



## Minutes of the ELI Council Meeting 1 December 2021, Remote

Venue: Remotely over Zoom

### Present:

**Chair:** Pichonnaz, Pascal (ELI President)

### Council Members

Anagnostopoulou, Despoina	Machnikowski, Piotr (proxy for Howells, Geraint from 10:00–13:30)
Anderson, Ross G (until 13:30)	Neumayr, Matthias (proxy for Koch, Bernhard)
Augenhofer, Susanne	Pocar, Fausto (proxy for Guercio, Laura)
Bachmaier Winter, Lorena	Povlakić, Meliha
Bagińska, Ewa (from 10:00)	Pozzo, Barbara
Başoğlu, Başak	Pretelli, Ilaria (proxy for Lehman, Matthias from 10:30)
Bechaalany, Sarah	Rodríguez de las Heras Ballell, Teresa (until 11:00)
Bielska-Sobkowicz, Teresa	Santos Silva, Marta
Bray, Robert	Scherpe, Jens (proxy for Anderson, Ross G from 13:30)
Busch, Christoph (from 10:00, proxy for Twigg-Flesner, Christian from 10:00–11:00)	Szabados, Tamás (proxy from Gimeno-Ribes, Miguel until 12:00)
Calderai, Valentina	Tot, Ivan (proxy for Josipović, Tatjana)
Comba, Mario	Tremosa, François (from 11:00)
Craig QC (Hon), Paul	Twigg-Flesner, Christian (from 9:00–10:00 and after 11:00, proxy for Busch, Christoph until 10:00))
Fauvarque-Cosson, Bénédicte (until 10:15)	Wiewiorowska-Domagalska, Aneta (proxy for Rodríguez de las Heras Ballell, Teresa from 11:00)
Forschner, Julius (proxy for Schoroeter, Ulrich G)	Zoll, Fryderyk Andrzej (from 9:30)
Fountoulakis, Christiana	
Gimeno-Ribes, Miguel (from 12:00)	
Grasso, Gianluca	
Howells, Geraint	
Jiménez Muñoz, Francisco Javier	
Lehmann, Matthias (until 10:30)	

### Ex-Officio Council Members

Pichonnaz, Pascal (proxy for Fauvarque-Cosson, Bénédicte from 10:15)	Gammeljord, Anne Birgitte
Lord Thomas, John	Sirena, Pietro (proxy for de Pretis, Daria)

**Senate Members**

Zimmermann, Reinhard

**Other Attendees**

Andersen, Henrik (for the part on Climate Justice)

Athanassiou, Phoebus (for the part on Access to Digital Assets)

Clément, Marc (for the part on AI and Public Administration)

Karsten, Jens (for the part on Food Law)

Philippe, Denis (for the part on Access to Digital Assets)

Schneider, Jens-Peter (for the part on AI and Public Administration)

van der Meulen, Bernd (for the part on Food Law)

Wendehorst, Christiane (ELI Scientific Director)

**Members of the ELI Secretariat**

Dudek, Tomasz

Duzel, Lucija

Fačková, Zuzana (keeper of the minutes)

Karachristou, Artemisia

Kolman, Katja

Wilcox, Vanessa

The meeting commenced at 09:00 CET.

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

- (1) Pascal Pichonnaz warmly welcomed those present and thanked them for joining this Council meeting, especially in light of the current extraordinary circumstances that require everyone's patience and commitment. He encouraged those present to continue to remain resilient and active. He thanked his colleagues in the Executive Committee for their enduring support and in particular the two ELI Vice-Presidents, Lord John Thomas and Anne Birgitte Gammeljord, as well as the other members of the Executive, Senate Speaker, Reinhard Zimmermann, and the Scientific Director, Christiane Wendehorst.
- (2) He explained that the meeting will focus on ELI projects.

