

Minutes of the ELI Council Meeting

11–12 February 2021, Remote

Venue: Remotely over Zoom

Present:

Chair: Wendehorst, Christiane (ELI President)

Council Members

Anderson, Ross	Kadner Graziano, Thomas
Avgerinos, Yannis	Keglevic Steffek, Ana
Avolio, Francesco (proxy Philippe, Denis during absences on 12 February)	Király, Miklós (proxy for Schroeter, Ulrich during absences on 12 February)
Bargelli, Elena (proxy for Iamiceli, Paola on 11 February after 15:30 CET)	Klip, André (proxy for Vervaele, John on 12 February)
Bielska-Sobkowicz, Teresa	Malberti, Corrado (proxy for Biondi, Yuri during absences on 11 February)
Biondi, Yuri	McKechnie, William M
Bray, Robert (proxy for Gilligan, Paul on 11 February after 14:00 CET)	Moser, Philip QC
Cavalier, George (proxy for Cotiga, Andra on 12 February)	Možina, Damjan
Clough, Mark QC (proxy for Avgerinos, Yannis on 12 February)	Neumayr, Matthias
Comba, Mario (proxy for de Pretis, Daria on 11 February)	Pocar, Fausto (proxy for Guercio, Laura during absences on 11 February)
Cvejić Jančić, Olga	Pretelli, Ilaria
Fauvarque-Cosson, Bénédicte	Rodríguez de las Heras Ballell, Teresa (proxy for Twigg-Flesner, Christian during absence on 12 February)
Forschner, Julius	Scherpe, Jens (proxy for Anderson, Ross on 11 February after 13:00 CET)
Gammeljord, Anne Birgitte	Schroeter, Ulrich
Giannakoula, Athina (proxy for Kaifa-Gbandi, Maria)	Schulze, Reiner
Gilligan, Paul	Shirvindt, Andrey
Gimeno-Ribes, Miguel (proxy for Shirvindt, Andrey on 11 February until 11:00 CET)	Sirena, Pietro (proxy for Schulze, Reiner on 12 February from 13:30 CET)
Giubboni, Stefano	Storme, Matthias
Graf von Westphalen, Friedrich	Tremosa, François
Guercio, Laura	Tuori, Kaius
Iamiceli, Paola (proxy for de Pretis, Daria on 12 February)	Twigg-Flesner, Christian
Josipović, Tatjana (proxy for Povlakić, Meliha)	Vervaele, John (proxy for Klip, André during absence on 11 February)

Wiewiorowska-Domagalska, Aneta
(proxy for Schulze, Reiner on 11
February)
Zalar, Aleš

Zlătescu, Irina
Zoll, Fryderyk (proxy for Wiewiorowska-
Domagalska, Aneta during absence on
12 February)

Ex-Officio Council Members

Lord Thomas, John (proxy for Moser, Philip QC on 12 February)
Philippe, Denis (proxy for Fauvarque-Cosson, Bénédicte during absences on 11 and 12 February)
Pichonnaz, Pascal (proxy for Tuori, Kaius during absences on 11 and 12 February))
Council of the Notariats of the European Union (CNUE), Raul Radoi
International Union of Judicial Officers (UIHJ), Jos Uitdehaag
Wendehorst, Christiane (proxy for Chatzinkolaou, Nikolaos)

Senate Members

Zimmermann, Reinhard (briefly on 11 February)

Other Attendees

Bachmaier Winter, Lorena (briefly on 11 February)
Clément, Marc (briefly on 11 February)
de Caria, Riccardo (briefly on 11 February)
Grimheden, Jonas (briefly on 11 February)
Hanzl, Martin (briefly on 11 February)
Haslam, Colin (briefly on 12 February)
Salimi, Farsam (briefly on 11 February)
Thomale, Chris (briefly on 12 February)
van Erp, Sjef (briefly on 11 February)
Vogelauer, Vera (briefly on 12 February)
Wallis, Diana (briefly on 11 February)

Members of the ELI Secretariat

Dudek, Tomasz (keeper of the minutes)
Fačková, Zuzana
Kolman, Katja
Puhr, Jessica
Richterova, Petra

The meeting commenced at 09:00 CET on 11 February.

