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**NEW JUSTICE PROGRAM**

**PARTICIPATION OF THE NATIONAL  
UNIVERSITY OF “KYIV-MOHYLA ACADEMY”  
TEAM IN THE EUROPEAN LAW  
MOOT COURT COMPETITION (ELMC) 2017**

**A Task Order under the USAID New Justice Project**

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**Authors: Yuliia Uhorska, Liliya Makhynko, Dmytro Derkach**

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**The authors' views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.**

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## **I. BACKGROUND**

The European Law Moot Court Competition (ELMC) is the world's most prestigious moot court on the matter of EU law, and one of the most well-known and engaging moot competition among the law students globally. The Competition was established in 1988 by the European Law Moot Court Society, and since then it annually brings together students from many Universities to compete on a fictional case constructed to place EU law's most tricky and sometimes unresolved issues to a courtroom's discussion. As the moot grew, in the early 1990's President Ole Due invited the European Final of the ELMC to be held in the premises of the Court of Justice of the European Union (CJEU) and to be decided by the Court's Judges.<sup>1</sup>

The competition is unique, as it not only engages in a very interesting sphere of law, deepens student's knowledge of the EU, but also offers a bilingual experience of moot. Both English and French are the so-called working languages of the moot, which makes the Competition stand out.

Despite the current existential crisis of the EU and notwithstanding the so-called EU Paradox, meaning the loss of the Union's popularity among EU citizens, the ELMC still is going strong; it remains a highly engaging and successful competition. Last season, in the year of 2016, it engaged over 80 teams in the Written Phase of the Competition.<sup>2</sup> This year's Written Phase of ELMC had been successfully carried out with 48 teams proceeding to the Regional Final stage of moot. Four Regional Finals have been successfully held in the following cities: The Hague, Paris, Naples and Gothenburg. To illustrate the geography, the Gothenburg Regional Final has brought teams within the EU, but also non-EU teams such as a team from Ukraine and the team from the USA. The team from Maastricht University has become the Winner of the Gothenburg Regional Final. Now four winning teams will compete in the European Final of the ELMC at the Court of Justice of the European Union on Friday, March 31st 2017.

### **Kyiv-Mohyla's history in the ELMC**

The participation of Kyiv-Mohyla team in the 2016-2017 season of the ELMC has become a second year in a row that a team from our University participates and advances to the Oral Phase of the competition based on the memo selection with only 50% of the participating student teams qualifying to the Regional Finals. Representing Kyiv-Mohyla at such a level has become a proud tradition now. We view it as a very important activity, as it allows young students from Ukraine get a better hold of what the EU is about, how EU law works, which is extremely important in the light of Ukraine's proclaimed and desired further integration to the European Union. However, we also view this experience not only from a professional level, but also as a great networking opportunity, something that helps us connect with the students from all over Europe and beyond. We hope that future teams will only enhance and make the further results better, with the help of our University, our coach and, surely, the informal ELMC Alumni community in Kyiv-Mohyla.

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<sup>1</sup> The European Law Moot Court [Rules](#)

<sup>2</sup> The Annual ELMC [Report of 2016](#)

## II. OBJECTIVES AND PARTICIPATION

The main objective of the European Law Moot Court Society in organizing the moot is to get the best Universities and best law students involved with the Competition, deepening their knowledge of EU law while offering a unique bilingual legal practice experience in written and oral forms.<sup>3</sup> Besides this, ELMC also strives to unite the participants by the common interest in the EU, is majorly devoted to eliminating national barriers, and stimulates the development and expanding of the informal network of people who share the values and ideas behind the European project as such.

The ELMC, in essence, consists of three main phases. *First stage* is a Written Phase, within which the ELMC every year releases the moot problem on the 1st of September. This is a fictional legal dispute involving some of the most problematic issues and challenges of present EU law developments. The teams who wish to participate have 3 months to submit their two memorials, one for the Applicant party to the fictitious dispute, and one for the Defendant party. Bilingualism of the written stage lies in the idea that if a memorial is submitted in one of the languages (English or French), then the team is also required to provide the short summary of the arguments in the other respective language of the Competition.

