

Minutes of the ELI General Assembly (GA)

Royal Flemish Academy of Belgium for Science and the Arts (KVAB)

29 September 2012, Brussels

Keepers of the minutes: Tobias Schulte in den Bäumen
Paul Reichert

Meeting starts at: 9:00

I. Opening and welcome

(1) **Sir Francis Jacobs** welcomes all the participants. He stresses the enormous work that has been done in a remarkably short time for the completed projects as well as for the upcoming projects. He makes a short introduction to the past and future projects and stresses the importance of Members Consultative Committees, suggesting involvement of the ELI members to the greatest extent possible as their expertise is greatly needed. **Sir Francis Jacobs** speaks about the future of the ELI, underlining the necessity of increasing ELI's visibility and creating national hubs as new channels of communication. The national hubs might be composed e.g. by a group of senior judges who can act as a link to the local community and arrange meetings. The hub in Ireland is going ahead, thanks to Paul Gilligan. So far no format has been laid out, but in any case flexibility is needed to best suit the various local conditions. He further expresses his thanks for the work done so far on the projects to the chairs of the committees, to the Secretariat, the Vice-President and the Treasurer, as well as to the University of Vienna for their support. He also thanks all the sponsors and all the other participants. He warmly welcomes President **Vassilios Skouris** to the GA.

II. Report from the Executive Committee (EC)

(2) **Bénédicte Fauvarque-Cosson** mentions the members of the committee and refers to its role and duties. The EC meets regularly and holds telephone conferences. In particular its task is to implement decisions and publish documents. The functioning of the Council committees is

discussed. The appointment of Council members to the committees is envisaged for today's Council meeting.

III. Report from the International Relations Committee (IRC)

- (3) **Bénédicte Fauvarque-Cosson** explains that international relations are not the core work of the ELI, but nonetheless relations and dialogue with the American Law Institute (ALI) have been maintained since the very beginning. Fabrizio Cafaggi is the co-chair of the IRC and had several meetings with representatives of the ALI. The ALI has a project running on data protection and has published a restatement on the law of consumer contracts. In these fields joint projects could be envisaged.
- (4) The ELI has relations to the World Bank and the Global Forum on Law, Justice and Development. **Sjef van Erp** went to meetings and the IRC participated in several telephone conferences. Also the work of UNIDROIT should be regularly observed. So far no particular engagement is intended; first the focus has to be put on European projects.
- (5) **Bénédicte Fauvarque-Cosson** informs the GA that the ELI has gained the status of observer with UNCITRAL. Fellows can contact the Secretariat if they wish to join specific UNCITRAL meetings. **Christiane Wendehorst** will function as the permanent representative at UNCITRAL.
- (6) **Bénédicte Fauvarque-Cosson** outlines the current PR activities of the EC. She reports that there are contacts established with specialised press and legal press, especially Oxford University Press. Reviews should be published about the two completed projects, the national hubs being a useful vehicle for that purpose. She also asks the members to make PR through various (national) law journals and by organising conferences in their home countries.
- (7) In matters of fundraising, **Bénédicte Fauvarque-Cosson** encourages all ELI members to support the ELI. She stresses that more input from the private sector is needed.
- (8) Questions are raised on the function of national hubs, and whether these hubs are supposed to take care only of communication or also of coordinative tasks. **Sir Francis Jacobs** answers that those hubs don't take part on their own in the projects. They are meant to act as a link between the ELI and the various national legal communities. They could serve as a vehicle for communication, for making the ELI better known and for attracting new members.

IV. Approval of budgets and accounts

- (9) **Christiane Wendehorst** presents the 2011 accounts: there was an income of 20.660,40 euros and expenses of 3.975,38 euros. The balance amounts to 16.689,26 euros. The first GA has been taken into account. **Christiane Wendehorst** stresses that this is just the account of the

Association, whereas the Secretariat is fully paid by the University of Vienna and has a separate budget. The University of Vienna cannot cover all meetings undertaken on behalf of the ELI. The accounts are approved by an Austrian auditor.