I. Opening and Welcome

- (1) Christiane Wendehorst welcomed those present and emphasised that everyone would have preferred to meet in Vienna, but it is good to still have the possibility to meet at least virtually. It is a special meeting, because the Council will not only discuss the projects, but also elect nominate members of the Executive Committee.

II. Approval of the Agenda

- (2) Wendehorst informed that the Draft Agenda was slightly adjusted, the Council was notified the day before that the meeting will start with the elections. **The agenda was approved.**

III. Approval of the Minutes of the Council Meetings of 8–9 September 2020

- (3) **The minutes were approved.**

IV. Election of the Executive Committee's nominate members (President, Vice-Presidents and Treasurer)

- (4) Wendehorst thanked Reinhard Zimmermann, Speaker of the Senate and Returning Officer, for overseeing the elections.
- (5) Zimmermann explained the elections. There are seven positions in the Executive Committee, four nominate, elected in advance, and three innominate, elected in September. The Search Committee (Irmgard Griss, Arthur Hartkamp, Lord Mance, Eddy Wymeersch, Reinhard Zimmermann) proposed Pascal Pichonnaz for the next President, Lord John Thomas for the First Vice President, Anne Birgitte Gammeljord for the Second Vice President and Pietro Sirena for the Treasurer. They all accepted to run for these positions. No further nominations were received. Zimmermann invited the nominees to introduce themselves.
- (6) Gammeljord thanked for the nomination. She is a practising Danish Supreme Court lawyer and assistant lawyer in insolvency matters at the Maritime and Commercial Court in Denmark. She previously served on the Disciplinary Committee of the Danish Bar and Law Society and as a member of the Council of the Danish Bar and Law Society. She was President of the Council of Bars and Law Societies of Europe (CCBE) in 2009. She would be honoured and pleased to continue serving for the ELI.
- (7) Pichonnaz thanked for the nomination. He is a Professor of Swiss contract law, Roman law, as well as European consumer law and comparative contract law in Fribourg. He published extensively on contracts, sits in editorial boards of many journals, was President of the European Law Faculties Association (ELFA), and currently serves as President of the Federal Commission for Consumers' Questions, where he gained experience in dealing with politicians and administration. He has been also visiting professor in many renowned Law Schools around the world. He is also an international arbitrator in commercial matters and for sports (Court of Arbitration for Sport, CAS). He has therefore broad contacts with lawyers all over the world. His experience of playing in the orchestra

taught him that one needs to cooperate to achieve success. He will continue to foster ELI diversity, his vision for the ELI is that it is a think tank that produces practical output for judges and practitioners. He pledged to invest time to ensure more visibility for the ELI and to still increase the impact of ELI projects and their dissemination. He looks forward to collaborating with the three excellent other nominate candidates to the ExCo.

- (8) Lord Thomas was honoured to be asked to continue as the First Vice President. He was a lawyer since 1971 and then, since 1996, a judge. He has been active in European affairs, including by serving as the President of the European Network of Councils of the Judiciary (ENCJ). He worked to establish the ELI, which under Wendehorst's leadership, is making outstanding progress. The ELI is arising stronger out of the pandemic and the Institute now has a good range of projects covering almost every area of law and a strategy for future projects. Steps to strengthen Hubs and SIGs were taken, so that they are now making an important contribution to the organisation. He wants to support Pichonnaz in his mission. He added that compared to the long history of the American Law Institute (ALI), the ELI experienced remarkable growth.
- (9) Sirena was grateful for the nomination. He is a Professor of civil law, European private law, and comparative private law at Bocconi University, where he has served since 2018 as Dean of the Law School. He also serves on the Board of the Society of European Contract Law (SECOLA) and as Director of the Società Italiana per la Ricerca nel Diritto Comparato (SIRD). He, therefore, has experience with managing budgets. ELI accounts are audited, and the Secretariat staff is very professional, he is confident that this will be of support for his work.
- (10) Zimmermann continued by explaining the voting procedure, which took place for each position in two rounds.
- (11) The Council then voted accordingly.
- (12) Zimmermann announced the results, according to which **Pichonnaz was elected as the next President, Lord Thomas was elected as First Vice President, Gammeljord was elected as Second Vice President, and Sirena was elected as Treasurer**. They all accepted the election. Zimmermann concluded that the ELI is in safe hands and emphasised that the results reflect the spirit of the ELI – diversity of vocational backgrounds and geography. He congratulated them on behalf of the Council and of the Senate and wished them well.
- (13) Wendehorst congratulated Pichonnaz, Lord Thomas, Gammeljord and Sirena on their election. She thanked Zimmermann for overseeing the elections.

