



Letter of Information

The 'Budapest' CEC Constitution - *current status of implementation* -

1.) CEC renewal: What has been done following Budapest 2013

In 2013, the Budapest Assembly of CEC took two major decisions: The first was to adopt a new Constitution, the second was to dissolve the headquarters at Geneva and establish the Conference with only one legal personality of CEC under Belgian law in Brussels.

What sounds so easy was, in reality, a very complex legal endeavour. Switzerland is not an EU Member State, and even within the EU there is no common legal system for private non-profit associations. Therefore, it is completely impossible to simply 'move' an organisation from one country to another. Usually, it is necessary to constitute a new one in the country of destination, dissolve the old one in the country of origin, and make sure that the net assets are being transferred from the one to the other.

In the case of CEC, the process was aided by the fact that there was already one part of CEC based in Belgium: the Church and Society Commission, which had – by way of reference in its Statutes – become part of CEC already more than a decade ago. Legally, it had remained an independent legal entity under Belgian law. But this existing legal personality could now be used to integrate the Conference as a whole, under the new Constitution.

However, it must be noted that the Constitution voted upon in Budapest was adopted by the Assembly of the Swiss association called 'Conference of European Churches', which was now in the process of dissolution. In order to become the Constitution of the new Belgium international non-profit association 'Conference of European Churches', the Budapest Assembly had commissioned its Governing Board to take all steps necessary under Belgian law, including such changes to the constitutional text as might be demanded by the Belgian authorities. However, the Governing Board of the Swiss CEC was not able to act fully independently in Belgium. It was the legal bodies of CSC that needed to act upon the Budapest decisions. Despite this legal challenge all went well: The General Assembly of CSC (also known as the 'Plenary') adopted, in December 2014, at its meeting in Leuven, a revised version of the text adopted by the 2013 CEC Budapest Assembly, as its new legal basis. The old Swiss

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association 'CEC' could safely be dissolved, with all net assets going to the new Belgian association 'CEC'.

A very similar procedure was necessary so that Central Committee/Governing Board elected by the 2013 CEC Budapest Assembly of the old Swiss association could become the new Governing Board of the new Belgian non-profit association. The Executive Committee of CSC had to make way for the CEC-Central Committee/Governing Board to be elected as the new Governing Board by the CSC Plenary. This, in turn, had to confine itself to confirm the Budapest election results, without any changes. It is remarkable and honourable, that all the decision making bodies of CSC, by honour bound, executed the Budapest decisions with very high commitment to the constitutional process.

As can be seen from the above outline of legal proceedings, the transition was in fact a very complicated and demanding enterprise. To move a non-profit organisation the size and complexity of CEC from one country to another is not something lawyers deal with every day, and for CEC it was definitively the first time such a challenge had to be mastered. With this in mind, it must be said that the transition process went amazingly smooth, uncomplicated and highly successful.

At the same time, it can come as no surprise that such an unprecedented process could not have been accomplished impromptu and without later need for readjustments. The next section will deal with issues that still need to be finalised. As the new CEC under Belgian law is now fully functioning, these readjustments do not fall into the Budapest mandate for the Governing Board anymore, nor does the CSC Plenary still exist to conclude the work. By law it is now the exclusive right and duty of the General Assembly of the new CEC to finalise the constitutional text as the legal basis of the Belgian Association, based upon the legal expertise received and verified by the Governing Board.

2.) CEC renewal: What is left to do for Novi Sad 2018

In 2017, the Assembly Planning Committee set up a Legal Group to deal with the procedural aspects of the 2018 Novi Sad Assembly. By going through the legal texts, some issues were identified that needed to be addressed from a legal point of view. The starting point was the constitution and composition of the General Assembly itself.

According to the Constitution, and in line with cogent requirements of Belgian law, there must be one General Assembly every year. This is necessary, because the annual accounts and budgets need to be approved every year, and discharge granted to the Governing Board responsible for the finances of the association. This can only be done by the Members through a meeting of the General Assembly as the highest authority within the association. In addition, (i) the annual accounts must be filed every year with the clerk's office of the Brussels' Commercial Court and (ii) a tax return must be filed with the tax authorities. This can only be validly done after the Members, through a meeting of the General Assembly, have given their approval.

