

Minutes of the European Law Institute's ordinary General Assembly

6 September 2013, Vienna City Hall, Vienna, Austria

Chair: Sir Francis Jacobs, President of the European Law Institute

Keeper of the minutes: Gerard Ehrismann

Meeting starts at 9:30

I. Welcome and Opening address

Sir Francis Jacobs opens the meeting and summarises the events of the previous two days. He is proud to have seen another national hub established, this time in Austria. It will be a task for the future to ensure proper communication between all the hubs and the Secretariat in Vienna. The Rector of the University of Vienna, **Heinz W. Engl**, has expressed his satisfaction with the development of the European Law Institute on the occasion of the opening ceremony on 4 September. **Sir Francis Jacobs** is very pleased with the keynote speech given at the ceremony by **Lance Liebman**, Director of the American Law Institute. Yesterday, 5 September, a successful projects conference with active panel discussions on three of the ELI's projects was held, followed by a most enjoyable gala dinner in the Kunsthistorisches Museum.

II. Reports from the Executive Committee and the International Relations Committee

Bénédicte Fauvarque-Cosson presents a report from the Executive Committee. The role of the Executive Committee is to represent the Institute, handle its general administration, implement the decisions of other bodies and bear responsibility for the publication of projects. The Executive Committee consists of seven members and is diverse in terms of geographical representation. **Bénédicte Fauvarque-Cosson** expresses her thanks to the Secretariat staff for all their work. Now that the ELI is firmly established, the Executive Committee should reconsider its role and shift its focus more to the projects of the Institute. A new Executive Committee should redefine its own role. Article 11(1)(e) of the Statute, which allows for any power of the Council to be delegated to the Executive Committee, may be useful in this respect. The Council regularly makes decisions electronically, but since not all members cast their votes, a swifter decision could instead be taken by the Executive Committee.

Bénédicte Fauvarque-Cosson continues with a report from the International Relations Committee. Its members are Gianmaria Ajani, Fabrizio Cafaggi, Mark Clough, Sjef van Erp, Anne Birgitte Gammeljord, Wim Louwman, Denis Philippe, Christiane Wendehorst, and Fryderyk Zoll. Its function is to strengthen and maintain relations between the ELI and international

institutions. The American Law Institute has a website which features all its current projects. Some ELI members are also members of the ALI, and cooperation between these two institutions should be deepened on an individual but perhaps even institutional level. With respect to the relations between the ELI and the World Bank, there are not many novel developments but the cooperation is continuing. A letter of endorsement was sent in 2011 to confirm a mutual commitment to support the Global Forum on Law, Justice and Development (GFLJD). The ELI has close relations with the Global Forum. In particular, their working group on justice reform is of great interest to the ELI, albeit a time-consuming endeavour. At this time, it is not the role of the ELI to get too involved with international projects. The focus should rather be on European law. Nonetheless the ELI should continue to follow the Global Forum with interest. Regarding UNCITRAL, the ELI was invited to become an observer and to attend sessions regularly in Vienna. Members who are interested are invited to write to the Secretariat. UNCITRAL sessions last for several days. **Mark Clough** has drawn the attention of the committee to the UNCITRAL Initiative on Enhancing Public Procurement Regulation in the CIS Countries and Mongolia. Another international institution which is of interest to the ELI is the Hague Conference on Private International Law. Last but not least, the ELI is cooperating with UNIDROIT, and it is an honour that **José Angelo Estrella Faria**, Secretary-General of UNIDROIT, will deliver a keynote address at the end of this General Assembly. UNIDROIT and the ELI will organise a workshop in Vienna on 18 and 19 October to prepare a joint project in the field of civil procedure.

Turning to the future, the International Relations Committee has several functions. An important task is to make the work of the ELI more known worldwide. Membership of the ELI is not limited to Europeans, and outside perspectives are important. The Institute should think beyond Europe in a global world, but indeed with its own perspective, which is clearly a European one. The goal is to promote European principles and values as well as the role of European law worldwide. In this respect, there is much more work to be done in the future for the International Relations Committee.