(10)**The accounts of 2011 are approved by the GA.**

(11)**Christiane Wendehorst** presents the budgets of 2012. Strictly speaking they were approved in 2011 by the GA. However they had to be adapted and modified. The balance is 8.600 euros roughly. The income is significantly better in terms of membership fees compared to the previous year. She underlines the role of the chair of the Membership Committee, **Walter Doralt**, who has been very successful in his efforts to attract new Institutional Observers. The budget plan has been calculated on the basis of the costs for meetings that are held in Vienna and Brussels (which turned out more expensive). In 2012 the projects were not paid by the funds of the Association but they were funded by research money. **Christiane Wendehorst** emphasises that the team of the ECHR project has covered 100% of the project's costs from private resources and expresses her and the ELI's gratitude to the working party.

(12)**The budget plan for 2012 is approved.**

(13)**Christiane Wendehorst** continues with the 2013 budget plan. The budget for 2013 represents a prudent calculation. She suggests spending less money on conferences and more on project meetings. PR activities e.g. a road show would make the financing of project meetings difficult. She leaves it to the GA to decide and asks for comments on this suggestion.

(14)**Hans Schulte-Nölke** would focus more on the project work. The minimum amount available should be the amount suggested in the budget.

(15)**Christiane Wendehorst** replies that more money will be available for projects through research funding. A full reliance on only the ELI account is not possible as many expenses have been paid from the Secretariat's budget.

(16)Remarks from the audience: the meetings' venue should be taken into consideration in order to reduce costs of the meetings. Another question is raised with regard to the increase of the amount spent on the cooperation with the ALI, which quadrupled. **Christiane Wendehorst** explains that 2 project meetings were held and the travel expenses of 1 person to the US amount to roughly 1.700 euros. There were 3 persons travelling to the US.

(17)Another remark is made regarding fundraising; the ELI needs to become better known. Projects conferences are crucial for visibility and for networking purposes. The ELI could "piggy bag" with other conferences and save money. **Christiane Wendehorst** clarifies that there will be at least one big annual meeting of the ELI as this is required by our Statute.

(18)Another suggestion is made to organise a lunch in Brussels inviting e.g. 10 big law firms. **Sir Francis Jacobs** welcomes this suggestion.

- (19) Another remark points to possible participation fees for annual meetings. This would solve the problem of registrants that do not attend, because once a fee is paid members would be more conscious to come. **Sir Francis Jacobs** finds it worth considering to charge at least a certain amount for that reason. It is argued by a member of the audience that the ELI has just started its work and that more money might be needed to sponsor meetings and conferences. Later more money can be devoted to projects. **Sir Francis Jacobs** acknowledges that conferences can be organised with limited fees.
- (20) One participant recommends that the ELI conference and GA should be held in Vienna as it seems that Vienna is an ideal place to organise more outreach to Eastern and Central European countries. **Sir Francis Jacobs** stresses that it was one of the reasons to choose Vienna as the host location of the Secretariat.
- (21) **Christiane Wendehorst** suggests a vote on the allocation of the budget to projects or to public relations. **Walter Doralt** suggests finding a leeway decision to satisfy all the needs and to allocate a bit more money to PR. **Christiane Wendehorst** proposes that the GA can leave the decision entrusted ultimately to the Executive Committee. The 2013 budget plan is approved with the slight amendments with regard to PR and project meetings.
- (22) **The 2013 budget plan is approved with the amendments proposed by the Treasurer.**

V. Report from the Membership Committee (MC)

- (23) **Walter Doralt** reports on the activities of the MC. He expresses his particular pleasure to meet in Brussels, which is the official seat of the Institute and the premises where it has been founded. The MC finalised a new application procedure to the ELI last month. This was done together with the Secretariat.
- (24) Given the fact that the ELI only exists for 1,5 years now, the membership numbers are quite substantial. The ELI has in total about 600 members; this number will be increased today. There are 27 Individual Observers and 16 Institutional Observers. Members come from 48 nations. There is a continuous and gradual increase, which is what, as **Walter Doralt** stresses we should strive for. The target number of several thousand however is still very far away. It is essential for the ELI to embark on successful projects and to maintain a broad, diverse and active membership basis. These are the two success factors for our future. **Walter Doralt** invites the members to approach potential new members, and to act as referees.
- (25) Question from the audience: Are we an introvert or an extrovert association and should it be our goal to have thousands of members? What have we done to make ourselves known to universities, to bar associations, etc.? **Walter Doralt** replies that numbers are not the most important part. We want to have the best people from various legal professions. The Council in its meeting will also discuss better outreach strategies and some countries will be specifically

addressed. We also want to become more affiliated with practitioners to answer the needs from all the legal professions. Members are encouraged to address persons in their country or professional environment. The two referee system is in place and works very well.