For domestic non-profit associations (in French: 'Association sans But Lucratif – ASBL' / in Dutch: 'Vereniging Zonder Winstoogmerk – VZW') in Belgium, it is compulsory that this annual meeting of the General Assembly is conducted physically. For international non-profit

associations (in French: ‘Association Internationale Sans But Lucratif – AISBL’ / in Dutch: ‘International Vereniging Zonder Winstoogmerk – IVZW’), Belgian law allows more contractual flexibility: the General Assembly can be conducted in writing, i.e. in a written procedure, which can also be in electronic/digital form. However, legally there is no difference between these two types of General Assembly. The written procedure is of no lesser legal value, it is a full General Assembly. The rules regulating the General Assembly held via written procedure must be set out in the Constitution itself.

General remark 1: International non-profit associations have in many aspects more freedom regarding their internal proceedings than domestic non-profit associations, as Belgian law offers to international non-profit associations more significant contractual flexibility regarding the content of their constitution. In addition, Belgian law contains less detailed rules regarding the internal organisation of international non-profit associations in comparison with the domestic non-profit associations’ ones. In turn, these items which are not regulated by Belgian law, must be addressed in the constitution of international non-profit associations. Indeed, Belgian law requires international non-profit associations to lay down some mandatory provisions in the constitution and not in the ‘by-laws’, ‘standing orders’, ‘rules of procedure’ or the like (as had been the case with the old legal basis of CEC under Swiss law and was also intended for the new Constitution). This specific requirement of Belgian law will appear at several points in the following paragraphs.

The Constitution adopted by the CEC Plenary, based on the Budapest mandate, does foresee some such rules for a written procedure. According to the legal advice the Governing Board now got, these have some legally problematic aspects in general (see below), but one issue is even more important: The procedure for the written procedure is laying down steps for voting only, but they say nothing about the composition of the General Assembly. Therefore, the written procedure must be conducted by the General Assembly in the same composition a physical General Assembly would have, as both are legally the same.

Now, the Constitution requires the General Assembly to be made up by delegations from the Member Churches, the size of which is laid down for each category of Church according to its numerical size (in terms of overall membership). The Member Churches must inform the Conference about the composition of their delegation, including the names and addresses of the Delegates. However, this has not happened yet. Churches are only now, in the run-up to the 2018 Novi Sad General Assembly, to establish their respective delegations. Without these, however, the General Assembly is not constituted and therefore not convened according to relevant legal requirements, either.

Thus, after the transition to Brussels, CEC has not yet held a valid General Assembly, while it is by law and its own constitution required to do so every year. This is a serious issue, especially with a view to the decision on the annual accounts and budget, and the granting of discharge to the Governing Board on the finances of the Conference.

Practical example 1: CEC as a whole has not so far had any experience with annual General Assemblies, as they were not required under Swiss law. Also, it would not be practicable to hold them physically the way CEC Assemblies were conducted in the past. Therefore, it was clear that CEC needed to make use of the option of a written procedure for in between physical General Assemblies, which, according to Budapest,

should be held every five years. There was, however, no experience with such a form of General Assemblies. Therefore, the way it was laid down needed to follow a ‘trial-and-error’-approach. With hindsight, it might not have been advisable to foresee the same composition of the General Assembly for the written procedure as has successfully been used for physical Assemblies in the past. It might not seem a very practical solution to form delegations of up to five people for this purpose. It might rather be advisable that the written procedure is conducted with writing to the Member Churches in a more general fashion and receive one answer per Church. In a revised proposal for the written procedure, this experience needs to be taken into account. However, in order to change the way a written procedure is conducted, the General Assembly needs to approve a relevant amendment to the Constitution first. The legal experts’ proposal on this issue reads:

CEC Constitution, Leuven 2014	<i>Proposal for an amendment</i>
7 (1) The Members of the Conference shall convene as a ‘General Assembly’ at least once a year. [...]	<i>7 (1) The General Assembly shall be composed of all the Members of the Conference, constituting its highest authority. It shall convene at least once a year. [...]</i>
7 (2) The General Assembly shall be composed of the delegates of the Members of the Conference. Every Member is represented by one or more delegates. [...] 7 (3) Each Member shall be apportioned a number of delegates at the General Assembly reflecting its numerical size. [...]	<i>7 b (3) Each Member shall be represented in a written procedure by one (1) of its Delegates only, who will cast all votes accorded to the Member based on its index number. For this purpose, each Member shall inform the General Secretary via regular mail and/or via any other means of written communication (including e-mail) of the identity and contact details, physical and electronical, of the person who shall represent it in between physical General Assemblies. [...]</i> <i>7 b (4) By way of derogation from Article 7 b (3) of this Constitution, Members shall have the right to be represented in a written procedure by the same delegation that has last been notified to the Conference according to Article 7 (a) (3) of this Constitution.[...]</i>

Having found out about this problem, the Assembly Planning Committee's Legal Group was commissioned by the President and the two Vice-Presidents of CEC to follow up on other possible legal inconsistencies based in the transition process, and to seek legal advice by the Belgian legal company with the best expertise and reputation for the law on international non-profit association (AISBL), which was found in KOAN Law Firm, based in Brussels.

