Minutes of the ELI General Assembly 2018
5 September 2018

Venue: University of Latvia (Riga)
Chair: Christiane Wendehorst (ELI President)

Keeper of the minutes: Tomasz Dudek (ELI Secretariat)

The meeting commenced at 16:15.

I.   Opening and Welcome

(1)   Christiane Wendehorst welcomed attendees and thanked the Latvian co-organisers for hosting the European Law Institute's (ELI) Annual Conference and General Assembly in Riga. She then gave an overview of the agenda of the 2018 General Assembly.

(2)   The Agenda was approved.

II.   Approval of the 2017 General Assembly Minutes

(3)   The 2017 General Assembly minutes were unanimously approved.

III.   Report from the President and Executive Committee

(4)   Wendehorst presented the report from the President and the Executive Committee. She emphasised that serving as a President of the ELI is a great privilege and that, with the guidance of the ELI membership, the Executive Committee is doing its best to ensure that the ELI lives up to its mission. The organisation is young but is making great progress. Wendehorst outlined various aspects of the Report from the President and Executive Committee and invited those present to read it. Among other things, she reported that the Organization for Security and Co-operation in Europe (OSCE) had recently joined the ELI as an Institutional Observer.

(5)   Wendehorst explained that the ELI succeeded in securing a Framework Cooperation Agreement from the European Commission for 2018–2021. Additionally, it received very generous funding from the European Commission for 2018 and will apply for a grant for 2019 under the above Framework Cooperation Agreement. She reported further on negotiations about the seat of the ELI Secretariat for the 2019–2023 period. Wendehorst revealed that the University of Vienna submitted a commitment letter offering to host the ELI's Secretariat for another four years and that the ELI Council gave a mandate to the Executive Committee to pursue this and sign an agreement with the University.

(6)   Wendehorst continued that while things have functioned well in the past, the fact is that the ELI is growing and so are its tasks and the expectations placed upon it. There is therefore a need to

ensure even more transparency and accountability. As a result, Internal Guidelines for the Secretariat and the Executive Committee were drafted and discussed with the ELI Council in February 2018. Those guidelines have now been adopted by the Council.

(7)   Wendehorst concluded the Report from the President and Executive Committee by informing those present that the ELI has begun to initiate publications with Oxford University Press (OUP). The first two books are currently in the pipeline.

(8)   No questions were raised in respect of the Report.

IV.   **Report from the Treasurer**

(9)   Denis Philippe explained that the ELI has three main sources of income: the University of Vienna, the EU Operating Grant and income from membership fees. He thanked Wendehorst for her efforts in securing funding from the University and Walter Doralt for the work he does with the Membership Committee.

(10)   Philippe proceeded to present the Report from the Treasurer, including the 2017 audited accounts and the 2019 budget forecast. He explained that the 'grant budget' for 2019 depends on the ELI receiving an EU grant. In the no-grant scenario, potential cuts will have to be made, including to staff.

(11)   Two formal votes were made in respect of the 2017 accounts and the 2019 budget forecast. Both were approved by the General Assembly.

(12)   As a key source of funding, Philippe emphasised the importance of prompt payment of membership fees by ELI members. He outlined the steps the ELI had taken to try to claw back outstanding membership fees.

(13)   Philippe outlined the ELI's Sustaining Membership scheme and said that a number of ELI members had already joined.

(14)   Philippe concluded by saying that that the ELI was subject to an audit by the Commission for its 2016 grant (Just/2015). The preliminary outcome of the audit is positive and a final outcome will be delivered in a few weeks' time.

(15)   Wendehorst thanked Philippe for his work and emphasised the importance of his role. She added that the ELI has third-party funding for some projects too and that while there are a number of potential sources of further funding that the ELI could pursue, independence is of utmost importance for the ELI, which has to be particularly selective in applying for such funding.

V. Overview of Projects

(16) Wendehorst presented the developments in ELI projects. As the projects would be discussed in detail in the Annual Conference, she mentioned that she would only outline recent progress. Before doing so, she emphasised the importance of a membership base that is constructive in criticising/suggesting improvements to projects.

(a) Completed Projects

(17) Wendehorst stressed that the ELI has been quite successful in completing many projects. For instance, the Criminal Law project was finalised, positively received, presented recently in Brussels (Belgium) and Luxembourg (Luxembourg) and will be published with the OUP shortly. Similarly, the Rescue of Business in Insolvency Law project is raising attention and has recently been cited by the UK government. It will also be published with OUP next year. The Alternative Dispute Resolution (ADR) project will be presented at a Conference in Trier in November 2018, while the output under the Migration project proves to be a practical tool that serves judges. As the word 'Statement' comes across as a 'position paper', Wendehorst explained that a decision was taken to do away with the term and change the project output to 'Detention of Asylum Seekers and Irregular Migrants and the Rule of Law: Checklists and European Standards'. The output is an important tool to assist judges in Europe.

(b) Current Projects

(18) Wendehorst reported that the project on Civil Procedure, conducted by the ELI and the International Institute for the Unification of Private Law (UNIDROIT) already raised a lot of interest. The consolidated draft will be submitted to ELI bodies to vote upon in autumn 2019.