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

- (3) **The Agenda was approved.**

#### **III. Approval of the Minutes of the Council meetings of 15 September 2021**

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

#### **IV. Report from the President and Vices and Report of the Scientific Director**

- (5) Pascal Pichonnaz presented the first Report of the President and Vices since the new Executive took office on 15 September 2021. Among the key strategic decisions taken shortly after the start of their term of office, was that of appointing ELI's first Scientific Director, Christiane Wendehorst. He thanked Christiane Wendehorst for all the work done in the first three months of her having taken office, which was of immense help to the Executive Committee. In particular, he reported on the meetings the Scientific Director had with the Reporters/Proposers of almost all of ELI's current/prospective projects and her involvement in the preparation of the High Level Expert Group (HLEG) meetings. He thanked her sincerely. He then continued to elaborate on four points in the Report.
- (6) First, ELI launched a series of meetings with Supreme Courts and other institutions such as the Organisation for Security and Co-operation in Europe (OSCE), the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), the Asian Law Institute (ASLI), the Asian Business Law Institute (ABLI) to explore various avenues for collaboration. ELI also strengthened relations with existing partners such as the International Institute for the Unification of Private Law (UNIDROIT). Further meetings with heads of key organisations, including in Africa and Asia are in the pipeline.

- (7) Second, with respect to ELI projects and publications, he announced that ELI-UNIDROIT's Joint Project on the Model European Rules of Civil Procedure was published with Oxford University Press (OUP). The Rules are also available [online](#), along with the translation into [French](#). He further mentioned the approval of the ELI's Flagship Project on the Data Economy by the ELI Membership on 27 September 2021. The American Law Institute (ALI)-ELI Principles for a Data Economy were presented at a dissemination event on 18–19 October 2021, among others, attracting increased attention and requests for translation into different languages. He thanked the Reporters of the project, especially Christiane Wendehorst and Lord Thomas, the co-chairs and broader Team as well as the Senior Project Officer, who did a tremendous job.
- (8) Third, he mentioned that three webinars on ELI projects took place in the context of the Conference on the Future of Europe (CoFoE), aimed at disseminating ELI's outputs and contributing to the initiative of the European Parliament (EP), the Council and the European Commission. He thanked all the speakers including Lord Thomas and Teresa Rodríguez de las Heras Ballell for chairing two of the webinars and explained that, once drafted, discussions would be published online.
- (9) Fourth, he reported on the Framework Partnership Agreement (FPA) with the European Commission and the finalisation of the 2022 Operating Grant. He said that ELI received less than had been expected because of the ongoing pandemic. The Commission's view is that meetings will likely be held remotely for a significant part of 2022 and as a result, it cut ELI's budget down. He also mentioned a very good relationship with the University of Vienna and ongoing talks between Christiane Wendehorst, Rector Univ-Prof Dipl-Ing Dr Heinz W Engl, and himself that are aimed at renewing ELI's Framework Partnership Agreement beyond 2023. He explained that talks began early as ELI needed to consider whether to launch a public call for funding. Further news on this will follow at the February 2022 Council meeting.
- (10) Fifth, he informed those present that the Membership database software MyELI will be launched, but there have been some delays. The Secretariat is in close touch with the company developing the software. He thanked Zuzana Fačková in particular, for her work on this and on ensuring they keep up with the revised timeline.
- (11) He welcomed two new members of ELI Secretariat staff, Lucija Duzel and Artemisia Karachristou, before thanking the Secretariat for the work done in the last three months. It has not always been easy, particularly as there is a new Executive Committee, President, Scientific Director, etc. He thanked the Secretariat by name for their reliability and their work – which is of a high quality – as well as for their support.

## **V. Appointment of Auditors and ELI Charitable and Tax Status**

- (12) In light of the cooperation with BF Auditing Wirtschaftsprüfungs-GmbH in 2020, the Executive suggested the renewed appointment of Mag Wolfgang Eder and Mag Franz Schweiger of BF Auditing Wirtschaftsprüfungs-GmbH as auditors for ELI's 2021 EU Grant Audit and the Full Audit of its 2021 accounts.
- (13) **Mag Wolfgang Eder and Mag Franz Schweiger of BF Auditing Wirtschaftsprüfungs-GmbH were appointed as auditors.**
- (14) Pascal Pichonnaz explained that in light of the profits ELI made as a result of the pandemic (as meetings/Annual Conferences, etc took place remotely), Deloitte Austria and Belgium were commissioned to advise ELI on whether the accumulation had an impact on ELI's charitable and/or tax status. The two were approached because ELI is registered in Belgium but has its administrative seat in Austria.
- (15) Based on the report from Deloitte Austria, Pascal Pichonnaz explained that ELI was advised to pass a resolution on how it intends to spend its accumulated profits, if any, and by when. ELI was also advised by Deloitte Austria in particular that its Statute needs to be amended to further emphasise ELI's charitable status under Austrian tax law. No other steps need to be taken from the Belgian law perspective. Pascal Pichonnaz clarified that the Austrian tax authorities look at ELI's accounts each year and had so far not flagged any issues but said that ELI would follow Deloitte Austria's suggestion nonetheless. The Executive will prepare such a resolution if needed, after ELI's finances have been carefully checked, and submit it and the revised Statute to Council.

