

Minutes of the ELI Council Meeting 14 April 2021, Remote

Venue: Remotely over Zoom

Present:

Chair: Wendehorst, Christiane (ELI President)

Council Members

Anderson, Ross	Malberti, Corrado (proxy for Biondi, Yuri after 16:30 CET)
Avolio, Francesco	McKechnie, William M
Bargelli, Elena (proxy for Scherpe, Jens)	Moser, Philip QC
Bielska-Sobkowicz, Teresa	Možina, Damjan
Biondi, Yuri	Neumayr, Matthias
Bray, Robert	Pocar, Fausto
Busch, Christoph	Povlakic, Meliha
Cavalier, George	Pretelli, Ilaria (proxy for Ana Keglevic-Steffek)
Cotiga, Andra	Rodríguez de las Heras Ballell, Teresa
Cvejić Jančić, Olga	Schroeter, Ulrich
Forschner, Julius	Shirvindt, Andrey
Gammeljord, Anne Birgitte	Sirena, Pietro
Giannakoula, Athina (proxy for Kaiafa-Gbandi, Maria)	Storme, Matthias
Gilligan, Paul	Tremosa, François
Gimeno-Ribes, Miguel	Twigg-Flesner, Christian
Guercio, Laura	Vervaele, John
Iamiceli, Paola (proxy for de Pretis, Daria)	Wiewiorowska-Domagalska, Aneta
Josipović, Tatjana	Zalar, Aleš
Király, Miklós	Zoll, Fryderyk (proxy for Reiner Schulze)
Klip, André	

Ex-Officio Council Members

Lord Thomas, John (proxy for Moser, Philip QC, after 16:45)
Philippe, Denis
Pichonnaz, Pascal (proxy for Tuori, Kaius)
Wendehorst, Christiane

Senate Member

Zimmermann, Reinhard

Members of the ELI Secretariat

Dudek, Tomasz (keeper of the minutes)
Fačková, Zuzana
Kolman, Katja

The meeting commenced at 16:00 CET.

I. Opening and Welcome

- (1) Christiane Wendehorst welcomed those present and thanked them for joining this first interim Council meeting.

II. Approval of the Agenda

- (2) Wendehorst informed the participants that the ELI accounts will only be presented and not voted upon. The vote is scheduled for the next meeting in July. **The agenda was approved.**

III. Approval of the Minutes of the Council Meetings of 11–12 February 2021

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

IV. Finances

- (4) Philippe informed that the accounts for 2020 are not final yet for several reasons. To ensure a stable financial situation of the Institute in the years after the COVID-19 pandemic, ELI is increasing its reserves. Holding increased reserves is in accordance with Belgian law, but must be examined from the Austrian law perspective. Also the Membership Database Software's amortisation needs to be clarified. The second tranche from the EU Operating Grant 2020 is still expected. Therefore the 2020 accounts will be put to the vote during the July Council meeting.
- (5) Philippe then presented the proposal for the Membership Fee Reduction Scheme, which should allow experts from lower income countries to join ELI. It would be based on the list of countries grouped on the basis of GDP per capita, offering two levels of membership fee reductions. Individuals from such lower income countries will be eligible to apply for a reduction. The discussion followed. **The Council agreed that eligible individuals will have to apply for reduction, but that there will be no further requirements. A template for such an application should be available on the ELI website.**

V. Council and Executive Committee Elections – Amendment of the ELI Election Byelaw

- (6) Wendehorst explained that due to the pandemic, many members will not be able or willing to travel to Vienna to participate in elections and that it is therefore proposed to organise the 2021 elections electronically. To that end, certain amendments are necessary to ELI Election Byelaw and are proposed for the period of April 2021–April 2022. The Council will then reassess them. **The Council approved the temporary amendments of the ELI Election Byelaw.**
- (7) Wendehorst encouraged eligible members to stand again for Council elections and to invite other outstanding and committed colleagues to stand for election to ensure that ELI has excellent Council members.

