

Minutes of the Council Meeting

Austrian Academy of Sciences, Vienna, Austria

3 September 2015

Present:

Chair: Wallis, Diana

Council Members:

Alunaru, Christian

Azizi, Josef

Bargelli, Elena

Beale, Hugh

Cafaggi, Fabrizio

Caponi, Remo

Clément, Marc

Clough QC, Mark

Doralt, Walter (*proxy for*

Kaiafa Gbandi, Maria)

van Erp, Sjef (*proxy for*

Botusharova, Snezhana)

Fauvarque-Cosson, Bénédicte

Gammeljord, Anne Birgitte

Gernandt, Johan

Gilligan, Paul

Hrádek, Jiří

Iamiceli, Paola

Infantino, Marta

Jerez-Delgado, Carmen

Keglević, Ana

Mader, Oliver

Malberti, Corrado

Meijer, Maarten R.

Micklitz, Hans-Wolfgang

Miller, Katharina

Možina, Damjan

Philippe, Denis

Porchia, Ornella

Povlakić, Meliha

Ruda González, Albert (*proxy*

for Jiménez Muñoz, Francisco

Javier)

Sabato, Raffaele

Schulte-Nölke, Hans

Schulze, Reiner

Sorabji, John

Stamelos, Harry

Storme, Matthias

Thomas, Lord John

Trstenjak, Verica

Vervaele, John

Wendehorst, Christiane

(*proxy for Prunbauer-Glasser,*
Marcella)

Wierzbowski, Marek

Zalar, Boštjan

Zlatescu, Irina

Ex-Officio Council Members:

Lewis, Alasdair

Vos, Geoffrey

Andrieux, Françoise

Senate:

Griss, Irmgard (Returning officer)

Keepers of the minutes:

Garciandía, Rosana

Šabanovič, Ala

Meeting commenced at 17:45.

I. Opening and welcome

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

II. Approval of the agenda

(2) The agenda was approved.

III. Approval of minutes of the February 2015 Council meeting

(3) The minutes were approved.

IV. Elections of the Executive Committee

(4) Irmgard Griss, Returning Officer, thanked the Executive Committee for its work in the last two years and announced that the Search Committee established by the Senate nominated Diana Wallis as the President of the ELI for another term of two years. The vote was taken by a show of hands. **Diana Wallis was unanimously elected as President.**

(5) Dr. Griss introduced Christiane Wendehorst as the candidate for the Vice-President's position, and asked the Council to vote. **Christiane Wendehorst was unanimously elected as Vice-President of the ELI.**

(6) Dr. Griss introduced Johan Gernandt as the candidate for the Treasurer's position, and asked the Council to vote. **Johan Gernandt was unanimously elected as the Treasurer of the ELI.**

(7) Dr. Griss announced the names of the candidates for the other four positions at the Executive Committee: i.e. Remo Caponi, Marc Clément, John Sorabji and Sjef van Erp.

(8) Matthias Storme made a remark concerning the Executive Committee election procedure and the necessity of electing, or reaffirming the mandate of its members for two years, when the current Committee had been elected to serve for four years and only two years of its term had passed. Dr. Griss proposed the use of ballots for the election of the four remaining members of the Executive Committee, but the Council decided to elect them by a show of hands. **Remo Caponi, Marc Clément, John Sorabji and Sjef van Erp were re-elected as members of the Executive Committee.**

V. Report on projects

(9) Diana Wallis referred to Annex II of the Agenda for an overview of the ongoing ELI projects, project proposals and other project related work.

(10) She invited Christiane Wendehorst to present the project proposal on Family Law to the Council. Christiane Wendehorst said that, in short, the project is about problems encountered by international families in the EU that present obstacles to free movement. In essence the project has two aspects. Firstly, it aims at defining standard forms to be provided to European families in various circumstances, containing information on issues they should be aware of and giving them transparent support to make use of the choices they would be afforded under the applicable legal instruments. If possible these should provide one-stop-shop solutions

regarding forum and applicable law. Secondly, the project aims at compiling country reports on what kind of contractual clauses are enforceable in the EU Member States in this field. These will be used to provide guidelines for practitioners and possibly proposals for legislative action. **The Council voted and approved the Family Law project proposal.**

(11) Diana Wallis invited Boštjan Zalar to introduce the project proposal on Migration Law. Boštjan Zalar briefly explained the aim of the potential future project and the reasons behind the decision to choose the topic on “Detention of Asylum Seekers and Illegal Immigrants and the Rule of Law”. The project would focus on due process standards and material conditions for detention and their implementation at the national level in EU Member States. It would aim at enhancing the implementation of existing EU law, mainly producing a user-friendly checklist of all due process standards and material conditions for detention for all the applicable EU secondary law sources (Dublin III Regulation, Recast Reception Directive and Returns Directive). The project would not aim at drafting new legal instruments. Nevertheless, it could also have an impact on the legislators, concerning the transposition of EU law to national legal systems. Boštjan Zalar also explained that UNHCR, EASO, FRA and other organisations have been approached and could be involved in the development of the project and in the dissemination of the project’s results.

