



## Note on changes of the AET Statutes

from: AET Board  
to: AET General Assembly

The Hague, 30 October 2009

### Introduction

At a number of Council meetings some possible changes were discussed to the way General Assembly, Council and Board of AET operate, which might have consequences for the Statutes. At its meeting of 13 March 2009 in Lisbon the Council decided to propose a number of Statutes changes to the General Assembly. The present note is a proposal to the General Assembly to change the Statutes.

Four issues were discussed by the Board and Council, and they will be treated here successively:

1. There are frequently insufficient candidates for the Council elections in one constituency, whereas there is a large number in the other, leading to the situation where good candidates are turned down, while seats remain vacant at the same time.
2. There is a lack of participation in the work of the Council by some elected members during their term.
3. The executive role of the Chair of the Board is not clearly separated from the statutory role of the Chair of the General Assembly.
4. There is some confusion over the role played by employees of organisational members who are not the designated representative of that organisational member.

### 1 The problem of unequal numbers of candidates in the constituencies

The Council of AET consists of two “constituencies”. Of the 24 seats, 12 are occupied by individual members and the other 12 by representatives of member organisations. In the elections, the individual members vote for the individual seats and the organisational members for the organisational seats. In a number of elections, the number of candidates per available seat has proven to be quite different between the two constituencies. It meant that some very valuable candidates were not elected in one constituency, while at the same time some seats remained vacant in the other. After discussing a number of solutions, including a temporary occupation of seats in the latter constituency by candidates who were not elected in the former, the Council<sup>1</sup> and Board decided to propose the abolishing of the two constituencies.

When the AET Statutes were drafted in 1998, there was a strong wish to avoid the types of conflicts that led to the demise of the European Transport Forum (ETF), the preceding association, which had disbanded itself in 1997. One of the solutions was to create a balance of power between the individual and the organisational members, by having two constituencies for the two types of members, which would have the same number of seats in the Council, regardless of the number of members of each type. Luckily, the AET Board and Council have, over their ten years of existence, functioned in a way that is quite different from the ETF. Conflicts between individual and organisational members have never arisen. In fact, when there were differences of opinion between Council members, the division was across the constituencies rather than between them. The fact that individual Council members sometimes give their proxy to organisational candidates and vice versa, shows that the distinction does not play a role in the way the Council functions. It was therefore concluded that the purpose of the distinction between individual and organisational members is to solve a problem which does not exist in our Association, as it has developed.

Abolishing the constituencies means that all members (individual and organisational) can be candidate

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<sup>1</sup> In the vote, on 13 March 2009 in Lisbon, 11 Council members voted in favour, 3 against and one abstained.

for all vacant seats in the Council, and that all voters vote for all candidates. The voting can be done in the same way as now, except that it will be done for one constituency with 24 seats. Every year, there will be an election for eight regular seats, plus the possible unscheduled vacancies. Other rules, like the nationality rule (which says that no more than half the Council members elected can be of one nationality), can continue to be applied in the same way as before. The larger organisational members will continue to have two to five votes in the General Assembly and the elections (according to article 5:2).

This has to be implemented by a change in the Statutes, namely in article 17.

The rule for members who are both an individual member and a the representative of a member organisation (article 17:5) has to be kept, however. For the application of the nationality rule the nationality of all candidates must be clear, and it is possible the individual does not have the same nationality as the member organisation he/she represents.

Also, the Election Rules have to adapted.

## **2 The problem of non-participating Council members**

The Council also discussed a rule of “three strikes and you are out”, with the argument that if a Council member failed to participate in three Council meetings, this meant that he or she was not in a position to participate sufficiently in the work of the Council and should leave.

However, the Council members are elected by the General Assembly, and only the General Assembly has the power to send a Council member away (not the Council or the Board). In the design of the Statutes, this was meant to happen at the elections, i.e. at the end of the three-year term of the Council member. The Statutes do not provide for any other way to end Council membership (other than the ending of the AET membership of the Council member). A rule of “three strikes and you are out” can only be implemented by changing the Statutes.

The Council <sup>2</sup> and Board therefore decided to propose to the General Assembly a mechanism whereby Council members can be made to leave the Council before the end of their term, by a decision of the General Assembly, which elected them. This rule will say that after being absent at three consecutive Council meetings, a proposal will be made by the Board to the General Assembly to dismiss the Council member in question. Knowing that this would be coming, the Council member in question might take the initiative to step down by his/her own initiative before that happens. This rule is to be applied to the two regular Council meetings that are held each year (in spring and autumn) and not to the short “catch-up” meetings that are held during the European Transport Conference or any e-mail decision processes. These meetings are scheduled a long time in advance, so members can take them into account in their other plans.