V. Report from the President and Other Executive Committee Members

- (14) Wendehorst continued by thanking Dudek, Fačková and Kolman, who agreed to take up the leadership of the Secretariat while Wilcox is on maternity leave. The ELI is grateful to Verschraegen who stepped in as interim Secretary General in 2020, but due to her other commitments she was no longer able to continue. She stressed that the current agreement is wonderful and thanked the entire Secretariat Team.

- (15) She informed that the Executive is preparing the revision of the ELI Principles for the COVID-19 Crisis, in the form of a short supplement, which will address issues such as vaccination. The Council will be approached on this, and there will be a webinar on this occasion.
- (16) She observed that ELI held several successful webinars in 2020, and therefore their organisation will be continued in 2021. The first webinar will be on the Guiding Principles for Updating the Product Liability Directive for the Digital Age, on the basis of the Innovation Paper prepared by Christian Twigg-Flesner.
- (17) Concerning the ELI Young Lawyers Award, Wendehorst thanked Interleges for sponsoring the Award also in 2021. She also thanked current members of the Jury for their preparedness to continue serving in 2021-2022, namely Walter Doralt, Sjef van Erp, John North and Reinhard Zimmermann, as well as new members, Council members Tatjana Josipović and Teresa Rodríguez de las Heras Ballell as well as Weronika Banska, President of the International Board of the European Law Students' Association (ELSA), for their willingness to serve on the Jury.

VI. Report from the Treasurer, Including Presentation on the 2020 Accounts and Revised 2021 Budget Forecast

- (18) Philippe thanked Fačková and Petra Richterova from the ELI Secretariat for their work on finances and presented the financial situation of the ELI, which has improved. Due to the pandemic and lack of physical meetings, the Institute secured additional savings. Thanks to regular dunning, more outstanding fees were paid. The expenditure eligible under the EU grant will be audited in February by the newly appointed auditor. The 2020 accounts will be audited later in the year and put to a Council vote earlier than at its September meeting, for instance, by means of an electronic vote, so that ELI is on time for the reporting towards Belgian authorities.
- (19) He then presented the revised budget forecast for 2021. **The Council approved the forecast.**

VII. Report from the Membership Committee

- (20) Pichonnaz thanked Fačková for her work on membership issues. The number of members is growing, despite the fact that some memberships had to be terminated due to unpaid fees. He encouraged everyone to pay fees with the use of SEPA mandates. He then presented some statistics of the ELI Membership.
- (21) New Members are welcomed to join the ELI, especially from the Baltic countries, the Czech Republic, France, Ireland, Poland, Scandinavia, Slovakia and Switzerland. Also, practitioners, as well as those with expertise in public law (constitutional law, administrative law, criminal law, tax law and IP law and labour law), are particularly welcomed to ensure better diversity and representation in the ELI.

VIII. Progress Reports, Discussion and Decisions (Where Applicable) on Current ELI Projects

a) Common Constitutional Traditions in Europe (Freedom of Expression)

- (22) Mario Comba (Co-Reporter) presented the project's progress and explained that the Team focused on the freedom of expression. The final report is in the form of a checklist to be used by European

judges at the national level, but also by the judges of the Court of Justice of the EU (CJEU). Riccardo De Caria, member of the Project Team, emphasised the important role of national reports, which formed the basis of the analysis.

