

## Minutes of the ELI Council Meeting 20–21 February 2020, Vienna

**Venue:** Austrian Ministry of Justice, Museumstraße 7, 1070 Vienna (*Palais Trautson*)

**Present:**

**Chair:** Wendehorst, Christiane (ELI President)

**Council Members**

Anderson, Ross Gilbert (proxy for Pichonnaz, Pascal on 21 February after 15:00)

Avgerinos, Yannis

Avolio, Francesco

Bargelli, Elena (proxy for Fauvarque-Cosson, Bénédicte on 21 February after 15:00)

Bielska-Sobkowicz, Teresa

Biondi, Yuri

Bray, Robert

Cavalier, Georges

Clough QC, Mark (proxy for Cavalier, Georges on 21 February after 14:00)

Comba, Mario

Dollani, Nada (proxy for Scherpe, Jens on 21 February after 15:00)

Forschner, Julius

Gammeljord, Anne Birgitte

Giannakoula, Athina

Gimeno-Ribes, Miguel

Giubboni, Stefano

Graf von Westphalen, Friedrich

Guercio, Laura (proxy for Avolio, Francesco)

Iamiceli, Paola

Josipović, Tatjana (proxy for Jančić, Olga Cvejić)

Kaiafa-Gbandi, Maria

Király, Miklós (proxy for Sirena, Pietro on 21 February after 12:00)

Klip, André (proxy for Vervaele, John from 13:00–14:45)

Lord Thomas, John (proxy for Gammeljord, Anne Birgitte on 20 February between 14:00–15:00 and on 21 February)

Malberti, Corrado (proxy for Iamiceli, Paola on 21 February 2020 after 11:30)

Philippe, Denis (proxy for Gilligan, Paul)

Pichonnaz, Pascal (proxy for Fauvarque-Cosson, Bénédicte on 20 February and on 21 February until 15:00)

Pocar, Fausto (proxy for Giubboni, Stefano on 21 February)

Povlakić, Meliha

Pretelli, Illaria (proxy for Povlakić, Meliha on 20 February after 16:30 and for Graf von Westphalen, Friedrich on 21 February from 13:00)

Rodríguez de las Heras Ballell, Teresa Scherpe, Jens

Schroeter, Ulrich

Schulze, Reiner

Shirvindt, Andrey

Sirena, Pietro

Storme, Matthias

Trémosa, François (proxy for Neumayr, Matthias Simon)

Trstenjak, Verica

Twigg-Flesner, Christian (proxy for Busch, Christoph)

Vervaele, John

Wiewiórowska-Domagalska, Aneta (proxy for Rodriguez de las Heras

Ballell, Teresa on 20 February after  
16:30 and on 21 February)  
Zalar, Aleš

Zlătescu, Irina  
Zoll, Fryderyk (proxy for Storme,  
Matthias on 21 February after 12:00)

#### **Ex-Officio Council Members**

International Union of Judicial Officers (UIHJ), Jos Uitdehaag

#### **Other Attendees**

Clément, Marc (briefly on 21 February)  
Frimston, Richard (briefly on 21 February)  
Thomale, Chris (briefly on 21 February)  
Tridimas, Takis (briefly on 21 February)

#### **Members of the ELI Secretariat**

Addie, Leon  
Dudek, Tomasz (keeper of the minutes on 21 February 2020)  
Fačková, Zuzana  
Hirner, David  
Kolman, Katja (keeper of the minutes on 20 February 2020)  
Wilcox, Vanessa

The meeting commenced at 10:00 on 20 February.

#### **I. Opening and Welcome**

- (1) Wendehorst welcomed participants to the ELI Council meeting, in particular newly elected Council members, and thanked them for devoting their time to ELI. She explained that this is the second meeting of the Council in its new composition and the first real working meeting, as the 5 September 2019 meeting was of a shorter nature. She thanked the Austrian Ministry of Justice for hosting the event and observed that the Council was well-represented. Finally, she wished ELI Treasurer, Denis Philippe, a happy birthday.

