA AB (Annex III GA),.

6. Activities of the AB

Considering the situation of COA described above, the GA approves the AB decision (Annex III GA) to be unable, under the present circumstances, to fulfil its duties listed in the COA Statutes,

namely: appointment of the Director and of the Deputy Director, preparation of the annual activity plan and of the activity report..

7. Activities of the GA

Considering the situation of COA described above, the GA decides that, under the present circumstances, the GA is unable to fulfil its duties listed in the COA Statutes, namely :

- approve the activity plan;
- approve the annual activity report and the financial statement for each completed financial year and give the discharge to the Administrative Board and to the Director for the implementation of the budget of the Association;
- decide on the financial compensation of the members of the Administrative Board;
- approve the contractual conditions of the Director;
- appoint an Auditor on the basis of Article 19;
- adopt any regulations or policies for the Association, such as regarding finances and staff, upon proposal by the Administrative Board;

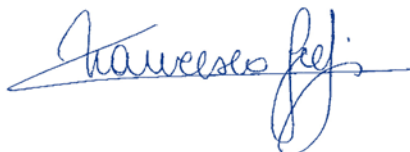
8. Any other business

The GA approves the conclusions of the AB (Annex III GA), regarding the absence of conflict of interest between members of the CSO and members of the COA AB or GA.

9. Approval of the Summary of Conclusions

The present Summary of Conclusion was approved by e-mail on 10 December 2010.

Professor Francesco Fedi – COA President



ANNEX I GA

Participants in the 2nd meeting of GA

Members of GA:

Bosnia & Herzegovina : Dr Ammar Mirascija

Bulgaria : Ms Albena Vutsova

Croatia: Mr. Damir Jelacic

Czech Republic : Dr Josef Janda

Finland : Mr Raimo Pulkkinen

Germany : Dr René Haak

Hungary : Ms Orsolya Toth

Italy : Prof. Francesco Fedi

Spain : Dr. Almudena Agüero

Turkey : Prof. Omer Cebeci

Observers

Ms Afroditi Patroni (designated member of GA for Greece) *regrets*

Dr Husam Massalha (designated member of GA for Israel)

Prof John Bartzis (COA AB Vice President) *regrets*

Dr Michel Gorlicki (COA AB Member) *regrets*

Dr Angeles Rodriguez Peña (COST CSO President) *regrets*

European Commission DG Research *regrets*

Ms Ulla Mesia (General Secretariat EU Council)

Ms Maria Uccellatore (Italian COST NC)

Ms Giulia Rotundo (Italian Deputy NC)

Ms Marion Wolpers (German COST NC)

Mr Milos Chvojka (Czech Republic NC)

ANNEX II GA

2nd MEETING OF THE GENERAL ASSEMBLY (GA)

3 December 2010, starting at 9.30 hours

Rome, “Consiglio Nazionale delle Ricerche” (National Research Council) Sala Sivestri, P.le Aldo Moro 7.

AGENDA

- 1. Opening, attendance and agenda**
- 2. Members of COA**
- 3. Situation of COA**
- 4. Funds of COA. Accounts for 2010 and budget for 2011.**
- 5. Financial viability of COA**
- 6. Activities of the AB**
- 7. Activities of the GA**
- 8. Any other business**
- 9. Approval of the Summary of Conclusions**

ANNEX III GA

1ST MEETING OF THE ADMINISTRATIVE BOARD

5 November 2010, starting at 9.30 hours

Brussels, Av. Louise 149, 15th floor

SUMMARY OF DECISIONS

1. Opening, attendance and agenda

Professor Francesco Fedi, President of the Administrative Board (AB) and of the General Assembly (GA), welcomes the participants. Participants in the meeting are the members of the AB: Professor Francesco Fedi (President), Professor John Bartzis (Vice-President), Dr Michel Gorlicki. Observer : Ms Marion Wolpers. Regrets: Dr Almudena Aguero who asked the President to represent her according to Art.13 of the Statutes. Regrets : Dr René Haak. According to Art. 13 of the Statutes the quorum (3 members) is present. The Agenda of the meeting is reported in Annex I.

2. Situation of COA

With the publication on 17 September 2010 in the Moniteur Belge of the Statutes and of the names of the members of the AB, COA is officially established and the board is officially designated and with powers to act and represent the Association.

The documents related to the establishment of COA are kept in the legal office Simmons& Simmons, Ave. Louise 149, Bruxelles.