In this context, giving a proxy to vote to another Council member does not count as being present. The Secretariat should keep an attendance record, to be supervised by the Council Chair. The proposed rule is applied to three consecutive meetings so that participating in one meeting stops the countdown. However, mitigating circumstances are not allowed. The reasons for not participating in the meetings may be very valid, but missing three consecutive meetings still indicates that the Council member does not have enough time available to contribute to the work of the Council.

This involves adding a new rule to article 17 of the Statutes.

These changes to the Statutes do not prevent the Council Chair from trying to convince a Council member to step down voluntarily if he or she is insufficiently contributing to the work of the Council (maybe after the second absence). The fact that the rule exists may make it easier for the Council Chair to convince the Council member in question.

## **3 Who should chair the General Assembly?**

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<sup>2</sup> In the vote, on 13 March 2009 in Lisbon, 10 Council members voted in favour, and 6 against.

The original Statutes (of February 1998) spoke of the “Chair of the Association”, which was the Chair of the Board, who also chaired the General Assembly and the Council. The separate position of Chair of the Council was created in the first change of the Statutes (of October 2000), as a response to the need to have a more independent position of the Council vis à vis the Board. The same question has arisen with regard to the chairing of the General Assembly, which is still chaired by the “Chair of the Association”. Conflicts between the Board and the General Assembly are possible, e.g. over approving the AR&A.

The Council<sup>3</sup> and Board therefore decided to propose to the General Assembly that the Chair of the General Assembly is the Council Chair instead of the Board Chair. As it is possible that the Council Chair cannot participate in a meeting, there should also be a deputy Council Chair who can replace him/her as Chair of the General Assembly as well as the Council. The Council Chair is appointed from among the Council members, who are elected by the General Assembly, so the General Assembly elects its Chair indirectly.

This has to be implemented by a change in the Statutes, namely in article 17 (appointment of a deputy Council Chair) and in article 20 (chairing of the General Assembly).

#### **4 Designated representatives and other staff of member organisations**

There appeared to be some confusion over the role that the employees of a member organisation can play in the Association, i.e. the designated representative (“organisational member”) and any other employees. A lack of flexibility between the different roles was perceived. The question was raised if a provision for this in the Statutes was needed.

At present there is a representative of each member organisation who has the right to exercise the member’s rights, i.e. to vote in the General Assembly and to be a candidate in the Council elections (Statutes, article 8). Other staff members can be proposed to ExBo as candidates for Programme Committee membership and are appointed by ExBo (Council decision and contract between AET and PTRC regarding ETC, which defines the roles of ExBo). The member organisation can change its representative at any moment by designating a different person (this does not even have to be an employee), by simply announcing this in writing (e-mail) to the Association Manager. The decision which staff member is designated for which task is entirely at the discretion of the member organisation, and the Association has (and should have) no influence on this.

There is no rule which prevents employees other than the designated representative to perform other tasks for AET or ETC, if the member organisation makes these people available for this. In fact, the Council can formalise this by using article 24 of the Statutes (which has never been used), which allows it to create committees, specifying their tasks in the Rules and Regulations. Article 24 leaves the Council full freedom in the choice of the members of such committees. Apart from that, article 13 allows the Board to delegate certain tasks to special committees.

Board and Council therefore decided not to propose a change in the Statutes on this point. If wished, Board or Council can start the practice of appointing other staff of organisational members (and individual members) for specific tasks, on nomination from the organisational representative, using article 13:3 and article 24.

#### **5 Next steps – changing the Statutes**

Changing the Statutes is less complicated than it was before, since the Statute changes of 3 October 2000. The procedure is laid down in article 26. It involves discussing a proposed text with the notary, then proposing it to the General Assembly, which has to adopt it by a 2/3 majority, and then a deed by the notary. It takes effect on the day the notary deed is registered with the Chamber of Commerce in The Hague. So the first Council elections according to the modification can be those of October 2010, provided the General Assembly approves the Statutes changes in its meeting in October 2009.

A change to the Election Rules is necessary if the distinction between the two constituencies is

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<sup>3</sup> In the vote, on 13 March 2009 in Lisbon, this was accepted unanimously.

abolished. This can become effective immediately after its adoption by the General Assembly, but should have happened before the start of the candidature procedure of 2010, i.e. before June 2010. Therefore, the Board also proposes a to the General Assembly to change the Election Rules accordingly in its meeting of October 2009.

