

## Minutes of the Council Meeting

Juridicum, University of Vienna, Schottenbastei 10-16, 1010 Wien

12 February 2016

### Present:

**Chair:** Wallis, Diana (*proxy for Illescas, Rafael*)

### **Council Members:**

Alunaru, Christian	Gernandt, Johan	Ruda, Albert ( <i>proxy for Jiménez Muñoz, Francisco Javier</i> )
Avgerinos, Yannis	Gilligan, Paul	Sabato, Raffaele
Azizi, Josef	Iamiceli, Paola	Schulte-Nölke, Hans
Bargelli, Elena	Infantino, Marta	Sorabji, John ( <i>proxy for Thomas, John</i> )
Cafaggi, Fabrizio	Jerez-Delgado, Carmen	Stamelos, Harry
Caponi, Remo ( <i>proxy for Porchia, Ornella</i> )	Josipović, Tatjana	Storme, Matthias
Clément, Marc ( <i>proxy for Fauvarque-Cosson, Bénédicte</i> )	Kaiafa-Gbandi, Maria	Trstenjak, Verica
Clough, Mark	Mader, Oliver	Wendehorst, Christiane
Cvejić Jančić, Olga	Malberti, Corrado	Wicke, Hartmut
Doralt, Walter ( <i>proxy for Brkan, Maja</i> )	Meijer, Maarten	Wierzbowski, Marek
van Erp, Sjef ( <i>proxy for Schulze, Reiner</i> )	Miller, Katharina	Zalar, Boštjan
	Philippe, Denis	
	Povlakic, Meliha	
	Prunbauer-Glaser, Marcella	

### **Secretariat Staff:**

Garciandía, Rosana (keeper of the minutes)

Sabanovic, Ala (keeper of the minutes)

**Meeting commenced at 9:45.**

**I. Opening and welcome**

- (1) Diana Wallis opened the meeting and welcomed those present.

**II. Approval of the agenda**

- (2) The agenda was approved with two amendments: the Report from the Treasurer would be presented after the Report from the Executive Committee, and Executive Committee elections would be discussed after that.

**III. Approval of minutes of the September 2015 Council meeting**

- (3) The minutes were approved.
- (4) Matters arising from September 2015 Council minutes: It was suggested that the Council celebrates two-day meetings. This would allow for more detailed discussions on drafts, and would be more cost efficient. It was suggested that these meetings take place on Friday-Saturday. **The Council voted on this initiative and approved it. 32 votes in favour.**

**IV. Report from the President and the Executive Committee**

- (5) Diana Wallis presented the report from the President and Executive Committee. As the ELI President, she featured her participation in the ELI-UNIDROIT joint project on civil procedure, her participation at a conference in Ferrara, where the Annual Conference will take place in September, and her presence in past and future Hub events (Slovenian Hub, Spanish Hub, Italian Hub).
- (6) The Executive Committee is proud to see the ELI recognised as a respected partner in the European legal environment, where cooperation has been strengthened with other organisations such as ERA, the CCBE and the ENCJ. The positive developments of the recently established SIGs and the preparations of the Annual Conference in Ferrara were also part of the Executive Committee Report, where the 2016 EU operating grant was also mentioned as a means to gain flexibility in the work programme to develop more projects and organise activities to achieve the aims of the ELI.
- (7) Fabrizio Cafaggi and Paul Gilligan strongly recommended that the Council gets more involved in the shaping of the agenda of the Annual Conference, as part of the definition of the ELI strategy. Various members of the Council suggested that the Conference should allow for in-depth discussions on drafts. Concerning the content, the ELI needs to decide whether it should stay within the strictly legal approach or whether it would like to be involved in more politically sensitive issues.
- (8) Report from the Treasurer: Johan Gernandt presented the 2015 financial report produced by Grant Thornton. It shows a positive financial situation for the ELI that will allow the Institute to spend more money on project-related work (see 2016 budget forecast, also presented at the meeting). The main sources of income of the ELI are the extension of the agreement with the University of Vienna until 2019, membership fees (individual and institutional members)

and the EC operating grant. The increase in costs in 2015 corresponds mainly to an increase in project-related costs, especially in the ELI-UNIDROIT project and the Insolvency project, both financially supported by the European Commission.

