

Minutes of the Council Meeting

University of Vienna – Senatssaal – Universitätsring 1, 1010 Vienna, Austria

13 February 2015

Present:

Chair: Wallis, Diana (*proxy for Fauvarque-Cosson, Bénédicte*)

Council Members:

Alunaru, Christian
Avgerinos, Yannis (*proxy for Clough, Mark*)
Bargelli, Elena
Brkan, Maja (*proxy for Doralt, Walter*)
Cafaggi, Fabrizio (*proxy for Micklitz, Hans W.*)
Clément, Marc (*proxy for Aubert de Vincelles, Carole*)
Cvejić Jančić, Olga
van Erp, Sjef (*proxy for Caponi, Remo*)
Gammeljord, Anne Birgitte
Gernandt, Johan (*proxy for Schulte-Nölke, Hans*)

Graf von Westphalen, Friedrich (*proxy for Prunbauer-Glaser, Marcella*)
Hrádek, Jiří (*proxy for Ruda, Albert*)
Iamiceli, Paola (*proxy for Avolio, Francesco*)
Illescas, Rafael (*proxy for Jerez-Delgado, Carmen*)
Infantino, Marta
Kaiafa-Gbandi, Maria
Keglević, Ana
Mader, Oliver
Meijer, Maarten R.
Philippe, Denis (*proxy for Storme, Matthias*)
Polčák, Radim

Porchia, Ornella
Sorabji, John (*proxy for Thomas, Lord John*)
Timmermans, Christiaan
Trstenjak, Verica (*proxy for Možina, Damjan*)
Vervaele, John
Warth, Wilhelm
Wendehorst, Christiane (*proxy for Botusharova, Snezhana*)
Wicke, Hartmut
Wierzbowski, Marek
Zalar, Boštjan
Zoll, Fryderyk (*proxy for Schulze, Reiner*)

Ex-Officio Council Members:

Lewis, Alasdair
Netten, Leo (accompanied by Andrieux, Françoise - Secretary General of UIHJ)
Tarrade, Jean

Senate:

Griss, Irmgard (Returning officer)

Secretariat Staff:

Davis, Joshua
Garcandia, Rosana (keeper of the minutes)
Tirić, Selma (keeper of the minutes)

Meeting commenced at 9:30.

I. Opening and welcome

- (1) Diana Wallis opened the meeting and welcomed those present. She read out the list of proxies.

II. Approval of the agenda

- (2) The agenda was approved.

III. Approval of minutes of the September 2014 Council meeting

- (3) The minutes were approved.

IV. Report from the President and the Executive Committee

- (4) Diana Wallis presented the report from the President and Executive Committee. She highlighted the excitement and enthusiasm she finds from others in the legal community wherever she presents the ELI for what the ELI potentially has to offer the legal structure in Europe. She reported amongst other things on her visit to Brussels with Christiane Wendehorst and Sjef van Erp to meet Commissioner Jourová and to give a presentation on the ELI at the European Parliament's Legal Affairs Committee (JURI). She gave an update on internal matters, including the extension of the agreement with the University of Vienna for hosting the ELI Secretariat for the next four years, which has been renegotiated and will be signed after the Council meeting. She expressed gratitude to Christiane Wendehorst for her contribution to this agreement. Diana Wallis further reported on recent hub activities, such as the upcoming launch of the Polish Hub, and the ongoing preparations for the 2015 Annual Conference in Vienna, at which both Commissioner Jourová and Harriet Lansing, President of the U.S. Uniform Law Commission, will deliver keynotes.
- (5) Diana Wallis informed the Council that the European Commission's decision on the application for the operating grant, for which the ELI applied in November 2014, was still outstanding.

V. Response to the Senate's report

- (6) Diana Wallis presented the response to the Senate's report from February 2014 and outlined the changes that have occurred since, such as the dissolution of the Council Composition Committee, the Projects Committee and the International Relations Committee. Furthermore, the Executive Committee prepared a proposal for subject-specific groups, as suggested by the Senate, which are intended to play a crucial role in the development of new projects and to ensure permanent horizon scanning for legal developments. She confirmed there is a need to ensure that the ELI reacts to currently topical issues and also develops long-term projects in cooperation with other organisations, such as UNIDROIT.
- (7) Diana Wallis informed the Council that Selma Tirić, Head of Secretariat, will be leaving the ELI Secretariat by the end of March. In the name of the Executive Committee and the Council, she expressed their gratitude for her contribution to the ELI, in particular for ensuring the smooth running of the Secretariat, and congratulated her on her new job.