## **6 Proposals for text changes in the Statutes**

Below are the text changes the Board and Council are proposing to the General Assembly. It should be noted that the text is in English, but that the legally binding text of the Statutes is in Dutch. The text changes in Dutch have been discussed with the notary. If the General Assembly approves them, the notary will make a new deed using the corresponding Dutch text (or any modification that the General Assembly would decide).

### **Article 17**

The changes in article 17 involve:

- deleting the rule about the two constituencies, i.e. the present article 17:1b;
- adding a rule about the “ordinary” Council meetings for which the consecutive absences are counted, i.e. a new article 17:1b;
- adding the appointment of a deputy Council chair, in article 17:1f;
- adding the rule about “three strikes and you are out”, i.e. article 17:1g.

The current text of article 17 is:

### **Article 17.**

1.
  - a. The General Assembly shall elect from its number a Council consisting of an even number of not less than twelve and not more than twenty-four members, who shall not sit on the Board.
  - b. One half of the members of the Council shall be elected by the individual members. The other half of the members of the Council members shall be elected by the organisational members.
  - c. All members of the members of the Council shall have one vote. The composition of the Council must be such that proportional representation of all associated European countries is ensured. No legally valid resolutions can be passed unless one half of the number of members of the Council are present or represented. No member of the Council can as a proxy represent more than two other members of the Council.
  - d. The General Assembly can adopt Election Rules, containing further rules for the election of Council members (which may also be held through correspondence) and which open the possibility to appoint an Election Committee.
  - e. Every Council member steps down at the latest in the General Assembly to be held three years after his election according to a schedule determined by the Election Rules or, in the absence of these, by the Council itself. He who is stepping down can stand for re-election immediately. He who is elected in a vacancy that occurred ahead of schedule, takes the place of his predecessor in the schedule.
  - f. The Council appoints a Council chair from among its members.
2. The following decisions, amongst others, shall be subject to the approval of the Council:
  - o laying down or amendment of Rules and Regulations;
  - o change of the amount of the membership fee for the various categories of members;
  - o appointment and removal of Members of the Board;
  - o approval of the Business Plan and Budget.
3. In no case shall more than half of each group within the Council consist of persons or organisations of the same nationality.
4. In urgent cases the Council may pass resolutions without a meeting being held.
5. A member of the Council shall either be an individual member or a representative (organisational member) of a member organisation.

The Board and Council propose to replace this with the following text (changes highlighted in grey):

### **Article 17.**

1.
  - a. The General Assembly shall elect from its number a Council consisting of an even number of not less than twelve and not more than twenty-four members, who shall not sit on the Board.
  - b. The Council shall have two ordinary meetings per year, unless it decides otherwise. In addition, the Council may decide to have other extraordinary meetings.
  - c. All members of the Council shall have one vote. No legally valid resolutions can be passed unless one half of the number of members of the Council are present or represented. No member of the Council can as a proxy represent more than two other members of the Council.
  - d. The General Assembly can adopt Election Rules, containing further rules for the election of Council members (which may also be held through correspondence) and which open the possibility to appoint an Election Committee.
  - e. Every Council member steps down at the latest in the General Assembly to be held three years after his election according to a schedule determined by the Election Rules or, in the absence of these, by the Council itself. He who is stepping down can stand for re-election immediately. He who is elected in a vacancy that occurred ahead of schedule, takes the place of his predecessor in the schedule.
  - f. The Council appoints a Council chair and a deputy Council chair from among its members.
  - g. If a Council member does not attend three consecutive ordinary Council meetings in person, the Board will make a proposal to the General Assembly to dismiss this member from the Council. Giving a proxy to another Council member does not count as being present.
2. The following decisions, amongst others, shall be subject to the approval of the Council:
  - laying down or amendment of Rules and Regulations;
  - change of the amount of the membership fee for the various categories of members;
  - appointment and removal of Members of the Board;
  - approval of the Business Plan and Budget.
3. In no case shall more than half of each group within the Council consist of persons or organisations of the same nationality.
4. In urgent cases the Council may pass resolutions without a meeting being held.
5. A member of the Council shall either be an individual member or a representative (organisational member) of a member organisation.

## Article 20 and 21

The changes in article 20 involve in the first place specifying that the General Assembly is chaired by the Chair of the Council rather than by the Chair of the Board. Where this and the next article still are speaking of “the Chair”, there is a need, because of this change, to specify which Chair is meant, this is solved by adding “Chair of the General Assembly”.

