

# THE RULES OF THE ELSA NEGOTIATION COMPETITION

## FOREWORD

The European Law Students' Association (ELSA) is the world's largest independent, non-profit, non-political association run by and for law students and young lawyers. The ELSA Vision is: "A just world in which there is respect for human dignity and cultural diversity". Contributing to legal education is the central aim of the association. Through various academically focused projects and events, ELSA provides opportunities for law students and young lawyers to apply theory in practice and to learn about other legal systems.

ELSA Switzerland, a member of ELSA International, organises the ELSA Negotiation Competition (ENC) to promote a greater interest among Swiss law students in legal negotiation, provide a means for Swiss law students to practise and improve their negotiating and English-speaking skills, provide Swiss law students with a critique of their performance from experienced legal negotiators.

Many thanks go to Kellerhals Carrard, ELSA Switzerland's Platinum Partner for the ENC.

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## **TITLE I. – GENERAL PROVISIONS**

### **Article 1 – Abbreviations**

1. ELSA: The European Law Students' Association
2. ENC: ELSA Negotiation Competition
3. VP C: Vice President in charge of Competitions of ELSA Switzerland
4. NOC: National Organising Committee
5. LOC: Local Organising Committee
6. OC: Organising Committee of the respective round, either the NOC or the LOC
7. LG: Local Group of ELSA Switzerland

### **Article 2 – Code of Conduct**

The Code of Conduct of ELSA Switzerland applies for all participants and OC-Members at all stages of the competition. It is to be sent to all participants together with the confirmation of their participation.

### **Article 3 – Regulations and Amendments**

Only the VP C may make amendments to these Regulations. After the registration period starts, such amendments can only be made if there is an important reason and they must be promptly communicated to the ENC participants.

### **Article 4 – Rounds of the Competition**

1. The ENC consists of at least two Local Rounds and the National Final Round.
2. Any LG may organise a Local Round. In every Local Round at least six teams must compete. If less than six teams register, the Round must be cancelled except if the NOC grants an extraordinary permission. Local Rounds are organised by LOCs, which are presided by at least one member of the board of the LG. The president(s) of a LOC may appoint more members to the LOC at their free discretion.
3. A Local Round may also be organised by multiple LGs together. LGs may ask the VP C to help them find other LGs to co-operate with, however the VP C is not responsible for the organisation of a joint Local Round or for the resolution of any disputes resulting therefrom.

4. The National Final Round is organised by the NOC which is presided by the VP C. The VP C may appoint more people to the NOC. In the National Final Round at least six teams must compete. The NOC defines, based on the number of local rounds, how many teams from each Local Round qualify for the National Final Round. If a Local Round has less than six competing teams, the NOC may decide that fewer teams from that Local Round qualify for the National Final Round. The number of qualifying teams for each Local Round must be decided after the registration deadline, before the Local Rounds take place.

### **Article 5 – Language**

The ELSA Negotiation Competition is conducted in English.

### **Article 6 – Judges**

1. For the Competition, the OC must make use of a Judging Panel, responsible for evaluating the negotiations, which must be composed of at least three individuals.
2. The members of the Judging Panel are selected by the OC among legal professionals and subject-matter experts who have chosen to contribute their experience and technical-legal knowledge to the ENC.
3. The Judging Panel applies evaluation criteria in accordance with the provisions of these Regulations.
4. The Judging Panel receives the case before the participants. Each member of the Judging Panel has the right to ask for clarifications or changes. Such requests must be made at least one day before the application period ends. The NOC decides whether the requested clarifications or changes will be executed.

## **TITLE II. – PARTICIPANTS**

### **Article 7 – Registration**

1. Participation in the ENC is open to all Members of any LG.
2. If a participant loses their membership during any stage of the competition, the VP C must be informed immediately. The VP C will disqualify the participant's team, unless extraordinary circumstances justify letting the participant compete anyway.
3. The registration of each team must be completed through the specific Google Form published on the social media channels of the organising LGs as well as ELSA Switzerland and sent via mailing list to the Members of all LGs, within the deadline indicated by the NOC.

4. Members of a LOC, the NOC and the National Board of ELSA Switzerland are excluded from participation. Other members of a board of an organising LG may only participate if the president of the respective NOC guarantees that all confidential information is stored in such a way that the other member of the board has no way of accessing it.
5. No registration or participation fee applies for the ENC at any round.