(19) The Empowering European Families project is in its final phase. Wendehorst explained that the Council was instrumental in identifying some of the outputs the project team should develop as part of the final ELI Instrument. The team is currently working on getting the input of national Ministries of Justice: as the project output is addressed to practitioners, it is important to get the view of influential individuals in EU Member States to ascertain what they consider could be enforceable in their jurisdiction and to collect suggestions on changes they deem necessary.

(20) Hans Schulte-Nölke explained that the Online Platforms project is also in its final stages and that the Instrument will be put to vote at the next General Assembly. The project's Members Consultative Committee (MCC) and newly appointed Advisory Committee members will also be involved at this critical stage. Schulte-Nölke appreciated the preliminary suggestions already given on the drafts and invited those present to keep making their views known to the team.

(21) Wendehorst said that the Protection of Adults in International Situations Project Team has made great progress and will present its preliminary findings at the Hague Conference on Private International Law in December 2018.

(22) Wendehorst passed the floor to Lord Thomas to give an update on the Data Economy project. The latter opined that the project is important for two reasons: first, it is an opportunity to collaborate with an organisation on which the ELI was modelled, namely the American Law Institute (ALI). It gives the ELI and the ALI an occasion to see whether they can agree on common principles. Second, as the common principles are approached on a transnational basis, they will be a forerunner of the future; this is because the ELI is working with the ALI to try to achieve a 'common' end and data is a topic with huge implications for the future. He praised the progress made by the Reporters on the project's draft.

(23) Raffaele Sabato explained that Mario Comba, now one of the Reporters of the Common Constitutional Traditions in Europe project, is absent from the meeting and will be absent from the Conference, unfortunately, as a result of a family bereavement. He outlined the progress made on the project and referred to the upcoming kick-off Conference in November in Turin (Italy). Sabato referred to the fact that the project's comparative methodology has recently been fine-tuned and that the team is currently deliberating on whether to limit their research to fundamental rights or whether to also take into account other constitutional rules. The Executive Committee and Council will closely follow this question.

(24) With regard to the project on Tax Law, Wendehorst explained that ELI bodies and the team are discussing whether or not the project should be elaborated upon in the form of an Instrument.

(25) Similarly, the project on Business and Human Rights is an example of a promising cooperation, namely with the European Union Agency for Fundamental Rights (FRA), and ELI bodies are discussing whether, given the topic's importance, it should be developed into a bigger project.

(26) No questions were raised by those present.

(c) Prospective Projects

(27) As to prospective projects, Schulte-Nölke reported on the Principles of Liability in Digitalised Environments. While the ELI wishes to continue working on this prospective project, a decision was taken by the Council to put things on hold since the Commission has now set up an expert group on this topic. The idea is to wait until the results of the Commission's group are released before embarking on the project.

(28) Sjef van Erp observed that the ELI is increasingly moving into data and the data economy realm and that the ELI will embark on two new projects in this field. The first, on Blockchain Technology

and Smart Contracts, approved by the ELI Council moments before, will see the Team attempt to produce a regulatory framework for the field and provide answers to many unsolved questions.

(29) The second project, which van Erp outlined, is on Access to Digital Assets. He explained that it reflects the global move away from physical assets. The team aims to find a description of 'digital assets', possibly identify different categories of the same and analyse issues such as inheritance, privacy, private international law, etc.

(30) Wendehorst solicited the input of those present as to where the ELI should be headed in terms of the projects it embarks on.

(31) Among others, Aneta Wiewiorowska -Domagalska stressed that the ELI indeed needs to take the initiative with regard to data projects, as otherwise the discipline will be taken over by IT experts that will lead the way without the input of lawyers. Matthias Storme announced that he is preparing a project proposal for an Instrument or model law on transactional avoidance in insolvency law as current divergences in national laws lead to insolvency tourism.

(32) When Hugh Beale raised the question of whether the ELI should respond to the European Commission's consultation papers more regularly, Wendehorst explained that this issue was discussed at the ELI Council several times and that so far it was decided that the ELI's procedures, which require the approval of the Council and/or General Assembly if output is to be published on behalf of the ELI, make it very difficult where a response is needed quickly. Wendehorst said the question might be reopened in the future. Mark Clough added that while interesting to respond to calls for responses, the main mission of the ELI is to anticipate change and offer statements before European institutions do so.

VI.   Draft Revised Project Guidelines

(33) Wendehorst informed those present that the ELI Council approved the new Project Guidelines. She thanked Lord John Thomas for having taken the time to work on these.

(34) Lord Thomas explained that the new Project Guidelines state, with much more precision, what is required when a project is put forward for approval, including the details to be included for each project, who is going to be involved in it and a timeline. A major change has been the addition to the Advisory Committee of two or more members of the Council who can act as critical friends and ensure that as the project is developed it achieves the very high quality standards the ELI has so far achieved. An attempt has also been made to clarify approval processes as it is easy to assume that other people have already looked at output in detail, whereas this may not be the case. The new Guidelines therefore seek to ensure output is properly considered by the whole ELI. Among other things, they also attempt to do better at regulating pre-approval publicity and intellectual property rights.