- (23) The Council was of the view that the report is good, among the advantages mentioned were that it takes into account the judgments of the CJEU and of the European Court of Human Rights (ECtHR) and that it takes into account also the law in smaller EU Member States.
- (24) The Council suggested to include also the case law of the monitoring body of the International Covenant on Civil and Political Rights (ICCPR) into the report. It was advised that issues such as the limitations of freedom of expression originating from private actors (as opposed to governments) should be analysed. Together with the analysis of fake news, misinformation and the role of platforms, this could, however, rather present the basis for a separate ELI project.
- (25) The Council then voted on the change of the project title, so that it better reflects the output, and **agreed to re-name the project to ‘Freedom of Expression as a Common Constitutional Tradition in Europe’.**

b) Business and Human Rights: Access to Justice and Effective Remedies (with input from the EU Agency for Fundamental Rights, FRA)

- (26) Project Co-Reporters Diana Wallis and Jonas Grimheden reported about the progress of the project and thanked the Team for their great work. Robert Bray, Project Team member, provided an update on the section on private international law.
- (27) The Council agreed that substantial progress was made by the Team, Assessors congratulated the Team and were impressed by the quality of the discussions. Questions were raised as to the timeline of the project and as to who will be the addressee of the recommendations proposed by the Team. On the former, Wallis explained that the Team will proceed quickly and that the Secretariat prepared a detailed timeline leading to the project’s approval. On the latter, Pretelli clarified that some parts of the recommendations will be addressed to EU based companies only, while some others also to other companies.

c) ALI-ELI Principles for a Data Economy

- (28) Lord Thomas reported that the ALI Council approved the remaining set of the Principles in January 2021 and the ALI Membership will discuss the whole set of Principles in May 2021. He hoped they would approve the draft, which will not preclude further revisions potentially coming from the ELI. He also said that the Chairs and Reporters met with Advisors in February for a very successful meeting that provided useful comments to improve the draft further.
- (29) Wendehorst continued with presenting the revised Principles that deal with contracts for supply or sharing of data, contracts for services with regard to data, data rights for the public interest, protection of others against data activities, effects of onward supply on the protection of others, effects of other data activities on the protection of third parties and multi-state issues.

- (30) Assessors were very happy with the project's development and acclaimed the working method of the Reporters and the collaboration with the ALI. Questions were raised with regard to the solutions proposed in Principles 38 and 39 (which deal with the application of established choice of law rules of the forum and issues not covered by established choice of law rules of the forum, respectively), whether Reporters discussed different options, as there might be difficulties with the enforcement. Wendehorst explained that in order for the Principles to be useful for as many jurisdictions as possible, it was decided to exclude issues such as IP law, data protection, trade secrets and consumer protection, as well as some issues pertaining to private international law, such as jurisdiction.
- (31) It was suggested to include references to Principles 1.4 and 1.7 of the UNIDROIT Principles of International Commercial Contracts (UPICC) in the ALI-ELI Draft. Given that certain topics were excluded of this joint project, it was also suggested to consider a European follow up project that would analyse them.

d) Artificial Intelligence (AI) and Public Administration – Developing Impact Assessments and Public Participation for Digital Democracy

- (32) Marc Clément presented the current state of the project, including the structure of the draft, and elaborated on the three scenarios the Team considered with regard to the Automated Decision Systems (ADS) and depending on the risk levels associated with them.
- (33) The Council was impressed by the advancement of the project and was confident that the output would feed into the ongoing discussions on the topic. The system and procedures are designed very well, and the methodology warrants potential use also outside of public administration.
- (34) Questions were raised whether the Project Team foresees to address some content-related issues, for example if an explanation should be added on how to assess whether a certain ADS presents a low or high risk and should be therefore subject to an impact assessment prior to their introduction into public administration. It was inquired whether, in particular, the proposed article dealing with standards of impact assessments (Article 7) would foresee some balancing exercise of the standards. Given the developments from the European Commission, the question was also raised whether the Team will adopt the Commission's terminology or stick to the proposed one.
- (35) Clément clarified that the Team is still discussing Article 7, but the preference is to focus on procedural aspects and keep the substantive considerations at the minimum, as issues with definitions could arise (eg discrimination). The Team would try to align the terminology with the Commission's documents as much as possible.
- (36) It was also suggested to consider the risk of profiling citizens in the context of the exchange of data between different authorities within the public administration. Clément agreed that this could be discussed by the Team.