*The second phase* is Oral Phase, which in turn consists of four Regional Finals. Only 48 best teams, based on the scores for the written memorials proceed to this stage, 12 teams in each of the Regional Round respectively. Within the regional round 12 teams compete firstly in the Preliminary rounds. This stage consists of three games for each team: one in the role of Applicant, another in the role of Defendant, and third one is either in the position of Advocate General of the CJEU or the Representative of the EU Commission. Each of this position is presented to the judges in a form of a simulated court hearing. In this round the teams from three different Universities compete, and each role, in turn, can be represented only by one member of the team. Within the simulated court hearing, parties of the dispute have 15 minutes to make their case, with Advocate General (AG) / Commission Representative (CR) having 10 minutes. Judges often interrupt the speakers to extensively ask questions, in both working languages. Teams are evaluated both on the substance of the arguments, their presentation style and use of languages. Four of the best teams in the Preliminary Rounds are selected to qualify for the Semi-Final of the Regional Round.

Two of the best teams based on the semi-final games are selected to be the finalists, and essentially only one team wins, proceeding to the *third stage* of the ELMC – European Final in Luxembourg. AG/CR's respectively have their individual competition, with only one AG or CR qualifying to the European Final.

This year the students competed on the case that involved the issues of the role of European Central Bank (ECB) in the EU within the Single Supervisory Mechanism, touched upon the unresolved questions on the creation of the Single Resolution Board, and concerned the issues of the ECB's mandate over the Emergency Liquidity Assistance. Students also dealt with issues of agencification of the EU, questions of the Court's jurisdiction, and application of EU directives, etc.

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<sup>3</sup> The European Law Moot Court [Rules](#)

### **III. ACTIVITIES**

#### **EU Law Summer School**

In NaUKMA, preparation for the ELMC has started early, in May of 2016, with the selection of the team. Our coach, Mr. Maksym Popovych, set up a summer school on EU law within the University, and 10 participants were active during the summer school. On the basis of the activities and learning over the summer, the team of three people were selected – Yuliia Uhorska (3rd year), Dmytro Derkach (2nd and Liliya Makhyanko (3rd year). During the summer school, the students learned the basics of EU law (general principles, institutional set-up, sources of law, all of the internal market, competition law, human rights protection), did writing tasks, debates, team work exercises, etc. All of this helped the coach to evaluate the skills and capabilities of those wishing to be on the team.

#### **Initial Preparation: Memorial Drafting/Oral Practice**

Preparation for the ELMC particularly began in September 2016, when the case was published by the organizers on September 1st. The students divided the four core issues among themselves and did research on them (both for Applicant and Defendant’s position) by way of reading all the relevant materials and looking for plausible solutions. The team met once, sometimes twice a week at the stage of legal research to discuss and brainstorm together. Later, the team divided the roles and responsibilities and the work on memorials coupled with continuous legal research began.

After submitting the memorials, the team continued to maintain interest towards the issues of the case, even prior to the results announcements. After the competition organizers announced the results of the Written Phase on January 11th of 2017, the team began active preparation on the oral presentation of the arguments. This involved in particular writing speeches and holding practice rounds nearly every day until the team’s departure to Gothenburg, Sweden, on February 22nd.

#### **The Regional Rounds**

The Oral Phase, which is the 4th Regional Final of the ELMC 2017 took place in Gothenburg, Sweden, and was attended by 13 teams from European counties and beyond. The NaUKMA team consisting of three members and one coach, Mr. Maksym Popovych, arrived in Gothenburg on February 22, 2017 where stayed in the “Comfort Hotel”. The next day, on Feb 23, 2017 the official part of the ELMC Regional Final began.<sup>4</sup>

#### **Opening Ceremony**

The opening ceremony on February 23rd was held in the beautiful palace building in Gothenburg, starting at 18.00. There was a welcoming reception, for which the representative of the city Government gave a speech, as well as organizers of the ELMC gave their welcoming greetings to all teams, coaches and judges. Then, because of the anonymity rules, the teams drew lots from which they obtained their numbers. After the official part, participants got a chance to relax and make friends at dinner.

