



VOX

Newsletter I/2018

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Dear members of the Institute,

Your vote has confirmed me in the office of IETL President and I wish to thank you for the confidence you placed in me at the General Assembly and the ballot. With the support of my two deputies, Vice Presidents Holger Backu and Dr Martin Metzler, I look forward to the next three years of new challenges the Institute will be facing if it is to maintain its status as an eminent forum for debate on issues of European traffic law.

To prepare for such challenges, we have initiated some changes to the organisational structure and distribution of tasks within the Board of Directors. By appointing a General Manager who will run the Institute's administration on behalf of the Board of Directors we aim to make the management of the Institute more efficient. I am very happy that Alain Kunz has agreed to assume this role. We must congratulate Alain Kunz on doing an excellent job as the IETL's 'minister of finances'. I am confident that the management of the Institute is safe in his hands.

In October 2017, we saw a very successful 18th edition of the European Traffic Law Days in Vienna, attended by 250 paying participants. You will find a conference report in this number of VOX.

I would ask you as early as today to mark your calendars for the 19th European Traffic Law Days (4 and 5 October 2018 in Naples/Italy) and the 2018 annual General Assembly (on 4 October 2018, also in Naples). We will provide timely information on the conference schedule and other Institute events in the upcoming editions of VOX, on the IETL home page and in the social media.

With kind regards

A handwritten signature in black ink, consisting of a large, stylized loop and a smaller mark above it.

Dr. Hélène Béjui-Hugues, IETL President



Message from the IETL General Manager

Hello everybody,

In October last year, the General Assembly wanted to give new impulses to the Institute for European Traffic Law. To this end, the meeting not only set a new vision and redefined the mission of the Institute, it also completely reviewed the way the organisation works.

The office of General Manager, to which I had the honour to be nominated, is part of these changes.

Apart from the responsibilities devolving to such an office, an important part of my work will consist in keeping information flowing between the various committees, the Board of Directors and the members of the Institute, as well as toward any party interested in its proceedings and work, which make the Institute a prominent mobility platform and will continue to do so.

Education and training will remain a priority issue for the Institute and I expect the scope of our commitment in this respect to increase over the coming years. This year, the European Traffic Law Days dedicated to all subjects and issues related to mobility at an international level will take place in Naples, Italy. The 2019 venue will be Athens. In addition, national and regional seminars will be held in Sofia, in Warsaw (both for the 2nd year running) and in Bucharest.

The General Manager will be the coordinating and operational hub for the committees in charge of organising all these various events and the hosting countries, where interest is peaking for organising such events.

I would like to wish you all a good year in 2018 and promise to keep you apprised regularly of important decisions and projects both while they are being prepared and when they are about to be implemented within the Institute.

With kind regards,

Alain Kunz

IETL General Manager

Save the Date! 19th European Traffic Law Days 2018, Naples

In Italy, we are unable to keep up the tradition of going to a country's capital for our conference. Rome is too expensive to allow that. We have decided to go to Naples instead.

The **19th European Traffic Law Days 2018** will take place on **Thursday 4 and Friday 5 October 2018** in **Naples/Italy**. The IETL General Assembly will be held **Thursday 4 October 2018 after the first conference day**, also in Naples.

IETL General Assembly, 4 October 2017, Vienna

The IETL General Assembly was held on 4 October 2017 in Vienna, with 48 members of the Institute in attendance. The agenda was dominated by the elections of IETL President, Vice Presidents and Board of Directors which had become due at the end of a three-year term, as required by the Statutes.

Election of the President

As the only candidate, H el ene B EJUI-HUGUES declared her renewed candidacy for the office of IETL President. She was (re)elected unanimously.