The future steps of COA are the following:

a) COA as an AISBL to carry out the activities envisaged in Art.3 of its Statutes on behalf of the Member States which are members of COA.

b) COA and the legal Status of COST. To achieve a legal Status for COST, COA should be officially appointed by the COST CSO as the legal representative of COST.

c) COA as COST Implementing Agent. The appointment of COA as the COST Implementing Agent will require a separate subsequent decision of the COST CSO if and when COST will deem this appropriate.

According to Art.2 of the Statutes the registered office of COA is located in 149, Av. Louise, Bruxelles, at the legal office Simmons&Simmons.

3. Funds of COA. Accounts for 2010 and budget for 2011.

The amount of the invoice of the legal office Simmons&Simmons covering the activities for making COA a reality (including all expenses) was EUR 9.369,24. This was paid out of the 10.000 Euro offered by Germany for this purpose and administered by the General Secretariat of the EU Council which gave back the remaining balance of EUR 630,76 to the German Ministry. The cooperation with the legal office Simmons&Simmons came to an end on September 20 2010.

No funds are presently available for COA. Consequently, under the present circumstances:

the **accounts for 2010** are:

zero income and zero expenditures.

Similarly

the **budget for 2011** is:

zero income and zero expenditures.

The AB decides to remind the GA of the content of Art.18 of the Statutes which states that:

“The funds of the Association come from contracts, grants, subsidies, gifts and donations from any natural person or legal entity (including the European Union), after acceptance by the General Assembly.”

All AB and GA members are invited to investigate on such possibilities.

4. Financial viability of COA

The attached report (AnnexII) provided by the legal Office Simmons&Simmons is examined and discussed. It appears that a letter to the European Commission signed by some or all the countries which joined the COA might be sufficient to ensure the financial viability of COA and enable COA to establish a contract with the European Commission. The AB decides to ask Dr Haak to prepare a draft of this letter for the voluntary signature of any COA country.

5. Activities of the AB

Considering the situation of COA described in the previous 2) and 3), the AB decides to inform the GA that under the present circumstances the AB is unable to fulfil its duties listed in the COA Statutes, namely: appointment of the Director and of the Deputy Director, preparation of the annual activity plan and of the activity report. for the approval of the General Assembly.

6. Members of COA

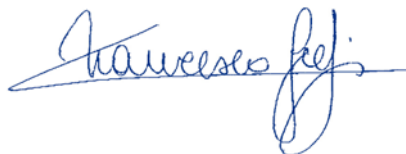
The AB takes note of the deadline of 23 November 2010 noon for the presentation of applications for COA Membership and of the fact that the COA President has informed all the COST countries of this deadline and of the procedures for the applications as described in the letter of the COA President dated 22 September 2010 and its attachments. The AB asks the President to send a reminder to the COST countries which were favorable to COA.

7. Any other business

After a discussion, the AB concludes that no conflict of interest exists between being members of the COST Committee of Senior Officials and being members of the COA General Assembly. In both cases the members are representatives of the same Member State which cannot be in conflict with itself and could decide by whom it had to be represented in the two bodies. This applies also to the members of the COA Administrative Board who are elected by the members of the COA General Assembly i.e by the COST Member States which are members of COA.

8. Approval of the Summary of Decisions

The present Summary of decisions have been approved by e-mail.



ANNEX I

1ST MEETING OF THE ADMINISTRATIVE BOARD
5 November 2010, starting at 9.30 hours
Brussels, Av. Louise 149, 15th floor

AGENDA

- 1. Opening, attendance and agenda**
- 2. Situation of COA**
- 3. Funds of COA. Accounts for 2010 and budget for 2011.**
- 4. Financial viability of COA**
- 5. Activities of the AB**
- 6. Members of COA**
- 7. Any other business**
- 8. Approval of the Summary of Decisions**

ANNEX II

Simmons & Simmons

Memo

To	Prof. Dr. Ing. Francesco Fedi CSO President	From	France Wilmet
Copy to		Date	02 April 2010
		Our ref	/-1/OPEN/-1/FZW
Subject	Forms of guarantees	Client	Cost

1. **Introduction**

You would like to be informed of the forms of guarantees that could be given to a contracting party, for example the European Commission, by a non-profit international association. If a non profit association receives funding from the European Commission, it is likely that the European Commission would like to ensure that the funding will be properly used. But this concern is not specific to the European Commission, any contracting party to a non-profit association is likely to raise similar concerns to ensure that a long term agreement is duly performed.