(12) Diana Wallis stated that there should be no hesitation in taking on a project that is about ensuring that existing law is properly dealt with. Matthias Storme asked about the kind of output (statement or instrument) that would be produced in accordance with the ELI project guidelines, and about the target group. Marc Clément clarified that the proposal envisages producing a Statement, in the same spirit as the ELI “Statement on Case Overload at the European Court of Human Rights” and that, as explained in the proposal, the target group is mainly the national judges implementing the established EU standards.

(13) John Vervaele welcomed that there is a project proposal in this field and asked for clarification on the subject matter and deliverable, especially referring to the second sentence of the project proposal: *“The project will not deal with the assessment or evaluation of the respect of the rule of law in court proceedings or in administrative procedures on detention in the Member States”*. Concerning the deliverable, he asked whether it is an assessment of the case law or it is also trying to improve legislation taking into account the applicable human rights standards.

(14) Diana Wallis clarified that it is a study which hopes to influence the way the law is dealt with and to achieve better implementation. The target group would be:

- a) Those who are using the law;
- b) Member States, as a message concerning the way they are implementing the law.

(15) Walter Doralt suggested producing an interim report, before launching the final version of the Statement. Diana Wallis suggested that, since on 4 September 2015 a special panel would

focus on the discussed project proposal, the proposal could be revised in light of the discussion and be submitted to an electronic Council vote. The Council agreed to that.

VI. ELI's hub logos

(16) Diana Wallis presented four proposals for an ELI hub logo, based on the example of the Polish hub, and kindly asked the Council for advice. **The Council agreed to entrust the Executive Committee to take the final decision on that matter.**

VII. ELI European Young Lawyer Award

(17) Diana Wallis presented this proposal and explained that its aim is to engage young people in the organisation and at the same time to attract ideas for potential projects. She highlighted the possibilities for cooperation with the CJEU and ELSA for this initiative.

(18) Hugh Beale suggested opening submission to all languages, with a translation into English. John Vervaele asked why the ELI would exclude published papers. Diana Wallis explained that papers that targeted and acknowledged the ELI were envisaged.

(19) Hans Schulte-Nölke noted that similar prizes do exist and that in some instances they have been awarded to authors of longer and more detailed works than what the draft suggests. Diana Wallis explained that the selection process for such awards can become a quite labour intensive matter. Therefore, the proposal was limited in order to exclude recycled papers and very long papers and to attract submissions that are really specific to the ELI.

(20) Walter Doralt welcomed the proposal and suggested that, if external funding was found, the ELI could also consider including a monetary prize in addition to the main prize. He also raised awareness about the fact that allowing submissions in all languages would not eliminate discrimination completely. Paul Gilligan suggested offering a presentation during the Annual Conference only to the winning paper, due to time restrictions. Anne Birgitte Gammeljord suggested including young lawyers as applicants. **The Executive Committee will revise the text and submit it to an electronic Council vote.**

VIII. Reimbursement guidelines

(21) Diana Wallis presented the amendments to the reimbursement guidelines. **The Council approved the amendments.**

(22) Hans Schulte-Nölke suggested introducing only a 'lump-sum' system for reimbursements. Paul Gilligan shared his experience on this solution and explained that it could create difficulties. Diana Wallis confirmed that this possibility will be discussed with the Secretariat and the Treasurer.

IX. Proposal for the next Council meeting

(23) Diana Wallis proposed 12 February 2016 for the next Council meeting. **This date was fixed.**

X. Any other business

(24)Walter Doralt addressed the Council regarding his role as the Chair of the Membership Committee. **The Council confirmed his appointment for another two years.**

(25)Hans Schulte-Nölke proposed to have more time for general discussions at the next Council meeting. He also suggested that as a general rule some projects should be presented at each physical meeting.

(26)Hugh Beale suggested that SIGs could be invited to report on their activities and developments during the Annual Conference.

(27)Bénédicte Fauvarque-Cosson suggested that the Council considers the topic of cyber security for a future ELI project. Diana Wallis mentioned the Digital Law SIG and the potential of this SIG for identifying future projects in the field.

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

Meeting concluded at 18:30.