III. Approval of the budget and financial accounts for 2013/2014

Christiane Wendehorst asks the General Assembly for approval of three documents, namely the accounts of 2012 and the budget for 2013 and 2014. Regarding 2012, the projections presented last year have been rather accurate. **Christiane Wendehorst** emphasises that these accounts are the accounts of the association as such, meaning the *Association Internationale Sans But Lucratif* which is registered in Belgium. Many costs are however born by the Secretariat which is funded by the University of Vienna, or by reporters themselves or the organisations they are affiliated with. These accounts have been approved by an Austrian auditor. **The General Assembly approves the accounts of 2012.**

The budget for 2013 is a revised version because the ELI is financially better off than expected. The main reason for this is that some projects have been postponed, but also that other projects managed to function without money from the Institute. Because the ELI now has more money than anticipated, it can spend more than anticipated, hence the revised budget. 117.000 euro is available and it is proposed to spend about 90.000 euro thereof, leaving roughly the same difference as last year. The ELI has made commitments to various reporters to spend money on ELI projects. **The General Assembly approves the budget for 2013.**

The budget forecast for 2014 is an estimation based on experiences from the past. It envisages at least 200 new members and some new Institutional Observers. It is hoped that the new Fundraising Committee will be successful in raising additional funds, but on the other hand there should be more projects which require financing. No questions are asked.

IV. Approval of the minutes of the 2012 General Assembly and adoption of the Reimbursement Guidelines

The General Assembly approves the minutes of the 2012 General Assembly in Brussels as well as the Reimbursement Guidelines.

V. Report from the Membership Committee

Walter Doralt presents a report from the Membership Committee. He expresses his thanks to all other members of the committee: Marc Clément, Anne Birgitte Gammeljord, and Lech Garlicki, as well as the former members Hans Micklitz and Snezhana Botusharova. The Membership Committee has developed a workflow for processing membership applications. The membership database needs to be sophisticated in order to have overview of the various specialisations which members have, the countries they come from, etc. The two referee system is now being firmly adhered to in processing applications. In the past some exceptions were made because the ELI did not have enough members yet for the system to function adequately. Implementation of the PayPal system gives members another option to pay their membership fees. All members are requested to pay their fees if they have not yet done so.

In 2012, the ELI consisted of 562 Fellows compared to 758 in 2013. There has been no major increase in Individual Observers as this is a very small category of members, and for good reasons. These are members who are unable to vote independently because of their professional affiliation. There has been a significant increase in Institutional Observers. The representation of nationalities among the membership has improved as well. Many members are based in Luxembourg and Belgium, close to European institutions, but statistics on nationality show a different picture. The ELI needs to continually improve the diversity of its membership. Members are encouraged to approach potential new members, especially from underrepresented countries. In addition, practitioners from all branches of the law should be approached. When looking at various areas of expertise represented in the membership, it is clear that private law is well represented, but the ELI is certainly not a private law institute.

The increase in Institutional Observers has been a success story especially during the last few months. A number of supreme courts have been approached and many of them have joined. Senate members **Jean-Marc Sauvé** and especially **Irmgard Griss** have been most helpful in this regard. These observers will hopefully give the Institute more credibility. The Network of the Presidents of the Supreme Courts of the European Union as well as various academic institutions have joined. The support of the four founding Institutional Observers has been crucial. A renewed effort has to be made by the new Membership Committee to attract more professional associations, especially on a national level. There is a potential role for national hubs to play in supporting this effort. Much more work also needs to be done to increase the involvement of law

firms. **Walter Doralt** expresses his gratitude in particular to the three law firms which have joined as observers, and which have supported the events surrounding the General Assembly.