## **VI. Draft UNIDROIT Work Programme: 2023–2025 Triennium**

- (16) Given the successful cooperation between ELI and UNIDROIT, Pascal Pichonnaz mentioned that ELI is about to enter into a four-year MoU with UNIDROIT. This is a follow-up from an earlier MoU signed in 2013 that led to the ELI-UNIDROIT Model European Rules of Civil Procedure. Again the Rules were published with OUP earlier on this year and are now available in French. Translations into Chinese, Spanish, Ukrainian, German and Russian are ongoing and a possible translation into Farsi is in the pipeline.
- (17) Given the successful cooperation, UNIDROIT approached ELI to suggest topics to it for projects and activities to be included in the draft UNIDROIT Work Programme for the 2023–2025 triennium to be pursued either jointly with ELI or independently. Pascal Pichonnaz asked those present for ideas for topics.
- (18) Christian Twigg-Flesner suggested that ELI could build on the Business and Human Rights project by launching a joint project with UNIDROIT on global supply chains. It would focus on the use by

governments of contracts to push non-commercial interests along the supply chain and the implications this could have on contract law. It was unclear exactly what kind of project would be pursued, but the synergies between the two organisations was emphasised as was the importance of this topic. Robert Bray and Teresa Rodríguez de las Heras Ballell agreed. The latter mentioned that in addition to contractual issues, questions relating to transferrable records, negotiable instruments and digital assets incorporated in the process would also be relevant in this respect.

- (19) Teresa Rodríguez de las Heras Ballell reiterated that a collaboration on automated contracting would be an excellent idea, even though outside UNIDROIT's mandate. However, Pascal Pichonnaz explained that to enable ELI to be more agile and meet the European Commission's 2023 deadline, a joint project with them was not advised, in light of the period of the triennial (ie from 2023–2025). He added that the intention was to invite UNIDROIT to act as observers in the project.
- (20) Pascal Pichonnaz encouraged those present to submit further suggestions to the Secretariat so that the Executive and Scientific Director can consider them before submitting the project proposal to UNIDROIT by the deadline of end of January 2022. He reminded those present that any projects suggested by ELI would need to be accepted by Member States in UNIDROIT.

## **VII. Discussion and Decisions on ELI projects**

### **a) Business and Human Rights**

- (21) Pascal Pichonnaz provided background information about the project, the latest draft of which was submitted to the Executive Committee following revisions arising from consultations with the Advisory Committee (AC) and Membership Consultative Committee (MCC) in September 2021. He added that as the project was adopted under the accelerated procedure, only a Council vote and not a Membership one is required for its approval.
- (22) On behalf of the Project's Reporters, Diana Wallis and Jonas Grimheden from EU Agency for Fundamental Rights (FRA), Bray thanked members of AC and MCC, and Council members Ilaria Pretelli, who wrote a chapter on private international law with him, and Laura Guercio for her contributions. He also thanked Katja Kolman for her assistance and Chiara Macchi who helped edit the draft. He then read out statements from the Project's Reporters Diana Wallis and Jonas Grimheden.
- (23) Robert Bray emphasised the difficulty of the topic and pointed to the fact that the promised Commission proposal on this topic is constantly being postponed, confirming the difficulties he alluded to. He referred to the series of options included in the output and said that the report has already attracted a lot of attention, adding that it may have influenced of the European Parliament's proposal for legislation in this field. Robert Bray outlined some of the proposals in

the chapter on public international law, including the introduction a statutory duty of care and its extension further down the supply chain by contractual means.

Robert Bray and Ilaria Pretelli were moved into the waiting room.

- (24) A member of the Council reminded those present that the project touches on a topic that people take strong and different views on. One of the achievements of the group has been to try and accommodate as best it could, various concerns. While further areas could have been explored, the drafters have reached an extremely important time in the development of this area of law in Europe. There is great public interest in this area and great reflection on what can be done for the very difficult conditions in many countries which supply Europe with goods. All in all, they added, the project has been worthwhile.
- (25) An internal discussion ensued, following which **the Council approved the results of the project subject to the usual editorial prerogatives.**
- (26) Upon rejoining of the meeting, Pascal Pichonnaz congratulated the Reporters and Project Team members on their work and on its adoption.

