

Minutes of the ELI Council Meeting 22–23 February 2024

Venue: Festsaal, Austrian Supreme Court (*Oberste Gerichtshof*), Schmerlingplatz 11
1010 Vienna, Austria

Present:

Chair: Pichonnaz, Pascal (ELI President)

Council Members

Augenhofer, Susanne

Bašoğlu, Başak (proxy for Anagnostopoulou, Despoina)

Bachmaier, Lorena (proxy for Grasso, Gianluca in the morning of 22 February)

Beale, Hugh (proxy for Maugeri, Marisaria in the morning on 22 February and after 16:30; proxy for Howells, Geraint on 23 February)

Bielska-Sobkowicz, Teresa (proxy for Mazepa, Svitlana until 15:00 on 22 February)

Calderai, Valentina

Cannarsa, Michel

Cavalier, Georges

Cockerill, Sara (proxy for Craig, Paul)

Dollani, Nada

Georgieva, Hristina

Gimeno-Ribes, Miguel (proxy for Rodríguez de las Heras Ballell, Teresa)

Grasso, Gianluca

Howells, Geraint

Janssen, André (proxy for Cannarsa, Michel on 23 February)

Jiménez Muñoz, Francisco Javier

Keane, Paul (proxy for McKechnie, William)

Koch, Bernhard (proxy for Machnikowski, Piotr in the morning on 22 February)

Kramer, Xandra (proxy for Toader, Camelia on 23 February)

Kubica, María Lubomira

Lehmann, Matthias

Machnikowski, Piotr

Mader, Oliver

Maugeri, Marisaria

Mazepa, Svitlana

Neumayr, Matthias (proxy for Zalar, Aleš)

Patti, Francesco Paolo

Pocar, Fausto (proxy for Robert Bray)

Poillot Peruzzetto, Sylvaine

Pretelli, Ilaria (proxy for Guercio, Laura)

Ruda, Albert

Scherpe, Jens

Schroeter, Ulrich G

Shirvindt, Andrey (proxy for Schroeter, Ulrich G on 23 February)

Skrjabina, Anna

Szabados, Tamás

Toader, Camelia

Tot, Ivan (proxy for Santos Silva, Marta)

Valle, Laura

Ex-Officio Council Members

Pichonnaz, Pascal (President)

Gammeljord, Anne Birgitte (First Vice-President)

Sirena, Pietro (Treasurer)

Vos, Sir Geoffrey (Second Vice-President)

Other Attendees

McGuinness, Terry
Wendehorst, Christiane (ELI Scientific Director)

Zoll, Fryderyk (for the section on Mt Scopus project)

Members of the ELI Secretariat

Wilcox, Vanessa (Secretary General)
Bianchi, Laura
Dudek, Tomasz (keeper of the minutes)

Fačková, Zuzana
Franco, Leonor

22 February 2024

The meeting commenced at 11:00 CET.

I. Opening and Welcome

- (1) Georg E Kodek, President of the Austrian Supreme Court, welcomed those present and wished them a fruitful meeting.
- (2) Pascal Pichonnaz thanked former Vice-President of the Austrian Supreme Court Matthias Neumayr and President Kodek for allowing ELI to hold its Council meeting at the Court's premises and echoed President Kodek in welcoming participants.

II. Approval of the Agenda

- (3) **The agenda was approved.**

III. Report from the ELI President and Executive Committee

- (4) Pichonnaz presented the above report, stressing the efforts made with regard to disseminating ELI outputs. Among other things, he mentioned the various webinars ELI hosts, including the recently inaugurated webinar series with the American Law Institute (ALI).
- (5) He informed those present about the recent approval of ELI's Fundamental Constitutional Principles project, which will be broadly disseminated, and congratulated its Co-Chairs and Co-Reporters. Pichonnaz referred, among various initiatives, to the series of webinars aimed at discussing each part of the project's output. He invited Council members to publicise the webinars.

IV. Report from the Treasurer

- (6) Pietro Sirena presented the above. Among others, he provided an overview of the budget, as of December 2023, and emphasised that the financial situation is better than anticipated. He also discussed outstanding membership fees issue.
- (7) A discussion ensued on the process through which defaulting members would be approached. **It was agreed that Council members would try to get in touch with Members in default within two months, following which the Secretariat will send a letter informing them (in the case of Members who are in default for two or three years) about their Membership cancellations.**
- (8) Sirena thanked the Secretary General, Vanessa Wilcox, and Senior Finance and Membership Officer, Zuzana Fackova, for their support.

V. Report of the Membership Committee

- (9) Pichonnaz presented the above, emphasising Membership increase despite some terminations. He went on to inform participants about new Institutional Members and encouraged Council members to invite their institutions to join ELI.

