Minutes of the ELI Council Meeting
28 February to 1 March 2019, Vienna

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

Present:

Chair: Wendehorst, Christiane (ELI President)

Council Members

Alunaru, Christian

Avgerinos, Yannis

Avolio, Francesco (proxy for Stamelos, Harry)

Azizi, Josef

Bargelli, Elena (proxy for Dollani, Nada)

Beale, Hugh

Biondi, Yuri

Bray, Robert (proxy for Wallis, Diana)

Caponi, Remo (proxy for Sorabji, John)

Cavalier, Georges (proxy for Clément, Marc)

Clough, Mark

Comba, Mario

Cvejić Jančić, Olga (proxy for Brkan, Maja)

Doralt, Walter (proxy for Giannakoula, Athina)

Gammeljord, Anne Birgitte

Gilligan, Paul

Guercio, Laura (proxy for Miller, Katharina)

Hrádek, Jiri

Infantino, Marta

Jiménez Munoz, Francisco Javier

Josipović, Tatjana (proxy for Cvejić Jančić, Olga on 1 March, afternoon session)

Kaiafa-Gbandi, Maria (proxy for Chatzinikolaou, Nikolaos)

Király, Miklós

Malberti, Corrado

Meijer, Maarten R (proxy for Pichonnaz, Pascal on 1 March, afternoon session)

Philippe, Denis

Pichonnaz, Pascal

Povlakić, Meliha (proxy for Brkan, Maja on 1 March, afternoon session)

Ruda, Albert

Schulte-Nölke, Hans (proxy for von Bar, Christian)

Schulze, Reiner (proxy for Beale, Hugh on 1 March, afternoon session)

Storme, Matthias

Thomas, Lord John

Trstenjak, Verica

van Erp, Sjef (proxy for Vervaele, John)

von Westphalen, Friedrich Graf

Wierzbowski, Marek

Zlatescu, Irina

Ex-Officio Council Members

European Land Registry Association (ELRA), Raga, Nuria
International Union of Judicial Officers (UIHJ), Uitdehaag, Jos

Other Attendees

Grimheden, Jonas (present briefly on 1 March)

Franzina, Pietro (dialled in remotely on 28 February)

Members of the ELI Secretariat

Carruet, Aline (keeper of the minutes)

Dudek, Tomasz

Fackova, Zuzana

Kolman, Katja (keeper of the minutes)

Ladewig, Doris

Wilcox, Vanessa

Interns

Fuente, Juan

Pheline, Julie

The meeting commenced at 10:00 on 28 February.

I.   Opening and Welcome

(1)   Wendehorst warmly welcomed participants to the ELI Council meeting.

II.   Approval of the Agenda and the Minutes

(2)   The **draft agenda was approved.**

(3)   **The minutes of the September 2018 Council meeting were approved**. There were no other matters arising from them.

III.   Report from the President and the Executive Committee

(4)   Wendehorst invited the Council to read through the above Report and informed those present, among other things, that the Cooperation Agreement with the University of Vienna was **extended for another four years, until autumn 2023.**

IV.   The ELI Statute and Election Byelaw

(5)   Wendehorst explained why amendments were made to the ELI Statute and Election Byelaw. One reason lies in a change in Belgian law. A new Code on Companies and Associations will enter into force in Belgium soon. It will entail some changes for the ELI, as the ELI is moving from a small association to a large association. Wendehorst stressed that one needs to be cautious in terms of compliance under Belgian law (ie timings, deadlines, filing accounts, appointing auditors, etc). She added that compliance would be difficult if there are no changes to the ELI governance structure. So far, the budget and reimbursement of the auditor used to be in the hands of the entire membership. The difficulty which arises out of our atypical organisational structural model is that it hinders the organisation from complying with deadlines set by Belgian authorities in a timely fashion since the General Assembly only meets once (towards the end of each year). To facilitate administration, it is envisaged that the current Council will become the General Assembly, hence the existing General Assembly has to be given another name (the term 'Membership' has been proposed).

(6)   The second amendment seeks to give more voice to two groups of ELI members (ex-officio Council members and Institutional Observers) that have certain disadvantages under the current Statute. So far, the Statute mentions that such members have a right to speak but not a right to vote.