(35)   This entire exercise, including the annexes appended to the Guidelines, is an attempt to ensure a much more professional approach to putting forward projects, monitoring progress and approving them at the end.

(36)   No questions were raised.

VII.   Summary Report following the Evaluation of Hubs and Special Interest Groups (SIGs) and Revised Draft Guidelines

(37)   Wendehorst thanked the ELI Secretariat for preparing a report that gave the Executive a full picture of what has been going on in Hubs and SIGs in the past few years. The report revealed that it was a good decision to initiate these groups and that the ELI Executive and the Council are happy to continue with the notion of Hubs and SIGs. That said, the report revealed that the above groups were functioning at different levels (eg the frequency and quality of events hosted differed, some began publishing their work, others were operating under the ELI's as opposed to the group's own logo, etc). Therefore, it became evident that further guidance was needed. Wendehorst added that the revised Guidelines were approved by the ELI Council earlier in the day with a few amendments yet to be made.

(38)   No questions were raised.

VIII.   Draft Self-Evaluation Report

(39)   Wendehorst said that the ELI was again greatly indebted to Lord Thomas for the work done on the ELI's self-evaluation. She proceeded to give him the floor.

(40)   Lord Thomas explained that the ELI is obliged, by its Statute, to undertake a self-evaluation exercise every four years. He emphasised that the ELI has achieved remarkable things so far, thanks to the contributions of each of its Presidents. He added that the ELI has been particularly lucky with its staff in Vienna, presently led by the Secretary General Vanessa Wilcox, in providing a very good administrative structure.

(41)   That said, Lord Thomas referred, amongst other things, to the changes under the revised guidelines discussed above as means to ensure the ELI keeps up its standards.

(42)   He also acknowledged the tremendous job done by the Membership and Fundraising Committees, but added that still more could be achieved in both respects. He thanked both Committees for their efforts. Lord Thomas mentioned that the ELI has been exceptionally fortunate with the support from the University of Vienna and repeated the news that Wendehorst was able to give those present moments earlier.

(43) Lord Thomas noted that the burden on the ELI's Officers and on the Executive Committee is steadily growing with the evolution of the organisation. The Executive Committee, together with the Secretary General, will be looking into how to strengthen the internal organisation, as the ELI needs a steady structure to support it.

(44) As to public relations (PR) and communications, Lord Thomas noted that internal PR works much better and the Secretariat is to be thanked in that respect. That said, much more needs to be done to raise the profile of the ELI. That will raise itself in time with the quality of the work the ELI does but the ELI should be recognised now for what it has achieved so more people can be encouraged to engage with it. He opined that more work needs doing in dealing with media and politicians, to make ELI better known.

(45) Lord Thomas summarised this section by saying: 'Well done but there is still a lot to do.' He concluded that the report was approved by the ELI Council and that it will be uploaded onto the ELI's website in due course.

(46) No questions were raised.

IX. Report of the Membership Committee

(47) Walter Doralt presented the Membership Committee report and informed those present that the Council voted Pascal Pichonnaz from Switzerland to join the Committee. He added that any praise should go to the Committee as a whole as it is a team effort.

(48) Doralt informed those present that the number of ELI members is steadily rising, despite some terminations. He added that there is nonetheless scope for further improvement.

(49) Having analysed membership statistics, Doralt emphasised the problem of defaulting members. The good news is that the ratio of members that default on their fees is decreasing. The bad news is that those with multi-year defaults will see their membership terminated. He lamented about the amount of time this issue consumes for the Membership Committee, Secretariat and Executive and encouraged members to sign up to SEPA (direct debit) to facilitate fee collection.

(50) Doralt ended by explaining the ELI's recently launched Sustaining Membership scheme and its benefits. Uptake is steadily rising.

(51) He emphasised the need for a more balanced membership, in particular the need to attract more members from Riga and the region, Scandinavia, Switzerland, Luxembourg and France. The ELI would benefit from attracting more judges, notaries and lawyers.

(52) Philippe mentioned the need for Institutional Observers to feel involved and engaged in the ELI's activities. He admitted that while this is not always easy to achieve, it is important. Wendehorst

agreed but referred to the need for the ELI to also be selective in attracting people who are enthusiastic about the ELI and prepared to enrich it. She invited those present to approach such people to join the ELI.

X.   Any Other Business

(53)   Among others, Josef Azizi questioned where things stand with the ELI Journal. Van Erp explained that the ELI was in touch with OUP, which feels it would be best if the ELI sets up an online journal first. The ELI's current focus is on its book series. It will resume work on the Journal subsequently.

(54)   Wendehorst added that the Executive Committee discussed the issue of the ELI Journal with the Senate extensively and decided that compared to projects, the Journal is of subsidiary priority and that it will be better to launch it once the ELI has capacity to produce it itself.

(55)   Wendehorst thanked the Executive Committee, the Senate and the Council, the chairs of the Council Committees and the entire ELI membership. She also thanked the ELI Secretariat's staff and the people involved in the organisation of the Conference.

The meeting closed at 18:00.