Election of the Vice-Presidents

The GA elected the persons listed below to the office of IETL Vice-President:

- Holger BACKU (representing corporate member Intereurope AG)
- Dr Martin METZLER (representing corporate member Swiss National Bureau of Insurance and National Guarantee Fund)
- Werner KAESSMANN (representative and legal adviser of ADAC Westphalia regional club)
- Paul KUHN (PEOPIL Honorary President and representing PEOPIL)
- Jean-Pierre TELLOLI (representing MACIF and the Bureau Central Fran ais)

Election of the Board of Directors

The persons listed below were elected en bloc to the Board of Directors:

- Simon BALL Lawyer, London
- Dr Michael BUSE Lawyer, Rome
- Ren  GHARIBEH (Mag) Van Ameyde Austria, Graz
- Sorin GRECEANU Director of FPVS/BAAR, Bucarest
- Veselin GRIGOROV Bulstrad, Sofia
- Bernd H KE Lawyer, Dortmund/Germany
- Martin HOFFER (Mag)  AMTC, Vienna
- Martin HOFFMANN Van Ameyde Switzerland, Basel
- Jean-Marc HOUISSE SCOR, Paris
- Torsten KORTE Lawyer, Wuppertal/Germany
- Alain KUNZ DEKRA Claims Switzerland, Geneva
- Thomas LANG President NVB & NGF Switzerland
- Fabrice LAZARI CONSAP, Rome
- Xavier LEGENDRE Bureau Central Fran ais, Paris
- Michael NISSEN ADAC e.V., Munich/Germany
- Yannis PANTELIDIS Lawyer, Athens
- Dr Tibor PATAKY Lawyer, T r kszentmiklos/Hungary
- Christian REINICKE Chief Legal Adviser, ADAC e.V., Hannover/Germany
- Oskar RIEDMEYER Lawyer, Munich/Germany
- Josef SCH RGHUBER (Mag) AVUS, Graz/Austria
- Alessandro SEBASTIANI Multiserass, Milan/Italy
- Daniel STAUFFER Allianz Suisse, Zurich/Switzerland
- Antoine TREVISAN Lawyer, Brussels

Changes to the organisational structure and distribution of tasks

In the years ahead the institute will work on the basis of the recommendations for its structural reform adopted by the Board of Directors meeting of 27 March 2017. They essentially aim at transferring Executive Committee responsibilities to the Board of Directors and from the Board of Directors to the IETL General Manager, in line with the provisions of Art. 9 (1) and (3) of the Statutes.

The new structure also involves a reorganisation of the working groups (committees) and the postings to these bodies. Alain KUNZ, the new IETL General Manager, will coordinate the work of the committees.

Think Tank/IETL Award/Advisory Council Committee

The committee is under the direct supervision of the President. Jean-Pierre TELLOLI will continue to head the Think Tank. Jean-Marc HOUISSE will continue to have responsibility for matters pertaining to the IETL Award.

Communication/Media Committee

This will be the responsibility of Michael NISSEN, Daniel STAUFFER and Bernd HÖKE.

Education Committee

This committee is the direct responsibility of the President. The President will be supported by Martin METZLER. Alain KUNZ will oversee the organisation of the European Traffic Law Days. Those interested should bear in mind that the committee – in coordination with the President – will transact its business chiefly in teleconferences and that the only physical meeting may be a kick-off, possibly at ADAC in Munich.

Lobbying/Membership/Partnerships Committee

This committee is subordinate to Holger BACKU.

Financial Committee

This committee is subordinate to the General Manager Alain KUNZ. He is supported by Jean-Marc HOUISSE and Werner KAESMANN.

Public Relations Committee

This committee will have three main responsibilities. First, liaison with the government of Luxembourg. In 2018 general elections are scheduled to take place in the duchy. The President has consulted with Paul HAMMELMANN and obtained his agreement to attend to Luxembourg relations with the aim of renewing the funding from Luxembourg. This is also the purpose of maintaining the Institute's seat in Luxembourg. Martin METZLER will keep responsibility for relations with countries outside the EU and with UNECE.