#### **II. Approval of the Agenda**

- (2) Wendehorst asked Council members to approve the agenda and explained that some items on the agenda might need to be rearranged if external participants do not arrive on time. **The agenda was approved.**

#### **III. Approval of the Minutes of the Council Meetings of 4 and 5 September 2019**

- (3) Wendehorst explained that the Council received two sets of minutes: of 4 September (old Council formation) and of 5 September 2019 (new Council formation). Former Council members were invited to comment on the 4 September minutes. No requests for changes were submitted. It now fell to the new Council to approve both sets of minutes. **Both sets of minutes were approved.**

#### **IV. Report from the President and Other Executive Committee Members**

- (4) Wendehorst briefly presented the report, pointing out that the ELI Executive has spent most of its time since the last Council meeting in September 2019 on ELI's Project Agenda for 2020 and Beyond, which would be discussed on the second meeting day. She encourage Council members, should they not have done so yet, to take a close look at proposed projects. No questions were raised.

#### **V. Explanation of Voting and Proxy Voting Procedure**

- (5) Vanessa Wilcox and Wendehorst went on to explain the voting procedure.
- (6) **There was consensus in the Council not to pursue a suggestion of a Council member to have secret ballots on the appointment of Assessors in light of the important service they provide.**

#### **VI. Current ELI Projects**

- (7) Wendehorst underlined the importance of ELI projects in developing and improving European law. She explained, among other things, that the Model Rules on Online Platforms were now being voted upon by the Membership, and encouraged Council members to cast their votes in the capacity of Fellows since it is crucial that ELI output's receive a fair number of votes. No questions were raised.

**a) Protection of Adults in International Situations**

- (8) Wendehorst explained that the only project to be voted upon at the Council meeting was the above one. Frimston, who joined the meeting briefly, went on to present the project's background, development and relationship with other instruments. He added that the Hague Conference on Private International Law plans to convene a Special Commission on the Convention in 2022 and said that the Team hopes to have further impact there. Wendehorst expressed appreciation for the Team's work and their enormous effort in accommodating concerns raised by various institutions and ELI members. Frimston thanked the Secretariat for their support.
- (9) Robert Bray, an Assessor of the project, underlined how very commendable the project is. It is easy for the public to appreciate its usefulness and it will be published at an ideal time as the European Commission President von der Leyen announced that the Commission will be open to taking up legislative initiatives from the European Parliament.
- (10) **The Council approved the project results and gave the Project Reporters the mandate to add a few clarifying sentences in light of lastminute comments by a Members Consultative Committee (MCC) member.**

**b) From Transnational Principles to European Rules of Civil Procedure**

- (11) Wendehorst explained that this was the final discussion on the project before the Council is approached for an electronic vote. She presented the background of the project, which has been conducted jointly with the International Institute for the Unification of Private Law (UNIDROIT) since 2014 and explained the envisaged output.
- (12) John Sorabji, a member of the project's Steering Committee, joined via Skype and briefly presented the project's history, stating that the final product sets out the widely agreed conclusions of the project's Working Groups, which include a broad range of academics and practitioners. The output is the first step in harmonisation, in terms of best practices, of European civil procedure. There might be aspects that individuals may disagree with, but the output sets out a considered view on a number of policy choices made by Working Group members.
- (13) Matthias Storme, Assessor and Chair of the project's MCC, presented his assessment of the project, which he submitted prior to the Council meeting in writing. Wendehorst thanked Storme for the tremendous work done. Sorabji mentioned that he prepared a reply to Storme's assessment, which should be before Council members. He felt that the majority of Storme's comments were very helpful and said that the Team will add some additional clarifications to the introduction and commentary and that the Team was already in fact doing so. The Working Group translating the text to French is quite far in their work and as of now, the translation did not have any significant impact on the English version.
- (14) When opening the discussion, Wendehorst underlined that it is difficult to discuss policy choices made at this stage of the project. Rainer Schulze and Fryderyk Zoll agreed. Zoll and Meliha Powlakić underlined the need for the Project Team to reflect on the comments received.

- (15) On the timeline for the finalisation of the project, **it was agreed that Council members should submit any comments they might have on the draft output by the end of February 2020**, therefore coinciding with the deadline given to UNIDROIT Governing Council members. This will enable the Team to ensure various comments are considered in the course of March, together with the Executive Committee and Storme. The draft will be submitted to ELI bodies for their vote in April and to UNIDROIT's Governing Council in May. ELI will seek to ensure that no major changes will be made to the black letter following approval by its Council but would appreciate some leeway on minor changes to comments, where necessary, should UNIDROIT's Governing Council propose further amendments.
- (16) **In light of a comment made by Storme, Vanessa Wilcox raised the issue of a change of the project's title to 'ELI-UNIDROIT Model Rules of European Civil Procedure', to which Sorabji agreed.**
- (17) Some Council members raised a general question of ELI's work being published in additional languages as well as their update after publication. The discussion on both was postponed.