Jiří Hrádek joined the meeting at 10:15.

- (8) The speaker of the Senate, Irmgard Griss, welcomed the Executive Committee's response as a good first step. She reminded the Council and Executive Committee that the very basis, the *raison d'être* of the ELI is to develop fascinating projects. Concerning Special Interest Groups (SIGs), which should ensure permanent horizon scanning, she advised that the leading figures in the respective fields need to be appointed. She also advised that the Council consider appointing a Secretary General as an independent entity to be both responsible for the Secretariat and to be able to present his or her own initiatives.
- (9) Diana Wallis confirmed that the Executive Committee discussed a Secretary General position the previous day and agreed with Irmgard Griss that the ELI should strive to become the kind of organisation that she described.
- (10) Fabrizio Cafaggi, Verica Trstenjak, Hartmut Wicke and Maria Kaiafa-Gbandi made suggestions along the same lines, highlighting the importance of the European Commission agenda for better regulation, the need for new project ideas and for permanent horizon scanning of European law, the benefits of involving young researchers working in the field, and the interest in a potential ELI journal. The question was also raised about project ideas, how they are selected and whether there is a need for an advisory board. The matter of quality control of projects was also brought up.
- (11) Sjef van Erp reported on the negotiations with Oxford University Press with regard to an ELI journal and also in relation to publishing project results as a book series. Johan Gernandt stressed the achievements of the ELI despite being such a young organisation. Diana Wallis encouraged members of the Council to provide input and ideas for future projects.
- (12) Due to reasons of timing and the availability of Irmgard Griss as the Returning officer, the discussion was halted to deal with the election procedure first.

VI. 2015 Council elections

- (13) Sjef van Erp informed the Council about the election process. The Election Byelaw required 30 Council seats to be identified for the 2015 Council elections, either by voluntary resignations or by drawing lots. Current Council members who have resigned or whose names were drawn are free to stand for re-election, alongside any other ELI Fellows wishing to join the Council.
- (14) Before the Council meeting, the Secretariat had received 14 voluntary resignations. During the meeting, Maja Brkan voluntarily resigned. Therefore, 15 lots needed to be drawn by Irmgard Griss.
- (15) The following names were drawn by Irmgard Griss and read out by Selma Tirić:
 - Alunaru, Christian
 - Doralt, Walter
 - Hofmann, Herwig
 - Hrádek, Jiří

- Infantino, Marta
- Meijer, Maarten R.
- Nettesheim, Martin
- Neubauer, Radim
- Nicolas, Miguel
- Ruda, Albert
- Schulte-Nölke, Hans
- Timmermans, Christiaan
- Warth, Wilhelm
- Wierzbowski, Marek
- Zoll, Fryderyk

(16)The Secretariat was asked to circulate the lists of those Council members who resigned (voluntarily or by drawing lots) and of those members who remain on the Council until the end of their term in 2017.

Irmgard Griss left the meeting at 10:45.

VII. Response to the Senate's report (continuation of discussion from paragraph 12)

(17)Christiane Wendehorst reminded the Council that it had been very difficult to establish the ELI, and that it had become reality and that the ELI has consolidated its position during its first four years are great achievements in themselves. However, the ELI still has to answer the question: why do we need this institution? It can do so by demonstrating it plays a unique role in European legal development and fulfils functions which no other institution does. One unique characteristic of the ELI is its nature as a European community of jurists from all vocational backgrounds. Christiane Wendehorst mentioned in this context that she still regrets the Council's negative vote in 2013 concerning the ELI's engagement in the European Jurists Forum as this would have been a unique selling point for the ELI. The ELI could have another unique selling point if it established permanent working groups which could scrutinise a particular field of the law on a continuing basis, submitting suggestions for improvement, including de-regulation, and thus providing a starting point for the EU Institutions in their regular activity of reviewing existing EU legislation after a period of five or ten years. This could bring the ELI closer to the vision that EU institutions automatically ask for advice from the ELI.

(18)Marc Clément alerted the Council of the risks of having too many projects of low quality and of the need to balance projects with resources. Fryderyk Zoll stressed the importance for researchers to know how the ELI can help them and what their advantage is if they contact the ELI when running a project. Dennis Philippe suggested that guidelines indicating advantages for researchers would be very helpful in this regard.