(7)   Schulte-Nölke explained the last changes, namely those arising in relation to elections. Schulte-Nölke was part of a Committee appointed by the Council, along with Reinhard Zimmermann and Matthias Storme, to faithfully implement the changes Council mandated them to change in September 2018. In particular, he stressed that the underlying difficulty was one of timing. It is not clear under the

current rules whether one will be elected as President, Vice-President or Treasurer until minutes after their election which does not allow one to plan in advance. This will pose difficulties for the ELI sooner or later. The changes thus seek to address the above. The simplest way is for the newly elected members to become ex-officio Council members.

(8) Schulte-Nölke mentioned that another proposed amendment was regarding doing away with the maximum period ELI members can serve on the Council. This was suggested by an individual member of the Council.

(9) Wendehorst asked whether Council members agreed with the technical changes in order to comply with the forthcoming Belgian law (ie that the Council will in the future be in charge of accounts, the budget, and the appointment of the ELI's auditor and approval of their pay, as opposed to the General Assembly as was previously the case). This allows for flexibility and allows the Council to vote on such matters electronically. Following a short exchange with members of the Council, **the amendments were unanimously approved**.

(10) Discussions turned to the right to give ex-officio Council members full voting rights in the Council.

(11) Given they will no longer simply be 'observing', **Hugh Beale suggested allowing some institutional members to remain as Observers should they wish to be only Observers and giving those who would like to play a more active role the right to vote. This would entail having a new membership category for institutional members equivalent to Fellows. The majority of the Council approved this.** It was agreed that this issue would be redrafted overnight and presented to the Council on the following day.

(12) **The majority of the Council also agreed to give ex-officio Council members voting rights.**

(13) **The Council approved, by majority, the manner in which the President, two Vice-Presidents and Treasurer will be appointed in future.**

(14) Regarding the options under Section 13 (2019 Elections for the President, Vice-President and Treasurer) of the Byelaw, Wendehorst explained that the Executive had discussed this and it felt there is only one practically feasible option which is option 1. That is, in 2019 the election of the President, Vice-Presidents and Treasurer will exceptionally take place at the first meeting of the newly elected Council, directly after the Council elections, as electronic voting would look very awkward and it would be too expensive and cumbersome to hold a Council meeting solely for elections. **There was a clear majority vote in favour of this option.**

(15) On a formal vote, **most Council members opposed the alternative option in Section 3 (Elected Council Members) of the Byelaw, which read 'Council members serve a renewable four-year term. (Article 10(2) of the Statute)**.'

(16) Wendehorst thanked the Drafting Committee for their work and the Council for its decisions.

V. ELI Project Strategy

(17) Wendehorst explained that the Executive felt that a general strategy for projects needed to be elaborated more clearly. Wendehorst explained that the Executive decided not to submit the document to the Council straight away as guidance was needed on a number of points. She outlined the strategy under the following five points:

- **Project types**: the Executive's suggestion is that the ELI's strategy should not only be to list the categories that ELI projects have fallen into in the past (see the four broad categories in para 3 of the new Project Guidelines, namely Draft legislative proposals; model laws, model rules, policies, statements of principles; checklists, other practical guidance; and position papers) but that ELI output should in fact fall within those categories and that the production of 'academic style' output, in particular, should not be the primary focus of ELI activities. Additionally, that the 'operative part' (ie the legislative proposal, model law, set of principles, checklist, etc, that is submitted for approval to the ELI's Council and/or Membership) should always occupy centre stage and that any introduction, comments and/or notes should be of ancillary nature was emphasised. In particular, the latter should be: (i) short and concise; (ii) drafted with a view to facilitating the understanding and/or use of the operative part; and (iii) in plain and intelligible language that is immediately understandable to the average lawyer in the relevant field. As far as background materials (such as country reports, conference papers or in-depth doctrinal analysis) do not fulfil the requirements for the 'operative part', these may be published in the ELI book series, but they should not be a part of what is submitted for approval to ELI Council and Membership. In response to a question by Yuri Biondi, it was clarified that projects would normally fall under one of the broad categories but that they could be subsumed under more cannot be excluded.