**c) For a European Approach to R&D Expenses Qualifying for the Common Corporate Tax Base Super Deduction**

- (18) Georges Cavalier, Reporter of the above, presented a brief update and explained that the Project Team is working on the general structure of the output and is renaming some titles. He thanked Wilcox for her editing work and said that he would submit the report by the end of March 2020.

Lunch Break

**d) Business and Human Rights: Access to Justice and Effective Remedies**

- (19) Project Team member Bray presented the project's progress over the last six months. Among other things, Chiara Macchi, a Marie Skłodowska-Curie Researcher in business and human rights, joined the Project Team and will be working as the 'person with the file'. Ilaria Preteli had also agreed to join the Team. Project Team members will submit the first drafts of their chapters by 23 April 2020, which will be then discussed at the Project Team meeting on 30 April in Vienna. Discussions were held on the areas covered by the project and topics have been delegated. As announced, the outcome should take the form of a Commission White Paper from which further projects could emerge at a later stage. The Team is on track to produce the final draft by the next year. Research carried out by the EU Fundamental Rights Agency (FRA) will feed into ELI's output. Among other comments, Verica Trstenjak underlined that ELI's work should not overlap too much with FRA's.
- (20) Lord Thomas thanked Bray and Diana Wallis for all the work done to bring the project back on track. He underlined the important role Assessors play in projects and that the revised Guidelines are drafted to ensure they get involved in projects at a much earlier stage. **Moreover, the structure of a project's output should be drafted at an early stage as it is easier for the Council to see where a project is heading and to correct things sooner.**
- (21) John Vervaele inquired as to why the Team opted for a Commission White Paper, to which Bray replied that business and human rights is a broad issue, so producing model rules, for example, at

this stage might be too ambitious. The Team therefore aims to propose further action in a few areas, paving the path for other possible projects.

- (22) **Wendehorst underlined that the Council needs to see a fairly advanced draft to have a meaningful discussion and expressed her hopes this will be possible at the next meeting.** Picking up on a question by Corrado Malberti's suggestion, Wendehorst advised that for the sake of maintaining independence any labour law experts should be appointed as Advisors, as opposed to Project Team members.
- (23) The Council voted on the proposed Assessors of the project. **Malberti, Lord Thomas and Vervaele were appointed as Assessors.**

#### e) Common Constitutional Traditions (CCTs) in Europe

- (24) Mario Comba, Project Reporter, gave an update on the project, including on progress made since the last Council meeting and on plans going forward. The project hopes to split into two pillars, with the first dealing with fundamental rights and the second with fundamental principles. The collaboration with the Court of Justice of the European Union (CJEU) has been strengthened. Moreover, the Max Planck Institute and Bocconi University offered to provide five-month scholarships to two researchers working with the Team. He went on to present the draft document on Freedom of Expression, which was submitted to the Council prior to the meeting. He mentioned that the project outcome changed. The Team plans to only produce restatements of some constitutional traditions accompanied by checklists. A further right to be analysed is the right to Free Movement. Should the number of rights covered be significantly increased, the level of research would need to change (eg to desk research on 10 fundamental rights by the two post-doctoral students as opposed to soliciting expert country reports). As to developing a methodological proposal to be followed for the research of CCT, the Team encountered some problems regarding the distinction between constitutional traditions and fundamental rights after analysing national reports.
- (25) Storme sought clarification on the overlap of the Pillars and asked whether the first pillar could be split further in producing individual outputs on different fundamental rights. He also wondered about the purpose/intention of the present draft on Freedom on Expression and raised concerns over it identifying the lowest possible standard for Europe (eg lower than present standards in Belgium). Comba clarified that the standard is inevitably low, as it is 'common'. Some Member States have problems even with respecting the low standards. Pichonnaz inquired about the relationship between the present draft on Freedom of Expression and the larger picture. He and Wendehorst expressed concerns over the possible change in methodology. Comba agreed that the Team should work further on the checklist. He suggested keeping the current methodology, but changing the title of the project. Lord Thomas reiterated the importance of having a full structure of content in place from the beginning of a project so that the Council can understand how things fit together and can decide on direction. Wendehorst agreed.
- (26) Storme asked about the envisaged users of the checklist. Maria Kaiafa-Gbandi was in favour of a more modest title of the project and inquired about its purpose, noting that CCTs could be considered useful by the CJEU, however, one should bear in mind that minimum standards are