#### **Preliminary Rounds**

All court hearings for the Preliminary Round were located in the University of Gothenburg, in the building of the School of Business, Economics and Law on Friday, February 24th. Our team

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<sup>4</sup> Regional Final [Programme](#)

participates in the 8.30 session in the role of AG represented by Yuliia Uhorska, then in the 11.00 session as Defendant represented by Liliya Makhynko, and finally, at 16.15 as Applicant represented by Dmytro Derkach. We cannot provide the exact University pairing, indicating the teams we played against, since we are not exactly aware because of the anonymity rules. Informally, we know that we played with teams from Slovenia, Paris, Belgium, and Germany.

According to the moot court rules, a person representing Applicant or Defendant has 15 minutes to present their observations. Applicant begins by making the claims, for which the Defendant then has to answer. After that, the Applicant is allocated 5 minutes to present a rebuttal to the Defendant's arguments, and then Defendant has 5 minutes to reply to the Applicant's rebuttal. In the course of these presentations, judges interrupt and ask questions, engaging the parties in the conversation with the bench of 4 or 5 judges. Next, there was a turn for AG to make his/her observations for 10 minutes based on the parties' pleadings. The role of AG is to give the balanced opinion on the case to the Court, so that to help the Court make a decision on the case.

The judges who participated in the Regional Final were highly qualified and well-trained professionals and academics of European Law. Some of them teach EU law, some of them used to work or still work for the Court of Justice.<sup>5</sup>

After the Preliminary Rounds, in the evening, the four semi-finalist teams were announced, and the four best AG's were announced. Kyiv-Mohyla team did not qualify for the semi-finals, however we had a very valuable experience participating in the Oral Phase.

After the results were announced, teams participated in the common dinner together, where besides relaxing and communicating, the participants got to try out the boules game, a traditional Swedish entertainment.

### **Semi-finals and Finals**

The semi-finals and final of the Regional Round were held on Saturday, February 25th. All the teams were present to observe the final game at 15.00 between the team from The Hague and Maastricht. The level of the court hearing and judges' involvement was very high, and we learned a lot just by watching this very close and intense game.

### **Awarding Ceremony and Final Party**

After the round, the winner was announced (Maastricht), and all teams have been awarded certificates, received judges' greetings. After the awarding ceremony, in two hours, all teams, judges and organizers gathered for the final party in Villa Belparc. There are a few interesting aspects to this party. Firstly, we got to the venue by taking a traditional transport in Gothenburg – a tram, all together with all teams which was a very special and fun experience. Secondly, the judges have created a little play to present to the participants, as well as sang us a song. All teams, on the other hand, also participated in the traditional ELMC Singing Competition, in which all present nationalities sang a song in their language to all in the audience. Ukraine's team performed the "Oi Smereko" song. This was a unique experience. Besides the performances, the teams enjoyed dinner and some informal communication with one another, making friends and enjoying each other's company.

## **IV. LESSONS LEARNED AND RECOMMENDATIONS**

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<sup>5</sup> Detailed information on the [judges](#)

## **Dmytro Derkach**

*The ELMC is the first moot court I participated in and it was quite a challenge! I think I will never forget this experience. I have dedicated 9 months of my life to EU law and I think it was totally worth it. I've started from attending the Summer School on EU law organized by our coach, Maksym Popovych. Based on my performance during the School, I was selected to the NaUKMA 2017 ELMC team. At first, I was a bit shocked because of the work load and the complexity of our moot case. But this let me learn that everything is achievable through the hard work. I am proud of myself for taking this challenge.*

*As for the ELMC itself, I can say that it is very important for Ukrainian students to take part in the competitions like this, because it gives practical knowledge of how to analyze facts, how to research the relevant law, how to make a case for your party. Moreover, EU law is the area in which Ukraine lacks experts and this competition allows students to go beyond the general aspects of EU law and research those areas where there is a contradiction between rules or a rule simply does not exist. In the light of Ukraine's closer integration to the European Union, it is vital for the Ukrainian lawyers to have sufficient expertise in the current legal developments and the ELMC is one of those few opportunities to learn these developments that are available to the student.*