Under Belgian law dated 27 June 1921 (as modified by the law dated 2 May 2002), the directors and the members of a non profit-association are not liable for the obligations undertaken by the association. This limited liability of members is of course an advantage to members deciding to set up an association. However given also that non-profit associations do not have a capital, this can raise financial issues when entering into an agreement. Indeed the contracting party could be reluctant to enter into an agreement as the contracting party will only have a recourse against the non profit-association which will not be very efficient if the association is unable to meet its obligations. This concern will be even higher for newly created non-profit associations that can not demonstrate their future ability to face their obligations, based on their accounting history. Therefore it is likely that a contracting party will request some kind of guarantees from non profit-association.

We draw your attention to the fact that the European Commission may decide to waive any request for a financial guarantee if the funding is allocated to public bodies. Non-profit associations are not public bodies but their members can be. The identity of the members can justify the waiver from the European Commission.

2. **Guarantees from the non-profit association**

2.1 **Bank (or financial) guarantee**

The non-profit association can request a bank to issue a first demand bank guarantee. This is probably the best guarantee that can be obtained by the contracting party. It is also the preferred guarantee for the European Commission. In most cases where the European Commission grants a funding, it requires a bank guarantee. The first demand guarantee is the preferred guarantee for contracting parties as the bank becomes direct obligor.

The bank will not only charge fees to issue this guarantee but in addition the bank will most probably request that guarantees be given to it (guarantees from the members for example), at least to cover the guarantee it issues. Therefore, to be able to offer such guarantee to the contracting party the non profit-association will have to offer guarantees to the bank (see below).

2.2 **Blocked account guarantee**

If the non-profit association disposes of some cash that it does not need to operate its activities, it can be decided with the contracting party to open a blocked account that will be used to secure the obligations of the non-profit association vis-à-vis the contracting party. The non-profit association remains the owner of the blocked amounts but does not have the funds at its free disposal up to the end of the agreement with the contracting party. The blocked amount can decrease upon fulfilment of parts of the agreement.

In your case however, this guarantee is probably not appropriate as the non-profit association will probably need all the amounts available to it. The blocked amounts can however be offered by a third party (a member for example).

2.3 **Pledge**

The non-profit association can pledge certain goods to the benefit of the contracting party. For example, a bank account can be pledged. It is also possible to pledge IP rights (copyrights, technology). This means that if the non-profit association fails to perform the agreement with the contracting party and owes some amounts to the contracting party, the contracting party will have a right to be paid from the pledge goods, by preference to any other creditors.

In your case, it can be worth investigating whether it is possible to grant some IP rights to the contracting party.

2.4 **Subrogation or assignment**

The non-profit association can subrogate all or some of its rights it has against third parties to the contracting party. This can be done either as a transfer or more likely as a security given to the contracting party. This means that the contracting party will be able to exercise all rights the non-profit can have against third parties.

3. **Guarantees from the members**

3.1 **Direct guarantee**

- **General security**

The members (or one of the members) can give to the contracting party a general security to pay all debts due to the contracting party by the non-profit association or to ensure that the funding will be used in accordance with the terms of granting. In such a case, the members will bear unlimited liability but only with respect to the contracting party (not other creditors) and only in the case the non profit-association fails to pay its debts vis-à-vis the contracting party (this is true if the guarantee is a security but often the contracting party will require from members a personal obligation which means that the member will become an obligor and not only a surety). The security can also be limited to a certain amount. The members can give a security to cover the reimbursement of the funding or a security covering the cost to ensure that the mission given to the non-profit association is fulfilled (even by third parties).

The wording of the security can be very different from one case to another. It will depend on the negotiation with the contracting party.

The European Commission usually requests this kind of guarantee from at least one member if there is no financial guarantee granted.

- **Parent company commitment**

The members can also give some kind of comfort to the contracting party. Depending on how the commitment is drafted, the comfort letter can be considered as a security or only as a moral commitment to support the non profit association or control the way the non-profit association fulfils its obligations. Depending on the capacity of the members (especially if the members are public bodies), this can be satisfactory to the contracting party without any real cost for the members. The exact scope of the members' liability will depend of the drafting on the comfort letter.

3.2 **Bank guarantee**

The members could indirectly cover the contracting party by giving a security to the bank issuing the guarantee on behalf of the non profit association and to the benefit of the contracting party.

4. **Final remark**

It is possible to combine the guarantees here above described in order to reduce unfavourable effect/cost of some of them.