In implementing this commission by the presidency, the Legal Group asked KOAN Law Firm to examine the entire text of the CEC Constitution carefully, identify further issues of legal concern, and make proposals on how to remedy these. The legal experts identified several types or categories of legal issues that need to be worked on in order to fully align the new Constitution with Belgian law and legal practice. In the following sections, these categories are listed and examples given of how they should be addressed.

General remark 2: According to the legal advice received, there are different categories of issues that need to be addressed.

- *The **first category** is about **legal references**: Belgian law requires certain references to specific legislation or the use of specific formulae or structures.*
- *The **second category** relates to **insufficient details given** in the provisions in question: Belgian law requires certain aspects to be regulated on the level of a non-profit association's statutes (the Constitution). This shall be done in a very detailed way in the Constitution as this cannot be regulated in the Rules of Procedure or the Standing Orders. This is especially relevant for every provision related to Membership (accession, termination, exercise or restriction of rights etc.), as well as for those provisions relating to the 'bodies' of the Conference, in particular those offices with the right to represent the non-profit association legally (members of the Governing Board, Presidents, General Secretary).*
- *The **third category** is about **legal concepts foreign to Belgian law**. This is especially relevant for having substitutes on the Governing Board [currently called 'proxy board members' in CEC]. While this is possible in many European countries (including Switzerland), the Belgian legal system doesn't have the notion of substitutes/alternates/proxy board members. Quite to the contrary, every person who is not appointed as a member of the Governing Board is consequently regarded as a third party, to whom members of the Governing Board are not allowed to grant proxies. Indeed, under Belgian law, a member of a Governing Board can only grant a proxy to another member of a Governing Board.*
- *The **fourth category** is about the **feasibility of legal practice**. This is especially relevant for the possibility of changing the Constitution on aspects which legally require the presence of a Belgian notary public being present at a meeting of the General Assembly being held in Belgium. If that is not the case, it can easily become a very tedious and expensive enterprise to change the Constitution, as this requires the intervention of a foreign officer accepted as equivalent to a Belgian notary public by the Belgian authorities.*

- The **fifth category** is about **errors that occurred transferring the Budapest constitutional text to Belgium**. Here, some words have been changed, probably without intention, but some do change the meaning of the text, both theologically and politically. In these cases it is not compulsory for CEC to revert to the original text adopted in Budapest, but it may be advisable, as the original meaning seems to be closer to what CEC actually intends and stands for.
- The **sixth category** is about **good governance**. Again, in these cases it is not compulsory for CEC to adopt the changes proposed, but it may be advisable. This could be relevant for the provision on official languages, which does not at the moment foresee a single working language. Therefore, if taken literally, every document would need to be produced in all the four official languages.

In the following paragraphs, examples are given and explained for every category listed above. It is not a comprehensive list, but serves to illustrate how the different types of legal issues affect the legal security of the life and work of CEC in practice.

Category 1 issues: legal form

In the Constitution, it is required to make a reference to applicable Belgian law of June 27, 1921 on non-profit associations, foundations, European political parties and European political foundations. This law also requires (i) the aims and (ii) the activities to be stipulated distinctly in the Constitution. It further requires the convening methods and certain decision-making procedures, such as majority requirements and quorum requirements, of the General Assembly and Governing Board to be explicitly stipulated in the Constitution.

Practical example 2: Introducing the required citations and/or standard phrases is a mere technicality. The reference is simply inserted into the existing text.