The Institute has yet to fill the position of coordinator of relations with the EU institutions. As the President pointed out, each committee will decide how and with whom to work in their respective areas. The work of the Institute was formalised in committees to have attributable responsibilities and persons in charge of organising committee work and regularly briefing the General Manager.

The Institute's new postal address

The IETL facilities in Bertrange were given up to cut costs. As of immediately, the Institute's new postal address is:

IDEC-IETL-IEVR
12 Rue Gabriel LIPPMANN
L-5365 MUNSBACH
LUXEMBOURG
Phone: +352 263112014

Conference report

18th European Traffic Law Days, Vienna, 5 and 6 October 2017

By Christian Reinicke, Chief Legal Adviser of ADAC e.V., Hannover/Germany and Michael Nissen, ADAC legal services. ADAC e.V., Munich/Germany

On 5 and 6 October 2017, the Institute for European Traffic Law (IETL), of which ADAC e.V. is a founding member represented on the Board of Directors by its Chief Legal Adviser, hosted the 18th European Traffic Law Days in Vienna, the capital of Austria. The attractive choice of venue was reflected in the number of participants. **Dr Hélène Béjui-Hugues**, re-elected unanimously to the office of IETL President at the General Assembly preceding the conference, was pleased to welcome over 250 experts in traffic and insurance law from across Europe, who had gathered in the metropolis on the Danube for two days of discussion on the most recent developments and problems in the fields of European transport law and claims settlement in the aftermath of road accidents.

Wolfgang Brandstetter, Vice-Chancellor of Austria and Minister of Justice honoured the conference in a very personal video welcome message addressing the points on the agenda of the Traffic Law Days and extending a warm welcome to the attendants.

In the name of SwissRe, the IETL's main sponsor, **Anja von Bodelschwingh**, SwissRe Munich, offered her own welcome and good wishes. With her personal charm she assumed the moderation of the conference.

The variety of expert presentations and papers were preceded by the first conference highlight. For the 2nd time, the Institute gave its academic award carrying a prize of €2,000. The award recognises an outstanding doctoral dissertation in the field of traffic law from the country hosting the European Traffic Law Days. On behalf of IETL, **Jean-Marc Housse**, SCOR Paris, member of the Board of Directors, presented the award to this year's laureate, **Dr Nikolaus Authried**, a lawyer with the Austrian automobile club ÖAMTC, in recognition of his outstanding dissertation on "The Rights of Airline Passengers in the EU".

The European Traffic Law Days then segued into the now traditional overview of the hottest issues in European transport and traffic law. As every year, Oskar Riedmeyer, lawyer and Chairman of the transport and traffic committee of the German Bar Association (DAV), Munich, presented his magistral review of the current developments in European traffic law. The focus this year was on a number of recent ECJ decisions regarding the settlement of claims from cross-border road accidents and some issues regarding motor third party liability insurance.

Addressing a particularly hot issue, **Lucy Wyles**, Barrister, London, in her presentation on "Brexit's impact on road traffic" outlined possible scenarios in respect of the EU legislation implemented in UK law (her focus being on the Motor Insurance Directive). Uncertainty hangs over the whole process and all options (from unrestricted application of the laws to their repeal) are on the table.

The next module, moderated by **Dr Hélène Béjui-Hugues** and **Oskar Riedmeyer** addressed the focal topic of "Personal injury". The focus of this module was on the issue of the standards for medical expert reports in international claims, often problematic for the practitioner and of a still unsatisfactory status. Another stringent issue is the management of personal injury claims with respect to the rehabilitation and reintegration of persons with severe injuries. As shown by **Jörg Halm**, from Deutsche Assistance Versicherer AG, Düsseldorf/Germany, there have been positive developments lately, notably in Germany. The workshop dedicated to the in-depth treatment and discussion of this topic came to the conclusion that EU-wide standardisation of examination methods by competent physicians seems desirable. The attendants agreed that the ideal approach would be the development of an international harmonised evaluation form that would allow medico-legal experts in the country where the accident took place to perform a reliable expertise on the basis of the examination reports and evaluations of the injured party's personal or family physician.