Sir Francis Jacobs emphasises the important role of hubs in attracting new members and especially law firms. Questions from the audience arise to more actively recruit members from Russia and to make detailed membership statistics available to members. **Mark Clough** suggests establishing contact with the *Federation Internationale pour le Droit Européen* (FIDE) and its national branches.

VI. Report from the Fundraising Committee

Johan Gernandt presents a report from the Fundraising Committee. The fundraising activities have unfortunately not been very successful which, in his view, reflects the economic situation in Europe. Many law firms tend to cut costs rather than to spend. The museum dinner (on 5 September) was a very fortunate exception. The committee has received two commitments from Sweden and one from France. These commitments have not been followed up, because the ELI is reluctant to offer law firms influence on projects. There were mixed sentiments on this matter in the Council. On the one hand, it should not be possible to buy a spot on a project team. On the other hand, the ELI needs input from legal practice. **Johan Gernandt** argues that the ELI needs to better involve law firms and be prepared to offer them more opportunities. Any suggestions from the membership are extremely welcome.

Philip Moser suggests not making law firms part of the ELI's work, although he fully supports the notion of getting them more involved. Marketing exposure should suffice as motivation to join and sponsor events. Especially as the Institute will continue to grow, such exposure will be a strong enough motivation to attract funding from law firms. **Johan Gernandt** replies that he does not disagree with this view, but at the same time the ELI should communicate to sponsoring law firms that, if their partners are interested in a particular project, they could provide a contribution. In attracting funds, the work of the ELI is more crucial than its profile.

VII. Report from the Projects Committee

Hans Schulte-Nölke presents a report from the Projects Committee. The committee has grown not only in the amount of work but also in its membership, which is now nearly 30 percent of the Council. The committee aims at having four meetings per year which may not even be enough. The role of the Projects Committee is not so much of a self-standing one but rather its function is to support the Council. Initially the committee operated mostly on its own initiative but now it does so more and more on the initiative of others. **Hans Schulte-Nölke** is grateful to the Senate for providing much input. He sees a tendency for ELI projects to be aimed at legislation, but emphasises that this is by no means a requirement. Projects of the ELI should aim to improve the law, have a practical application, a pan-European perspective and be the collaborative product of a diverse group of jurists. Projects take the form of Instruments and Statements. **Hans Schulte-Nölke** reiterates the requirements for project proposals: they should outline subject matter, methodology and target outcomes; present the legal background and options for funding; and if possible a timescale and a proposed project team. Projects are formally set on track by the Council.

Three current projects were discussed at the Projects Conference on 5 September. An introductory MCC meeting took place on the criminal law project and the administrative law project. A project on copyrights has been approved but some funding issues are still being sorted out. In such matters the ELI needs to be creative. On 3 September two more projects were formally adopted by the Council: a project on collective redress and a project on insolvency law. Various other project ideas are under consideration. Some of them may soon be submitted for approval to the new Council. The most advanced proposal relates to principles of financial services. It has been suggested that the scope of this project is limited to only certain types of services. **Hans Schulte-Nölke** is confident that a full-fledged proposal can swiftly be developed. With regard to the project idea on an optional instrument for services much more work needs to be done before it can be forwarded to the Council. The project on income tax has been halted, or has perhaps even failed. After having found willing reporters and having had meetings with them many problems were encountered, both content-related but also workload-related. The reporters turned out to be hesitant to commit to the project. The ELI might nonetheless develop a new tax law project because there is a clear potential for doing so. Another project idea relates to land registers and spatial data and some preparations for this project have already been made.

For the future, it might be very good to have a much closer interaction between the Executive Committee and the groundwork which is done by the Projects Committee. **Hans Schulte-Nölke** invites the members to submit ideas for new projects, and in doing so, to consider funding issues in advance.