- (9) Dr Berkovec is the auditor that was appointed by the ELI Executive Committee, conditional to his appointment by the General Assembly. The Treasurer informed the Council that Dr Berkovec is currently performing the audit and will finalise it in the next few weeks. The preliminary report he has produced for this meeting is positive. The audited accounts will be presented to the General Assembly in September. The Treasurer also informed the Council that it was decided to hire a financial officer in-house, which will ease the access of the Executive Committee to financial information on a regular basis.
- (10) Walter Doralt asked whether Dr Berkovec's appointment had already been approved by the General Assembly according to the ELI Statute. John Sorabji clarified that the auditor was appointed by the Executive Committee due to the time pressure, and the General Assembly will be asked to ratify his appointment for 2015 and 2016.
- (11) Executive Committee elections: Sjef van Erp informed the Council that, following a recommendation from the Senate, the Executive Committee would like to propose the creation of a Committee to assess whether there is a need to revise the Statute and Election Byelaw in order to guarantee continuity through rotation in the Executive Committee. In 2017, the whole Executive will end its mandate and the Senate considers that continuity might be desirable in the executive body of the ELI. The proposed composition for this Elections Committee is the following: 2 members of the Executive Committee, 2 members of the Council and 2 members of the Senate. Members of the Council welcomed this proposal. Walter Doralt mentioned that there is an exception in the current framework, if a member of the current Executive Committee is elected as the next President of the ELI. He also mentioned that continuity could be guaranteed if former members of the Executive Committee who are still members of the Council were appointed again. Paul Gilligan suggested increasing the number of members of the Executive Committee and reducing the size of the Council. He also suggested celebrating a meeting of the Council and Executive Committee to deal only with this issue. **The Council agrees that this Committee is established, with up to 4 representatives of the Council. Interested members should contact the ELI Secretariat.**

#### V. Report on Special Interest Groups (SIGs)

- (12) John Sorabji reported on the latest developments of SIGs, some of which became very active after the 2015 Annual Conference, and stressed the need to attract more members to the SIGs. Members of the Council expressed their interest in the establishment of new SIGs on topics such as criminal law (Maria Kaiafa) and corporate responsibility and compliance (Katharina Miller). John Sorabji clarified that the determining factor for establishing them is the number of members showing interest in the field and suggested that the next issue of the Newsletter could mention these two areas and invite members to join the existing SIGs and to express their interest in these two potential SIGs to the ELI Secretariat.

- (13) John Sorabji mentioned the Administrative Law SIG as the only one without coordinators. Marek Wierzbowski offered his support in the search for a coordinator of the administrative law SIG.
- (14) Christiane Wendehorst informed the Council on the developments in the very active Digital Law SIG, which is already producing content, and raised the question on how the work of SIGs could be best linked to the work of project teams, and how the SIGs should be reminded of the ELI approval procedures. John stressed that these developments are the proof of the informal organic growth of the organisation that was envisaged with the establishment of SIGs.

