

Minutes of the ELI Council Meeting 6 September 2022, Hybrid

Venue: University Carlos III of Madrid, Ronda de Toledo 1, 28005 Madrid

Present:

Chair: Pichonnaz, Pascal (ELI President)

Council Members

Anagnostopoulou, Despoina (remotely)
Anderson, Ross G
Augenhofer, Susanne (remotely)
Bachmaier Winter, Lorena
Bagińska, Ewa
Başoğlu, Başak
Bechaalany, Sarah
Bielska-Sobkowicz, Teresa
Bray, Robert (remotely)
Busch, Christoph
Calderai, Valentina
Craig QC (Hon), Paul
Dollani, Nada (remotely)
Forschner, Julius (remotely)
Fountoulakis, Christiana
Gimeno-Ribes, Miguel
Grasso, Gianluca
Guercio, Laura
Howells, Geraint
Jiménez Muñoz, Francisco Javier
Josipovic, Tatjana (proxy for Tot, Ivan)
Koch, Bernhard (proxy for Neumayr, Matthias)
Kramer, Xandra (remotely)
Lehmann, Matthias (remotely)

Machnikowski, Piotr
Malberti, Corrado
Maugeri, Maria Rosaria
McKechnie, William M
Patti, Francesco Paolo
Pocar, Fausto (proxy for Giubboni, Stefano)
Povlakic, Meliha (remotely)
Pozzo, Barbara
Pretelli, Ilaria
Rodríguez de las Heras Ballell, Teresa (proxy for Gammeljord, Anne Birgitte)
Santos Silva, Marta
Scherpe, Jens
Schroeter, Ulrich G
Shirvindt, Andrey
Szabados, Tamás
Tremosa, François
Tuori, Klaus (remotely)
Twigg-Flesner, Christian
Vos, Sir Geoffrey
Wiewiorowska-Domagalska, Aneta
Zalar, Aleš
Zoll, Fryderyk Andrzej

Ex-Officio Council Members

Council of Bars and Law Societies of Europe (CCBE), Panagiotis Perakis
Pichonnaz, Pascal

Council of the Notariats of the European Union (CNUE), Raul-Mihai Radoi (remotely)
Sirena, Pietro
Lord Thomas, John (proxy for Gilligan, Paul)

Other Attendees

Biondi, Yuri (for the part on Principles and Recommendations of Company Capital and Financial Accounting for Corporate Sustainability)

Van Erp, Sijf (for the part on Access to Digital Assets: Enforcement)
Wendehorst, Christiane (ELI Scientific Director)

Members of the ELI Secretariat

Dudek, Tomasz
Hartnett, Elise
Kolman, Katja (keeper of the minutes)

Vadehra, Zuzana
Vuillemot, Rosalie
Wilcox, Vanessa

The meeting commenced at 09:00 CET.

I. Approval of the Agenda

- (1) The Agenda was approved.

II. Report from the ELI President and Executive Committee

- (2) Pascal Pichonnaz presented the above, pointing out that the ELI Executive Committee held nine meetings since the last Council meeting in February 2022 as well as organised several representational activities. He expressed his gratitude to ELI's Scientific Director Christiane Wendehorst, who has done tremendous work in following all ELI projects, and to the ELI Secretariat and Secretary General for all their work. He also thanked Manuel Bermejo Castrillo, the local organiser of the 2022 ELI Annual Conference at Universidad Carlos III de Madrid. He further announced that the next ELI self-evaluation report would be published in the coming months and that work on the membership database MyELI is continuing. He concluded by referring to the various representational activities that took place recently.

III. Report from the Treasurer

- (3) Pietro Sirena presented the report. He pointed out that ELI's 2022 financial situation is stable, however, further costs are anticipated due to the resumed organisation of physical meetings (including the ELI Annual Conference) and inflation. He repeated, on behalf of the Executive Committee, that regular project-related meeting should be held remotely. Key meetings, such as kick off and final meetings as well as dissemination events, could still be held in person not only for financial but also for climate-related reasons. He went on to present the 2023 budget forecast and said that activities may need to be adjusted in light of the outcome of the grant award. **The budget was approved.**
- (4) Among other things, during the discussion, Pichonnaz reassured participants that the Executive Committee is looking into further sources of income. The work of the (understaffed) Secretariat was praised.

IV. Report on Evaluation of ELI Hubs and SIGs

- (5) Aneta Wiewiórska-Domagalska presented the above report, explaining that in particular the frequency and quality of outputs as well as the overall contribution and impact of ELI Hubs and SIGs was considered during the evaluation by the Executive Committee at its June 2022 meeting. The Executive Committee does not recommend the dissolution of any groups in light of the pandemic but advised especially less active groups to harness the opportunities brought about by online meeting/conference platforms. Pichonnaz added that the most exemplary Hub and SIG would again be awarded the ELI Hub and SIG of the Year Award in the framework of the ELI Annual Conference.

