

## Minutes of the Council Meeting

Assembly Hall, University of Zagreb, Trg maršala Tita 14

Zagreb, Croatia

26 September 2014

### Present:

**Chair:** Wallis, Diana

### **Council Members:**

Alunaru, Christian  
Aubert de Vincelles, Carole  
Avgerinos, Yannis  
Bargelli, Elena  
Beale, Hugh  
Clément, Marc  
Clough, Mark  
Cvejić Jančić, Olga  
Doralt, Walter (*proxy for  
Maria Kaiafa-Gbandi*)  
van Erp, Sjef (*proxy for Albert  
Ruda*)  
Fauvarque-Cosson, Bénédicte

Gammeljord, Anne Birgitte  
Gernandt, Johan (*proxy for  
Friedrich Graf von  
Westphalen*)  
Hofmann, Herwig  
Iamiceli, Paola (*proxy for  
Francesco Avolio*)  
Infantino, Marta  
Jerez-Delgado, Carmen  
Keglević, Ana  
Meijer, Maarten R. (*proxy for  
Radim Neubauer*)  
Schulze, Reiner

Sorabji, John (*proxy for  
Imelda Maher*)  
Storme, Matthias  
Thomas, John (*proxy for Paul  
Gilligan*)  
Timmermans, Christiaan  
(*proxy for Oliver Mader*)  
Trstenjak, Verica  
Wendehorst, Christiane  
(*proxy for Radim Polčák*)  
Wicke, Hartmut  
Wierzbowski, Marek  
Zalar, Boštjan

### **Ex-Officio Council Members:**

Netten, Leo

### **Secretariat Staff:**

Garciandia, Rosana  
Leblanc, Jeff  
Lengyel, Alina (keeper of the minutes)  
Tirić, Selma

## **Meeting commenced at 2:20 pm**

### **I. Opening and welcome**

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

### **II. Approval of the agenda**

- (2) Diana Wallis accepted Marek Wierzbowski's suggestion to discuss the council elections earlier in the meeting; otherwise the agenda was approved.

### **III. Approval of minutes of the February 2014 Council meeting**

- (3) The minutes were approved.

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

- (4) Diana Wallis referred to her speech that morning at the General Assembly concerning the strategy for projects. She outlined the main points of the proposal; the Projects Committee should be resolved, efficiency improved, and the involvement of the ELI membership increased. Diana Wallis expressed her hope that these suggestions will meet the approval of the Council. She specified that there should be no more than four Special Interest Groups (SIGs) and one or more members of the Executive Committee will coordinate the work of these groups.
- (5) Matthias Storme expressed his concern about delegating a majority of tasks to the Executive Committee, which might lead to reduced involvement of other Council members. He supported the idea of SIGs, which would enable Fellows to get more involved in the work on projects. He explained that abolishing the Projects Committee will lead to a situation where there is no particular ELI body being in charge of projects. He did not object to dissolving the Committee, but would like to know who is going to deal with its tasks. He did not object to dissolving the IRC, as its tasks are already handled by the Executive Committee.
- (6) Johan Gernandt reminded those present that currently there are no funds available for covering meetings of so many bodies.
- (7) John Sorabji explained that the strategy document does not intend to limit the involvement of the wider Council and membership, it is a reaction to the Senate's observation that ELI bodies must work more efficiently. The Projects Committee deals with a number of suggestions that have come up from individuals, its involvement with the Council and membership at large is already very limited. The Projects Committee does not operate as a forum to generate or coordinate the ideas from the membership. John Sorabji clarified that the idea of giving the executive functions of the Projects Committee to the Executive Committee will streamline the process while all the other tasks of the Projects Committee will be passed onto the Council and the members, who can be involved in SIGs. He concluded that on one hand the strategy leads to centralisation of purely executive functions in the hands of the Executive Committee, but insofar projects are concerned, the approach is in fact more decentralised and inclusive.