Moderated by **Prof Dr René Schaffhauser**, University of St. Gallen, the module dedicated to “Dashcams – relevance for reconstructing accident dynamics and legitimacy across Europe” also found a great number of interested attendants. **Markus Heberlein**, a lawyer with ADAC legal services at ADAC e.V. in Munich, presented a detailed overview of the relevant legal provisions and court rulings to date from those European countries that have already addressed the issue. The discussion in this workshop was animated, which shows that the interests in the western and eastern part of the EU are different. It is also proof that the status of dashcams in terms of legal provisions and admissibility in court proceedings is quite divergent in the different European countries. This was evident from a comparison of the latest court decisions in Sweden with the strict regulations and heavy sanctions in Austria, which **Martin Hoffer (Mag)**, head of legal services at ÖAMTC/Austria, presented in detail. The participants in the workshop agreed that a harmonisation of the relevant regulations across the EU would be desirable, for instance as part of the Data Protection Directive. This would ensure legal certainty and reliance about the legality of devices and the conditions under which they can be admitted as proof in civil and criminal proceedings.

Next to the two work-shop based topics, the recent spree of terrorist attacks committed by using vehicles in Berlin, London and Nice were a stringent opportunity for the inclusion into the programme of a topical module on “Claims adjustment after terrorist attacks (with a focus on the use of vehicles)”. Module II, moderated by **Prof Bernhard Koch**, University of Innsbruck, was dedicated to a presentation of examples from practice in Belgium, Germany (**Sandra Schwarz**, CEO of Deutsches Büro Grüne Karte e. V., the German Green Card Bureau, and Verkehrsofferhilfe e.V., the German Guarantee Fund, Berlin), Finland, Italy, France and the United Kingdom. It became obvious that the compensation of victims of this type of terrorist attacks is being implemented in a different manner in each country, in some cases thanks only to liberal interpretations of the existing legal systems.

After a review of the results presented above, the second conference day proceeded with the module dedicated to “International claims: What happens when an insurer goes bankrupt – Perspectives: Victims of road accidents and insurers”. To this day, the national Guarantee Funds and their umbrella organisation, the Council of Bureaux (CoB), are facing significant challenges in the aftermath of the bankruptcies of two Romanian insurers, *Astra* and *Carpatica*, which were selling policies in other EU countries. CoB President **Jean Zenners** and **Zsuzsa Teleki**, CoB Legal Advisor, Brussels, took turns in presenting the options available in indemnifying the injured parties and in ensuring the continued stability of the Green Card system.

The next module, moderated by **Dr Martin Metzler**, President of the National Bureau of Insurance & National Guarantee Fund, Zurich/Switzerland started with a presentation by **Robert Nowak**, Economic Affairs Officer at the UNECE, Geneva/Switzerland of “News from the UNECE Sustainable Transport Division”. After a briefing on the five-pillar plan of action to increase road safety and reduce the number of casualties from road traffic accidents, the speaker focused on the development of rules of the road to adequately reflect the progress in vehicle technology, including autonomous driving. He pointed out that UNECE’s primary aim was adapting the 1968 Vienna Convention on traffic rules, most notably the redefinition of the concept of ‘driver’, as required by the advent of driving without direct human control. The Institute assured Mr Nowak of its support.

The last module was dedicated to the traditional review of current EU and national legislation affecting the settlement of cross-border road accidents claims. The court rulings presented referred to a variety of legal issues, such as the question whether and to what extent the internal regulations of the CoB are Community law and in the ECJ’s jurisdiction. Other decisions addressed the question of applicable law with respect to insurance cover amounts in cross-border claims from road accidents, to burden-of-proof rules or to an aircraft accident in Spain involving an injured party from Austria and a German insurer.