**b) Use of Digital Assets as Security**

- (27) Pascal Pichonnaz outlined the background to the above project, explaining that the Draft Principles of Digital Assets as Security is the work of one of several Working Groups of the above project. He explained that the current draft was revised in light of feedback received in September 2021 under the guidance of the Executive Committee in liaison with the Assessors and Scientific Director. If approved, the project will be sent to the Membership for approval too as this project is not under the accelerated procedure.
- (28) Phoebus Athanassiou presented the substance of the report, its aim, namely to provide guidance to private parties and those adjudicating over disputes with a view to facilitating the use of digital assets as security and the realisation of their economic potential, and the progress made in addressing the main requests by the Council. He said that the document was better rearranged to ensure a better match between titles and content and that more illustrations were included to help the reader appreciate the report's provisions. Further illustrations will follow.
- (29) Project's Assessor, Aneta Wiewiorowska-Domagalska, praised the topicality of the project and said that the reduction in scope helped to advance the project. However, the Council's requests were met only to a certain extent. She emphasised the need for illustrations as the matter is new and has not really been developed at national or international level. Further the combination of substantive and private international law is quite challenging. She stressed that some inconsistencies between the comments and black letter rules must be addressed, which the illustrations could do by explaining the content of the black letter rules.

- (30) Teresa Rodríguez de las Heras Ballell thanked Phoebus Athanassiou and Denis Philippe for their work. She raised the question of ‘control’ and asked the extent to which it is a good idea to deviate from the widely recognised factual standard in favour of a hybrid one.
- (31) Phoebus Athanassiou agreed that the proposed concept of control is indeed a hybrid one. If one looks in detail in pages 13 and 14 they will see that in fact, the team sides with factual control for practical reasons (as it protects the interests of *bona fide* holders of digital assets that may have no way of establishing whether the security provider has good title over a digital asset) and as necessary in the context of digital assets which, because of their features, are not yet the object of recognition of the law of property as objects of property rights. He elaborated on the group’s choice.
- (32) Meliha Povlakić suggested that the topic of digital assets as security could serve as a common subject for a project with UNIDROIT but Pascal Pichonnaz reacted that organisations such as UNIDROIT, United Nations Commission on International Trade Law (UNCITRAL), the Conference on Private International Law (HCCH) as well as other relevant organisations have already started or advanced their work on the matter so that it might be too late to propose this topic.
- (33) Phoebus Athanassiou agreed with Meliha Povlakić in terms of the importance of this topic. He emphasised that there is great practical importance of the project in providing tools on the use of security in the lending context as this is a potentially very useful source of value which overcomes the root cause of liquidity issues.

Phoebus Athanassiou and Denis Philippe were moved to the waiting room.

- (34) An internal discussion followed. The need to iron out inconsistencies in the draft between the black letter rules and comments was emphasised (as regards scope for example, there are severe inconsistencies between the black letter and explanations on the definition of what amounts to a digital asset). That there are some inconsistencies between the black letter rules and some illustrations and inconsistencies within comments was also raised. A member of the Council returned to the deviation from the factual standard of control in favour of the hybrid approach and observed that while the drafters say that this is clarified in the document, reading the black letter rule alone gives a different impression. A member of the Council opined that some comments could benefit from being moved from footnotes into the main text and another that the other helpful comments made by UNIDROIT at the ELI Annual Conference need to be fully taken into account. Finally, those present were informed that the drafters committed to adding four to five further illustrations.

- (35) **The Council approved the ELI Principles on the Use of Digital Assets as Security under the Philippe Motion, ie subject to the insertion of the additional illustrations, removal of inconsistencies, addressing comment from UNDROIT, etc and the usual editorial prerogatives.**

Phoebus Athanassiou and Denis Philippe joined the meeting.

- (36) Pascal Pichonnaz informed them of the conditional approval of their draft and on the need to submit the final version of the draft to the Membership for final approval very soon.