- (8) Reiner Schulze supported in principle the plan, agreeing that there should not be too many committees as they generate additional costs. On the other hand, he expressed his concern that the members of the Executive Committee might have difficulties dealing with such a heavy workload. He suggested creating a smaller and more active Projects Committee.
- (9) Diana Wallis explained that given the financial situation of the Institute, the number of new projects, at least in the next few months, will be limited. She supported Reiner Schulze's proposal as a valid idea for the future, however she believes that at the moment the Executive Committee will be able to manage the workload.

*Herwig Hofmann joined the meeting at 2:45 pm*

- (10) Christiaan Timmermans informed those present that at the Projects Committee meeting on Wednesday (24 September) he endorsed the strategy drafted by the Executive Committee. He mentioned that the members of the Projects Committee agreed that the execution of this strategy would have to be overseen by at least two members of the Executive Committee, one coordinating the work of the SIGs, and another responsible for management of projects and the strategy in general.
- (11) Hugh Beale explained that the Projects Committee was established in order to, on one hand, generate new project ideas, and on the other to coordinate the work on the projects and ensure quality. He agreed that as far as generating new projects is concerned, the SIGs will be sufficient. He suggested that every SIG should have a chair with certain reporting obligations and that the work on ongoing projects should be overseen by Executive Committee members, in the same way as it was overseen by members of the Projects Committee. He explained that the members of the Projects Committee were often lacking sufficient expertise to deal with certain topics and ensure the quality of the work. He recommended introducing a control mechanism in the future. Hugh Beale concluded that in his opinion the existing Projects Committee is not an effective mechanism to perform any of the three functions he identified.
- (12) Walter Doralt supported the Executive Committee's strategy and he would fully entrust the Executive Committee members with executing it and managing the projects. He suggested renaming the SIGs, e.g. special interest hubs.
- (13) Hartmut Wicke mentioned that creating SIGs as a form of sub-structure might generate exactly the same problems as the Projects Committee, as it will be hard to ensure that the right experts join the SIGs. As an alternative he suggested creating interests groups within the Council. He emphasised that the Council should concentrate on the quality of the work, rather than creating new structures.

*Carmen Jerez-Delgado left the meeting at 2:58 pm and gave her proxy to Reiner Schulze*

- (14) Mark Clough agreed to the proposal of establishing SIGs, and mentioned that the hubs could also play an important role in supporting their work. He also put forward the idea of co-opting new members on the Executive to help with the workload.

- (15) Christiane Wendehorst clarified that the ideas outlined in the strategy document are not only about replacing the Projects Committee by SIGs, but also about involving more people in the development of ELI projects and in ELI project work itself, especially practitioners and judges. SIGs or similar structures would provide them with the opportunity to articulate any obstacles connected with European law which they encounter in their daily professional lives and to bring forward solutions. It ought to be stressed that the SIGs could, according to the strategy paper, also function as something like permanent ELI working groups where judges, practitioners and academics can, where appropriate, develop solutions, submit them to the ELI bodies and make their voices heard by the EU institutions. Solutions proposed by the ELI need not always take the form of large projects, but can also have a much smaller ambit, e.g. remedying a single nuisance found in a piece of EU legislation.
- (16) Matthias Storme explained that development of a strategy for projects has always been a task of the Executive and not the Projects Committee. He agreed that the SIGs could be responsible for collecting ideas and making suggestions for experts. He mentioned that the Council has never debated projects in detail, neither at the physical meetings nor electronically; the details and content of various projects were discussed at the meetings of the Projects Committee, so as the quality of the work: who will take over these tasks once the Committee is dissolved?
- (17) Verica Trstenjak considers the structure of the Institute as too complex. The future structure should ensure more active involvement of ELI members. She asked who is going to propose members of the SIGs and how these groups will function.
- (18) Diana Wallis asked the Council members whether there is an agreement on disbanding the Projects Committee and establishing the SIGs in principle. She explained that the Executive Committee is open to further suggestions from Council members with respect to how SIGs could function. A detailed proposal would be submitted by the Executive Committee only at the next Council meeting.
- (19) John Sorabji explained that the Council will have a much more important role to play within the new structure. Its members should have leading roles within the SIGs. In his view the ELI membership is sufficiently diverse to populate the various SIGs. The members of these groups will be experts on the topic, ensuring the quality of their proposals. The Council will have a final say in approving the proposals and making decisions, which constitutes a quality control mechanism.
- (20) Matthias Storme questioned making a decision on dissolving the Projects Committee, without having a concrete proposal regarding the next steps. Christiaan Timmermans proposed casting a vote.
- (21) Elena Bargelli asked about the costs of running the SIGs. Diana Wallis explained that the SIGs would be organised in an informal way and their work would be mainly conducted electronically.