In her closing remarks, the IETL President rightly presented a positive summary of the conference. The Traffic Law Days had once again lived up to their reputation as an expert high-level international forum for the practitioners of traffic and insurance law.

The 2017 IETL Award laureate's acceptance speech and dissertation abstract Dr Nikolaus Authried



Born in Vienna in 1983, he obtained his higher secondary school leaving certificates in 2003 and enrolled at the Vienna University law school the same year. In 2009, he graduated from law school. He continued postgraduate (doctoral) studies in law at Vienna University, specialising in administrative and EU law, the rights of airline passengers in particular. He earned his doctorate in 2015.

While studying for his law degree, he worked in the legal department of ÖAMTC immersing himself in transport and traffic law. After graduation, he started working for the Austrian Road Safety Board dealing primarily with the administrative law agenda. After a teaching stint at a secondary vocational school, he returned to the ÖAMTC legal department as a legal counsel in 2013. In 2014, he transferred to the ÖAMTC public policy/advocacy department. His main responsibilities include transport policy as well as transport/traffic and travel law issues.

Acceptance speech

Dear members of the IETL, Ladies and Gentlemen,

When I started working for legal services at the Austrian mobility club ÖAMTC after my graduation I was exposed to massive doses of travel and traffic law. It was here that my particular interest in this field of the law was peaked.

During my doctoral studies, still looking for an adequate subject, I studied the EU Regulation on airline passenger rights in a seminar and soon realised that there were a series of unsettled issues, for instance with regards to connecting flights. So I decided to systematically analyse these issues also in relation to the national implementation of the Regulation.

I went through ups and downs while writing my dissertation, and my simultaneous professional commitments did not make getting ahead any easier. In addition, there was the constant worry that an amendment of the Regulation – the EU Commission presented proposals for an amendment in 2013 – could make my work obsolete. It could have been even more difficult and time-consuming had my academic supervisors not been very receptive for, and immediately responsive to, my questions and wishes with regards to deadlines and had I not had the manifold support of my parents.

When the dissertation was finally achieved, a huge weight was taken off my shoulders. The experience I gained in delivering scientific papers and my new expertise come in handy in my work in the consumer law advocacy section of ÖAMTC legal services, where issues of travel law are part of my remit.

I am particularly pleased that the IETL has now chosen to honour my dissertation with its award. The award for a dissertation on a subject of travel law is doubly pleasing as it clearly shows the Institute's commitment to this matter. It is a clear signal in this respect considering how hot the issue currently is with a view to two airline insolvencies.

My special thanks go to the members of the jury for according me this honour. It means a lot to me that a jury composed of reputed experts has deemed my work worthy of distinction in the light of the Institute's statutory object. In view of the above I am happy to accept the award and I wish to thank the jury most sincerely.

“Airline passenger rights and obligations in the European Union and in Austrian traffic law”. Abstract.

The dissertation “Airline passenger rights and obligations in the European Union and in Austrian traffic law” focuses specifically on the legal implementation of the EU Flight Compensation Regulation, with its primary object in denied boarding, cancelled and delayed flights, and the Montreal Convention concerning the international carriage of persons, baggage or cargo, including the carrier’s liability in the case of an incident. Related national legislation, such as the Austrian Air Traffic Act (Luftfahrtgesetz) is also critically scrutinised. The aim is to point out solutions or legal issues demanding legislative action, some of which remain unresolved to this day.

The dissertation begins with an analysis of the legal basis both in the EU and national legislation in terms of competencies. Close scrutiny is given to the federal state’s powers of legislation and execution set forth in Art. 10 (1) (6) and (9) of the Federal Constitutional Law. Based on the originalist principle dominating the interpretation of constitutional law by the Austrian Constitutional Court (i.e. interpretation based on the original meaning of the text at the time of “its writing; “Versteinerungsprinzip” in Austrian jurisprudence), the author argues that Art. 10 (1) (9) is not an adequate basis for enacting (substantive) civil law such as the Flight Compensation Regulation. The adequate basis for national passenger rights legislation is Art. 10 (1) (6) dealing with powers of legislation in civil matters.