**c) Freedom of Expression as a Common Constitutional Tradition in Europe**

- (37) Pascal Pichonnaz detailed the developments which led to the final draft of the above project, among other things, mentioning its limitation in scope to freedom of expression.
- (38) Mario Comba described the evolution of the project, which was initially devoted to common constitutional traditions in Europe. An aspect was devoted to the common principles, which is now being run as a separate project. The project was reduced further to focus on freedom of expression, with the aim of preparing a tool/checklist to help practitioners, judges, etc to identify commonalities and differences in the legal treatment of the main issues arising in this context of freedom of expression across Europe. He continued by outlining the report which was compiled on the basis of reports from national correspondents. He added, among other things, that there is not yet a constitutional tradition on new technologies so this was only addressed briefly.
- (39) Lord Thomas, one of the Assessors of the project, expressed deep gratitude to the Reporters. He referred to the terminological issues but concluded that the report will be a useful contribution to the future development of common constitutional traditions in European courts, although the UK would not be a part of this. Fausto Pocar, also one of the Assessors, echoed the issue of small problems with language but referred to other problematic aspects of the project, which were addressed, and which contributed to the excellence of the draft. He congratulated the team for the work done.
- (40) Fryderyk Zoll pointed out that the report is underdeveloped in terms of references to modern technologies and social media networks. Comba explained that this is due to the minimal reference of this situation in the national reports because there is not yet a stated tradition in the Member States.
- (41) Despoina Anagnostopoulou added that there is no mention of Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia which tries to harmonise constitutional principles of Member States on hate speech and is of relevance to the report. Comba thanked her and said it would be added.

- (42) Lorena Bachmaier Winter congratulated the Reporters and the Project Team. Among other things she referred to the need to balance the advancing new constitutional principles and traditional ones. She added that religious symbols were a very important aspect which could have been further developed. Comba reacted that it was indeed a much debated matter but the page limit and lack of development in the national reports led to the current outcome.

Mario Comba was moved to the waiting room.

- (43) An internal discussion followed. Views were expressed that the impact of new technologies should have been elaborated upon given that the report focuses on freedom of speech and national reporters could have been asked to develop this. On the other hand, the focus on the retrospective nature of the project, ie on well-established doctrines, was emphasised. Following further discussion, it was agreed that a reference to the Council Framework Decision of 2008 should be added.
- (44) **The results of the project were approved by the Council, subject to the usual editorial prerogatives.**

Mario Comba rejoined the meeting.

- (45) Pascal Pichonnaz congratulated him on the adoption of the project, subject to editorial changes including the addition of the abovementioned Council Decision of 2008, after which it will go to the Membership for a final vote.
- (46) In light of earlier discussions, Lorena Bachmaier Winter suggested that a follow-up project could focus on new technologies, including fake news, and the impact this could have on freedom of expression. Pascal Pichonnaz responded that the Executive would consider this carefully.

#### **d) Final Presentation of the Artificial Intelligence (AI) and Public Administration Output**

- (47) Pascal Pichonnaz informed those present that the Project Team, which met regularly and consulted the AC and MCC on several occasions, is revising the draft in light of comments it received. The vote on the final outcome will be electronic but Pascal Pichonnaz encouraged those present to comment on the draft at the current meeting as any fundamental concerns need to be tackled as soon as possible.
- (48) Marc Clément gave a presentation on the project's structure, outcome and key Model Rules, among other things.
- (49) Jens-Peter Schneider said that the discussions over the last three weeks revolved around two points. First, the draft AI Regulation proposed by the European Commission in 2021, which adopts a horizontal approach across each AI tool; ELI focuses on those AI instruments, and more

specifically algorithmic decision making, in the field of public administration, meaning ELI has further instruments such as the external public audit and public participation. If the Regulation is adopted, he opined, it would be helpful if there are opening clauses for Member States or other bodies to also implement such specific pieces of legislation. This is highlighted in the report's preface. Second, in order to support authorities in drafting their reports, two questionnaires were drafted. He went into this in further detail.

- (50) Fryderyk Zoll, one of the project's Assessors, acknowledged the high quality of this output and the implementation potential of the project in different systems of public administration.
- (51) Project's Assessor Ilaria Pretelli acknowledged the Team's commitment, focus and their involvement of various experts. She considered it a 'model team'. Having said that, she welcomed more substance on the monitoring of data, given systemic risks. She acknowledged that this may be outside the scope of the project and referring to article 6(2)(c) of the Rules on the fundamental rights at stake. She added that the project's scope should be made clearer in the title.
- (52) Jens-Peter Schneider acknowledged Ilaria Pretelli's comments, adding that most of them were already taken on board. He felt that the current title was suitable, however, and explained that the procedural nature of the project is described in the introduction of the output.
- (53) Pascal Pichonnaz said that there would still be a period of consultation with the Council prior to the electronic vote.