*In addition, participation in the ELMC taught me many valuable lessons I would not be able to get elsewhere. The most important one is that of self-discipline. ELMC is a very complicated moot court. One of the legal experts I've been lucky to have briefly discussed our case with said that when he read this problem, he saw at least 15 specific points that are contradictory in the EU law. And it is indeed true that every issue is very complex and sometimes they seem to be too complex. What helped me to handle this all along the way is being disciplined. I followed every single deadline our coach set. I did not rest until I was satisfied with my work and has shown at least some progress. I never spent a day without working on our case even if I was demotivated, tired, overwhelmed at the university. The ELMC was my first legal job and it was very rewarding when at the end of my oral pleadings my coach told me that it was my best performance so far and that I grew a lot. To be honest, I can feel it myself. It was a victory for me.*

## **Liliya Makhynko**

*I started my moot-court 'career' with participating in the Central and East European Moot Court Competition as a member of the NaUKMA team, and taking part in the ELMC was a logical development of my EU law oriented studies. ELMC is a law competition of a very high level and I was happy to be a part of this legal discussion. For me, the most exciting moment of this competition was when I realized that one of the judges at the Regional Final will be an EU law expert whose EU law online course I listened to during my preparations. It was truly unforgettable to discuss with her the issues and concepts which she described in her course. Thus, the ELMC 2017 was a huge forum where both students and experts were able to share their views on the topics they had mutual passion for.*

*On the other side, it was not just a pleasure – it was a challenge of a completely new level for me. I think the ELMC is the most serious legal job I have done so far. I developed my research skills, I started analyzing facts in a more complex manner, and I have become a better speaker. But the most*

*important lesson the ELMC gave me is that when you do a project like this, you are a team. This means that by doing your work you are responsible not for your own success but for the success of the whole team, because your part of the written pleadings is a part of a memorial which will be presented as written arguments developed by the team, not just by you on your own. You can show your responsibility and reliability in rather simple ways: following deadlines, coming to all the meetings, striving for quality and not for the quantity. You can also show that you are a team-player by helping out your team members when they are stuck, motivating them, reminding them of why they have started their ELMC journey.*

*ELMC is indeed a journey, and our team has spent 9 months on this track. It was unbelievably difficult at times but we have done a great job by keeping our team spirit high. We handled all the difficulties together and have become a real family. To my mind, most of the legal jobs are the jobs for the team players and I think I have done well being one.*

### **Yuliia Uhorska**

*The ELMC is my second competition of such kind. Last year I took part in the Price Media Law Moot Court Competition which deals with the human rights issues in the Internet. I got involved into ELMC by my team member, Liliya Makhynko and I cannot thank her enough for encouraging me to take this challenge.*

*For me, ELMC wasn't just a competition. It was a real school of how it will be at my future legal work. Unfortunately, Ukrainian universities leave their student unprepared for the real life challenges that a young lawyer may face. ELMC prepared me for many of them instead of the university. I have learned how to draft quality legal memorials, I have developed my research skills and can now do a profound research much quicker than before, I have mastered my public presentation skills and received more practice of making my case before the judges. The one lesson that is the most valuable for me is a lesson of a being not biased and prejudiced. Last year, during Price Moot Court, we divided the roles in a way that both, written and oral phases I represented the Defendant party and I never had to think of the arguments our Applicants were developing. In ELMC, I faced the challenge of writing the arguments for a party I did not support. This gave me a lot of pain. I was convinced that my 'client' was wrong and that whatever I write will not work because there is not argument that could possibly be of use for the party which is simply wrong. Now, when our journey has come to an end, I think that it was me who was wrong. I did not grow to like Applicant's position, but I learned that one should always look at a situation in a global way. It is always good to have a personal opinion. However, locking yourself to one point of view without even trying to understand the rationale behind the opposite is never a good approach, especially for a lawyer. The thing about this moot court and, as far as I can imagine it, about any other case is that there is always an argument to make, you just need to find a right approach on how to present this argument. This is something that all moot court participants should bear in mind.*