already contained in the EU Charter of Fundamental Rights and the European Convention on Human Rights. Zoll and Verica Trstenjak agreed with the latter pointing to relevant work done in the field by national institutions and legal theory. Fausto Pocar said that due consideration should be given to wording of Article 6 of the Treaty on European Union.

- (27) **It was agreed that the Executive Committee, Project Team and Assessors will discuss the issues mentioned during the meeting and submit a proposal on the way forward to the Council.**
- (28) The Council voted on the proposed Assessors of the project. **Lord Thomas was elected to oversee Pillar I and, should the Council give green light, Pillar II. Anne Birgitte Gammeljord, Fausto Pocar and Daria de Pretis were elected as Assessors of Pillar I and Bénédicte Fauvarque-Cosson, Philippe and Kaius Tuori were appointed as Assessors of prospective Pillar II.**

**f) Principles for a Data Economy**

- (29) Lord Thomas briefly presented the joint project with the ALI, its history and recent developments. Among other things, **he invited Council members to submit comments on the draft by the first week of March 2020 and referred to a planned meeting on the Monday of the 2020 Annual Conference.**
- (30) In response to Philippe's inquiry about the relationship between the project and European Commission's recently published European strategy for data, Wendehorst explained that the strategy paper already takes into account certain issues covered by the ALI-ELI Principles, one of the most important ones being the notion 'co-generated data', which was coined by the Team. She went on to explain certain policy choices made, including the question of whether someone who contributed to the generation of data should have the right to an economic share in it.
- (31) Teresa Rodríguez de las Heras Ballell welcomed the project as a very timely one of high quality. She suggested that rules should be created as a second step. As regards the title she asked whether 'Data Economy' is visual enough and whether data rights or rights in or relating to data better. Lord Thomas responded that the title was a compromise but welcomed better options. Further discussion ensued.
- (32) Pichonnaz expressed admiration for the draft and remarked that despite being called 'principles', he had the impression that these are more model rules. He inquired about the detrimental effects of data processing and the relationship between interconnected and co-generated data. Wendehorst explained that Principle 20 deals with detrimental effects of data processing and will set some limits to it. She added that interconnected data is difficult to deal with and that the respective principles are not yet in their final shape. The Team is grateful to receive any guidance in this regard. Lord Thomas further explained the envisaged timeline. The new draft will be presented at the 97th ALI Annual Meeting in San Francisco in May 2020 and then at the ELI Annual Conference and Meetings in September and the ALI General Meeting in October.
- (33) **Ana Keglević Steffek, Pascal Pichonnaz and Christian Twigg-Flesner were appointed as Assessors.**

### **g) Blockchain Technology and Smart Contracts**

- (34) Juliette Sénéchal, Project Reporter, joined the meeting over Skype and briefly presented the project's recent developments.
- (35) During the discussion, Povlakić raised concerns about the project's progress, its methodology, which is still being developed, and the proposal to broaden its scope. Rodríguez de las Heras Ballell questioned its objective.
- (36) Jos Uitdehaag, member of the Project Team, explained that the Team is facing the same issues as the Access to Digital Assets Project Team, namely that there is a lack of legislation in the field and that developments occur very quickly. He emphasised that case studies were absolutely necessary to develop a common understanding of blockchain and its possibilities. The next step is to analyse legislation and develop the methodology. More information should be available in September.
- (37) Kaiafa-Gbandi suggested that Project Team members prepare a brief statement on how they think they can address the ideas and wishes of the Council and ensure quicker progress. Wendehorst emphasised that the Executive and Secretariat have been communicating with the Team on this for months and are trying their best to ensure thing progress qickly.
- (38) **Christoph Busch, Rodríguez de las Heras Ballell and Pietro Sirena were approved as Assessors.**