#### **VIII. Future/prospective ELI projects: Feasibility Studies and Project Proposals (including votes, where applicable)**

##### **a) Climate Justice – New Challenges for the Law and for Judges**

- (54) Henrik Andersen, co-author of the above project with Alberto De Franceschi, presented the project proposal, stressing the diverse composition of the team in terms of professional backgrounds. He explained that the project aims to assist courts by developing guiding Principles on how to deal with cases of climate justice and be a source of inspiration for legislators. The focus of the project lies in the question of liability for harm caused by the climate of the different legal actors, taking into consideration international climate change law, human rights law, tort law, etc, which come in the form of hard and soft law. He emphasised that it is important to comprehend the global warming phenomenon to understand legal problems of climate change law and went on to present the financial aspects and the timeframe of the project.
- (55) Pascal Pichonnaz stressed the positive assessment of the project drafted by ELI's Scientific Director.

- (56) Marta Santos Silva congratulated Andersen and De Franceschi on their proposal and inquired into whether they intend to consider behavioural insights in the field of climate change and nudging in the Principles in line with international trends. Andersen reacted that they will look into the relationship with science in respect of causation, otherwise the proposers aim to taking a dogmatic approach in drafting the Principles. He asked Santos Silva to share her paper on this topic for consideration. Pascal Pichonnaz referred to the lecture on ‘Nudging and Other Behaviorally-Based Policies as Enablers for Environmental Sustainability’ that Santos Silva delivered to ELI Environmental Law SIG members on 8 April 2021 and invited her to share her paper, which has now been openly published, in chat.

Andersen was moved to the waiting room.

- (57) A member of the Council said she had already made suggestions to the proposers, at least via the Executive Committee, and would not repeat them again. She said that the proposal would strengthen the ‘green leg’ of ELI’s project portfolio but proceeded to emphasise, considering the deadlines that the team set itself that, the project’s scope is currently too wide. To ensure a timely contribution on the matter, she suggested dividing the project up into stages, with follow-up projects. She also emphasised the need for ELI to involve more experts from Eastern European countries, who should also contribute to the discussion.
- (58) Pascal Pichonnaz said the Executive Committee’s view is that the Project Reporters should begin to work, with a view to carving the scope of the project in due course as otherwise dwelling on the scope may lead to procrastination. He agreed with the need for diversity. A member of the Council repeated that this is an urgent matter that has seen a 30% growth in worldwide litigation. There are very important aspects that the project does not yet cover, particularly as regards directors’ duties, duties of disclosure, problems of liabilities for banks for green finance, and his view is that the project needs direct management leading to a series of projects. He suggested the need for actual practitioners, not merely judges, because of the worldwide growth in litigation. He also emphasised the need to structure the project so it delivers successive answers.
- (59) A member of the Council referred to the fact that both the University of Glasgow and Strathclyde University have launched two different projects on Climate Justice (see websites on the issue). Furthermore, she referred to the growing involvement of NGOs, with one organising webinars on how to sue companies, and distributing leaflets on the same. Another member of the Council agreed, saying she was already in touch Reporters of the Ecocide project to suggest the balanced involvement of NGOs. An individual responded that his experience on an ELI project was not very positive. NGOs have their own agenda and are not very forthright in this respect. A further individual agreed. He felt it is good to know what NGOs do but said that their approach is not scientific. Their indirect involvement, however, is fine. It was mentioned that many NGOs had scientific backing with, eg law professors, working for them, especially in the context of this topic.

- (60) Christiane Wendehorst said that the team was extremely responsive and had already cut down the scope of their proposal. She added that they have prioritised matters and implemented other changes such as reducing the German and academic aspect of the proposal. They are also aware of the need for diversity. She said, referring to the response to the question by Marta Santos Silva, that the team still needs to ensure that the project is not too doctrinal. As regards NGOs, Christiane Wendehorst suggested this be approached on a case-by-case basis, adding that there are many different ways NGOs can be involved including via consultations; and not necessarily as part of the Project Team.
- (61) **The Council approved the start of the ‘Climate Justice – New Challenges for the Law and for Judges’ project.**
- (62) Pascal Pichonnaz invited those present to send in suggestions to the Secretariat on people they think should be involved in the project.