- Hugh Beale suggested firstly, that the strategy document should include a category that explores and sets out the policy options in a neutral way which can be useful to hand to bodies like the European Commission at the various stages of considering whether legislation in a particular areas is needed. The ELI would not be taking a stance on any issue but solely giving a neutral analysis and setting out the various options. Secondly, he felt that (i) above should refer to 'as short and concise as is consistent with explaining fully the underlying policy choices, etc'. Maria Kaiafa-Gbandi agreed.

- Among other suggestions, Robert Bray agreed that a category on policy papers should precede the points mentioned in para 3 of the new Project Guidelines. He added that output should include explanatory statements or statements of reasons, detailing the reasons for the project.

- Impact assessments are also important although, as Lord John Thomas pointed out, the ELI should consider whether it has the capacity to do so, as this may be complicated for some projects. He also felt, on the issue of policy papers, that position papers could cover options and this allows the ELI to retain a neutral position.

- Vanessa Wilcox reminded those present that the ELI in fact has feasibility studies that are exploratory and are not subsumed under the heading of projects.
- The need for real comparative background materials was stressed by Matthias Storme. Maria Kaiafa-Gbandi agreed. Storme, along with Tatjana Josipović and Kaiafa-Gbandi, cautioned against exhaustive categories of project outputs. Wendehorst explained that the document was a 'strategy', ie how the ELI would normally proceed. This is not to say the categories are closed. She added that the draft strategy document is softer (in that it refers to words such as 'normally', 'generally', etc).
- **Project relevance**: Wendehorst explained that these are the orientations used to justify the ELI's selection of projects. In particular, the document states that in deciding whether the ELI should – subject to issues of setup and funding – embark on a particular project, ELI bodies may wish to ask themselves, in particular:
  - Whether the output will be a major reference text in the relevant field, which everyone dealing with the issues at stake has to take into account, for at least one decade (or until legislative action is taken);
  - Whether it is possible to explain in simple language, understandable by a general audience, why the output would make a material difference for the benefit of citizens, companies or professionals in Europe (and is not anyway dealt with by other players); and
  - Whether the issue is so topical and central for the development of society and law in Europe that ELI is rightly expected to raise its voice, and whether the output will be a contribution to the debate that will receive significant public attention.

  Bray thought that the strategy document should also reflect the fact that a project may also be in the interest of the law.
- Wendehorst explained that only two points need to be answered in the affirmative. Storme was against the last part of the third bullet point since it appears to read that the ELI should only raise its voice where this would receive public attention, whereas the ELI is independent. Pascal Pichonnaz felt that less is more and cautioned against the document being too prescriptive. Biondi was not sure about the limitation to two out of three affirmative responses. Azizi, among others, proposed standardised questions to assist people who are not specialised in a particular area in ascertaining its relevance: eg, What is the problem? What is proposed to solve the issue?, etc. The relevance for the law and the public were suggested as other reasons for the ELI to raise its voice. Wendehorst welcomed further suggestions. She repeated that this is the first step towards an ELI project strategy and added that it could be the basis for a further document on a checklist for project proposers.
- **Project setup**: Wendehorst explained that set up is included in the ELI Statute and Project Guidelines but the latter do not include the 'person with the file' (PWF) notion, namely an individual who is prepared to invest in high quality drafting. This part also refers to the fact that timelines, proposed working methods as well as budgets and

sources of funding must be concrete, realistic and credible. No points were raised on this issue.

- **Project funding**: Wendehorst said that this point emphasises that the ELI has limited resources and is not a research funding organisation. This is a very common misunderstanding. The ELI cannot pay remuneration for the work done as such. No points were raised on this issue.
- **Institutional considerations**: Wendehorst said that such considerations as the requirement that project teams be kept to a manageable number, be balanced in terms of nationalities and professions, etc are more or less self-evident.

(18) Reiner Schulze recalled the discussions last year on the need to involve more people and researchers outside the structures of the ELI. One of the main goals is to extend the ELI's influence. The large majority of current projects are more or less organised by leaders of the ELI and proposed by Executive Committee members. Wendehorst clarified that this is included under institutional considerations in the strategy document in addition to the need to encourage Hub and SIG project proposals.

