

Eclipse Foundation AISBL

International not-for-profit association
Rond Point Schuman 11 Brussels 1040 Belgium
VAT BE 0760.624.114
RLE Brussels (French-speaking Enterprise Court)
(THE “ASSOCIATION”)

Minutes of the Meeting of Board of Directors

18 January 2023

A Meeting of the Board of Directors (the “**Board**”) of Eclipse Foundation AISBL was held as a regularly scheduled conference call scheduled to begin at 16h30 CET.

Present or validly represented at the meeting were the following Directors:

Present	Director	Organization
Y	Andreas Nauerz	Bosch
Y	Bryan Che	Huawei
Y	Ed Merks	Elected Committer Representative
N	Etienne Juliot	OBEO
N	Farah Papaioannou	Elected Contributing Representative
Y	Gorkem Ercan	Red Hat
Regrets	Gunnar Wagenknecht	Elected Contributing Representative
Y	Ian Robinson	IBM
Y	James Eggleston	European Space Agency
Y	Jim Wright	Oracle
Y	Kenji Kazumura	Fujitsu
Y	Matthew Khouzam	Elected Committer Representative
Y	Matthias Sohn	SAP SE
Regrets	Robert Hilbrich	DLR
N	Sébastien Gerard	CEA List
Y	Shelley Lambert	Elected Committer Representative
Y	Stephen Walli	Microsoft
N	Tom Ritter	Fraunhofer FOKUS
Y	Torkild Ulvøy Resheim	Elected Contributing Representative
Y	Wolfgang Gehring	Mercedes-Benz Tech Innovation GmbH

Present at the invitation of the Board were Mike Milinkovich, Executive Director, Gael Blondelle, Chief Membership Officer, and Gesine Freund, Corporate Executive Assistant of Eclipse Foundation AISBL.

Regrets were received from Paul White, Secretary/Treasurer of Eclipse Foundation AISBL; as a result, Mike Milinkovich acted as Secretary of this meeting. Regrets were also received from Gunnar Wagenknecht, and Robert Hilbrich.

AGENDA

The following agenda was proposed for the meeting, the materials for which were posted on the Association's Board portal.

1. Roll Call and Approval of Agenda
2. General Business
 - a. Approval of December 14, 2022 Board meeting full and abridged minutes
 - b. Update on new Observer representative of IBM
3. Appointment of Andreas Nauerz as representative of Robert Bosch GmbH
4. Appointment of Osborne Clarke as Special Proxy (Approval of special proxy enabling legal counsel to publish notices to Belgian Gazette)
5. Update on Eclipse Foundation response to the Cyber Resilience Act
6. Status of IBM's 3-way Adoptium TCK Participant Agreement with Oracle and Eclipse Foundation (raised by IBM 19 December 2022; *see background information below*)
7. Other Business

Adjournment

VALIDITY

The acting Secretary established from the attendance list that a quorum of members were present or properly represented, that the meeting had been validly convened, and the meeting could validly deliberate and decide on the matters listed on the agenda.

GENERAL BUSINESS

The meeting was called to order at 16h34 CET by Mike Milinkovich.

The Board agreed that for all decisions to be taken during the meeting, votes would be held by the Executive Director asking members to voice: a) those voting in favor, b) those voting against, and c) those abstaining.

1. Approval of Agenda

Mike Milinkovich reviewed the agenda with the Board. With all Board members present or validly represented at the meeting voting in favor, the agenda was approved unanimously by the Board.

2. General Business

a. Minutes

Mike Milinkovich introduced a discussion of the full and abridged minutes of the 14 December 2022 Board Meeting, attached as *Appendix 2*. With all Board members present or validly represented at the meeting voting in favor, the Board unanimously passed the following resolution:

RESOLVED, the Board approves the draft full and abridged minutes of the 14 December 2022 Board Meeting as circulated.

b. Update on new Observer representative of IBM

Mike Milinkovich reminded the Board that, as mentioned in his email from 3 January 3 2023 to the Board, Pradeep Balachandran stepped down from Eclipse Foundation AISBL Board of Directors effective immediately, and that IBM has appointed Ian Robinson to take on the role of their Observer representative, as that term is defined in the Bylaws. Mike and the Board expressed their thanks to Pradeep for his many years of dedicated service and work with the Board and with the Association. Mike welcomed Ian.

3. Appointment of Andreas Nauerz as representative of Robert Bosch GmbH

Mike Milinkovich reminded the Board that Steffen Evers informed the Executive Director of his intention to resign from the Association's Board of Directors effective 31 December 2022. The Board unanimously passed the following resolution:

WHEREAS, Steffen Evers has resigned as Director from the Board; therefore

RESOLVED, the Board approves, in accordance with Article 24.7 of the Bylaws, that Andreas Nauerz is co-opted on behalf of Robert Bosch GmbH as Strategic Member Director, as that term is defined in the Bylaws, as from as the date of this meeting until the next General Assembly that will decide on the new Board to be subsequently appointed. In accordance with article 27.1 of the Bylaws, Andreas' mandate will not be remunerated.