VI. ELI-Mount Scopus European Standards of Judicial Independence

- (10) Project Co-Reporter, Fryderyk Zoll, presented developments in the project, the deadline of which was extended until July 2024. He spoke about the adjustment of rules on judicial careers (appointment and promotion); independence as a value which must be seen in light of the accountability and effectiveness of the judiciary; the right of judges to publicly and actively defend core judicial values; and disciplinary systems.
- (11) A discussion ensued with the Project's Assessor, Teresa Bielska Sobkowicz, ELI Scientific Director, Christiane Wendehorst, and Council members providing input. All congratulated the Reporters for the work already done. Among other things, discussions centered on the issue of the freedom of speech for judges, including former judges, the composition of bodies responsible for selecting judges and the need to refer to digitalisation and climate change. Members also suggested consideration of references on how to deal with decisions taken by judges appointed incorrectly and to reflect on the role of *amicus curiae* briefs in the context of judicial independence.

VII. Foreseeable Amendments to the European Commission Proposal on the Recognition of Foreign Filiactions

- (12) Project Co-Reporter, Ilaria Pretelli, provided an overview of the project's developments, focusing on the insights behind proposed amendments to article 4. She emphasised the need for linguistic accuracy and explained the choices made by the Team so far.
- (13) Pichonnaz noted that the project is discussed at the Council for the first time, but also for the last, as it is adopted under accelerated procedure and should be put to the vote in July 2024.
- (14) A discussion ensued with Council members and ELI Scientific Director providing feedback. Among other things, it was observed that the title of the project should be reconsidered. It should refer to 'proposed' as opposed to 'foreseeable' amendments. Also, the proposal currently referred to in the title does not exist. It was emphasised that more legal content is expected from the project and that it might be necessary to have an ad hoc Council meeting to discuss its outcome prior to a vote in July 2024.

VIII. Digitalisation of Civil Justice Systems in Europe

- (15) Developments in the project were presented by Associate Reporters, Xandra Kramer and Anna Skrjabina, who were joined by the Lead Reporter, Dory Reiling, remotely. They focused on ordering/structure and the topics/content to be addressed within this structure of the output.
- (16) A discussion ensued. Among other things, Council members advised that vulnerable people, ie those without access to the digitalisation, should not be left behind. It was also said that the Reporters should consider who should have access to data that is fed into the justice system, and who may see it. As there is a potential overlap of this projects with other ELI projects, they have to be aligned.

The meeting ended at 16:30.

23 February 2024

The meeting recommenced at 09:00 CET.

IX. Access to Digital Assets

- (17) Project Co-Reporter Teresa Rodríguez de las Heras Ballell presented the progress made on the above project. Given the changes in the context of the project, ie a different legal landscape, as compared to when the project was initially adopted, she focused on the new approach and format the Reporters would like to implement.
- (18) A discussion ensued. Among other things, Council members suggested consideration of information duties of custodians, aligning the project with that of Digitalisation of Civil Justice Systems in Europe, the problems of remote access to computers and cross border enforcement as well as that of the freezing of digital assets. It was opined that more time might be needed to finalise the project than currently envisaged, ie August 2024.

X. Third Party Funding of Litigation

- (19) Project Co-Reporter, Sara Cockerill, presented the progress made on the project. As the project is slowly coming to an end, she discussed the approach to be taken with regard to reaching the right audiences.
- (20) Council members congratulated the Reporters for the work done. A discussion ensued with Council members providing some suggestions, eg on drafting (what should be included in principles, and what perhaps in the comments; consistency with the use of modal verbs). They also questioned what the consequences of agreements on funding are, if the minimum content recommended is not included.

- (21) Pichonnaz informed those present that Lord John Thomas, former ELI First Vice-President, approached the Executive for permission to use the project's draft in the context of the current parliamentary debate in the UK, and that the Executive Committee agreed to this. The project is therefore already bearing influence.

XI. Discussion on other ELI projects

- (22) Pichonnaz explained that this slot facilitated discussion on other ELI Projects, ie those that are not specifically listed on the Council Agenda. He invited Council members to comment on Progress Reports submitted by Reporters. These will be forwarded to the Reporters.
- (23) Barbara Pozzo presented her observations about the Climate Justice – New Challenges for Administrative Law and Judges project, which now focuses on *locus standi*. She advised the Reporters, among other things, to consider damages and to distinguish between damages towards an individual and towards the community, as well as to reflect on the standing of future generations.
- (24) Hugh Beale wondered who the addressees of the Innovation Paper on Nudges were.
- (25) Lorena Bachmaier-Winter solicited information on the Corporate Criminal Liability in the European Union project. Wendehorst explained that this, and Extra-Judicial Administration of Justice in Cross-Border Family and Succession Matters projects, received EU Action Grants, and are following the timelines agreed with the Commission. She will have meetings with the Reporters of both projects after the Council meeting.
- (26) Ivan Tot wondered whether it would be possible to invite Reporters of the Enterprise Foundations in Europe to present the developments orally at the July Council meeting.

XII. ELI Young Lawyers Award

- (27) Pichonnaz encouraged Council members to advertise the above.

XIII. Any other business

- (28) Wilcox and Pichonnaz informed those present about the changes in the Secretariat.
- (29) Paul Keane encouraged those present to mark their calendars and come to Dublin for the 2024 ELI Annual Conference.

(30) Pichonnaz thanked the Secretary General and entire Secretariat for their work. He also thanked the Executive Committee and the Vices, as well as the Treasurer. He further thanked the Scientific Director and all Council members for their valuable input.

The Council meeting ended at 12:00 CET.