*Therefore, despite us not winning the Regional Final, it was a rewarding experience which has brought a lot to the legal education of our team.*

### **Maksym Popovych**

*This has been my second year of coaching the ELMC team of Kyiv-Mohyla Academy. I was initially motivated to give back to my alma mater during my participation in ELMC for Leiden University where I completed my LL.M. in European and International Business Law. I believe that it is important to train a new generation of Ukrainian lawyers on legal research, memo drafting and oral pleadings. It is equally important to expand the knowledge of EU law among law students in a country that aspires to approximate its laws to the legal order of the European Union. The participation in ELMC gave the team the opportunity to research complex issues of EU law, become more skillful lawyers, and, most importantly, build networks with colleagues from many other European and North American universities at the regional round in Sweden.*

*At the oral round, the Ukrainian team witnessed strong support from other teams and the organizing university – we were encouraged to continue participating in the competition. One representative of the organizing team mentioned that our commitment to the competition is an excellent proof of Ukraine’s commitment to European integration. It motivates me to continue coaching students at Kyiv-Mohyla University. Every year, I learn yet new insights about effective training techniques and the needs of the team. By and large, the role of the coach is to motivate the students and make sure that they benefit from participating in the competition. I have been able to learn a lot from the team as well. Namely, it was essential to listen to their feedback on the progress on research, memorial drafting and speech preparations to understand weaknesses and strengths and provide effective guidance as a result.*

*Following several conversations with the ELMC Society, it seems like the ambitious idea of holding a regional round of ELMC in Kyiv might be possible in the nearest future. It would certainly raise the visibility of Kyiv-Mohyla Academy, prove Ukraine’s strong connection to European legal academia and student networks, and allow to attract many Ukrainian law students to the idea of learning and excelling in EU law.*

## **V. OUTCOMES**

ELMC judges were invited to evaluate each participant based on the criteria specified in the official team results (Annex B).

NaUKMA team’s scores are:

	<b>Oral Phase Score</b>	<b>Memorial Score</b>
Applicant	20,4 / 30	18,44 / 25
Defendant	17 / 30	
Advocate General	19,75 / 30	

According to the ELMC Rules,<sup>6</sup> the final scores of the participating teams (excluding the 4 teams qualifying for the semi-final) are not made public unless the team itself wants to share them. Therefore, there is no official overall team ranking available for the Regional Final.

The diploma certifying participation of the team comprises Annex C hereto.

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<sup>6</sup> See the ELMC Rules, para 30.6

## VI. GENERAL TIPS FOR WRITING MEMORIALS

The longest and probably the hardest part of the ELMC is drafting the memorials. The following tips helped us during our preparations:

- You need to have at least a general idea of the law applicable to the moot court before doing this moot court or even reading a case. It is true that the information on EU law is not that widespread in Ukraine, but there are still sources you can learn from (for instance, the book *“EU Law: Text, Cases, and Materials”* by Paul Craig, Gráinne de Búrca).
- Work with your facts first, do not jump into law. You need to work on your case for at least a week before starting a research. This kind of work includes: (a) making sure you know all the vocabulary used in the case; (b) making a timetable of all the events and the events relevant for the particular issue; (c) learning the context (every moot problem is drafted based on some real life situation, and it is better for your overall understanding to know which one is that); (d) researching facts about the institutions, agencies, mechanisms etc. mentioned in the case.
- Legal research has to start from those acts which are explicitly mentioned in the case. Read carefully through those parts which are relevant to your case but do not forget about the context. On the [eur-lex.europa.eu](http://eur-lex.europa.eu) there is a lot of information about the act itself (e.g. different versions, white papers etc.).
- When legal research is on the general (basic) scale, everyone should research every issue to get an abstract picture of the legal dilemma in the case.
- Divide issues among the team members when you start digging deeper into the law.
- Meet! Do not think that since you have your issue, other issues are none of your business. It is not so. Meet and discuss what you have and what kind of arguments you can develop.
- Criticize each other. This way you will learn the weak spots applicant or defendant has.
- Read the facts every day.
- First develop a line of arguments, and only then start writing.
- Make your memorial a story. IRAC (Issue-Rule-Application-Conclusion structure which is used in legal memorials) can get very mechanical if you do not present it in a nice manner.
- You need to have five to ten drafts before you combine everything into the final version.
- Be consistent with other team members on the language and editing style (whether you follow American English or British English rules).
- You need to have your final version of the text ready at least two weeks prior to submission deadline. Writing a summary of arguments and doing references takes a lot of time. Never underestimate how difficult it is.
- Have some rest after you have finished editing everything. Then take a fresh look at your memorials. It is possible that you need to make some corrections.