4. Approval of special proxy enabling legal counsel to publish notices to Belgian Gazette

The Board unanimously passed the following resolution:

RESOLVED, to grant power to Ruth Wirtz, David Haex, and Karen Calvo Vleugels attorneys-at-law with office at Bastion Tower, Marsveldplein 5, 1050 Brussels, or any other attorney-at-law from the firm Osborne Clarke, with office at the same address, each acting alone and with power to substitute, to act on behalf of the Eclipse Foundation AISBL in order to comply with the legal requirements resulting from these minutes, and in particular the publication of an extract of these minutes in the Annexes to the Belgian State Gazette and the updating of the Eclipse Foundation AISBL registration information at the register of legal persons of the Belgian Crossroads Bank of Enterprises. The proxies are authorized to sign every document, form, register, notification or letter and to take every necessary step towards the Enterprise Court, the one-stop business shops and the Belgian Crossroads Bank of Enterprises and more generally, to undertake any action necessary following these minutes.

5. Update on Eclipse Foundation response to the Cyber Resilience Act

Mike Milinkovich introduced a discussion on the topic of the European Union's current draft legislation known as the Cyber Resilience Act, the materials for which are attached as *Appendix 5*. Mike explained that the EU Cyber Resilience Act is still in draft but has been proposed to the EU parliament for ratification. Mike stated that the CRA legislation in its current form would have a disruptive and detrimental impact on the Foundation and its community, along with all open source software initiatives, and would at the very least lead to an enormous amount of work for each release of every Eclipse project.

Mike emphasized the importance of member companies to investigate the potential impact of this legislation, and noted that he had published a blog on this subject earlier this week and shared it with all the Association's members. Mike further noted that the Association is working with other interested industry organizations in providing feedback regarding the legislation.

6. Status of IBM's 3-way Adoptium TCK Participant Agreement with Oracle and Eclipse Foundation

Jim Wright stated he believed he had a conflict of interest with respect to this topic as the Oracle appointed representative to the Board, and recused himself from the discussion and left the meeting.

Ian Robinson brought forward a request on behalf of the Adoptium Steering Committee regarding the current status of IBM's 3-way Adoptium TCK Participation Agreement with Oracle and Eclipse Foundation. Ian reminded the Board of the requirement that to participate in the Eclipse Temurin Compliance project, an organization must first enter into a three-way agreement with the Eclipse Foundation and Oracle. He further reminded the Board they had approved this requirement for such an agreement. IBM and the Association had provided such 3-way agreement to Oracle for execution in June 2022 and Oracle has not as yet signed it. Ian noted that Oracle had signed the 3-way agreement with all other members of Adoptium that had requested it, and thus IBM was being singled out in this regard. Ian reminded the Board that the Eclipse Temurin project does build on a variety of platforms that only committers from IBM have the skills to carry out, and thus there are target platforms in the Adoptium community such as AIX and System Z that are being blocked that would otherwise not be.

Ian explained the Adoptium Working Group Steering Committee unanimously adopted the following resolution in the meeting held on 15 December 2022: *RESOLVED, the Adoptium Steering Committee has determined that Oracle's 6-month delay in signing the 3-way Adoptium TCK Participant Agreement for IBM is frustrating the progress of the Adoptium community and blocking IBM's participation in the Eclipse Temurin Compliance project, and seeks engagement by the Board to address this matter directly with Oracle by requesting Oracle sign the 3-way agreement within the next 2 weeks.*

Mike Milinkovich noted that Oracle has continued to sign the 3-way agreement with other Adoptium members as recently as last month but that, to date, Oracle had not given any explanation as to why they have not executed the agreement with IBM which was sent to Oracle in June 2022.

With the exception of Jim Wright's recusal and with all other directors either present or validly represented voting in favor, the Board passed the following resolution:

RESOLVED, on behalf of the Eclipse Board the Executive Director of the Eclipse Foundation will request Oracle to sign the Adoptium TCK Participant Agreement for IBM by Friday, 3 February 2023, as requested by the Adoptium Steering Committee due to the 6-month delay to do so since originally requested.

In addition, the Board tasked the Executive Director to report whether Oracle's actions violate any of the Association's policies and what sanctions should be applied to Oracle if so. Further, if no policy violations are found, the Board tasked the Executive Director to investigate and possibly recommend whether revisions to such policies should be brought forward to the Board for approvals.

It was requested that this topic will be brought forward again at the February board meeting.

7. Other Business

Mike Milinkovich mentioned that Mercedes joined SDV, and thanked Wolfgang Gehring for his leadership and work in accomplishing this outcome.

Mike also informed the Board that the IDE Steering Committee asked the EMO to add in-app sponsorship in the Eclipse IDE and that the EMO is currently working towards implementing this capability.

Mike noted that the Association recently submitted an application to be listed on the EU Transparency Register. Mike explained that this is a requirement of the EU government prior to any Eclipse staff engaging with the EU government.

The meeting was adjourned at 17:54 CET.

Action Items:

1. Mike agreed to report to the Board regarding the 3-way Adoptium TCK Participation Agreement as noted above.

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This being a true and accurate record of the proceedings of this Meeting of the Board of Directors held on 18 January 2023, is attested to and signed by me below.

/s/ Mike Milinkovich
acting Secretary of Meeting