Lunch break

(19) In Wendehorst's absence, as the next topic dealt with her project, Sjef van Erp chaired session VI of the meeting.

VI. Vote on EEF Instrument and Template Choices

(20) There was a **clear majority in favour of adopting the Empowering European Families Project as an ELI Instrument.** The majority of those present voted in favour of **the designed templates.** As a next step, the **Instrument will be voted upon by the General Assembly in September 2019**.

VII. Current ELI Projects
a) Online Intermediary Platforms

(21) Schulte-Nölke explained that this project started outside of the ELI. The current draft Model Rules on Online Intermediary Platforms would be presented at the next General Assembly in September 2019, following which it will be put up for a vote. The Project Team will meet in Brussels on 14−15 March 2019 and another meeting is scheduled for early June 2019, involving potentially all Advisory Committee and MCC members. Schulte-Nölke outlined the progress made on the project to date, adding that comments will accompany black letter rules. Beale asked that these be made available well in advance to facilitate the Council's proper assessments of the rules.

(22) Wendehorst encouraged everyone to join the MCC of the project (so they can receive all the interim drafts) and to contribute more substantively to discussions.

b) ELI-UNIDROIT European Rules of Civil Procedure

(23) Caponi explained that the project's Working Groups are currently in the process of drafting a consolidated version. A meeting was held in Rome recently. Approval of the project's final output will

not be sought in September as it is not possible to submit a fully-fledged final version by that time. The idea is to submit the final version for the Council meeting in February 2020. Caponi was not sure when the comments for the consolidated version would be made available.

(24) Caponi explained the voting procedure of this joint ELI-UNIDROIT project, as it needs to be approved by both institutions. In responding to one of several questions raised, Caponi explained that digital developments play a major role in civil procedure and that specific Working Groups are dealing with such issues. However, it is rather difficult to take into account all digital developments as things are moving at a fast pace. As far as possible these are, however, taken into consideration.

c) Protection of Adults in International Situations

(25) Elena Bargelli presented the state of play of the project. She explained that a position paper was produced by the Team and presented at the Joint European Commission-Hague Conference on Private International Law (HCCH) Conference on the Cross-Border Protection of Vulnerable Adults in Brussels in December 2018, with a view to enhancing the protection of adults by increasing the number of ratifications to the Hague Convention. An ELI seminar will take place on 22 March 2019 in Milan. It will be hosted in cooperation with the University of Milan and the Italian Hub. Bargelli added that the position paper also outlines possible amendments to the Hague Convention.

(26) Pietro Franzina, Co-Reporter of the project, joined the meeting via a conference call. He mentioned that the Team's views differ from that of the HCCH's. However, he added that both EU and HCCH representatives will be present at the Team's upcoming event in March. In response to Schulze's question on the concrete measures the EU can take that Member States cannot, Franzina explained that Member States cannot do much individually. The Team is seeking to agree on measures to improve the rate of ratification of the Convention and this may entail an amendment to the Convection or a piece of EU legislation complementing the Convention. A similar approach was taken in respect of family maintenance. He concluded that the number of ratifications is slowly increasing. The EU has external competence in this field and can request Member States who have not done so to ratify the Hague Convention in the interest of the Union. This was done for the 1996 Child Protection Convention.

Coffee break

d) Common Constitutional Traditions (CCT) in Europe

(27) Mario Comba explained the developments in the CCT project which was approved in February 2018. The first Team meeting was held in April 2018 in Italy and a kick-off conference in November 2018. During the event, questions about the distinction between 'principles' and 'traditions' were raised, among others. Pilot reports from five Member States were drafted and discussed. These were useful in drafting the questionnaire which was sent out to all national reporters in January 2019. The questionnaire has two parts (one methodological (on the definition of CCTs according to the constitutional law, history, politics, etc of the Member State) and one focused on substance (notably, on some fundamental rights, including free speech, freedom of movement and judicial independence)).