e) Access to Digital Assets

- (37) Sjef van Erp presented the developments in the project and emphasised that the Reporters try to coordinate the Team's work with the work of other organisations on the topic (considering initiatives by the United Nations Commission on International Trade Law (UNCITRAL), International Institute for the Unification of Private Law (UNIDROIT), Uniform Law Commission (ULC), International Union of Judicial Officers (UIHJ)). Moreover, Reports are making an effort to ensure internal coherence with other ELI projects, such as the ALI-ELI Principles for a Data Economy and the Blockchain Technology and Smart Contracts projects. The Team split the output into two reports. The first one will include a general part, a part on private international law and a part on securities, and the second one will focus on succession, marriage and registered partnerships as well as on enforcement.
- (38) Assessors noted the progress with Chapter 5 dealing with securities but also that it is still a part of a larger unit, contrary to the Council's suggestion to finalise it separately.
- (39) It was suggested to clarify further how to deal with the contractual agreements that could give rise to a security interest over digital asset (a reference to the Cape Town Convention on International Interests in Mobile Equipment) as well as elaborate on the transfer of control as a substitute for transfer of possession in the case of some countries (a reference to the UNCITRAL Model Law on Electronic Transferable Records). Concerning the Principle dealing with priorities of security interests in digital assets against third parties, it was suggested to rather consider how to make national registration systems work with digital assets.
- (40) It was agreed that the Team should finalise the part on secured transactions as a separate output and not use the concept of 'access' in it. Also the part on judicial enforcement looks more advanced than others. The remainder of the topics could follow at a later point. It was suggested to make sure that the proposed rules are useful for different types of digital assets, ranging from (personal or non-personal) raw data to social media accounts to software to cryptoassets. It was also advised to note the proceedings of the UNIDROIT-UNCITRAL Working Group on Model Law on Warehouse Receipts, section on Electronic Warehouse Receipts.
- (41) With regard to the issue of succession law, it was questioned whether the approach currently taken would create sufficient added value. The problems of succession, matrimonial and registered partnership property regimes would warrant for a separate project that could go more into substance, rather than analysing it from the limited perspective of access.
- (42) Van Erp clarified that concerning the issue of succession law, the Team does not wish to deal with privacy and personality rights in it. In practice, the biggest problem is access as such – can the executor ask for access? Van Erp will revert to the Team whether they would agree to have this topic as a separate project.
- (43) Van Erp said that he plans to finalise the general part and the part on security rights over the summer (including by initiating all ELI procedures well in advance), to have the vote in September. Different types of digital assets will be discussed in the general part, focusing on security rights, and it will be extended when the next parts will follow.

f) Blockchain Technology and Smart Contracts

- (44) Van Erp presented the developments in the project and emphasised that the Reporters extensively discussed whether a legally binding contract could be concluded on chain. On the one hand, smart contract could be considered an expression of will, and therefore the answer is in the affirmative, on the other hand, smart contract is a code that is not understandable by humans, and therefore the answer is in the negative. He emphasised that in practice such transactions already take place. He also stressed that the Team agreed that consumer protection must be ensured with regard to the use of blockchain technology. He explained that the set of principles is ready (some revisions are yet to be done to the formulations) and that he expects to have explanatory notes ready in March.
- (45) Assessors reported that the discussions at the Project Team meetings were of high quality and, once translated into explanations to the principles, this warrants a valuable report.
- (46) It was suggested to look at the problem from a technologically neutral perspective, the perspective of an algorithmic transaction rather than a smart contract. Van Erp and Hanzl explained that during their discussions, they indeed refrained from using a reference to a 'smart contract' and used 'source code' and 'byte code' instead, but for drafting the Principles, they returned to 'smart contract' as this is the title of the project. Changing the title is an option, but it was rather discouraged.
- (47) It was assessed that progress was made with the project.

g) Admissibility of E-Evidence in Criminal Proceedings in the EU

- (48) Farsam Salimi presented the aim of the project, which seeks to find clear standards of e-evidence in criminal proceedings, particularly regarding the admissibility of, and exclusionary rules on, e-evidence.
- (49) Lorena Bachmaier Winter explained that the Reporters decided to postpone the first Project Team meeting to autumn. During that meeting it is envisaged to discuss the scope of the project. She then went on to provide details as to the selection criteria of countries to be included in the comparative research. She mentioned the Reporters are in touch with the European Anti-Fraud Office (OLAF).
- (50) The Council was of the view that the project is very important and developing fine. The project should focus on the e-evidence only, rather than general rules on admissibility of evidence in criminal procedure. This could then, in turn, modernise traditional rules. The issue of whether the project will cover, apart from the criminal proceedings *sensu stricto*, also administrative punitive proceedings, will be further discussed by the Team.
- (51) The vote on Assessors of the project followed with **André Klip and John Vervaele being appointed**.