The current text of article 20 is:

### Article 20.

1. General Assembly shall be presided over by the Chair of the Board or his deputy.  
If the Chair and his deputy are absent, then one of the other Board members to be designated by the Board shall act as chair. If no chair is selected in this way, the General Assembly itself shall choose some-one to take the chair.
2. Minutes of the proceedings of each Meeting shall be taken either by the Secretary or by another person designated for that purpose by the Chair. The minutes shall be confirmed and signed by the Chair and the minutes secretary. Those convening the Meeting may cause a notarial report of the proceedings to be made.  
The contents of the minutes or the report shall be brought to the knowledge of the members.

The Board and Council propose to replace this with the following text (changes highlighted in grey):

### Article 20.

1. General Assembly shall be presided over by the Chair of the Council or his deputy.  
If the Chair of the Council and his deputy are absent, then one of the other Council members to be designated by the Council shall act as chair. If no chair is selected in this way, the General Assembly itself shall choose some-one to take the chair.
2. Minutes of the proceedings of each Meeting shall be taken either by a person designated for that

purpose by the Chair of the General Assembly. The minutes shall be confirmed and signed by the Chair and the minutes secretary. Those convening the Meeting may cause a notarial report of the proceedings to be made.

The contents of the minutes or the report shall be brought to the knowledge of the members.

The current text of article 21 is:

#### **Article 21.**

1. The Chair's opinion pronounced at the General Assembly concerning the result of a vote shall be decisive. The same shall apply to the contents of any resolution passed where the vote was taken on a proposal not laid down in writing.
2. If the correctness of the Chair's opinion referred to in the first paragraph is disputed immediately after it has been pronounced, a second vote shall be taken if demanded by the majority of the Meeting or, if the original vote was not taken by poll or ballot, by any person present and entitled to vote.  
This second vote shall put an end to the legal consequences of the original vote.
3. Unless otherwise provided by the Statutes or the law, all resolutions of the General Assembly shall be passed by an absolute majority of the votes cast.
4. Any abstentions and invalid votes shall be regarded as null and void and not be counted in the determination of a majority.
5. If in an election of persons no-one has obtained the absolute majority, a second vote shall be taken between the two persons who have received the largest number of votes.  
Where in an election for a seat in the Council two or more persons have received an equal number of votes, a second vote shall be taken between these persons.
6. In case of an equality of votes on any matters other than those referred to in paragraph 5, the resolution shall be lost.
7. All votes shall be taken orally unless a ballot is deemed advisable by the chairman or demanded before the vote by one of the persons entitled to vote.  
Ballots shall be taken by unsigned, closed papers.  
Resolutions may be passed by acclamation unless a poll is demanded by any person entitled to vote.

The Board and Council propose to replace this with the following text (changes highlighted in grey):

#### **Article 21.**

1. The opinion of the Chair of the General Assembly pronounced at the General Assembly concerning the result of a vote shall be decisive. The same shall apply to the contents of any resolution passed where the vote was taken on a proposal not laid down in writing.
2. If the correctness of the Chair's opinion referred to in the first paragraph is disputed immediately after it has been pronounced, a second vote shall be taken if demanded by the majority of the Meeting or, if the original vote was not taken by poll or ballot, by any person present and entitled to vote.  
This second vote shall put an end to the legal consequences of the original vote.
3. Unless otherwise provided by the Statutes or the law, all resolutions of the General Assembly shall be passed by an absolute majority of the votes cast.
4. Any abstentions and invalid votes shall be regarded as null and void and not be counted in the determination of a majority.
5. If in an election of persons no-one has obtained the absolute majority, a second vote shall be taken between the two persons who have received the largest number of votes.  
Where in an election for a seat in the Council two or more persons have received an equal number of votes, a second vote shall be taken between these persons.
6. In case of an equality of votes on any matters other than those referred to in paragraph 5, the resolution shall be lost.
7. All votes shall be taken orally unless a ballot is deemed advisable by the chairman or demanded before the vote by one of the persons entitled to vote.  
Ballots shall be taken by unsigned, closed papers.  
Resolutions may be passed by acclamation unless a poll is demanded by any person entitled to vote.

## **7 Some minor text changes in the Statutes**

As the notary will be involved in these changes, the Board proposes to profit from the occasion to make some minor other changes in the text.

These concern articles 5 and 11.

### Article 5

The nationality rule is continued in the Council elections, so the nationality of each candidate must be clear. For individuals, it is simply what his or her passport says. For member organisations the nationality may not always be clear and a choice has to be made. This is taken care of in article 7:2, which says:

“Admission shall be decided by the Board. On a member's admission the Board shall decide his nationality, or whether such member is an international organisation.”

