

EURALO Bylaws Taskforce

Update – 18 April 2017

Following the presentation at the EURALO General Assembly on 15 March 2017, in particular the open topics of “resources” and “dispute settlement” have been discussed in the informal drafting group of EURALO Bylaws Taskforce. A strong impetus for consideration was the ITEMS Review of the ICANN At-Large Community and its relevance for RALOs, e.g. calling for stronger “rooting” and more independence.

Following guidance from EURALO Board and ALSs, a new version of the Bylaws should be discussed in next meeting of the EURALO Bylaws Taskforce.

The role of “resources” in the swiss law of associations

Resources describe all the means, financial and otherwise, the association plans to receive. Together they form the entire legal estate of the association. It is disputed to what extent the source of the funds, has to be declared in the articles of association. Undisputed is that the source of funds, which are meant for the pursuit of the associations purpose have to be declared in some part of the articles.

The usual solution is a rather general clause in the articles, which empowers the association to receive gifts, donations, bequests and legacies.

Usually the question of the resources is tied to the financial liability of an association and its members. This was the case in Switzerland until 2004. Since then the legislator limited the liability of associations to the associations resources (Art 75a ZGB).

The principle of the legal personality of the association is largely independent from its right to allocate and manage funds. It is completely independent from any form of registration or incorporation. The legal entity is formed by creating and signing statutes in accordance with the swiss law. The association is a legal entity under swiss law and has to declare all resources it plans to use in pursuit of its purpose.

First draft for a clause on resources for the EURALO Bylaws

- 1) Resources are formed and funded through donations, bequests and legacies granted to the “Association” by members and/or third-parties.
- 2) The “Association” does not and will not levy membership-fees.
- 3) There is no liability or additional payment liability of the members. Only the “Association” is liable for its obligations, in accordance with Art. 75a ZGB.
- 4) The “Association” holds its estate, which is managed by the Board.
- 5) The “Association” uses its resources to pursue its “Purpose”.

Dispute settlement

Since litigation in Switzerland is very expansive and the Brussels I Regulation is not applicable, I advise to consider private arbitration. There are two alternatives either an established court and jurisdiction are chosen or a private arbitration regime is formed (either by experts or by members who are not part of the internal dispute). I would advise to choose swiss law, but either another jurisdiction for disputes (for example a German court which has to apply Swiss law) or an internal arbitration by elected members.

Quorum

Which quorum should be the threshold for decisions of the Board and the Assembly? The law demands a single majority of the present votes (the articles can stipulate a different quorum). The single majority is also the quorum for the dissolution of the association, if not stipulated otherwise by the articles.