V. Vote on the Outcome of the Principles and Recommendations of Company Capital and Financial Accounting for Corporate Sustainability Project

- (6) Pichonnaz explained that the title of the above project had changed to 'ELI Guidance on Company Capital and Financial Accounting for Corporate Sustainability'. Project Co-Reporter, Yuri Biondi, presented the draft output, which contains a set of company law recommendations aimed at facilitating corporate sustainability. He explained how previous comments by the Council and other stakeholders were addressed.
- (7) A discussion with Council Members followed, during which the change of title was further considered. Co-Reporters Biondi and Corrado Malberti explained that the specific recommendations are still labelled 'Recommendations'. However, the title of the instrument changed to 'Guidance' to reflect the fact that 'Guidance' is common in international commercial law and better reflects the nature/intention of the report. This was followed by confidential reports from Assessors and the Scientific Director and confidential discussions among Council Members. Pichonnaz said it would be important to get a reaction from some key members of the team's Advisory Committee on the output, especially with respect to the annex which will only be integrated on the above basis. There may also be a need for more narrative to be added to the annex.
- (8) **The Draft Guidance was adopted by the Council (34 votes in favour, one opposed and one abstention) under the Philippe motion, ie subject to the following conditions:**
 - the Company Law Codification scope on p 18 should be clarified;
 - some modal verbs, eg shall, must, should be adjusted with a view to making the text consistent with the type of output (recommendations);
 - the annex, which was added to the report after its evaluation, can be integrated in the final output subject to sufficient assurances about its accuracy and usefulness from the Project Team and key Advisory Committee members.

VI. Admissibility of E-Evidence in Criminal Proceedings in the EU

- (9) Co-Reporter Lorena Bachmaier Winter presented the progress of the above project, which is due to be put to the Council to vote on at its December 2022 meeting, focusing on the scope of the proposed exclusionary rules. She emphasised, among other things, that the draft legislative proposal needs to strike a balance between the principle of mutual recognition and the protection of human rights in the EU.
- (10) This was followed by a discussion with Council Members, during which the definition of electronic evidence and the production of evidence as well as minimum security requirements when it comes to the custody of evidence were discussed. Members also considered the conditions, if any, under which there can be an interference with human rights when collecting evidence. Among other things, clarifications were provided as to the assessment of the fairness of the proceedings (Art 6 ECHR) as a whole when it comes to transferred evidence. It was agreed that the Reporters will look into double negations used in the draft output.

VII. Access to Digital Assets: Enforcement

- (11) Project Co-Reporter Sjef van Erp presented the progress of the above, which is due to be put to the Council to vote on at its December 2022 meeting. He focused on the question whether individual cases of seizure and attachment should be treated differently from insolvency situations.
- (12) During discussions with Council Members, it was suggested to include further in-depth analysis of the Member States' (digital) enforcement frameworks into the work, as legal systems diverge significantly in national traditions, as well as to clarify the question of the location of the digital asset, eg whether a location is needed for the enforcement of digital assets. Van Erp explained that in the experience of judicial officers, location is vital to initiate enforcement. Another issue is the link between virtual and real life assets (ie where the former represents the latter). A comparative study on enforcement is foreseen.
- (13) Members also stressed the importance of a timely completion of the work. The feasibility of a further instalment on succession and divorce was discussed, with one member suggesting a new project instead. Van Erp justified the need for and importance of the instalment, adding that once the second instalment is complete it would not take much to extend the findings to succession and divorce.

VIII. Ecocide

- (14) Project Co-Reporters Robert Bray and Fausto Pocar presented the progress made on the project, which is due to be put to the Council to vote on at its December 2022, focusing on the issue of ecocide as an autonomous crime. They emphasised that the draft that the Council received was not yet approved by the Project Team.
- (15) This was followed by a discussion with the Council during which the relationship with and added value to the Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law was discussed. It was explained, among other things, that the ELI project feeds into international initiatives to include ecocide into the Rome Statute as a crime as well as EU developments of regulating crimes against the environment – the ELI proposal therefore aims to bridge the two systems by having ecocide recognised as a self-standing crime. A Member suggested to highlight the added value of ELI's work, by eg pointing out the proposed extension of the European Public Prosecutor's Office (EPPO)'s competences.
- (16) The timing of the ELI project was discussed, and possibilities for cooperation with the EU, in particular the European Parliament, presented. A Member also raised the question of the relationship with Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage. Another Member suggested more care in using the term 'ecocide' should be taken, as the definition currently covers situations which will potentially result in it, and to further consider the definition of 'ecosystem'. It was suggested that situations

where damage could be reversible should also be considered carefully. The Reporters agreed that the term should be used only for crimes of a certain level. It is important that the conduct is made with the awareness of the likelihood that the event may occur. The Reporters will carefully consider all the points raised.

The Council meeting was interrupted for a lunch break from 12:30 to 13:30 CET.

IX. Report from the Scientific Director and Discussion on Matters Arising From Other Project Reports

- (17) Christiane Wendehorst presented her report, focusing on the internal report on best practices for ELI projects. The report is being discussed by the Executive Committee, which will come forward with decisions in due course. Pichonnaz confirmed that the Executive is looking into new (larger) projects.
- (18) During the discussion, Council Members voiced support for continuing thematic work and finding a balance between short and long-term projects (with smaller outputs), in light of capacity needed for the latter. A suggestion was made for more projects on family law; another to involve more ELI (Institutional) Members in projects.

X. Any other Business

- (19) Pichonnaz reminded Council Members that the next meeting will take place online on 1 December 2022. He also outlined the Annual Conference programme for the day.

The Council meeting ended at 14:15 CET.