Article 7:3 adds:

“On admission the member shall be registered in the Membership Register.”

This register is defined in article 5:1, but here the nationality is not mentioned.

The current text of article 5 is:

### Article 5.

1. The Board shall keep a register containing, for each category, the names and addresses and, in the case of natural persons, birth-dates of all members.
2. Member organisations are sub-divided into:
  - a. small organisations, which shall be understood to mean organisations with one to ten (inclusive) professional employees working in the transport sector;
  - b. average-sized organisations, which shall be understood to mean organisations with eleven to fifty (inclusive) professional employees working in the transport sector;
  - c. medium-sized organisations, which shall be understood to mean organisations with fifty-one to one hundred (inclusive) professional employees working in the transport sector;
  - d. large organisations, which shall be understood to mean organisations with one hundred and one to five hundred (inclusive) professional employees working in the transport sector;
  - e. very large organisations, which shall be understood to mean organisations with over five hundred professional employees working in the transport sector;
  - f. libraries.
3. The Council may divide members into separate categories.  
The General Assembly may also resolve that it shall be possible to grant certain titles to certain members, in which case the granting itself must be done by the General Assembly.

The Board proposes to replace this with the following text (changes highlighted in grey):

### Article 5.

1. The Board shall keep a register containing, for each category, the names and addresses, the nationality and, in the case of natural persons, the birth-dates of all members.
2. Member organisations are sub-divided into:
  - a. small organisations, which shall be understood to mean organisations with one to ten (inclusive) professional employees working in the transport sector;
  - b. average-sized organisations, which shall be understood to mean organisations with eleven to fifty (inclusive) professional employees working in the transport sector;
  - c. medium-sized organisations, which shall be understood to mean organisations with fifty-one to one hundred (inclusive) professional employees working in the transport sector;
  - d. large organisations, which shall be understood to mean organisations with one hundred and one to five hundred (inclusive) professional employees working in the transport sector;
  - e. very large organisations, which shall be understood to mean organisations with over five hundred professional employees working in the transport sector;
  - f. libraries.
3. The Council may divide members into separate categories.  
The General Assembly may also resolve that it shall be possible to grant certain titles to certain members, in which case the granting itself must be done by the General Assembly.

## Article 11

Somehow, the Statutes are not saying that Board members should be members of the Association, individuals or designated representatives of a member organisation (the so-called “organisational members”). This has always been the intention and the practice, so the Board proposes to add this in the Statutes.

In this article, there is also a remnant from the original Statutes of February 1998, appointing the first Board as the mechanism to appoint them was not yet in place. In the new version of the Statutes this is no longer needed.

The current text of article 11 is:

### Article 11.

1. The Board shall consist of a number of not less than two and not more than seven natural persons.
2. The Council shall fix the number of Board Members with due observance of the above provision.
3. Board Members shall be appointed by the Council.
4. The first Board shall be appointed by this deed.
5. Any Board Member may at any time be removed by those who appointed him.
6. Any Board Member may at any time be suspended by a resolution of the other Members of the Board jointly.  
Any suspension which is not followed by a resolution for removal within three months shall end by the lapse of that period.
7. Each Board member shall step down not later than in the Council meeting to be held three years after his appointment, in accordance with a schedule to be drawn up by the Board. The Board member stepping down shall be immediately eligible for re-appointment. Any person appointed to fill a casual vacancy, shall take the place of his predecessor in the schedule.
8. Board membership shall further end:
  - a. by termination of the membership of the Board member concerned, or by revocation of the authority granted by the legal person or partnership whose membership rights he exercises;
  - b. resignation.

The Board proposes to replace this with the following text (changes highlighted in grey):

### Article 11.

1. The Board shall consist of a number of not less than two and not more than seven natural persons.
2. The Council shall fix the number of Board Members with due observance of the above provision.
3. Board Members shall be appointed by the Council from among the members of the Association.
4. Any Board Member may at any time be removed by those who appointed him.
5. Any Board Member may at any time be suspended by a resolution of the other Members of the Board jointly.  
Any suspension which is not followed by a resolution for removal within three months shall end by the lapse of that period.
6. Each Board member shall step down not later than in the Council meeting to be held three years after his appointment, in accordance with a schedule to be drawn up by the Board. The Board member stepping down shall be immediately eligible for re-appointment. Any person appointed to fill a casual vacancy, shall take the place of his predecessor in the schedule.
7. Board membership shall further end:
  - a. by termination of the membership of the Board member concerned, or by revocation of the authority granted by the legal person or partnership whose membership rights he exercises;
  - b. resignation.