CEC Constitution, Leuven 2014	Proposal for an amendment
1 (2) The Conference is an international non-profit association. The aims and activities pursued by the Conference are of an exclusively non-profit nature. It does not seek to make a profit, either for itself or for its Members. The Conference uses its financial resources solely to fulfil the aims and activities set out in this constitution and does not offer disproportionately high remuneration to its constituent bodies, to its staff or to third parties.	<i>1 (2) The Conference is an international non-profit association constituted under the provisions of Title III of the Belgian law of June 27, 1921 on non-profit associations, foundations, European political parties and European political foundations (hereafter referred to as the 'Law'). It does not seek to make a profit, either for itself or for its Member Churches (hereafter referred to as the 'Members'). The Conference uses its financial resources solely to fulfil the aims and activities set out in this Constitution and does not offer</i>

	<i>disproportionately high remuneration to its bodies, to its staff or to third parties.</i>
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Category 2 issues: insufficient detail given

The provisions relating to the Members and their rights need to be elaborated in more detail. They are generally possible in the way foreseen, but it is not possible to lay executive orders down in secondary legal texts like standing orders or by-laws. It is, for instance, obligatory to include criteria for membership in the Constitution. By the same logic, when allowing for the restriction of membership rights, or the exclusion of Members, the relevant criteria and procedures need to be laid down in the Constitution in some detail. This is required, because according to the applicable Belgian law, the Constitution must contain *“the conditions and formalities regarding the admission and resignation of the members and, if applicable, of the members of different categories”*, and *“the rights and obligations of the members and, if applicable, of the members of different categories”*. This is cogent, because it prevents arbitrariness, thus safeguarding equal treatment. However, it does not exclude a margin of appreciation in any case, but it must be clearly stated where such a margin exists and at whose discretion it may be exercised. The current provisions are much too vague and lacking detail, and would therefore not suffice in case of dispute. In practice, the legal requirements in Belgium make relevant regulations much longer than usual for a Constitution in other legal traditions, in which concrete procedures are usually addressed in by-laws.

Practical example 3: Next to the aims and activities of a non-profit association, the relations between its members are regarded as the legal heart of the statutes. Therefore it does not suffice to say that a Member can be excluded by a qualified majority. It is rather necessary to state in which cases such an extraordinary measure may be considered and how such a procedure must be conducted, and with what consequences for the future relations between the non-profit association and the Member in question.

CEC Constitution, Leuven 2014	Proposal for an amendment
4 (3) The Governing Board shall decide on the exclusion of a Member by a two-thirds majority after allowing the Member to be heard. This decision shall require confirmation by the next General Assembly by a two-thirds majority. In the meantime the membership of this Church or Federation of Churches shall be in abeyance.	4 (5) A Member (i) which ceases to satisfy the membership criteria set out in Article 3 (2) of this Constitution or (ii) whose membership right(s) continue to be suspended following a decision of the General Assembly according to the procedure set out in Article 4 (4) of this Constitution may be excluded from membership by the General Assembly on recommendation from the Governing Board. Before deciding on the recommendation of the exclusion of a

	<p><i>Member from membership to the General Assembly, the Governing Board shall provide the concerned Member with the relevant details in writing via registered mail or via any other means of written communication (including e-mail) with acknowledgment of receipt thirty (30) calendar days in advance of the date on which the exclusion from membership will be recommended to the General Assembly. The concerned Member has then time to definitely remedy the breach or breaches having led to the recommendation of its exclusion from membership to the General Assembly. The Governing Board may decide to recommend to the General Assembly the exclusion of a Member from membership, provided that the concerned Member has been invited to a meeting of the Governing Board and given opportunity to defend its position, prior to voting on the decision to recommend to the General Assembly such an exclusion. The Governing Board can validly decide on the recommendation to exclude the Member from membership to the General Assembly only if: (i) at least half of the members of the Governing Board are present or represented and (ii) the decision to recommend to the General Assembly to exclude the Member from membership obtains a majority of two-thirds (2/3) of the votes cast by the members of the Governing Board present or represented. The decisions of the Governing Board regarding the recommendation to the General Assembly to exclude a Member from membership are final, sovereign, and the Governing Board shall give reasons for its decisions. If the Governing Board has decided to recommend the exclusion of a Member from membership to the General Assembly, it shall request the General Assembly to decide at its next physical meeting whether or not the Member shall be (i) excluded from</i></p>
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	<p><i>membership or (ii) permanently suspended from membership until a new decision of the General Assembly to stop the suspension. The decision of the General Assembly regarding the exclusion from membership or the permanent suspension from membership of the Member shall be taken within five (5) years of the decision of the Governing Board to recommend to the General Assembly the exclusion of the Member. The General Assembly can validly decide on the exclusion from membership or the permanent suspension from membership only if (i) at least half of the Members are present and (ii) the decision to exclude from membership or to permanently suspend from membership obtains a two-thirds (2/3) of the votes cast. The decisions of the General Assembly regarding the exclusion from membership or the permanent suspension from membership shall be final, sovereign, and the General Assembly shall not give reasons for its decisions.</i></p> <p><i>4 (6) A Member which, in whatever way and for whatever reason, ceases to be a Member of the Conference shall (i) remain liable for its obligations towards the Conference, such as the payment of the membership fees, up to the end of the financial year in which the termination of its membership became effective, and due confidentiality, (ii) have no claims for compensation on the Conference or for its assets, and (iii) forthwith cease to hold itself out as a Member of the Conference in any manner.</i></p>
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Practical example 5: In the same way, according to Article 48, 6° of the Law all procedures relating to the election/appointment, end of term of office or resignation/dismissal must be stated in detail for those persons who, as official bodies of the Conference, are empowered to represent the non-profit association vis-à-vis