(19)Maja Brkan argued that the gathering of ideas for projects should be decentralised and that the person suggesting a proposal should be involved in any project resulting from it. Fellows should be encouraged to present their ideas at the General Assembly at a brainstorming session. Elena Bargelli highlighted the importance of ex post evaluation of the quality of

projects. Marta Infantino suggested that the ELI should expand its international relations not only to the U.S. but also to the rest of the world (e.g. the link between China and mediation should be explored).

Oliver Mader joined the meeting at 11:13.

(20)Rafael Illescas stressed the need for permanent working groups. He suggested different ideas for potential working groups, and mentioned that European institutions are not the only counterparts of the ELI, but also European states, members and non-members. As ELI membership is growing, the ELI should establish broader groups on different topics, broader than the concrete statements adopted so far.

(21)The Executive Committee clarified the exact nature of the operating grant the ELI applied for and its relationship with projects and welcomed all the comments, committing to take them into consideration.

VIII. Structure and functioning of Special Interest Groups (SIGs)

(22)John Sorabji presented the Executive Committee proposal for the establishment of SIGs, which should play a key role in the development of projects at grass-roots level. They will be special subject hubs that serve as a tool for horizon scanning of EU law. The idea of regulation or deregulation as raised by Fabrizio Cafaggi could be also covered by the activity of SIGs. Experts as parts of these SIGs could disseminate the results of ELI projects. And also young researchers could be involved in SIGs.

(23)Members of the Council agreed, in general, with the proposal. Several Council members such as Christiaan Timmermans, Verica Trstenjak, Ana Keglević, Yannis Avgerinos, Olga Cvejić Jančić, Anne Birgitte Gammeljord, Hartmut Wicke, Alasdair Lewis, Paola Iamiceli, Maria Kaiafa-Gbandi stressed that the list of SIGs enumerated in the Proposal was imbalanced (in particular in favour of private law subjects) and suggested that SIGs could also be established in the areas of tax law, economic law, environmental law, intellectual property law, European law, company law, European constitutional law, fundamental rights, insurance law, financial law and competition law. John Vervaele suggested that the area for a SIG should be bigger than a project and smaller than a whole area. Radim Polčák expressed concern that SIGs, as proposed, would be self-funding, although they should carry out the main work in terms of projects. Maja Brkan expressed her concerns about potential conflicts of interest with universities concerning funding of SIGs.

(24)John Sorabji clarified that the list of potential areas of law is only indicative and the intention is to revise this list depending on the interest expressed by members. Diana Wallis suggested that a call for interest about establishing SIGs could be open and announced via e-mail, website and newsletter.

(25)**The Council approved the Executive Committee's proposal concerning the establishment, functioning and role of Special Interest Groups (SIGs) and decided that the Secretariat should issue an open call to all ELI members seeking expressions of interest to establish and**

participate actively in SIGs. The open call should provide general guidance as to potential subject areas in which SIGs could be established.

The meeting was adjourned for lunch at 12:10. The Council reconvened at 13:20.

IX. Report on projects

(26) Diana Wallis referred to Annex VI of the Agenda for an overview of the ongoing ELI projects.

X. Future of the ELI Project on the European Foundation Statute

(27) Christiane Wendehorst explained the current state of play and suggested three different options to proceed further:

- i. to leave the project as it is, i.e. not to publish a statement;
- ii. to issue a concise statement that summarises the work done so far by the ELI Project Team and the ELI's general support of the idea of a European Foundation; and
- iii. to consider running a project on European non-profit associations in the future.

(28) She informed the Council that Thomas von Hippel, a member of the Project Team, would be willing to lead option (ii) and that he is aware of the time restrictions. This short document presenting the main findings and the position of the ELI on the topic could be developed in three months or less.

(29) Various Council members expressed their preference for option (ii), and were positive about considering option (iii) in the future. Diana Wallis confirmed that on the basis of discussions in Brussels, there seems to be an interest in keeping the matter on the agenda in the future.