h) The Concept and the Role of Courts in Family and Succession Matters

- (52) Elena Bargelli explained that the Reporters drafted a questionnaire that would form a basis for the research, covering issues pertaining to the national levels as well as EU policy relevant questions. The scope is broad and covers the whole area of family and succession law potentially impacted by the topic. Reporters will focus on EU policy related questions in the first phase of the project, which will aim at analysing the extent to which EU rules concerning courts and decisions may apply to non-judicial authorities. The questionnaire was shared with the Advisory Committee and Members Consultative Committee (MCC) for feedback, and the revised version will be discussed at the workshop scheduled with Advisors for 19 March. This meeting will be a precondition to drafting the policy statement, the output of the first phase of the project.
- (53) She disclosed that the Reporters wish to have a physical meeting in autumn, therefore they will either prepare the policy statement after that conference or in May, and have the autumn conference as a preparation for the phase two of the project.
- (54) The vote on Assessors of the project followed and **Matthias Neumayr, Pascal Pichonnaz and Jens Scherpe were appointed**.

IX. ELI Innovation Paper Series – Discussion on Procedure and Lessons Learned

- (55) Wendehorst explained that the background idea for the ELI Innovation Paper Series was to have a more flexible format allowing ELI to respond quickly to current developments, and introduce ideas that are perhaps not based on long comparative research. The Council gave the Executive the mandate to conduct the pilot and thanks are owed to Twigg-Flesner, who wrote the first paper.
- (56) Twigg-Flesner, who shared his views on the drafting of the paper with the Council the day before in writing, believed such an Innovation Paper Series could indeed allow for a rapid reaction by the ELI to policy changes. He valued very much the comments he received from the Membership. He suggested to have a small group of additional advisors to help drafting, but agreed that a bigger group might slow down the process.
- (57) The discussion followed as to how innovation papers would relate to ELI projects, who should define the topic of a call for papers and who should choose the person responsible for drafting the paper. As the ELI developed feasibility studies for projects, it was considered that innovation papers should be different from ELI projects, however, should not preclude that they would be followed by a project. It was opined that the Executive Committee should be in charge of identifying potential authors and that the call should be open to ELI Members, with the draft being consulted upon with the Council and Membership prior to the publication. There could be an additional, *ad hoc*, online Council meeting to discuss the draft paper after ELI Members commented on it. The call for papers could ask for one page explaining the idea and then the author of the most promising one will be asked to draft a paper. The Executive Committee will consider the best way forward and conduct another call allowing for flexibility with the procedure before approaching the Council with a concrete proposal on the procedure to be adopted.

The meeting adjourned at 17:00 CET.

The meeting recommenced on 12 February at 09:00 CET.

X. Future ELI Projects: Feasibility Studies and Project Proposals

a) EU Conflict of Laws for Companies: The Acquis and Beyond

- (58) Project proposer Chris Thomale presented the revisions to the initial project proposal as well as a questionnaire, which he prepared to address the Council's requirements formulated in its 2020/22 decision. The focus of the project is to identify the grey *acquis communautaire* – areas in which national case law is developed, but that do not reach the EU level due to the preliminary rulings procedure. On that basis, a restatement of that *acquis* would be produced. As he preferred to have the project first approved before reaching out to potential national correspondents and Advisors, these were not yet formally contacted. He emphasised the vocational and gender balance of the proposed group.
- (59) It was clarified that the ultimate goal of the project – to propose a Rome V Regulation, should not be excluded, but that the Council believed it would be more appropriate to begin with a restatement.
- (60) After an internal discussion, **the Council agreed that the requirements set out by its 2020/22 decision were met, and thereby the project can proceed as an ELI project, provided the final list of individuals involved and consenting to participate will be approved by the Executive Committee.**
- (61) The vote on the Assessors of the project followed, and **Yuri Biondi, Thomas Kadner Graziano, Miklós Király, Corrado Malberti, Denis Philippe and Ulrich Schroeter were appointed.**