third parties. This means that it is obligatory to stipulate detailed provisions for the President, the two Vice-Presidents, the other members of the Governing Board, as well as the General Secretary. The following example shows what is now said about this concerning the President and the two Vice-Presidents, and what must be said to satisfy the Law:

CEC Constitution, Leuven 2014	<i>Proposal for an amendment</i>
<p>7 (3) (...) In particular, [the General Assembly] alone is competent to do the following:</p> <p>(...)</p> <ul style="list-style-type: none"> - elect the President and two Vice-Presidents of the Conference and the other members of its Governing Board, and their proxies, if necessary remove them, and formally approve the exercise of their mandates throughout the year; (...) 	<p><i>7 (3) In particular, the General Assembly shall have the following powers:</i></p> <ul style="list-style-type: none"> - [...] <ul style="list-style-type: none"> - <i>to elect and dismiss the President and two (2) Vice-Presidents, the members of the Governing Board, and the electoral reserve, and grant discharge to them regarding the exercise of their mandate during the past financial year;</i> - [...] <p><i>9 (5) The mandate of the President and the two (2) Vice-Presidents terminates by expiry of the term of their mandate. The mandate of the President and the two (2) Vice-Presidents terminate as of right and with immediate effect, (i) by death or incapacity, or (ii) if the President or the two (2) Vice-Presidents are no longer linked to the Member they are representing, or (iii) if the Member the President or the two (2) Vice-Presidents represent, for whatever reason, ceases to be a Member of the Conference. The term of office of the President and the two (2) Vice-Presidents shall commence at the closure of the General Assembly at which he/she is elected.</i></p> <p><i>The President and the two (2) Vice-Presidents are also free to resign from their office at any time by submitting, via registered mail or via any other means of written communication (including e-mail), with acknowledgement of receipt</i></p>

	<p><i>their resignation to the Governing Board through the remaining President or Vice-President(s). Should the President and the two (2) Vice-Presidents decide to resign in conjunction, the notice shall be submitted through the General Secretary. The respective recipient shall return an acknowledgement of receipt immediately.</i></p> <p><i>The General Assembly may further dismiss the President as President and a Vice-President as Vice-President, at any time and does not need to give reasons for its decision, without any compensation or cost becoming due by the Conference, and provided that the President or the Vice-President concerned is convened at the meeting and has received the possibility to defend his/her position during the meeting of the General Assembly and prior to the voting on the dismissal.</i></p>
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Category 3 issues: legal concepts foreign to Belgian law

In the Revision Working Group responsible for drafting the Budapest Constitution, in the General Assembly and in the Governing Board, many different nationalities were represented. As legal concepts, tradition and practice vary widely throughout Europe, this resulted in a draft text reflecting what, to a vast majority of the persons involved, was common legal usage. However, in some cases Belgian law differs in both legal theory and practice from what was assumed a possible way of regulating things. CEC's legal team and KOAN Law Firm worked on solutions that reach the aims of the Budapest text, using however different means, in line with Belgian law.

Practical example 6: One of the decisions of the Budapest Assembly was to limit the number of members of the Governing Board while establishing a system of substitute members of the Governing Board [currently called 'proxy board members']. Now, in the Belgian legal tradition, you are either a member of the management body ('Governing Board') or invariably considered a 'third party'. Due to the personal ('intuitu personae') character of the mandate of the members of the Governing Board and the 'principle of confidentiality and secrecy of affairs', each member of the Governing Board shall personally exercise his / her mandate and is not allowed to share Governing Board's information with 'third parties'. Consequently, a member of the Governing Board can only grant a proxy to another member of the Governing Board, to the exclusion of third

