

## Minutes of the Council Meeting

6 September 2017

Venue: City Hall (*Rathaus*), Vienna (Austria)

### Present

Chair: Wallis, Diana

### Council Members

Avgerinos, Yannis

Bargelli, Elena (proxy Kaiafa Gbandi, Maria)

Botusharova, Snezhana

Cafaggi, Fabrizio

Caponi, Remo

Clément, Marc

Clough, Mark

Cvejić Jančić, Olga

Dal, Georges-Albert

Doralt, Walter (proxy for Gammeljord, Anne

Birgitte)

van Erp, Sjef (proxy for Jerez Delgado, Carmen)

Gernandt, Johan

Gilligan, Paul

Hrádek, Jiří

Iamiceli, Paola

Király, Miklós

Mader, Oliver

Philippe, Denis

Porchia, Ornella

Prunbauer-Glaser, Marcella

Ruda, Albert (proxy for Jiménez Muñoz,

Francisco Javier)

Sabato, Raffaele

Schulte-Nölke, Hans

Schulze, Reiner

Sorabji, John

Storme, Matthias (proxy for von Bar, Christian)

Thomas, Lord John

Trstenjak, Verica

Vervaele, John

Wendehorst, Christiane (proxy for Azizi, Josef)

Zalar, Boštjan

### Ex-Officio Council Members

Gemmel, Ruthven - President of the Council of Bars and Law Societies of Europe (CCBE)

Raga, Nuria - European Land Registry Association (ELRA)

### Member of the ELI Secretariat

Šabanovič, Ala (keeper of the minutes)

Wilcox, Vanessa

The meeting commenced at 10:15.

## **I. Opening and welcome**

- (1) Diana Wallis opened the meeting and welcomed those present for the last time in her capacity as the ELI President.

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

- (2) Wallis drew the attention of Council members to the agenda of the meeting and pointed to an item regarding a comment submitted by Joseph Azizi earlier in the year (which was already shared with ELI members via the Secretariat). She suggested that this point be postponed to discussions on prospective projects.
- (3) **The agenda was approved without any amendments.**

## **III. Approval of Minutes of the 31 March–1 April 2017 Council Meeting**

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

## **IV. Discussion on Membership Fees**

- (5) Wallis informed those present that the Institute's budget continues to be fragile although the Executive Committee views the matter of funding from the EU Commission's operating grant optimistically. Moreover, the ELI's membership continues to grow. The current membership fee stands at EUR 60 per year, which is a very reasonable amount when compared to similar organisations. A very small increase in membership fees (even if it were between EUR 5 to EUR 10) would make a difference for the Institute's ability to continue with further project work. She revealed that the Executive Committee had already exchanged views with the Senate earlier that morning. There were reservations, so the Executive also wanted to test Council members' feelings about a small increase in membership fees. She added that alternatively, the Executive Committee wished to receive other ideas for funding and fundraising.
- (6) Francesco Avolio raised a question about the percentage of debtors the ELI has, to which Wallis replied that there were not so many debtors, as the ELI pursues non-payers diligently.
- (7) Fabrizio Cafaggi expressed his view, explaining that the ELI is a young organisation and it would perhaps be considerate to increase membership fees only of older members and keep prices low for new members to incentivise them.
- (8) Moreover, the fact that there were relatively few members from Central and Eastern European countries but that the increase might be seen as discouraging for those members was raised. Walter Doralt said that membership fees constitute a large share of the ELI's revenue and that

statistically, new members are rarely in debt to the ELI. He pointed to the fact that out of close to 1,500 members, only a small share attend ELI General Assemblies. Presuming that the fee would be increased, for example, to EUR 50, the effect might be the loss of revenue due to resignations on the part of some members. Therefore, in Hull the discussion linked the raise in fees to the ELI journal. However, Doralt admitted that the details of such a scenario would need to be considered carefully.

- (9) Wallis said that discussions on the journal were continuing and that Sjef van Erp would present developments on the issue later in the meeting. Wallis again emphasised the fragility of the ELI's financial situation and added that if membership fees were not increased, the Executive Committee would need to ask all members to look for other means.
- (10) Hans Schulte-Nölke said that he would be in favour of a slight increase of membership fees, because if such an increase after some years of the existence of the organisation occurs and is justified, then it should not be seen as something harmful. An increase to 65 Euros or 70 Euros was reasonable in his view. Olga Cvejić Jančić was against increasing the fees. Christian Alunaru thought it might be wiser to have more members with a lower fee than less members with a higher fee, comparing it to having more taxpayers paying less than less taxpayers paying more. Another Council member drew on his experience at another international organisation and mentioned it is much more palatable to have a small yearly increase than a sudden increase of 10–15%.
- (11) Paul Gilligan recalled that the Membership Committee have in fact 'weeded out' those who were not paying. Moreover, there is a relatively static membership base (of those who actively participate in person or at a distance). If the membership fee were increased significantly then the latter will be faced with the question of if they want to pay more. If they are not taking an active interest, then they may drop out. Another issue to consider is the problem of members who have set up a standing order; the hassle of changing this with their banks may be a deterrent in itself. With such a small performing percentage of members, he urged caution in this regard.
- (12) Marc Clement said it was important to find a balance, if the increase in fees does not make a substantial difference (especially considering the prospect of a loss of members through the increase).
- (13) Verica Trstenjak was in favour of keeping the fees as they were; however, she raised the point that it was the responsibility of the new Council to deal with this rather than the current one. **Wallis agreed that it would be better for the new Council to further assess this situation and that it should be back on the agenda in spring.** By then further developments will also have been made on other financial aspects giving more clarity to the matter.