## **VII. GENERAL TIPS FOR PLEADING IN THE MOOT COURT**

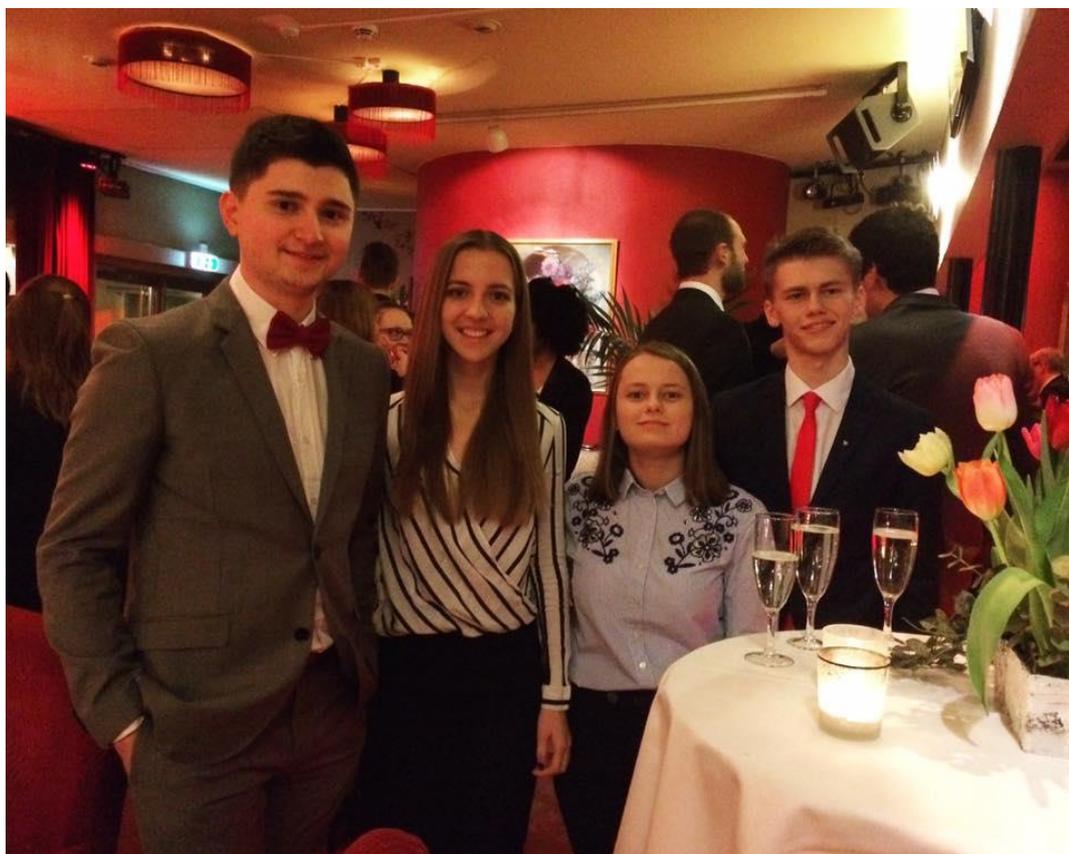
Pleading in the ELMC Regional Final has been a great educational experience for the NaUKMA team. Following this experience, we have comprised and are happy to share the following tips on how to be successful in the oral pleadings:

- Prepare the answers to the possible questions well in advance. However, be prepared that judges might ask something you do not know the answer to. It is always better to say that you do not know the answer rather than lose time on your personal reflections on the topic.
- Make your answers specific and straight to the point. If you want to say two sentences, the key substance of your response has to be in the first one.
- Know your arguments by heart but do not stick to the speech you have prepared before. Successful speakers sound natural because they are not afraid to paraphrase and modify their speeches on the spot.
- Be flexible. Judges will ask you questions which can change the whole structure of what you were going to say. When this happens, try to answer the question in a way which would take you back to the point where you were interrupted, or if there is no necessity to do this, make a logical transition to your next point.
- Mind your time. ELMC is the moot court where you get very limited time to make your case and judges are reluctant to grant additional time. Therefore, prioritize what you need to say.
- Talk slowly. Judges do not like when they cannot follow what you are saying and this certainly does not help you to sound convincing.
- Strong arguments must come first. This is a technic of structuring your speech favourably for your side. Unfortunately (or luckily), judges are often more interested in your weak spots and will ask you on that.
- Always have an alternative argument. There might be an occasion when judges do not agree with your argument or want to know whether you did your research at home.
- Be confident but never pushy. Being too self-confident will make everyone feel like your arguments are weak and you are trying to defend yourself with an aggressive attitude.
- It is okay to make concessions. If you know that another side has a strong point and you cannot equal up your argument, agree with that argument. This looks good. However, make sure you do not lose your case this way. The best thing would be to concede with an argument but to say that you never argued the opposite and offer the judges an alternative view on the situations.
- For the Advocate General/Commission Representative: know the peculiarities of your roles.
- Enjoy every second of it! Think of your pleadings as of a conversation with the judges. They are actually interested in what you have to say. This is your time to shine!

**ANNEX A: PICTURES**



*NaUKMA Team (left to right):  
Dmytro Derkach, Liliya Makhynko, Yuliia Uhorska*



*NaUKMA Team at the Farewell Reception*

## ANNEX B: FINAL SCORES

**European Law Moot Court**  
**Official Team Results**

**TEAM 01 – Kyiv, National University of Kyiv-Mohyla Academy** F

**Written Proceedings Phase Score : 18,44**

Each written pleading is evaluated following the ELMC Double Blind Assessment procedure, established by the ELMC Rules. Each pleading (i.e. applicant and defendant) can receive a maximum of 25 points. In total therefore a team receives 2 (app+def) x 2 judges = 100 points. This is divided by four, in order to get an average score of 25 points maximum.

**Qualified to University of Gothenburg University Regional Final**

**Oral Proceedings Phase Scores :**

	Preliminary round	Semi-Final	Final
Applicant	20,4		
Defendant	17		
AG / CA	19,75		

Each team pleader is evaluated by the ELMC Judges at the given Regional. Each judge can give a maximum score of 30 points, following the ELMC Rules. Each pleader receives one average score per pleading.

The score is composed of:

Correct legal analysis and application of relevant law	10 points
Presentation and style	10 points
Reply and Rejoinder / Understanding of Role (for AG/CA)	6 points
Bilingualism	4 points



**MANNHEIMER SWARTLING** **VAN BAELE & BELLIS** **DE BRAUW BLACKSTONE WESTBROEK** **strada lex**



## ANNEX C: DIPLOMAS



# European Law Moot Court

La Société  
sur recommandation des  
Juges du ELMC a décerné ce  
Certificat de Participation à  
la Finale Régionale de l'Université  
de Göteborg à



The Society  
On the recommendation of the  
ELMC Judges has conferred this  
Certificate of Participation to the  
University of Gothenburg  
Regional Final On

*Dmytro DERKACH*

*National University of Kyiv-Mohyla Academy*

*Національний університет «Києво-Могилянська академія»*

Signé à Göteborg | Signed in Gothenburg

A handwritten signature in dark ink, appearing to read 'Lars Petersen', written over a horizontal line.

The Executive Secretary | Le Secrétaire exécutif



February 27 2017 | 25 février 2017

A handwritten signature in dark ink, appearing to read 'Tom King', written over a horizontal line.

The President | The President