parties. In addition, there is no concept of substitutes / third parties, who automatically have all the rights of a member of the Governing Board whenever a certain member of the Governing Board is unable or unwilling to attend a meeting of the Governing Board, resigns, dies or is otherwise unable to continue in his/her office. Most other legal traditions in Europe allow for such substitutes, and these are not considered a 'third party' and their participation is not considered a breach of the principles described above. In Belgium, however, the overwhelming majority of the legal scholars consider that within an association sans but lucratif ('ASBL') and a public limited liability company ('SA'), members of the management body cannot grant proxies to any 'third parties' for the purpose of representing them at meetings of this management body. Some scholars argue, that in an AISBL, an international non-profit association like CEC, the Belgian law of June 27, 1921 might allow for somewhat more contractual flexibility. The following proposal tries to balance the wish of CEC for permanent substitutes with the reluctance of Belgian law to give 'third parties' insight into governance affairs of the Conference:

CEC Constitution, Leuven 2014	<i>Proposal for an amendment</i>
<p>8 (3) Each member of the Governing Board except the President and the two Vice-Presidents shall have a named and fixed proxy elected by the General Assembly. Wherever possible, the Proxy Board Member should come from the same Church family and same region as the Principal Board Member that she or he is linked to.</p> <p>(6) Each member of the Governing Board shall have one vote. The decisions of the Governing Board are taken by simple majority. In the event of a tied vote, the President has the casting vote. The transfer of voting rights to persons other than the elected Proxy is not admissible.</p>	<p><i>8 (7) The General Assembly shall also elect an 'electoral reserve' of up to seventeen (17) potential members of the Governing Board, taking into account the diversity criteria provided in Article 8 (1) of this Constitution. Except for the President and the two (2) Vice-Presidents, if the mandate of a member of the Governing Board ceases before its term, for whatever reasons, the Governing Board may freely appoint (by co-optation) a new member of the Governing Board from this 'electoral reserve' for the remainder of the term, who should be from the same church family and region as the replaced member of the Governing Board.</i></p> <p><i>8 (8) Except for the President and the two (2) Vice-Presidents, each member of the Governing Board shall have the right, via regular mail or via any other means of written communication (including e-mail), to give a proxy to a member of the 'electoral reserve', to be represented at a Governing Board meeting, who should be from the same church family and region as the member</i></p>

	<i>of the Governing Board conferring his voting right. No member of the 'electoral reserve' may hold more than one (1) proxy.</i>
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Another example relating to legal concepts can be found in the current provision regulating the written procedure for the General Assembly. Under the entirely new article introduced in Leuven, following the Budapest mandate to introduce such changes as are necessary to satisfy the requirements of Belgian legislation, churches are asked to participate in the voting process via E-mail. If they do not respond at all, this will be counted as an abstention, and the abstention will be counted as a vote in favour. So, by not responding to (maybe, for technical reasons after not even receiving) the original request for participation, a Church's inaction will be counted as an agreement. In Belgium, and indeed in most other legal systems abstentions are not counted at all or are counted as a 'No'-Vote, depending on the formulation in the legal text/Constitution. Also, if in our case the Member did not respond at all, it is almost impossible to establish a quorum, i.e. to know if Members were at all aware of the procedure. Examples of non-reaction that are counted as an agreement, are therefore extremely rare in legal practice, occurring mainly where assent to the change of terms of service is required for a large service provider by every customer. In this case, non-reaction to the publication of amended terms of service is often sufficient. It is unlikely that the same would hold in court for the decision on a budget or the granting of discharge to a managing body.

Category 4 issues: feasibility of legal practice

In some cases, the normative text of the Budapest/Leuven Constitution is legally correct, however, special provisions in the Belgian Law make it very complicated for CEC to practise them in the way they require its bodies to act. The most striking example is found in the provisions regulating the process of amending the Constitution itself:

- i. *Practical example 7: Under Belgian law, some specific amendments to the Constitution of an AISBL need to be recorded in a 'notarial deed', by a Belgian notary public being present at the General Assembly. Some amendments will additionally need to be confirmed by royal decree. If the General Assembly is held outside Belgium, it is impossible for a Belgian notary public to act officially, because that is, by law, restricted to Belgian territory. However, the AISBL might hold its General Assembly abroad in the presence of a foreign notary public that will subsequently record the amendments to the Constitution in a foreign "notarial deed". But this requires that the foreign country has an equivalent to the Belgian notary public and that the foreign notary public agrees to record Belgian law in a foreign notarial deed. Moreover, if the foreign notarial deed is not drafted in French, a 'sworn' translation of the foreign notarial deed recording the amendments to the Constitution is required. These requirements may not be met in all instances, and they are, at any rate, expensive to practice. For this reason, one alternative is that the Members informally decide at the General Assembly being held abroad on the amendments to the Constitution according to the usual presence and voting quorums provided for by the Constitution (i.e. have a political agreement on the*