- (22) Paola Iamiceli suggested as an alternative solution to suspend the Projects Committee rather than abolish it. Diana Wallis clarified that she would be in favour of making a concrete decision in that regard.
- (23) Diana Wallis concluded that in principle the Council members agreed that the Projects Committee should be abolished, and that it will be the responsibility of the Executive Committee to draft a concrete proposal for the future strategy.
- (24) Reiner Schulze proposed postponing the decision on dissolving the Projects Committee to the next Council meeting, when a concrete proposal of the Executive Committee is on the table. Marc Clément disagreed and explained that there should be a clear decision in order to move forward. As a member of the Projects Committee he is convinced that the Executive Committee can replace it for the moment. The establishment of the SIGs would facilitate the discussion on projects. Christiane Wendehorst emphasised that it must be clear who is in charge of what over the coming months and that at least some revision of the Project Guidelines is definitely necessary.
- (25) Mark Clough agreed with the remarks made and suggested voting abolishing the Projects Committee, which is seconded by Lord Thomas, who emphasised that the Council's discussion should rather concentrate on projects and not the structure.
- (26) The Council proceeded with the votes on (i) dissolving the Projects Committee, (ii) giving a mandate to the Executive Committee to exercise the tasks of the Projects Committee for the next 12 months and (iii) submitting a proposal for a new strategy for projects and respective structural changes. These proposals were approved by the Council.**

*Hugh Beale, Herwig Hofmann and Christiaan Timmermans (who gave his proxy to Marc Clément for the rest of the meeting; proxy for Oliver Mader was not transferred and from that moment on not effective) left the meeting at 3:25 pm*

#### **V. Report from the Treasurer and Chair of the Fundraising Committee**

- (27) Johan Gernandt referred those present to his presentation that morning, at the General Assembly. He explained that the budgets and accounts were approved and the only decision left to be made is the one concerning funding from the Commission.
- (28) Diana Wallis explained that the Council should make a decision concerning an application for an operating grant from the European Commission. She clarified that there is no guarantee that the ELI will be successful in its application, but the Executive Committee would be in favour of submitting the application.
- (29) Walter Doralt objected; in his opinion, receiving funds from the Commission might, perhaps, not infringe ELI's independence per se, but it will certainly look like that from the outside. Many people's perception, and also that of governments critical of particular EU legislative drafts, such as in the context of the CESL, may find it difficult to see the ELI as an independent association if substantial funding is provided by the Commission. This also depends on the

amounts involved. If ELI applied for up to 80% of its running costs, claiming full independence will be much more difficult. Marc Clément explained that it is an operating grant, which would be covering functioning of the ELI rather than projects themselves. Walter Doralt also raised concern about the extensive reporting obligations, which would require hiring more staff at the ELI Secretariat, which would use a big part of the money.

(30) Marc Clément pointed out that many of the associations, for which independence is of crucial importance receive support of the Commission. Diana Wallis agreed and further explained that the Commission is not in control of the organisations it financially supports. Lord Thomas agreed with Walter Doralt that the bureaucracy involved is extensive, however he disagreed on the issue of independence. He explained that the networks of the judiciary also receive funding from the Commission, which is substantial, and they are in no way influenced. In fact the networks often disagree with what the Commission is doing. Lord Thomas does not believe that the way the ELI is perceived will change if it received the EU funds, and given the clear difficulty in raising money elsewhere, the ELI should apply for the operating grant.