### **Article 8 – Training webinar**

The NOC organises a webinar where legal negotiation experts prepare the teams for the ENC. The NOC will invite all teams to the webinar by e-mail. Participation in the Webinar is not required for the participation in the ENC.

### **Article 9 – Team Composition**

1. Each team must consist of two members. Participants usually apply as a team. Participants may also apply as individuals, in which case they will be paired with other participants who apply as individuals. These teams are formed according to the time of registration. Should there be an uneven number of individual applicants, the last person to apply cannot participate in the competition.
2. The respective LOC determines the maximum number of teams admitted to the Local Round. If the number of registered teams exceeds the maximum number allowed, teams will be selected based on the chronological order of registration. LOCs may prioritise members of their own LG over members of other LG.
3. Changes in team composition are permitted up to seven days before the start of the negotiation of the Local Round. Such changes, under penalty of inadmissibility, must be promptly communicated to the LOC and the NOC.
4. Participants are required to assume the role of lawyers representing the assigned party.

### **Article 10 – Team numbers**

1. Within 48 hours of registration, the LOC will assign a number to each team.
2. This number replaces the participants' personal details and must be used throughout the duration of the Competition.
3. For the National Final Round each team receives a new number.
4. Teams may not disclose which LG they belong to or any other personal information except their name to the judges until after the respective Local or National Final Round is over.

5. Upon the closure of registrations, the LOC will inform each team of the party assigned to them, determined by a random draw, along with the corresponding confidential information. For the National Final Round the NOC will do the same.

### **TITLE III. – THE COMPETITION**

#### **Article 11 – The case and supporting materials**

1. The fictional case at the centre of the Competition consists of:
  - a. “*General Information*”, provided to all teams regardless of the party they represent at the time of registration;
  - b. “*Confidential Information*”, differentiated according to the party represented and communicated exclusively to the relevant teams after the registration period has closed.
2. Confidential information must not, under any circumstances, be shared with any teams representing the opposing party.
3. External materials that are commonly accessible are allowed to be introduced during the simulation process.
4. Fictional materials that are not materially affiliated to the scenario itself (such as business cards) are allowed to be introduced during the simulation process.
5. It is strictly prohibited to invent and introduce materially self-serving facts during the simulation process. A material self-serving fact is one that significantly changes the relative leverage between the parties. Whether a team’s interpretation of the facts is reasonable, or whether a team has invented or inferred material self-serving facts, is a matter to be determined by the Judging Panel during the round.
6. Teams are allowed to use calculators.
7. The NOC is responsible for drafting the cases for the Local Round as well as for the National Final Round. If a LOC wants to draft their own case, they must submit the case to the NOC for approval before the application period ends.
8. The case must be sent to the teams four days prior to the negotiation.

## **Article 12 – Requests for clarification**

1. Participating teams may submit a maximum of two requests for clarification to the OC regarding general or confidential information by sending a specific email to the president of the OC within five days after the case has been sent out.
2. Requests for clarification may only be submitted in cases of ambiguity or possible errors and not to request additional information.
3. The LOC must consult the NOC before answering the requests for clarification. The answers are to be sent at least one day before the negotiation.
4. Participants are strictly forbidden to contact the judges, under penalty of disqualification from the Competition.
5. Each team is prohibited from presenting content that is, in whole or in part, the work of individuals external to the Competition, under penalty of disqualification.

## **Article 13 – Assistance**

6. Teams may not receive advice or assistance from any person with access to the confidential facts of the opposing team.

## **Article 14 – Oral Phase**

1. Before the start of the Oral Phase, the OC shall draw lots to determine the competing pairs and the order in which the negotiations will take place.
2. The purpose of the Oral Phase is to reach an agreement, and it proceeds according to the following timeline:
  - a. "Pre-negotiation" (2 minutes per team): presentation of the objectives of the negotiation and the related tactics and strategies of each team before the Judging Panel, in the absence of the other party. The Judging Panel may not give any feedback or give advice, since the pre-negotiation serves only to understand the team's plan.
  - b. "Negotiation" (45 minutes): interactive exchange of information and interests aimed at reaching an agreement or, at the very least, identifying common points. Members of the Judging Panel may not ask questions. Each team may ask for one break of no more than 5 minutes to privately discuss how to proceed. The team that requests the break leaves the negotiation room accompanied by a timekeeper. Such a break does not stop the total time for the Negotiation phase.