(30) **The Council decided in favour of option (ii), with the provision that option (iii) be explored in the future.**

XI. ELI/ReNEUAL: State of play/future cooperation on EU administrative procedural law

(31) Diana Wallis informed the Council that a Preface to the ReNEUAL model rules indicating the ELI's contribution to this work was agreed to with ReNEUAL. Concerning next steps, she confirmed that there are prospects of further collaboration with ReNEUAL on a new project. She informed the Council that the ELI is trying to arrange presentations and meetings in Brussels together with ReNEUAL. Based on ReNEUAL's work, a full ELI-ReNEUAL project could come into consideration. The original project has come to an end but there could be a new chapter deriving from this project.

(32) **The Council agreed to explore such possibilities for a second project with ReNEUAL.**

XII. Potential projects

(33) Christiane Wendehorst presented to the Council the idea for a potential ELI project on "Empowering European Families. Towards more party autonomy in European Family and Succession Law". The need for such a project is justified by the problems that families encounter when changing their place of residence across borders within Europe. The details of this potential project, summarised in Annex VII to the Agenda, have been developed by

Katarina Boele-Woelki, President of the European Commission on Family Law, the Austrian Chamber of Notaries, and Christiane Wendehorst. The project will be carried out regardless, but those involved would be pleased to carry it out under the auspices of the ELI.

- (34) Members of the Council, such as Johan Gernandt, Christiaan Timmermans, Hartmut Wicke, Maarten Meijer and Alasdair Lewis expressed their interest in the project, and the need to make regulations in this area of law more predictable. Christiaan Timmermans defined it as a typical ELI project, extremely useful for citizens, and asked whether an agreement with the other actors is needed. Christiane Wendehorst confirmed such a need and showed confidence about reaching an agreement, in particular since the European Commission on Family Law (CEFL) is an ELI Institutional Observer. Hartmut Wicke suggested that the private international law perspective should be taken into account.
- (35) Boštjan Zalar presented a selection of ideas for a potential ELI project in the field of “rule of law and migration”, as contained in Annex VII of the Agenda. A potential project in this field could focus on detention of asylum seekers and migrants in the process of removal, considering jurisprudence of the ECHR and the CJEU. Given that the deadline for transposition of the Recast Reception Directive is July 2015, a project in cooperation with the European Asylum Support Office (EASO) and the European Chapter of the International Association of Refugee Law Judges would be topical and timely. This project could also benefit from support from Registry Staff lawyers of the ECHR, as suggested by Judge Paul Mahoney.
- (36) Boštjan Zalar suggested that the Secretariat approach the ECHR and the Council of Bars and Law Societies of Europe in light of a potential project proposal that could be elaborated together with these institutions. He also suggested that the Secretariat approach members of the ELI with interest in migration, administrative law and other related fields, in order to identify the most relevant and adequate topic for a project. A SIG on administrative law could also be established. A potential project on detention could be envisaged as a joint project with EASO. Boštjan Zalar offered to approach EASO informally to explore possibilities of cooperation. He suggested devising a short term project on this topic.
- (37) Many members of the Council expressed their interest in such a project and identified it as topical. Ornella Porchia suggested turning to fundamental rights and migration instead of focusing on rule of law issues and agreed that it would be appropriate to take the two courts into consideration. Diana Wallis clarified that the “rule of law” element came into play from the keynote held by Hubert Legal on rule of law and how the discussion evolved from the panel on human rights litigation in Zagreb to the topic of migration. Verica Trstenjak was in favour of such a project, and insisted on involving the two courts and on altering the focus of the project to “fundamental rights and migration”. John Vervaele highlighted the importance of the concept of mutual recognition in this area.
- (38) Diana Wallis presented the note on a potential project on mediation contained in Annex VII of the Agenda and invited members of the Council to make further suggestions about a project that could deal with the review of the Mediation Directive. Johan Gernandt, Marek

Wierzbowski, Leo Netten and Denis Philippe expressly supported this idea for a potential future project. Issues related to confidentiality and enforcement in the field of mediation were particularly mentioned. Leo Netten highlighted that the UIHJ would be happy to participate in such a project on mediation.

(39)The Council agreed that the above listed ideas should be explored further with the goal of eventually preparing formal project proposals in these fields of law.