#### **VI. Report on current and potential projects**

- (15) Christiane Wendehorst presented the report on projects, briefly describing the latest developments in the ongoing projects and in the feasibility study with the US Uniform Law Commission.
- (16) Rescue of Business in Insolvency Law project: This project is running very well, and the publication of results is being negotiated with Oxford University Press. The preliminary results of the project will be presented during the Annual Conference. Although the final version of the outcome will not be available by September, not putting it to a vote during the 2016 General Assembly would mean postponing approval of the results of the project one more year. Since the final product would be ready by February 2017, it was suggested to put it to a vote in the 2016 General Assembly, for conditional approval, listing all the comments received in the discussion. Those comments would be submitted to the consideration of the reporters for the consolidation of the final text. The final version would then be put to an electronic General Assembly vote, for the final approval of the text. **The Council agreed that this option is acceptable and in accordance with the ELI Statute.**
- (17) ELI-UNIDROIT joint project: John Sorabji reported to the Council on the latest developments of this project, which is raising the interest of EU institutions such as the EP. Three new Working Groups have been established (Costs, Judgements and Structure) and the Steering Committee will meet the co-Reporters of the Working Groups in April in Rome. After the successful conference in Trier in November 2015, the Hungarian Ministry of Justice and Academy of Sciences offered to host a conference where Reporters could present the developments of their work in May 2016.
- (18) Criminal Law project: André Klip, one of the reporters of the project, addressed Council members and briefly presented the work of the Project Team to them. The team will meet in February and June in Luxembourg. In May, the project will be presented by Katalin Ligeti at a Conference that ERA organises in Trier. The project team will present the final outcome of the project at a panel session during the 2016 Annual Conference in Ferrara. Professor Klip's presentation caught the attention of Council members, who used this opportunity to raise questions about the project and suggested that welcoming Reporters for more detailed discussion during Council meetings should be common practice.

- (19) From CESL to the Digital Single Market: Christiane Wendehorst informed the Council about the meeting of the team in London in January, and the well-attended Conference that took place in Vienna on 21 and 22 January. The drafting team will meet in Vienna at the end of March and a draft will be shared with the Council in April.
- (20) Family Law project: Christiane Wendehorst reported to the Council on the first developments of this project, adopted as an ELI project last September. She also reported on recent developments at the Council of the European Union concerning Matrimonial property regimes and property consequences of registered partnerships in December 2015, which will have an impact on Workstream 1 of the project. The Council could not reach a political agreement on either the regulation on matrimonial property regimes or the regulation on the property consequences of registered partnerships. The Council presidency noted that it would not be possible to reach an EU-wide agreement in relation to both regulations within a reasonable period of time.
- (21) Migration Law project: Boštjan Zalar reported on the working plan developed by the Project Team and the plans to have a first face-to-face meeting in spring. The final draft will be presented to ELI members in September, during the Annual Conference. Hans Schulte-Nölke suggested that drafts are available to the Council at an earlier stage, and that the Secretariat and the Executive Committee should perform a preliminary check of the drafts, before sharing them with the Council. Setting a standard presentation structure would be very helpful in this regard.
- (22) Feasibility study with US ULC: Sjeff van Erp updated the Council on the latest developments in this joint study. He will be traveling to the US in July and will meet the ULC counterpart.
- (23) Potential joint project with the ENCJ: Diana Wallis presented to the Council a proposal for an ELI-ENCJ joint project on 'The Principled Relationship of Formal and Informal Justice through the Courts and Alternative Dispute Resolution'. She added that this proposal comes in a moment when the European Commission is revising the Mediation Directive. Members of the Council expressed their support to the project proposal. Marcella Prunbauer-Glaser stated that it would be important to involve practitioners. **The proposal was approved by the Council. 41 votes in favour, 1 abstention.**
- (24) Ideas for potential projects: Christiane Wendehorst classified the ideas for potential ELI projects that the Executive Committee is currently considering in four groups:
- a) small projects, where the ELI is approached by other actors;
  - b) medium-size projects, where the ELI would compete with other actors (tax law, vulnerable adults, free flow of data, etc.);
  - c) big projects of a very technical nature, where the ELI could be the leading institution;  
and
  - d) huge topical issues as the constitutional order of the EU.