(28) There are now 18 national reporters, six are yet to be confirmed and candidates for four jurisdictions (Luxembourg, Lithuania, Malta and Slovenia) are yet to be found. Comba invited suggestions. He informed those present that the next meeting will take place in May 2019 in Aix-en-Provance, which will be an opportunity to fine-tune the national reports which are due in June 2019. The idea is to have the draft outcome ready for the Council meeting in February 2020 to facilitate discussion on the final format. A fundamental question is whether CCTs relate only to fundamental rights or whether they extend beyond those, eg to the rule of law. Aspects of the above that are linked to fundamental rights will also be considered as a compromise. A checklist and possibly a restatement of national decisions will be produced.

(29) Storme regretted that the questionnaire was not made available to Council members nor was the list of national correspondents. Among other things, he further questioned the notion of 'common' as currently defined by the Project Team, the purpose of the project (in particular he questioned the function/level of model rules being drafted and the type/purpose of the checklists to be drafted) and felt that it is interesting as an academic study but not as an Instrument, especially in light of the increasing resistance to the imposition of such traditions. Other members voiced it was indeed of practical significance while others raised the question whether CCTs only relate to fundamental rights or if they can extend to other principles. Comba replied that the Team decided to limit the scope of possible rights to ensure that the project is manageable.

(30) Among others, Lord Thomas emphasised that one should be careful that the project does not only target judges and lawyers. It should also accord with what people think. He applauded the Team's bottom up approach.

e) ALI-ELI Principles for a Data Economy

(31) Lord Thomas explained the progress made since the last session at the Annual Conference in Riga 2018. A meeting in Philadelphia took place in October 2018 which led to a redraft of the rules. He added that the aim is to produce a new draft by summer 2019, to hold a meeting prior to the next Annual Conference and to present the draft at the Annual Conference. The Team is currently trying to set up a trans-Atlantic video conference with all advisers, to be scheduled in October, as costs of getting everyone to or from America are too high. Further steps were outlined. In light of the complicated nature of the Principles and all the States represented in the US, Lord Thomas explained that the Team will not be able to finalise the draft before 2021.

(32) Among other things, van Erp reiterated that both the Blockchain and Digital Assets projects will take the ALI-ELI Principles as a framework in terms of harmonising the terminology used. Wendehorst added that the ALI-ELI Team has already taken inspiration from the Online Platforms Team, in light of the overlap in some areas, but would be extremely grateful for more suggestions on what should be included. On a different note, Lord Thomas confirmed that the Team does indeed plan to eventually look into criminal liability, in particular the civil consequences of this.

(33) Meliha Povlakić referred to Chapter VI of the Principles, stating that the title of the Principle should align with its scope. There are two Principles in this Chapter: Principle 25 and 26. Povlakić suggested Principle 25(2) be added under Principle 26 and the 'Perfection of the Security Interest' title should

also be added. Lord Thomas thanked Povlakić for this and invited more suggestions from the others, stating the sooner these are received, the better.

(34) Among others, Pichonnaz asked whether discussions were had with computer analysts and if the concepts have been sounded with them. Lord Thomas confirmed that technical experts will be included on the Advisory Committee. Wendehorst revealed that the Team tries to be as technology neutral as possible and does not deal, as such and specifically, with blockchain or other distributive ledger technology. She concluded by saying that the project aims at Principles that work in an environment with or without the above technologies.

f) R&D Tax Incentives

(35) Georges Cavalier revealed that Team members have agreed on a draft final Statement. The latter was discussed last November in Nice. He began by explaining why the project is important, how it is innovative, who the target audience is and, if implemented, what the consequences on tax and research would be.

(36) Among others, Lord Thomas stressed that if the ELI were to adopt the project and make it a Statement, one should be cautious as to how to avoid adopting a stance in favour of a particular tax policy (as this is highly political). Cavalier mentioned a number of reasons as to why he felt politics does not play a role.

(37) Schulte-Nölke suggested Advisors be approached to assist the Council to evaluate the project, given its technical nature. Cavalier responded that Advisors were also involved, albeit at different levels, in the elaboration of the draft. He agreed to a written reaction from them on the project.

The meeting adjourned at 18:00.

The meeting recommenced on 1 March 2019 at 09:00.