The main body of the dissertation is dedicated to issues in the Flight Compensation Regulation, some of which have not been resolved to this day. The conclusion in relation to connecting flights is that they may legally be seen to form a single entity, if the carrier for the connecting flight is different, in conformity with ECJ rulings.

In relation to the exceptional circumstances under which a carrier may not be under obligation to make rightful compensation, the author points out that, in the spirit of the EU legislation, these must necessarily include the hire or provision of an alternative aircraft.

With regard to seating downgrades, the dissertation shows that the passenger must not necessarily settle for the standardised percentages of compensation provided for such cases in the Regulation. Based on the intent and object of the Regulation, passengers are entitled to claim any differences between the compensation and their actual financial loss under the national compensation laws of their countries of residence.

A second essential part of the dissertation looks at the national law as set forth in the Austrian Air Traffic Act. The author censures the lack of a provision obliging the air carrier to make advance payments in certain cases of transport-related damage to passengers’ luggage. Under international and EU law such an obligation exists in respect of personal injury. However, the Austrian legislator could have provided for an extended obligation to include certain instances of material damage.

The dissertation dedicates ample space to the dispute resolution procedure required in all Member States under the Flight Compensation Regulation, but whose implementation in national law is left almost entirely to the Member States’ discretion. The author finds that the national procedural rules for the resolution of disputes between air carriers and passengers, non-technically designated “guidelines” (Richtlinien), are an act of private law and that the procedure itself must be qualified as a “provisional non-public administrative procedure”. The thrust of the criticism aims at the fact that the guidelines were not published and that no adequate consultation procedure was defined for their enactment or amendment. As a positive example the author cites the dispute resolution guidelines set forth in the Austrian Telecommunication Act (TKG) and points out that requiring the participation of certain persons in the adoption and amendment of such guidelines would have been possible in similar fashion and desirable in connection with the Flight Compensation Regulation, including the publication of any conclusions by the arbitration board. In part, the implementation in Austria of an enforcement body for the protection of passenger rights as required in the Regulation is qualified as contrary to EU law since this body was not granted the full range of powers required under EU law.

In an excursus, the author treats the authority to check travel documents and/or clearances to enter, if applicable, by private organisations, here airlines, as provided in the Austrian Aliens Policing Act (Fremdenpolizeigesetz), regulating the enforcement of migration, entry and residence. In his evaluation of the current rules with a view to their constitutionality, the author finds that the implementation in Austria is problematic from a constitutional point of view.

The conclusions at the end of the dissertation present a summary of the key issues and problems as well as possible solutions.

European Traffic Law news

Digital toll sticker

To use Austrian motorways, motorists must pay a toll. Vehicles up to a GVWR of 3.5 tonnes are subject to a variable duration toll sticker requirement. Until recently, motorists had to affix adhesive stickers to their windcreens to drive on toll sections of the Austrian motorway system. As from 2018, they can alternatively use digital 'toll stickers'. Initially the digital toll will be available only on-line at www.asfinag.at. As from mid-2018, it will also be available at selected toll stickers points of sale.

Anybody can check whether a vehicle is covered by a digital toll ticket in a public registry. By entering the licence plate number and country of registration, users will find vehicle information (car or motorcycle) and the term of validity of the digital toll ticket.

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Call from the editors: please submit contributions to the next numbers of VOX by e-mail to michael.nissen@idec.lu or by fax to +49 89 76 76 86 70. Thank you.

The editors wish to thank Dr Nikolaus Authried, Christian Reinicke and Josef Schörghuber (Mag) for their contributions to this edition, the entire team of ADAC Language Services for their translations and Angela Dillinger for the layout.