(31) Walter Doralt asked the Executive Committee how many other institutions have been approached for funding so far, as he had been asked by the Treasurer to provide a list of possible institutions to be approached for funding already in 2013, which he had provided accordingly. None of these institutions require a similar amount of bureaucracy for possible applications. It seems however, that none of these, nor any other institution has been approached to date. He suggested that the ELI should first try applying for funding from other sources, such as foundations at a national level and turn to the Commission's funds if the alternatives lead to no result. Funding from the Commission, in his view, is problematic because of objectives of ELI's substantive work with its focus on the critical scrutiny and independent commenting on legislative drafts by the European Commission. Diana Wallis states the Executive Committee will explore other sources of funding.

*Verica Trstenjak left the meeting at 3:45 pm*

(32) Referring to comments made by Walter Doralt, Reiner Schulze explained that it is quite normal for the institutions like ELI, established internationally, to apply for funding at a European level, rather than national.

(33) Marta Infantino asked whether the ELI is a European network, in the meaning as the Commission uses it. She also asked whether ELI applying for this grant does not raise any copyright conflicts with other institutions. Diana Wallis explained that this issue has already been clarified with the Commission.

**(34) The motion to give the mandate to the Executive Committee to apply for the operating grant from the European Commission was approved.**

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

(35) Walter Doralt suggested changing the procedure for admitting new institutional observers, namely to begin with an informal negotiation of the fee, which should be set prior to the

admission. He mentioned that the Council members' involvement in recruiting new members is not sufficient and he encouraged those present to make an effort to get new members on board. Walter Doralt proposed changing the membership fee payment system in order to reduce the need for reminders; the Membership Committee will prepare a proposal.

## VII. Projects

### *i. Report from the Projects Committee*

(36) Diana Wallis referred to her presentation at the General Assembly and the meeting's documents, as well as to the discussion which took place beforehand. No additional comments were made.

### *ii. Decision on dissolving the International Relations Committee (IRC)*

(37) Sjef van Erp, the chair of the IRC, explained that he agrees with dissolving the IRC. He mentioned that the Secretariat will keep a list of those who are interested in being involved.

**(38) The Council proceeded with the vote, in accordance with the proposal outlined in the strategy document, namely on dissolving the IRC but only after it would have produced an overall strategy for international relations. This proposal was approved.**

### *iii. Decision on revision of the Project Guidelines*

(39) John Sorabji explained the background of the revisions. Most of the changes are a consequence of implementing the new structure and strategy. He explained that changes made in section 8 of the Guidelines aimed at making the provisions less off putting.

(40) Christiane Wendehorst explained that the new approach to 'adopted projects' in section 8 of the draft Guidelines (formerly section 7) should encourage experts to bring their ideas to ELI by giving them full security that they will retain control of projects they have developed themselves. Discussions she has had with individual experts who would, in principle, be prepared to develop an ELI project have shown that the Guidelines in their previous version were often misunderstood and that there was a fear individuals would lose their own projects to the ELI.

(41) Diana Wallis mentioned two further changes made during the Projects Committee meeting. She explained that amendments in section 1 paragraph 3 should allow for more flexibility and simpler procedure. The other change was a correction in section 8 paragraph 2 point a, which now reads "*(a) been fully developed without having solicited the assistance of the ELI Secretariat (...)*".

(42) Yannis Avgerinos referred to the earlier discussion on SIGs. Given that the decision on a concrete strategy and structure was not made, he suggested either rephrasing sections 5 and 11, which specifically refer to SIGs or postpone the decision of the Council. Diana Wallis proposed deleting the references to SIGs in sections 5 and 11 and to proceed with the vote.