I. Opening and Welcome

(1) Wendehorst opened the meeting and welcomed the participants. She also welcomed Diana Wallis who joined briefly by way of a conference call and Jonas Grimheden from the EU Agency for Fundamental Rights (FRA). Both are Project Reporters for the ELI-FRA project on business and human rights.

II. Progress Reports
a) Business and Human Rights: Access to Justice and Effective Remedies

(2) Laura Guercio presented the aim and current state of the project. She explained that the first round of research was conducted in the 28 EU Member States in addition to North Macedonia and Serbia (which fall in the FRA's mandate) in 2018 and outlined the methodology used. A second round of research is also expected and the questionnaire is being finalised. Guercio went on to list upcoming events and disclosed that the final project outcome will be voted upon in February 2020 and not in September 2019 as envisaged.

(3)   Responding to a question raised, Grimheden stated that the outcome of the joint project will indeed be something concrete and operational. However, a decision has not been taken yet as to what exactly this will be as it would depend on the research findings. The research will be published by FRA. Businesses are being consulted.

(4)   Azizi pointed out that in autumn 2018, a meeting of the Austrian Law Commission, German Law Commission and Swiss Law Commission on Transnational Enterprises and Human Rights took place. A publication on corporate social responsibility was (or should soon be) issued and its findings should be considered by the Project Team. Wendehorst added that the German Association of International Law will focus on this topic at their conference in Vienna this year. Grimheden agreed to follow up on these.

(5)   Bray, one of the Project Team members, emphasised that the project is politically very sensitive and difficult, and has to be tackled in a very thorough manner. The text has to be neutral, balanced and carefully analysed.

(6)   Schulte-Nölke congratulated the Project Reporters and sought clarification on the timeline of the project. He proposed that the Council should have some more in-depth exchanges on initial drafts of the operative part of the project well in advance. Grimheden clarified that after the Team's next meeting on 3 June 2019, he will be able to say more concretely about what they wish to focus on.

(7)   The Project Team members left the room for internal discussions to take place.

Coffee break

[The next issue following the break was Blockchains and Digital Assets. However, for the sake of continuing, the rest of the discussion on the above project, it is written first.]

(8)   The Council **voted in favour of postponing the decision on the approval of the project proposal. However, the Executive Committee will draft a clear list of requirements that still need to be fulfilled in order to pave the way for the Council to consider approval of the proposal in September 2019.**

(9)   On Guercio's and Bray's return to the room [Grimheden left earlier], Wendehorst explained that there is strong enthusiasm for the project and it is an important topic. However, the Council has wishes on some minor/bigger points which it would like to see fulfilled. They will be sent to the Project Team in writing shortly. The Council supports the project and appreciates the work done on it.

b)   Blockchain Technology and Smart Contracts

(10) Van Erp, who is a Project Reporter with Juliette Sénéchal, explained that no written report was produced yet as the project proposal was recently approved. The first meeting of the Project Team, which includes lawyers as well as persons with technical expertise, took place in Paris in December 2018. The Team split into sub-groups; however, as everyone is interested in all aspects of the project, practically everyone is also a member of all sub-groups. The subgroups look at so-called 'use cases', ie situations where blockchain and smart contracts technology is used in practice to see whether it

works and what the benefits and disadvantages of using such technology are. Two further meetings will be held soon: one in Paris on 12 March 2019 and at the other at the University of Lille in May 2019. Moreover, the European Commission is following the work of the Project Team closely. They received invitations to join the group as Observers and cooperate in their research efforts.

III. Proposals for Prospective ELI Projects
a) Access to Digital Assets

(11) Van Erp, who is the Project Reporter with Jos Uitdehaag, presented the project proposal, which focuses on inheritance, security and judicial enforcement. The Project Team is fairly big and also includes non-European members. Van Erp disclosed that he was also recently approached by the Council of Bars and Law Societies of Europe (CCBE) to become an Observer at the meetings of their working group on digital assets and that he approached the global digital assets group of the Society of Trust and Estate Practitioners (STEP) in England to cooperate with them.

(12) The Team already met in Paris on 18 December 2018 and will meet again on 13 March 2019, also in Paris. The idea is that the group will split up into smaller sub-groups, which will work on particular areas and write short notes to be discussed at plenary meetings.