Sir Francis Jacobs emphasises the importance of the project selection criteria and of maintaining a balance between different areas of law. He agrees that the Executive Committee should be more closely involved with the work of the Projects Committee. **Christian von Bar** comments that the list of projects and project ideas is an impressive one but enquires whether the Institute is already in a position to cope with so many projects at once. The ELI must find a way to approve these projects, to make them truly 'ELI' products, and this is not an easy process. **Sir Francis Jacobs** emphasises that the idea is not to embark on all of the projects mentioned: many of them are simply being considered. **Christian von Bar** does not consider himself properly informed to judge all the projects that were discussed yesterday. He asks whether it would not be wiser to strive for one single instrument on service contracts. He suggests to engage in fewer but larger, more ambitious projects rather than to take a piecemeal approach. **Christian von Bar** offers one last suggestion: the ELI could get involved in teaching, particularly in relation to exchange programs. Many law students currently spent time abroad, sometimes successfully but certainly not always. Perhaps the ELI could develop a standardised educational schedule for exchange students. **Hans Schölte-Nölke** replies that he agrees the capacity of the ELI is limited. As a guideline he suggests a 2+1 rule of thumb: 2 Instruments and 1 Statement per year. He takes note of the concerns raised. Regarding the project on services, he replies that the Projects Committee has considered a larger project in this field, but at the moment there is no feasible proposal. Differences between various types of services seem to be larger than the commonalities. Developing projects has been a learning process and it requires the involvement of more than just the Projects Committee. Regarding teaching, the suggestion is interesting and could be considered, although this subject has been discussed by others for many years and so

far without any success. **Paul Abbiati** is pleased to see the subject of services on the list of project ideas, and suggest that the ELI looks at the online market place, which is largely dominated by a few business networks, making abuse of dominance a pressing issue in this field.

VIII. Report from the Council Composition Committee

Sjef van Erp presents a report from the Council Composition Committee. Founding an institute like the ELI has been a process and today's election marks an end in that process. The committee has drafted the procedure for these elections. The Fellows of the Institute will elect 60 members to join the six ex-officio members currently on the Council. Given the youth of the ELI, an issue of concern in developing the election procedure was continuity. Therefore, as a transitory measure, of the 60 members elected today, 30 should come from the current Council. The details of the procedure are to be explained later.

IX. Any Other Business

No questions are raised. **Sir Francis Jacobs** expresses his thanks to the staff of the Secretariat and closes the discussion at 11:15. A short break is held before conducting the Council elections.

X. Council elections

The first Council elections of the European Law Institute are overseen by Returning Officer and speaker of the Senate, **Irmgard Griss**. The Fellows present at the meeting and those represented by proxy have elected the following persons to the Council:

Christian Alunaru, Carole Aubert de Vincelles, Yannis Avgerinos, Francesco Avolio, Christian von Bar, Elena Bargelli, Hugh Beale, George A. Bermann, Snezhana Botusharova, Maja Brkan, Fabrizio Cafaggi, Remo Caponi, Marc Clément, Mark Clough, Olga Cvejić Jančić, Georges-Albert Dal, Walter Doralt, Sjef van Erp, Bénédicte Fauvarque-Cosson, Anne Birgitte Gammeljord, Johan Gernandt, Herwig Hofmann, Jiří Hrádek, Paola Iamiceli, Rafael Illescas, Marta Infantino, Carmen Jerez-Delgado, Maria Kaiafa-Gbandi, Ana Keglević, Miklós Király, Oliver Mader, Imelda Maher, Maarten Meijer, Hans-Wolfgang Micklitz, Damjan Možina, Martin Nettesheim, Radim Neubauer, Miguel Nicolas, Denis Philippe, Radim Polčák, Ornella Porchia, Marcella Prunbauer-Glaser, Albert Ruda, Hans Schulte-Nölke, Reiner Schulze, John Sorabji, Matthias Storme, John Thomas, Christiaan Timmermans, Verica Trstenjak, John Vervaele, Gerhard Wagner, Diana Wallis, Wilhelm Warth, Christiane Wendehorst, Friedrich Graf von Westphalen, Hartmut Wicke, Marek Wierzbowski, Boštjan Zalar, Fryderyk Zoll.