Henrik Andersen rejoined the meeting.

- (63) Pascal Pichonnaz informed Andersen of the approval of the project and outlined the above discussions, in particular mentioning the recommendation to expand the Project Team’s composition to include members from Eastern Europe and the need to implement suggestions already made by the Executive Committee and Scientific Director.

#### **b) Food and Farm Law**

- (64) The project proposers Jens Karsten and Bernd van der Meulen presented their proposal and emphasised the geographically diverse composition of the Team, which already meets regularly.
- (65) Jens Karsten and Bernd Van der Meulen were moved to the waiting room.
- (66) During the internal discussion it was emphasised that there is a need for an ELI project in this area as the issue of sustainability, food security and sovereignty are crucial and are of increasing importance. The feasibility of the team delivering the final results by January 2022, which is the only possibility to participate in the Conference on the future of Europe (CoFoE), in a form of a position paper for the CoFoE was questioned, especially considering the current state of the proposal and the need for consultation with ELI bodies. Other matters were also questioned.
- (67) **The Council did not approve ‘Food and Farm Law’ to proceed as an ELI project.**

Jens Karsten and Bernd Van der Meulen joined the meeting.

- (68) Pascal Pichonnaz informed the project proposers that it seems unrealistic for the team to produce what they proposed in the timeframe proposed, especially as they have barely made progress despite working on the topic for several months. It would also be impossible for ELI bodies to be

involved in the consultation given the tight schedule. He stressed that the Council would like to have a project in this area of law and is open to discussing a more focused specific and feasible proposal, eg linking it to the issue of property law and public law.

#### **IX. Appointment of Assessors**

- (69) In light of the desirability of having at least one member of the newly composed Executive Committee as an Assessor of each project and the preference for the new ELI Scientific Director not to sit as an Assessor in projects, **the following were appointed as Assessors: Matthias Lehman as an Assessor of the Access to Digital Assets project; Teresa Rodríguez de las Heras Ballell as an Assessor of the Admissibility of E-Evidence in Criminal Proceedings in the EU project; Aneta Wiewiórska-Domagalska as an Assessor of the Ecocide project and Pietro Sirena as an Assessor of the EU Conflict of Laws for Companies project.**

#### **X. Update on ELI activities**

- (70) Pascal Pichonnaz reported on the High Level Expert Group (HLEG) meetings which focused on topics proposed in ELI's FPA with the European Commission.
- (71) The Scientific Director to present the focus and preliminary outcomes of these meetings.
- (72) Christian Twigg-Flesner opined that there is a clear perspective for a project on automated contracting with potential to influence EU law.
- (73) Lord Thomas highlighted the tremendous contribution of the Scientific Director in the preparation of these meetings, while stressing the resources of ELI are limited which can lead to difficult decisions on which to advance in future.
- (74) Pascal Pichonnaz informed those present about ELI's team that will submit a response to the EU's Public Consultation on Civil Liability by building upon Christian Twigg-Flesner's the Innovation Paper on Guiding Principles for Updating the EU Product Liability Directive for the Digital Age. Pascal Pichonnaz said that Bernhard A Koch agreed to chair a small working group to prepare the response that will go out in ELI's name should the Council approve it. He added that the draft will be put to an electronic vote before the Council by 17 December ahead of the deadline consultation period which ends on 10 January 2022.

#### **XI. 2022 ELI Council Meeting and ELI Annual Conference and Meetings**

- (75) Pascal Pichonnaz mentioned the dates of the next Council meetings and of the upcoming Annual Conference, which will take place in hybrid mode or, possibly remotely depending on the circumstances. The upcoming ELI Council Meetings are scheduled for 24 February 2022, 09:00–17:00 CET, to 25 February 2022, 09:00–13:00 CET (remote); 5 July 2022, 16:00–19:00 CET (format

to be decided); 6 September 2022 (hybrid, Madrid). The Annual Conference will take place from 7–9 September 2022 (hybrid, Madrid).

**XII. Any other business**

- (76) Pascal Pichonnaz informed those present that the Membership Committee will convene after the Council meeting. Further, the Fundraising Committee will identify a date for their first meeting.
- (77) Pascal Pichonnaz closed the meeting by thanking the Vices, Executive Committee members, the Scientific Director, the Secretariat and Council members for their commitment.

The Council meeting ended at 14:30 CET.