Coffee Break

### **h) Access to Digital Assets**

- (39) Project Reporter Uitdehaag presented the progress on the above project and explained that the Team was divided into various working groups. He explained that the Team is also paying attention to the link between terms used in law and industry in light of existing differences in both fields. This will feed into the Principles the Team intends to draft. As they have just started their work, it is too early to talk about their progress. However, this will be discussed at the next Project Team meeting on 15 April 2020 in Paris.
- (40) Schulze was very enthusiastic about the project on one hand and skeptical about it on the other due to its duration and current state. He inquired as to whether the Team considers that methodological problems could be overcome by their next meeting and how, and who will be in charge of the final drafting. **He asked whether the Council could receive an exact timeline and information on the division of the work prior to its next meeting, to which Uitdehaag agreed.** Uitdehaag clarified that the Project Reporters will be authors. Moreover, Working Groups are responsible for their parts of the draft and should therefore be considered as authors in this regard.
- (41) Among other things, Aneta Wiewiórska-Domagalska asked whether the Team is developing principles and the extent to which these principles are restatements, to which Uitdehaag reiterated that the present draft is a rough pre-draft. Wiewiórska-Domagalska added that the inclusion and exclusion of certain areas should be re-considered.



- (42) Pichonnaz agreed that an analysis of legal systems would be needed for a restatement. He sought additional clarification on Chapter II, Part I dealing with excluded areas under applicable law and questioned what is included. He was uncertain as to whether Part 1(2) on ‘Qualification’ falls as an exclusion. Zoll observed the discrepancy between succession law being excluded but digital inheritance being included and added that in his view the revolutionary potential of the project lies in substantive law issues (proprietary aspect of digital content) and the production of guidelines for national legislators, not on conflict of laws. Uitdehaag explained that discussions on these issues are ongoing and more clarifications will be available in September. Josipović sought elucidation on the legislation listed in the document. Uitdehaag explained that it will be moved to the comments. Storme and Wendehorst joined in expressing concerns over the (substantial) overlap between the Digital Assets and Data Economy projects and the propriety/relevance of such overlap in some cases.
- (43) Wendehorst explained that the Executive agreed with Sjef van Erp, Project Reporter of the Access to Digital Assets and Blockchain and Smart Contracts projects, on a tentative roadmap for both projects during a Skype call before the meeting.
- (44) **Schulze, Wendehorst and Wiewiórowska-Domagalska were appointed as Assessors.**

#### VII. Amendment to the Internal Guidelines for the Executive Committee and Secretariat

- (45) **The Council approved the revised Internal Guidelines which were amended to reflect recent changes to ELI’s Statute.**

#### VIII. Vote on Revisions of the Hub and SIG Guidelines

- (46) **The Council approved the revised Hub and SIG Guidelines, which among other things ensure a democratic element in voting in Hub and SIG Chairs and a dismissal procedure, in line with requests made by ELI members.**

#### IX. Minor Amendment to the Project Guidelines

- (47) Wendehorst clarified that a minor editorial error of the Project Guidelines is needed as they refer to a non-existing part of the Statute by stating: ‘Although the terms ‘instruments’ and ‘statements’ are used in the Statute’. **The Council approved the deletion of the wording.**
- (48) ELI’s Project Strategy had been amended to accommodate a request by Josef Azizi at the Council meeting of 4 September 2019 for paragraph 3 of Part 1 to include the italicised ‘Model rules, *laws or conventions, draft agreements, policies, statements of principles*’. **The current Council decided against this and against amending the Project Guidelines in this respect. It was decided that the Project Strategy should not be changed now but in the course of its next revision.**

## **X. Report from the Treasurer**

- (49) Denis Philippe, ELI Treasurer, presented his report, including draft 2019 accounts and 2020 budget. He explained ELI's sources of income and main expenses. On Philippe's invitation, **the Council appointed Mag Gernot Göttlicher to audit ELI's 2019 accounts**. Philippe went on to present the budget forecast. He explained that outstanding membership and event fees were drastically reduced by sending reminders and terminating memberships. However, a significant amount is still outstanding.
- (50) Twigg-Flesner inquired whether the financial report as well as Membership and Fundraising Committees' reports could be presented at the beginning of the meeting in the future, to which Wendehorst explained that the previous Council decided to discuss these at the end so as to dedicate more time to projects which are core ELI output, but that this is open to revision.