(43) **The Council voted and approved the revised Project Guidelines with additional amendment in sections 5 and 11, where references to SIGs were deleted.**

*iv. Decision on establishing the Members Consultative Committee (MCC) for the ELI-UNIDROIT project*

(44) **The establishment of the MCC for the ELI-UNIDROIT project was approved.**

*Marek Wierzbowski left the meeting at 4:10 pm*

*v. Statement on Collective Redress and Competition Damages Claims*

(45) Diana Wallis gave the floor to Mark Clough, the project leader. He mentioned that there have been not many comments following the panel discussion. He gave a brief overview of the project and the ongoing legislative process. There were no further comments.

*vi. Potential new projects*

(46) Lord Thomas, who was the first speaker after Diana Wallis opened the floor, commented that the ELI should not be concentrating on very general topics where no concrete outcome of immediate practical utility can be expected. This could be the case for the project on constitutional principles.

(47) Walter Doralt suggested that the Institute should embark on an additional type of projects, which is not so much aiming at the creation of new EU instruments or at the reaction to proposals for such instruments but rather at the ongoing revision of existing laws, contributing to the improvement of existing legislation and, where appropriate, to de-regulation. This would be a unique contribution the ELI could make to European legal development. It is a contribution which could not readily be made by any other existing institution, and which would be of immediate practical utility to the European legislator. This type of projects would probably take some years to finalise, however the ELI would not be under any external time pressure. The impact of these projects would be notable and the ELI is probably the only institution which could be heard.

(48) Bénédicte Fauvarque-Cosson mentioned Paul Mahoney's lecture at the Projects Conference, who suggested that a project in the field of migration law might be of interest to the ELI. She recommends that the ELI should explore this possibility in more depth.

(49) Mark Clough reminded those present that the unique membership of the ELI should be used as a guiding principle when choosing the projects. He pointed out that there are many academic institutions which can be involved in the consultation process at the Commission. He believes that the priority of the ELI should be to identify matters which are going to be relevant for the future. The Institute should concentrate its efforts on trying to improve the EU system.

(50) Boštjan Zalar also referred to Paul Mahoney's presentation and his reference to migration, which is politically a very sensitive topic, however in his opinion it should be nevertheless considered by the ELI.



*Marta Infantino left the meeting at 4:19 pm*

(51) Marc Clément gave a short overview of the current situation on the project on administrative procedural law. He informed those present that the ReNEUAL Group finished its work and is going to publish the Model Rules. In his opinion any future work of the ELI should be restricted to the needs of a particular debate at the EU level.

vii. *Criminal law*

(52) Bénédicte Fauvarque-Cosson reported on the meeting of the MCC, which took place in the morning. She mentioned that the topic is very interesting, but the work will actually only begin in November; so far there are not many members in the MCC, more should be encouraged to join the group.

viii. *The ELI's potential involvement in legal education*

(53) Diana Wallis referred to the discussion which took place at the last Council meeting. No additional comments were made.

#### **VIII. Council elections**

(54) Sjef van Erp informed those present that in accordance with section 13 paragraph 3 of the Elections Byelaw, 30 Council members elected in 2013 will be asked to step down; the Council members to resign will be either those who volunteer to do so or will be identified by drawing lots. He explained that the Executive Committee has already started to prepare the 2015 elections and next steps should be initiated over the next months.

#### **IX. Location of the Secretariat**

(55) Diana Wallis briefed those present on the status of negotiations and mentioned that the University of Vienna agreed to accommodate the Secretariat for another term of four years. The talks should be finalised soon and an agreement signed. There would be no need to carry out a tender.

(56) Matthias Storme noted that the option to conduct a tender should not be excluded for the future. He stressed however that he did in no way object to the Secretariat remaining in Vienna for the next four years.

(57) Diana Wallis requested a formal vote on the decision that the Secretariat will remain in Vienna for the next four years, and there is no necessity to issue a tender.

(58) **The Council approved this decision.**

#### **X. Any other business**

(59) Leo Netten suggested introducing an ELI Prize, which could be used to promote the Institute.

(60) Lord Thomas asked the Council whether the existing CESL Working Party has a mandate to continue its work in case of any further developments at the EU level. **The Council gave the mandate to the CESL Working Party to continue its work.**

**Meeting concludes at 4:30 pm**