(26) Question from the audience arise whether there have been emails sent to universities. It is suggested that the advertisement should take a more generalised approach. **Walter Doralt** would like to leave this question for discussion but is rather reluctant to send mass emails. He would support a selective continuous growth. The key to get new members among various institutions is going through personal relations.

(27) One proposal is made to award a prize to the best doctoral theses on topics that are relevant to our projects. This would attract both media attention and perhaps promising junior colleagues.

(28) **Sir Francis Jacobs** suggests that the projects are not only our core business, but also the best way to promote ourselves. With regards to membership and the goal of increasing it, we should remember to think of membership as something of a privilege.

(29) Question from the audience: Is there a kind of who-is-who platform, in which people can be searched according to the area of specialisation they are active in? **Walter Doralt** stresses the efforts of the Secretariat to set up the MyELI network which will be available very soon for the ELI Members.

VI. Report from the Council and Senate Composition Committee (CSCC)

(30) **Sjef van Erp** reports on the activities of the CSCC. He points to the fact that the founders of the ELI were appointed to the ELI's first Council. This Council will function until the end of 2013 at the latest. An election will be carried out then, which will be the first internal election of the ELI. **Sjef van Erp** underlines that no election procedures are set up yet. The Council should represent the different fields of law as much as possible, as well be diverse in terms of geographical coverage and gender. Given that the ELI's founders were mostly academics, practice was the main priority of the selection. The involvement of lawyers, advocates and notaries is vital for the functioning of the Council and the entire work of the Institute. Some presidents of organisations are ex-officio members of the Council. Ex-officio members who are founding members shall remain in the Council in their personal capacity. Some seats were left vacant to invite eminent members during the course of the first Council term. **Diana Wallis** is recommended for one of these seats. The CSCC is about to be dissolved as its goal is achieved. Sjef van Erp recommends that a follow up committee should be set up to prepare the next steps including the elections. It should be a standing committee to organise and to oversee the elections.

(31) There are no questions to the CSCC from the audience.

VII. Report from the Projects Committee (PC)

(32)**Hans Schulte-Nölke** explains the notion of projects. There are two types: Statements and Instruments. Statements are envisaged as short to medium term projects. The two projects that have already been completed were both Statements. At the moment the ELI does not have new projects, which would be identified as the ELI projects and put on track. Certain preparatory work needed to be done first. In comparison, the ALI takes about 3-4 years to adopt new projects. In the last Council meeting, a few project were identified as to be carried out under the auspices of the ELI, however they were referred back to the PC for further elaboration. These ideas have been advanced in the meantime. They were presented yesterday. In general, the ELI should identify not more than two projects as Statements and one project as an Instrument per year.

(33)**Hans Schulte-Nölke** briefly talks about the four projects proposals that will be presented by the PC to the Council during its afternoon meeting. The 'Income Tax and Mobility of Individuals in Europe' is already a very far advanced project proposal. It is a fully fledged proposal with regard to the involved experts, the end-product and the funding. The second project: 'Towards Restatements and Best Practice Guidelines on EU Administrative Procedural Law' is an exceptional project as it is a joint project. It has been already ongoing for years, carried out by the ReNEUAL group. The envisaged end-products are restatements and best practice guidelines for EU and national legislators. The third project is about prevention and settlement of conflicts of exercise of jurisdiction in criminal law. A lot of academic work has been put into this project. The goal is to develop a draft regulatory framework, which can be picked up by the EU. The fourth project, 'Data Protection and Enforcement of IP Rights', was to some extent influenced by the ACTA discussion in early 2012. In the meantime also the data protection package of the EU has progressed and therefore the proposal might need to be revised in order to be adjusted to the changed political and regulatory framework.