## **XI. Report from the Membership Committee**

- (51) Pichonnaz presented the report and thanked members of the Membership Committee for their work. Among other things, he explained that despite membership terminations, ELI had an increase in both Individual and Institutional Members. However, Membership Committee is still looking into the issue of non-payments and the motivations behind this. It is important to ensure a balanced membership in terms of geographical origin (Baltic countries, Central and Eastern Europe, France, Scandinavia and Switzerland), age (in particular by involving more young lawyers) and professional background (in particular by involving more judges, lawyers in administration and firms, and in-house counsels). Pichonnaz invited those present to encourage people to join ELI as their contributions would also be valuable to ELI projects. At the same time, it would be helpful if Council members can act as referees and thereby ensure the proper quality assessment of new members. He also pointed out that ELI is happy to support and organise conferences by securing speakers and sending materials. The Membership Committee will continue to work on expanding the Sustaining Membership scheme and increasing SEPA mandates. Wendehorst thanked the Membership Committee and the Secretariat for their work.

## **XII. Report from the Fundraising Committee**

- (52) Philippe presented the report and emphasised that ELI is looking for additional Institutional Members to support its cause. He was pleased to inform the Council about new law firms joining. Members of the Fundraising Committee are working on expanding the cooperation with different stakeholders, in particular in Italy and the UK. Wendehorst thanked the Fundraising Committee for their endeavors.

## **XIII. Closing remarks**

- (53) Wendehorst emphasised that the present discussion demonstrated very well the strengths and weaknesses of ELI projects. The second day of the meeting will be devoted to ELI's future work. She encouraged Council members to reflect on the discussions held and familiarise themselves with relevant documents.

The meeting adjourned at 17:30.

The meeting recommenced on 21 February 2020 at 09:00.

### **I. Opening and Welcome**

- (1) Wendehorst opened the meeting and welcomed participants.

### **II. General Project Strategy for 2020 and Beyond**

- (2) Wendehorst informed the Council that the Executive proposed three areas of focus for ELI projects, namely 'Rule of Law in the 21st Century', 'Law and Governance for the Digital Age' and 'Sustainable Life and Society'. Under these umbrella areas, the Executive suggests the development of medium-sized, manageable projects, to be developed within three years. Wendehorst informed those present that after reflecting on current procedures, the Executive identified a recurring pattern: ELI projects have amazing people and topics, but this does not translate into an 'operative part'. To address this, the Executive proposed a two-stage procedure: a Feasibility Study of maximum duration of a year, after which the Team would be asked to submit preliminary findings, including a representative sample of operative part, and an outline of what the operative part could include; based on these, ELI bodies would decide whether such work should proceed as an ELI project.
- (3) A discussion ensued, during which Elena Bargelli raised the importance of dissemination, to which Wendehorst explained that indeed ELI does this as it ELI must sell what it produces.
- (4) Kiraly Miklos, Kaiafa-Gbandi, Wiewiórowska-Domagalska and Schulze supported the two-stage procedure with the latter adding that ELI should perhaps externally evaluate Project Reporters in advance. Ulrich Schroeter and Paola Iamiceli also agreed, with Iamiceli and Sirena adding that ELI should have a residual category in addition to the three umbrella areas to accommodate other topics that may be central in the near future. Bray concurred adding, along with Zoll, that Hubs and SIGs should be utilised for the development of projects, as their Guidelines envisage.
- (5) Mark Clough pointed out that the founders of ELI were inspired by the American Law Institute (ALI) and its mission to promote the clarification of law. Therefore, he explained that in his eyes ELI should also engage in the Conference on the Future of Europe and that European principles like the principle of subsidiarity should also be revisited by ELI under the 'rule of law' focus area. He considered it feasible for ELI to find a way of addressing questions in the future that otherwise might be considered too political. Bray agreed and added that ELI should be drafting resolutions with regard to the current happenings in some countries.
- (6) Wendehorst recalled that in the past the Council was hesitant to engage in debates on issues such as Brexit. Furthermore, she called into question whether formulating political statements was feasible in light of ELI's structures and procedures. She conceded, however, that views may have changed and the new Council may wish to reopen discussions.