b) ELI-Mount Scopus European Standards of Judicial Independence

- (62) Zoll explained that the project aims at revising the Mount Scopus Standards of Judicial Independence developed by the International Association of Judicial Independence and World Peace to adapt them to the current situation in Europe. Concerning the Team, he invited all interested Council members to join.
- (63) It was discussed that various organisations might join the MCC, once established for this project, to ensure all relevant stakeholders are on board. As external views should be included, attorneys at law should also be involved.
- (64) After an internal discussion, **the Council approved the proposed project to proceed as an ELI project, provided all relevant individuals involved will submit their signed declarations of adherence to the ELI Project Guidelines to the Secretariat.**
- (65) The vote on Assessors of the project followed, and **Teresa Bielska-Sobkowicz, Paul Gilligan, Fausto Pocar and Lord John Thomas were appointed.**

c) Ecocide

- (66) Bray explained that the proposed project consists of three strands, the first one contributing towards the definition of ecocide as an international crime (taking into account what Philippe Sands' group is preparing), the second is to draw up a model law for the EU, which will criminalise ecocide, and the third will propose a model law relating to civil remedies and tort, it would also deal with the implications for private international law. He mentioned they would invite experts from the ELI High Level Expert Group on Corporate Criminal Liability to the Advisory Committee as well as other experts.
- (67) The Council agreed that this is an important and timely topic. It was suggested to analyse the problem from the perspective of criminal law and civil liability, but the results should be narrowed down in scope, in particular to the criminalisation aspect only. More participants should be added from eastern European countries and German speaking countries to the Team as well as more experts in criminal law and perhaps an expert in energy law.
- (68) After the internal discussion, the **Council approved the proposed project to proceed as an ELI project, provided the group develops the general enforcement framework of the project by September 2021, with the Council reserving the right to reconsider the scope of the proposed output of the project at that point.**
- (69) The vote on the Assessors of the project followed, and **Francesco Avolio, Nikolaos Chatzinikolaou, André Klip and William McKechnie were appointed.**

d) Corporate Sustainability, Financial Accounting and Share Capital

- (70) Biondi explained the revisions made to the project proposal and feasibility study initially submitted to the Council in February 2019. He added that the aim is to investigate the relationship between corporate sustainability, company law and financial accounting, with a view to produce a position paper, set of recommendations, possibly model rules on accounting law and company law.
- (71) After the internal discussion, the **Council approved the proposed project to proceed as an ELI project, provided all relevant individuals involved will submit their signed declarations of adherence to the ELI Project Guidelines to the Secretariat.**
- (72) The vote on the Assessors of the project followed, and **Anne Birgitte Gammeljord, Miguel Gimeno-Ribes and Meliha Povlakić were appointed.**

XI. Feedback on ELI Council Meeting Format

- (73) The Council discussed whether Council meetings should be organised physically or online in the future, after the end of the pandemic. While the latter meetings are more cost-efficient and effective as well as could be organised on an *ad hoc* basis, the former allow for better networking opportunities, particularly for newly elected Council Members, and to discuss ELI's work also in a less formal atmosphere.

- (74) It was suggested that in order to make an informed decision, a paper showcasing the advantages and disadvantages of each solution, including financial implications, should be prepared for the September meeting by the Secretariat.

XII. Format of ELI Annual Conference 2021 and ELI Decennial

- (75) Given the pandemic situation might change, it was decided to discuss the format of the Annual Conference and Decennial celebration in two months' time. The Secretariat will announce the date of an additional online Council meeting to discuss this and other issues.

XIII. Any Other Business

- (76) Wendehorst thanked the Secretariat Team for their great work.
- (77) Pichonnaz informed the participants about potential places to organise the Annual Conference 2022.
- (78) Avolio invited members to join the EU Law SIG that is being currently relaunched.
- (79) Pichonnaz thanked Wendehorst for chairing the meeting as well as for all her work for the ELI. Wendehorst thanked the Executive and the Council and emphasised that it is important the organisation decided to keep going despite the pandemic.

The Council meeting ended at 12:10 CET.