- (25) Diana Wallis also reported on the requests that the Secretariat and the Executive Committee have been receiving lately to participate in joint tenders of the European Commission. Normally, these requests had been kindly declined. The recent invitations from the CCBE were, however, considered as a different request of special interest for the ELI. The Executive Committee would like to open a discussion in the Council in this regard. Since those requests normally come with very short notice, the Executive Committee would appreciate clear indications from the Council on how to proceed. Members of the Council agreed that as a matter of principle there is no need to exclude these offers, but it would be desirable to receive as much information as possible from the Executive Committee, including the fears and doubts this body may have about the participation of the ELI in a particular tender.
- (26) The Council voted on the Advisory Committee of the Family Law Project. John Sorabji highlighted the fact that no judges were included in the proposed Advisory Committee. Katharina Miller asked whether it would be possible for an institution, such as the European Women Lawyers' Association (EWLA), to be involved in an Advisory Committee. The Executive Committee confirmed this and encouraged her to suggest a female judge for this Advisory Committee. **The proposed Advisory Committee members were appointed.**
- (27) The draft decision on the Advisory Committee of the Criminal Law project was postponed until an issue concerning this Advisory Committee is clarified.

#### **VII. Report on negotiations with OUP**

- (28) Sjef van Erp reported to the Council on the state of play concerning the negotiations with OUP for the publication of an ELI Journal. Negotiations are quite advanced and OUP is awaiting a proposal for an Editorial Board, with special attention to the Editor-in-Chief. Members of the Council asked several questions on the content of the Journal and discussed different possible approaches to an ELI Journal. The Executive Committee opened a call for suggestions for an Editor-in-Chief. **The Council agreed to support the attempts of the Executive Committee in these negotiations, waiting to see a more concrete proposal in the next few months.**

#### **VIII. Report from the Membership Committee**

- (29) Walter Doralt presented the statistics on membership, which look very promising, and welcomed the initiative taken by Maria Kaiafa, who provided the Secretariat with a list of potential members (with a focus on criminal law) that could be contacted putting her as a reference. A letter signed by the chair of the Membership Committee and the Secretary General gave very positive results. Other members of the Council are encouraged to participate in this kind of initiative. The membership priorities will remain within the following fields until September 2016: criminal law, tax law, labour law.
- (30) Walter Doralt also reported on the situation of the ELI concerning outstanding fees. Some ELI members have more than two years outstanding membership fees and some have been directly addressed by members of the Membership Committee. Most of them replied positively and paid their fees. The list of unpaid fees was shared as a confidential handout

with the Council. Members of the Council were kindly asked to go through the list and identify any members they could approach directly. The remaining members in the list will receive a final reminder letter from Diana Wallis, upon which membership could be terminated if no reply was received. Paul Gilligan suggested that the Council is given at least six weeks to provide that information to the Secretariat, before the letter from Diana is sent out. The Council agreed to that.

**IX. Report from the Fundraising Committee/Treasurer**

(31) Johan Gernandt reported on the fundraising efforts in the last few months and explained that, not being a national organisation, fundraising was a challenge for the ELI in the last few years. The funds received from the University of Vienna and the European Commission are the main source of income of the ELI, apart from membership fees. The Fundraising Committee met on the morning of 12 February. The committee discussed new possibilities and new solutions. One of the possibilities discussed was approaching institutions that could benefit from indirect tax relief on in-kind donations. The Committee also reported on a meeting of ELI representatives with the Governor of the Austrian National Bank, which could be interested in becoming an Institutional Observer and funding some ELI projects.

**X. Discussion and Decision on ELI European Young Lawyers' Award**

(32) Diana Wallis referred to the Council discussions on MyELI regarding the ELI European Young Lawyers' Award. Members of the Council suggested increasing the age limit to 35 years, involving the European Lawyer Students Association, and considering a higher prize than the coverage of the travel expenses. Josef Azizi suggested to foresee the possibility of attributing more than one "Young lawyer's award" if e.g. two proposals are equally excellent and of equal interest for the future work of the ELI. It was agreed that the Executive Committee should finalise the call for the Award.

**XI. Report on International Relations**

(33) Sjef van Erp presented the main achievements in international relations since September 2015, with special references to the American Law Institute, UNCITRAL, UNIDROIT, the US Uniform Law Commission and the CCBE.

**XII. Any other business**

*The meeting adjourned at 16.00.*