- (7) Zoll said that he was in favor of releasing political statements, but that ELI should also remain loyal to its original aim. In his view, the next Annual Conference is a good forum to discuss pressing issues like independence of the judiciary. Wiewiórska-Domagalska and Pretelli agreed and Pretelli added that the difference between political preference and the promotion of the rule of law was difficult to understand.
- (8) Wiewiórska-Domagalska opined that Feasibility Studies may put serious jurists off knowing that they may embark on something that can be discontinued after a short period, to which Wendehorst replied that the idea behind Feasibility Studies was to have already valuable work done so that they can be an end in themselves, even if for example the conclusion is that this is not the right time to produce model rules.
- (9) Wendehorst explained that ELI convened High Level Experts Groups (HLEG) in 2019 in four target areas. Along with HLEGs, ELI members also suggested topics on which ELI should be active. The Executive's idea is to agree on six to eight out of twelve topics to go forward but this is ultimately for the Council to decide.
- (10) She informed the Council that as Takis Tridimas had not arrived, the agenda needed to be reshuffled.

### III. ELI Project Portfolio: 2020 and beyond

#### a) The Concept and the Role of Courts in Family and Succession Matters.

- (11) Francois Trémosa presented his proposal.
- (12) After Trémosa left the room and following a brief exchange, **the Council decided that the proposal would be an ideal candidate for the two-step procedure, ie Feasibility Study followed by a possible project.**

#### Coffee Break

- (13) The Council agreed for Marc Clement, a former member of the ELI Executive Committee that would be presenting a proposal later in the day, to sit in the meeting. It further agreed that Chris Thomale, who would also be joining the meeting later, could do so with his assistant.

#### b) Fundamental Constitutional Principles

- (14) Tridimas presented his proposal.
- (15) Several questions were raised, following which Lord Thomas reminded the Council that as it was unclear where CCT Pillar I was headed, it would be necessary for the proposers of Pillar II to provide the Council with a sample of the operative part that the prospective Team intends to cover and clarification on how the proposal relates to Pillar I.
- (16) Tridimas left the room and discussion preceded a **vote in favour of approving the proposal as a Feasibility Study.**

**c) Admissibility of Criminal Evidence in the Digital Age**

- (17) Vervaele presented the above proposal. Wendehorst pointed out that the Project Team was yet to be assembled.
- (18) Lord Thomas asked whether the project would also contain transnational elements, to which Vervaele answered in the negative.
- (19) Kaiafa-Gbandi felt that the proposal also fell under the rule of law umbrella (fundamental rights).
- (20) **Following further discussions, the Council concluded that the proposal could constitute a future project and should be further developed.**

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

- (21) Chris Thomale presented his proposal.
- (22) One of the observations made, that Thomale were sympathetic to, is the need to focus the proposal on practice in a bid to identify the *acquis* in this area. As such, an adequate representation of lawyers, notaries, tax lawyers, etc was essential so that the project does not only concentrate on adjudicative practice.
- (23) **After a quick internal discussion in Thomale's absence, the Council voted to give green light to a Feasibility Study.**

Lunch break

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

- (24) After the lunch break, Marc Clément presented the proposal and Wendehorst explained that ELI would organise external funds for it.
- (25) **Following a discussion and vote, Wendehorst informed Clément that the Council gave green light to a Feasibility Study.**

**f) Corporate Criminal Liability**

- (26) André Klip presented the proposal, following which **the Council voted to see it developed further.** Klip offered to help look for a Reporter but said he could not be one.

**g) Corporate Sustainability, Financial Accounting and Share Capital**

- (27) Biondi presented the proposal. Among others, Lord John Thomas raised concerns of the implications of tying up capital which could be detrimental to the liquidity of companies. It would be essential to consider the implications of recourse to other less draconian options, such as insurance.
- (28) Following a vote, **the proposers were informed that the Council gave green light to a Feasibility Study.**

#### **IV. Any Other Business**

- (29) Lord Thomas further explained, in Wendehorst' absence, that outlines of other projects existed, including one on product liability, but that time did not allow for their proper consideration. Council members will be approached with more developed drafts and may have to vote electronically.
  
- (30) On Wendehorst's return, she thanked the Executive and those that have taken on additional responsibilities as Assessors, chairs and members of committees. She thanked all Council members, the Secretary General and Secretariat. Those present gave the Secretariat a round of applause.

The Council meeting ended at 15:30.