- (14) Marc Clough pointed out that some organisations wave membership fees for those members who attend annual conferences. Considering that travel and accommodation costs are quite high, it might be a good incentive for members to attend the conference if in turn, they were offered free membership.
- (15) Wallis thanked the Council members for all the helpful input provided and added that for the next spring Council meeting in 2018, **the Secretariat ought to disclose the overview of membership fees in other comparable international organisations (a document had already been prepared), to allow a better comparison of the situation.**

## V. Votes on Current Projects

- (16) Wallis asked Council members to vote on the draft Instrument on the **Rescue of Business in Insolvency Law**. She informed members that the Council vote was required for the approval of the Instrument and that it would be followed by a General Assembly vote once the approval of the Council was obtained.
- (17) She asked members to vote by the show of hands. **Out of 33 present members, 31 present members (and five proxies) voted in favour, no members voted against and two members abstained.**
- (18) Next, Wallis asked Council members to vote on the **draft Statement on Detention of Asylum Seekers and Irregular Migrants and the Rule of Law**.
- (19) **There were 32 votes (plus proxies) in favour, no votes against and one abstention (unrecorded).**
- (20) Following that vote, Wallis asked members to vote on putting the **R&D Tax Incentives project on hold**. She asked Christiane Wendehorst to give the necessary background that led to this decision.
- (21) Wendehorst explained that the Executive Committee did not want to discourage the project's proposers by asking Council to put the project on hold; she stressed the importance of that fact. The ELI is very much interested in the tax law project. The problem was that the European Commission came forward with a proposal which 'overtook' the work that the project reporters had envisaged producing. That was why the team was asked to revise their proposal. She mentioned that a panel on that project was scheduled during the conference and invited everyone to attend it and discuss issues with the reporters. Overall she wished to send a positive message to the reporters but also the message that the project simply cannot be carried on as it is.

- (22) Wallis asked Council members to vote on the decision.
- (23) **31 votes (plus six proxies) were cast in favour of putting the project on hold, zero against and two abstained.**
- (24) Following that, Wallis invited Council members to vote on a new project on the **Protection of Adults in International Situations**. She invited Wendehorst to give the background of proposed project.
- (25) Wendehorst explained that the idea for a new project in this area emerged some time ago and that it concerned the rights of vulnerable adults in international situations. Their position in cross-border situations is a very difficult one. To date, there exist various international instruments, like The Hague Convention, but it has only been ratified by a small number of States. At the same time, there exists great potential for an EU wide instrument in this regard and that is the reason why the European Parliament asked the Commission to propose a legislative instrument in this area by March 2018. The team is forecasted to deliver its results a year later, which she saw as a potential problem. It seems, despite this obvious clash, it still makes sense to go forward since the prospective ELI project reporters are in touch with the relevant authorities and are monitoring developments closely. Wendehorst underlined, and she asked for this to be highlighted accordingly in the minutes, that if the Council takes a positive vote on the adoption of this proposal, the vote is valid only as long as the proposal in its current state remains relevant taking into account developments with regard to the legislative instruments currently considered. If they adopt the proposal, then the project team should immediately adapt their methodology to new developments. Given that the Commission does not seem very interested in making a proposal, it still makes sense for the ELI to continue with this project.
- (26) Council members were asked to vote on the proposal. **There were 31 votes in favour of adopting the proposal (plus proxies), one against (unrecorded) and one abstained.**

#### VI. Report on Negotiations with the Oxford University Press (OUP)

- (27) Wallis asked van Erp to present a report on the ELI's negotiations with OUP. He said that significant progress had been made in this regard. On the other hand, he referred to the speed of progress on OUP's part acknowledging their slowness. As an example, he explained that a Memorandum of Understanding was finalised by Vanessa Wilcox and shared with the OUP, but the person responsible on the side of OUP was on annual leave so progress was stalled for a month. However, a meeting with OUP would be held in Vienna later in the day. Wallis said that despite this, she truly believed that the negotiations promising.

#### VII. Any Other Business

- (28) Wallis, as the final point on projects, discussed an already circulated note in which Josef Azizi suggested, in light of the checklists produced for the ELI's Detention project, that it was worth investigating the possibility of advancing the ELI's output technologically. Wallis agreed that this seemed sensible and forward thinking.
- (29) van Erp added that following the successful conference on digitalisation in Hull in March 2017, and the presentation given by two young lawyers from Freshfields Bruckhaus Deringer (the law firm), a joint event was underway. It was proposed that the event be organised under a title 'Code as Law' to reflect the nature of digital influences on the law.
- (30) Wendehorst agreed that the adaptation of project results to new computerised formats was both interesting and useful.
- (31) Cafaggi raised a point concerning the dissemination strategy of the results of ELI projects in general. In his view, it is important that the ELI works out a concrete policy concerning target groups, methodology and the timeline of how the results of particular projects are disseminated. This is very important, because certain target groups could be addressed and dissemination improved to achieve better results and give better visibility to the ELI's work.
- (32) Wallis thought that this was a very relevant point indeed, especially now, when the Institute is about to publish its two pilot projects, one on insolvency law and another on detention.
- (33) Wallis mentioned that another issue was relevant which she asked John Sorabji to present.
- (34) Sorabji explained that at the establishment of the Institute, it was decided that a 360-degree review of its work to be carried out every four years. However, this had skipped the attention of members. It would indeed be important for the next Council to keep this provision in mind and ensure that such an evaluation is carried out on a periodical basis.
- (35) Council members agreed that this is a relevant point.
- (36) Wallis thanked Council members for all the years of mutual cooperation. She thanked them for their loyalty and support and wished the new Council and the new President all the best.

The meeting adjourned at 11:12.