(34)**Hans Schulte-Nölke** continues to present projects ideas that have not yet been identified by the Council as the projects to be carried out under auspices of the ELI. The PC and the Senate have evaluated these ideas. First, a proposed Statement on the Commission's proposal for a Regulation on a European Foundation Statute could be conducted in a similar way as the project on the Common European Sales Law. The PC and the Senate were positive about this topic. Second, the project proposal on State Liability in cases of negligent financial supervision might be of enormous importance in the current phase but it might be only applicable for a transitional period. If supervision will shift to the European level, the liability might also shift to the EU. Given the recent and foreseeable developments the project will not be recommended to proceed with. The next project idea concerns EU Insolvency Law. The PC and the Senate are very positive about working on a Statement which would address the expected revision of the Insolvency Regulation. There are further ideas in the pipeline such as the rights of the child, but the outcome of such a project is currently uncertain. However, the Senate has recommended to advance this idea into a more refined proposal. The Senate also recommended advancing the proposal for an optional

instrument (model law) for services. This could build on the CESL work already carried out by the Institute, depending slightly on the fate of the CESL.

(35)**Sir Francis Jacobs** briefly summarises what has been discussed. A regular flow of products should be ensured. He suggests discussing the 'production line' to make sure the Institute remains at the forefront of European law. Reflections on the right balance are needed. The practical impact of the projects is very important.

(36)**Hugh Beale** comments on the production line of new projects. In case of the CESL project, it was extremely helpful but it would have been better to start with it at the time of the feasibility study. We should be willing to take 'whatever is thrown at us' and consider its importance at an early stage. Another remark from the audience is made along these lines. **Hans Schulte-Nölke** confirms that one has to be aware of new developments at an early stage. The real problem starts with the usage of the tools the ELI has. The Statement tool has so far only been applied for full-fledged proposals. A statement might be developed earlier so the Commission is aware of it when it finalises its work, but we may need to take the risk of being rather late in the process. In any case we aim to improve our workflow on this.

(37)A question is raised on the State Liability proposal. It is agreed that it may not be feasible. It is indeed a political issue but also one that is of high importance for citizens in Europe. The idea of a banking union is a very pressing issue and the topic raises significant legal questions. An independent assessment from an institute like the ELI is vitally needed. The very architecture of financial regulation, banks and insurances raises significant legal issues. **Sir Francis Jacobs** agrees that the proposal should perhaps be opened up to cover regulation of financial services in general.

(38)A proposal is made from the audience concerning a project on the harmonization of procedural rules, judicial cooperation and e-justice. **Benedicte Fauvarque-Cosson** remarks that the Commission has published a strategy on cloud computing and linked it with the CESL. Maybe the CESL work needs to be continued and widened. **Hans Schulte-Nölke**: These sub-disciplines will be considered by the ELI in the future and will help to broaden the impact of the Institute within these fields of law. More projects need to be developed and certainly civil procedural laws will be among them in the future. Also various digital services and services in general will be addressed.

(39)**Sir Francis Jacobs** thanks the PC and is looking forward to further ideas. As it is a formal requirement under Belgian law (to which the Association is subject) to adopt a progress report, Sir Francis Jacobs suggests to adopt the reports given at the GA as a report on the progress of the Institute.

(40)**The report on progress is adopted.**

(41)**Hugh Beale** enquires about the format of the conferences. Not enough time has been scheduled to discuss certain matters because of the rich agenda; questions were cut off too quickly. Secondly, would there be a need for an informal news forum or more for a formal discussion? **Sir Francis Jacobs** acknowledges that the discussion had to be cut short on the CESL. More time for discussion should be allowed. We are also in the process of setting up electronic tools for debate. In this context, **Christiane Wendehorst** announces the launch of the MyELI network. In the future these networks have a great potential. However there needs to be somebody who (re)arranges the network, which will be quite time costly and requires particular effort. She believes the electronic discussion cannot replace physical conferences. More events launched by the ELI are also needed. Long-term projects will be on track and the Membership Consultative Committees will be established. The discussion cannot be only carried out by the PC.

(42)Another remark is made regarding Hugh Beale's point. It has been an interesting session but priority has not been given to the project reports. More emphasis should be put on the debate. Reporters should present their projects only briefly and then turn it over to the members. This is the habit at the ALI GA, where often 3 or 4 microphone stations are installed, behind which members are lining up.

(43)**Sir Francis Jacobs** closes the meeting and thanks all the participants for the fruitful discussions.

Meeting concludes at 12:00