- c. "Discussion with the Judging Panel" (up to 10 minutes): The teams start by a brief self-evaluation which is followed by feedback from the Judging Panel. The Judging Panel may ask questions. The Judging Panel may not reveal individual scores, nor which team fared better. In case one of the teams has another Oral Phase with the same case, the Judging Panel may not give feedback concerning the substantive aspects of the case or give concrete feedback for the next Oral Phase.
3. The OC may choose to omit the pre-negotiation and/or to change the time allotted to each part of the Oral Phase. Such changes must be clearly communicated to all participants and must be announced before the cases are sent to the participants.
4. During the negotiation, both team members must speak at least once, under penalty of a five-point deduction from the total score.
5. Participants are not allowed to attend the performances of other teams.
6. Members of the Judging Panel may not become aware of the participants' identities before the Oral Phases are concluded. The identity of participants includes their place of residence as well as the university they attend.
7. During the negotiation, both parties briefly present their points of view one after the other, followed by open negotiations.
8. A timekeeper, designated by the OC, is responsible for periodically indicating the remaining time. They are to indicate when 20, 10, 5, 2 and 1 minute are left.
9. Team members must adhere to the ethical rules of the legal profession.

#### **TITLE IV. – EVALUATION AND AWARDS**

##### **Article 15 – Evaluation of the Oral Performances**

1. The following aspects will be particularly considered when evaluating performance:
  - a. preparation of the negotiation strategy;
  - b. logical consistency of the argumentation;
  - c. ability to respond to the other party's demands;
  - d. any concessions made to the other party;
  - e. flexibility during negotiations;

- f. skill in using negotiation techniques;
  - g. teamwork;
  - h. the outcome of the negotiation.
2. Each member of the Judging Panel assigns an individual score.
3. After each negotiation, in the absence of the participants, the Judging Panel assigns each team up to 40 points (from 1 to 5 points for each criterion mentioned in paragraph 1).
4. The Judging Panel also assigns each participant a score from 1 to 10 to determine the best oral presentation and the best strategic application for any additional awards.
5. After determining the overall ranking, the teams with the highest scores advance to the National Final Round, the number of teams that advance is decided by the NOC according to Article 4(3). In case of a tie, the Judging Panel will decide by a simple majority vote. If the tie persists, the President of the OC decides by flipping a coin.

#### **Article 16 – Awards**

1. The LOC may give out awards and/or prizes at the end of the Local Round.
2. At the end of the National Final Round, awards will be given to the best team, the best negotiator, and any other potential award categories.
3. The NOC is responsible for identifying the awards for the winning team, the best negotiator, and any additional participants.
4. The NOC will issue a certificate of participation, signed by the VP C to each participant in the Competition, also for participants that did not qualify for the National Final Round.

#### **Article 17 – Score Communication**

1. The OC will not disclose the general ranking and the individual team rankings.
2. Each team may know only the score assigned to its own performance by making an express request to the OC.
3. At the end of the respective Round, the OC will send the scores obtained in the negotiation evaluation to the teams that have duly requested them.

## **TITLE V. – FINAL PROVISIONS**

### **Article 18 – Disciplinary Measures**

1. All participants are required to comply with these Rules, the provisions of which they are deemed to accept by the sole fact of their registration in the Competition. In the event of a serious violation, the VP C shall take all appropriate measures, including disqualification.
2. In case a violation of these Rules also constitutes a violation of the Code of Conduct of ELSA Switzerland, the VP C may refer the case to the Welfare Officer in charge.
3. Participants must ensure their presence throughout the entire duration of the Competition, under penalty of disqualification of the team.

### **Article 19 – Interpretation**

Participants may submit any questions concerning this Regulation to the VP C, who is solely responsible for resolving issues related to the application and interpretation of this Regulation.

### **Article 20 – Decisions**

1. The NOC may grant extensions to any deadlines set forth in this Regulation for proven organisational needs, provided that absolute equality of treatment among all competing teams is ensured.
2. The evaluations and decisions of the Judging Panel, and the interpretative decisions regarding this Regulation made by the Vice President for Competitions are final and not subject to appeal.

### **Article 21 – Expenses**

1. The OC has no obligation to reimburse travel, accommodation, and incidental costs incurred by participants in the Competition. The OC may choose to reimburse some or all costs, if it does, it is free to define the procedure for reimbursements.
2. The OC is not liable for any costs or risks associated with attending the Competition.

### **Article 22 – Absence of the VP C**

In case there is no VP C, the Vice President in charge of Academic Activities of ELSA Switzerland takes on all tasks and competences assigned to the VP C by these Rules.