VI. Brief Update on Some Projects and Decisions Where Necessary

- (8) Wendehorst informed about the Access to Digital Assets project. As several developments in the area underway on the European and international level, the Council requested at its last meeting that the part on security rights is published by September 2021 with a view to ensure for a timely contribution to the on-going debate. There is now a timeline in place, agreed with the Reporters and the Team, leading to the approval of this first report in September 2021.
- (9) Concerning the Blockchain Technology and Smart Contracts project, **the Council gave the mandate to finalise the output as Project Reporters to Professor Sjef van Erp and Dr Martin Hanzl.**
- (10) Wendehorst reported that two out of four projects approved conditionally by the Council in February, namely the project on Corporate Sustainability, Financial Accounting and Share Capital and the project on ELI-Mount Scopus European Standards of Judicial Independence, fulfilled the condition of their Project Teams and Advisory Committees members submitting declarations of adherence to the ELI Project Guidelines. They will therefore proceed as fully-fledged ELI projects.
- (11) Wendehorst also explained that the Executive Committee shortlisted two ideas that emerged from the High Level Expert Group meetings organised in 2020 to be developed further, namely on New Modalities of Work and Their Impact and on Corporate Criminal Liability. To that end, members of the Executive Committee held meetings with potential Reporters of these projects. She also reported that potential Reporters were identified for the project on Climate Justice, namely Professor Henrik Anderson and Professor Alberto De Franceschi, who will prepare the proposal for the July Council meeting.

VII. Project Strategy for the EU Grant Application

- (12) Wendehorst explained that after having been the beneficiary of two Framework Partnership Agreements (FPA) with the EU (2015–2017 and 2018–2021), ELI wants to apply for another EU FPA for 2022–2025, and in order to address call priorities, the Executive Committee identified a number of topics to be developed further that, subject to the Council's approval, could be included in the application for the grant. These include: Third Party Funding of Litigation, Recognition of Agreements Resulting from Mediation, Automated Contracting and Enforcement of Claims in Consumer Cases and Digitalisation of Justice Systems. The discussion followed during which support was expressed towards ELI embarking on these identified ideas. It was mentioned to consider exploring synergies with organisations that already worked on similar ideas. It was further clarified that other, current ELI projects will be included in the grant application, so that also the criminal aspects of the call will be addressed.
- (13) Pichonnaz added that the application will also include the position of the Scientific Director and referred to what he said when he accepted to become ELI President, that ELI will need such a position to ensure an even higher quality of its output. He emphasised that American Law Institute also has such a position. The exact details about the position will be elaborated by the new Executive Committee. He approached Wendehorst whether she would be potentially interested in taking the position and she confirmed, but emphasised that she would do it pro bono. Pichonnaz clarified that

including the position in the application would ensure that certain resources are secured for it, to also consider other candidates, who are perhaps not prepared to do this pro bono.

(14) **The Council approved the Project Strategy for the EU Grant Application.**

VIII. Format of the ELI Annual Conference 2021 and Update on the ELI Decennial Celebration

- (15) Wendehorst explained that initially the Annual Conference was expected to take place in Vienna and the Decennial to be connected to the event. Given the current state of the Covid-19 pandemic, it became clear that if ELI wants to ensure the participation of key figures in European law, the Decennial Celebration has to be online. She reported that Věra Jourová (Vice-President of the European Commission), Koen Lenaerts (President of the Court of Justice of the European Union), Didier Reynders (European Commissioner for Justice), Robert Spano (President of the European Court of Human Rights), and Margarete von Galen (President of the Council of Bars and Law Societies of Europe) confirmed their participation in the event that will take place on 1 June.
- (16) Discussion followed as to the character of the Annual Conference, and the Council **decided to organise it also online.**

IX. 2021 Supplement to the ELI Principles for the COVID-19 Crisis

- (17) Wendehorst said that the 2020 Principles were very well received and it was therefore decided, given the new legal issues that emerged in the last year of the pandemic, to prepare a 2021 Supplement. The first draft thereof was discussed during the webinar on 23 March and shared with the ELI Members and received valuable feedback. The version before the Council takes into account that feedback.
- (18) The discussion on the Supplement followed. **The Council voted separately on Principle 16 and Principle 17, and both were approved.**

X. Any Other Business

- (19) Wendehorst thanked the Secretariat Team for their great work. She also thanked her colleagues from the Executive Committee as well as Council members for joining this interim meeting.

The Council meeting ended at 18:10 CET.