intended amendments). Thereafter, a new second General Assembly is convened in Brussels to officially decide on the amendments to the Constitution according to the above presence and voting quorums provided for by the Constitution. For the second General Assembly in Belgium, to allow the presence quorum to be reached easily, it might be useful that the Constitution allows that in this particular situation Members may grant proxy to other Members' Delegates (e.g. the President and the Vice-Presidents, representing the three denominational families) and that such Delegates may hold an unlimited number of proxies. Such provisions would for example allow to only have three Members being represented through their Delegates (President/Vice-Presidents) present at the second General Assembly in Belgium to formally decide on the amendments to the Constitution:

CEC Constitution, Leuven 2014	<i>Proposal for an amendment</i>
<p>7 (2) The General Assembly shall be composed of the delegates of the Members of the Conference. Every Member is represented by one or more delegates. If a delegate cannot be present, this Member may appoint an alternate in his/her place or give its proxy vote to another Member or to a delegate of the latter. The delegates may hold several proxies.</p>	<p><i>7 a (4) If a Delegate cannot be present at a meeting of the General Assembly, the Member in question may appoint another Delegate in his/her place. Unless otherwise provided in this Constitution, a Member may not grant a proxy to another Member.</i></p> <p><i>In case the General Assembly has to adopt amendments to this Constitution in the presence of a notary public, because the amendments require to be recorded in a notarial deed according to Belgian law, each Member shall have the right, by way of derogation from the previous sentence, to grant proxy to a Delegate representing another Member. The Delegate(s) being granted such proxies shall cast all votes apportioned to the Member he or she represents according to Article 7a (3) as well as all votes granted by other Members according to their respective index number. In such a proceeding, only such amendments may be adopted that have been approved by a previous physical meeting of the General Assembly outside of Belgium in accordance with the requirements laid down in Article 17 (1)-(6) of this Constitution. For this purpose, each Delegate being present may hold an unlimited number of proxies. The proxy shall be granted directly to the Delegate, via regular mail</i></p>

	<p><i>or via any other means of written communication (including e-mail), provided the General Secretary receives a copy of this proxy by similar means.</i></p>
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This proposal incidentally also takes care of another problem, which falls under category 5.

Category 5 issues: errors that occurred transferring the Budapest Constitution to Belgium

Everybody who has worked on long texts, especially those in need of editorial work, will know how easily mistakes slip in while copying, rephrasing and/or translating. In some instances, this has also happened between Budapest and Leuven. Therefore, some parts of the Constitution are not what the 2013 Assembly originally intended, especially as – in some cases – they imply very serious changes that the Conferences highest body, the General Assembly, should at least consciously accept or reject. As those accidental changes are of very different content and consequences, in this case three examples shall help illustrate the problem.

Practical example 8: As CEC is not an umbrella of businesses pursuing the same economic interests vis-à-vis the EU Institutions, but a living ecumenical community of Churches, it is regarded as crucial that as many Members as possible take an active part in the life of CEC, and especially in the proceedings, exchanges and prayers of its General Assemblies. However, due to an editorial mistake, a provision that had been debated in the Governing Board at some point, finally slipped into the Constitution, without the actual intention of pursuing the aims it actually implies. According to the above cited Article 7 (2), attending Member Churches could now receive an unlimited number of proxies from other Member Churches. So, in fact, only a few Churches could actually attend, while the presence quorum would still be met. This extreme situation is not very likely, but for CEC it would already be very sad if a handful of Members did rather transfer their voting rights than partake in the life of the meetings. The only case where this could be useful and even advisable is the above case, namely transferring voting powers via proxies to a limited number of Delegates so that an amendment to the Constitution could be passed in a later Brussels meeting. As Budapest did not foresee an unlimited transferral of voting rights (via proxies), while Leuven introduced it without either qualification or intent and mandate, Novi Sad should rectify the situation, keeping it as a possibility, but strictly qualified and bound to the specific case.

Practical example 9: In the preamble, also by accident, the term ‘Church’ was substituted by ‘the Member Churches of the Conference’, in a pneumatological statement, changing the theology of the preamble dramatically: ‘the Gospel, as witnessed in Holy Scripture and transmitted in and through the Church by the power of the Holy Spirit’ became limited to a Gospel transmitted in and through the Member Churches of CEC, thus excluding for example the Roman Catholic Church from this spiritual gift.