(40)Sjef van Erp informed the Council about the ELI/ULC pilot project on “Uniform Fiduciary Access to Digital Assets Act”, whose aim is to explore whether Europe can benefit from the experience gained by the U.S. Uniform Law Commission (ULC). The pilot project will focus on the digital world, specifically on digital assets. The ELI working group (Radim Polčák, Leo Netten and Sjef van Erp) will work together with three or four Canadian and American lawyers appointed by the ULC. He clarified that in the area of internet law, Europe does not want to take on board everything that comes from the U.S. (concerns regarding personal data protection etc.). The ELI working group will draft a short note considering whether this model law is able to solve problems that Europe has or whether it should be adapted. This should be discussed at the annual ULC meeting in July, and communicated to the Council. Commissioner Jourová showed her interest in this idea in her meeting with ELI representatives in Brussels.

(41)Members of the Council welcomed this idea and encouraged the group to explore it further.

Verica Trstenjak left the meeting at 14:25.

(42)Diana Wallis informed the Council about a possible second phase for the project on Common European Sales Law (CESL), given the latest developments at the EU institutional level, and suggested that the same ELI Project Team continues work on that as already discussed in Zagreb. The Project Team is aware of the latest developments and plans to hold an all-day meeting in March, open to other ELI members interested in the area. Friedrich Graf von Westphalen informed the Council about the debates with the Commission at stakeholders’ meetings, reassuring the Council that this project is not dead and outcomes are expected from the Commission in June.

XIII. Revision of the Project Guidelines

(43)The Council adopted the amendments to the ELI Project Guidelines as suggested by John Vervaele and as discussed in Zagreb.

XIV. Membership Committee Report

(44)The Council wished Walter Doralt, absent owing to health concerns, a speedy recovery.

(45)Marc Clément presented the Membership Committee report on behalf of Walter Doralt. It was reported that more efforts should be put in attracting members from Scandinavian and Eastern European countries, non EU-countries, and also from the following sectors of law: IP law, tax law and criminal law. There is also a need to increase the number of practitioners. Marc Clément also reported on the increase in the number of Institutional Observers, and on

the loss of one Institutional Observer: ACA Europe. There is a need to think on how to bring more added value to Institutional Observers in the work of the ELI.

(46) Concerning members not paying their fees, according to Article 8.7 of the Statute, when members do not pay after being reminded, they are eventually deemed to have resigned. Marc Clément proposed that the names of those members be circulated within the Council to see if members of the Council who are close to them could approach them and try to investigate the reasons for their failure to pay. This proposal raised some data protection concerns within the Council.

(47) Christiaan Timmermans will approach the President of ACA Europe and inquire about ELI membership.

(48) Maja Brkan informed the Council about the discussions at the Membership Committee on “supporting membership”. It would not be a new category of membership, but a way to contribute to the Institute as “friends of the ELI”, who could donate more than the regular annual fee.

Fabrizio Cafaggi left the meeting at 15:00.

XV. Fundraising Committee and Treasurer’s Report

(49) Johan Gernandt presented the report from the Fundraising Committee and the Treasurer, and stated that the financial situation of the ELI is now stable in terms of liquidity. The budget plan adopted in Zagreb for 2015 will not be revised until the decision on the operating grant application is known. Fundraising Committee members faced troubles in fundraising and were not successful. It is difficult to raise funds for an institution which is fairly new and not specific to any one European nation (national funding organisations primarily fund national applicants). Now that the ELI is established, it will be easier to raise funds.

(50) Friedrich Graf von Westphalen congratulated the Executive Committee and the Secretariat team for the financial health of the ELI and the successful establishment of a professional bookkeeping system despite being such a young organisation.

XVI. Report from the International Relations Committee

(51) Sjef van Erp reported on the draft proposal for an overall strategy for international relations that he drafted and circulated amongst the International Relations Committee (IRC). He committed to incorporating the comments he had received from the IRC, so that the amended strategy can be put to an electronic Council vote as a final report from the IRC, after which the IRC will be dissolved in accordance with the Council decision reached in Zagreb.

Yannis Avgerinos left the meeting at 15:06.

XVII. Any other business

(52) Maria Kaiafa-Gbandi proposed that the ELI create a prize for young people. It could consist of an essay on a matter of European law. The prize could be symbolic in terms of costs but

meaningful in many ways. For young people working in the field it would be a relevant achievement to include in their CVs; it would contribute to the promotion of European law and the ELI; and it would also be a strategy to get new members. She also proposed to have a section at the Annual Conference for young jurists working in European law.

(53) Diana Wallis thanked the participants for all their ideas and input and closed the meeting.

Meeting concluded at 15:10.