CEC Constitution, Leuven 2014	<i>Proposal for an amendment</i>
In faithfulness to the Gospel, as witnessed in Holy Scripture and transmitted in and through the Member Churches of the Conference by the power of the Holy Spirit, they seek to continue to grow in a fellowship of faith, hope and love.	<i>In faithfulness to the Gospel, as witnessed in Holy Scripture and transmitted in and through the Church by the power of the Holy Spirit, they seek to continue to grow in a fellowship of faith, hope and love.</i>

*Practical example 10: In Article 2, probably also by accident, in the list of International Organisations named as being in dialogue with CEC, a hierarchy has been introduced that was – with intention – not part of the Budapest version. While in the original, the European Union was named as so to speak *primus inter pares* with the other Organisations, in the Leuven version the European Union has now become the primary partner, with the others following in a subordinate clause. As several of CEC's member churches are based in countries outside the EU, such a prioritisation seems politically unwise. It would give the EU undue precedence, especially as the Council of Europe is the only European Organisation that all countries are members of and which is of particular importance in fields like Human Rights and education.*

CEC Constitution, Leuven 2014	<i>Proposal for an amendment</i>
2 (4) It maintains an open, transparent and regular dialogue with the European Union and with international organisations such as the Council of Europe, the Organisation for Security and Cooperation in Europe and the United Nations.	<i>2.2. (1) It maintains an open, regular and transparent dialogue with International Organisations, in particular the European Union, the Council of Europe, the Organisation for Security and Cooperation in Europe and the United Nations.</i>

Category 6 issues: good governance

A few of the proposed changes are not required by Belgian law, but are highly advisable from the point of view of good governance. None of these would have been proposed to the General Assembly for their own sake. However, as there need to be amendments to satisfy Belgian law and give legal security to the Conference, such minor issues could as well be addressed, as the competent lawyers pointed out that they might cause practical trouble at some point.

Practical example 11: The current Constitution specifies that the 'official languages' of CEC are English, German, French and Russian. This is important in principle, especially for the basic legal texts of CEC and for the proceedings of the General Assembly. But unless otherwise specified, this would mean that the Secretariat would at the request of any Member Church or even any Delegate or member in a Thematic Reference Group

need to produce any document in all of the four languages, provide interpretation for all the languages at meetings, and so on. From a quite practical perspective, it would therefore be advisable to make some modifications:

CEC Constitution, Leuven 2014	<i>Proposal for an amendment</i>
15 (1) The official languages of the Conference are English, French, German and Russian. The constitution of the Conference must be drafted in French as long as its headquarters are in Brussels.	<i>16 (1) The official languages of the Conference are English, French, German and Russian. Without prejudice to applicable legal obligations, English shall be the working language. Upon request of the Governing Board, translations of relevant documents shall be provided in any of the official languages. While the French version is binding by law, officially approved translations of this Constitution shall be published in all four languages. For General Assemblies, interpretation into any of the official languages shall be available, as far as possible, if Delegates so request.</i>

3.) How should the solutions be implemented?

It is advisable that the Governing Board adopts a proposal for a motion to amend the Constitution according to the legal advice received. It could then inform the Members about the proposal and ask them for comments in advance. These could be taken into account before presenting the finalised motion and motivation. It would, however, not ask the General Assembly for a full constitutional debate, but just clarify points of information or procedure. It would ask the General Assembly to adopt (or reject) the amendments en bloc, without amending the proposal. For this, it would be necessary to have a competent Belgian lawyer present during the debates, which is not feasible. If the General Assembly informally approves the proposed amendments to the Constitution in Novi Sad, a new second General Assembly will thereafter be convened in Belgium to officially adopt the amendments. For this purpose, Members could make use of the possibility offered by the current article 7 (2) of the Constitution to grant proxies to Delegates of other Members. In this case, three Delegates [in this case it should be the President and the two Vice-Presidents], being present in Brussels will be sufficient to meet the presence quorum as according to the current article 7(2) of the Constitution. Indeed, a Delegate can be granted several proxies without a maximal number being provided for. If, however, the General Assembly were to reject the proposal, new legal advice should be sought as how best to solve those issues that are clearly regarded as contradictory to the Law.

4.) Annex I: Synopsis

A full synopsis of the Leuven text and the new proposals will be attached.