(13) The outcome of the work is guiding principles. Uitdehaag presented their concept to working groups at the Council of Europe European Commission for the Efficiency of Justice (CEPEJ). Among others, members of the Project Team will also participate at a joint CEPEJ-UIHJ conference on digital assets and enforcement in Strasbourg towards the end of the year. They are also in contact with a publishing house which wishes to publish on this topic.

(14) Schulte-Nölke presented the assessment of the project on behalf of the Executive Committee. The assessment focused on four levels: (a) project type (ie whether the envisaged outcome falls into the categories of defined ELI outputs in para 3 of the Project Guidelines); (b) project relevance; (c) project setup; and (d) other considerations.

(15) Regarding the project type, he pointed out uncertainty as to the number of outputs and the target group of the guidelines. On the issue of project relevance, Schulte-Nölke concluded that the project is of highest relevance. Concerning project setup, he underlined the need for strict monitoring to ensure the project's output is delivered on schedule. Initial drafts of the operative outcome should be available, at least internally, soon. In addition, a more detailed description of some members of the Project Team should be added or adjusted and the person with the file identified. The time schedule is not too unrealistic. As regards funding, the project would be mainly financed through the ELI. Schulte-Nölke called on the Project Team to seek external funding. Among other considerations, he mentioned that there might be too much overlap with the Principles for a Data Economy project. However, he did not see severe problems so far. He concluded that this is a project that the ELI should wish to embark on. He proposed adopting it under clear, but formalised conditions.

(16) Van Erp and Uitdehaag clarified that the Team is exploring funding with the UIHJ and the Commission, under which a consortium would apply for the grant. Van Erp revealed that he is the person with the file. Project Team members were asked to leave the room in advance of internal deliberations.

(17) **The proposed project was adopted on the following terms: (a) the reporters are to secure substantial independent co-funding towards the project's costs within a period of one year of approval; and (b) to deliver in advance for each Council meeting a tentative draft of the main project outcome, in the sense of the operative part. In addition, a Members Consultative Committee (MCC) for the project should be established and the Executive Committee should be granted the mandate to appoint Assessors. The majority of those present approved the proposed project.**

(18) On the Project Team's re-entry, they were informed of the Council's decision, following which van Erp thanked the Council for its trust in the project.

b) Mediation in Restructuring and Insolvency Law

(19) The project was withdrawn from the agenda.

IV. Prospective ELI Project Ideas

(20) Wendehorst explained that the following items should be treated as project ideas, not project proposals. Therefore, there will be no individual discussions and no votes on them, as they are in early stages of development. She welcomed any questions Council members might have or any informal advice.

a) EU Courts and ADR Proposal

(21) No questions/comments were raised/offered.

b) The Application of Artificial Intelligence in EU Administration

(22) Marta Infantino asked about the scope of the project (namely, whether it focuses only on the use of artificial intelligence by EU/national institutions or whether it is broader). Marek Wierzbowski explained that the idea is to draft some sort of regulation, depending on the composition of the Team and financing. So far a handful of ELI members have already indicated that they would like to participate in the project. Furthermore, the project seeks to look at the use of artificial intelligence by governments of EU Member States as well as EU administration. He underlined that there are many problems connected to this issue, which will probably require substantial changes.

c) Towards a Common European Research Data Space (CEREDAS)

(23) Schulze stated that this is quite an interesting topic and asked about the start date of the project. Wendehorst explained that the earliest point the project could go to Council is September 2019, therefore, there are two possibilities: (a) either the starting point is postponed; or (b) the project would commence outside the ELI and then possibly be adopted. It is by no means the idea to start with something that the Council has not seen in full.

d) Corporate Sustainability and Company Capital

(24) Yuri Biondi encouraged Council members to contact him and Corrado Malberti with any advice on the substance of the project.

Lunch break

V. Amendment to the Statute and Byelaw

(25) Schulte-Nölke explained the draft changes he prepared overnight to Articles 7 and 9 of the ELI Statute.

(26) On the question of whether there was still the support that some institutions **should have voting rights (Institutional Fellows) and some should not (Institutional Observers) and that this should also translate to individuals so that there are individuals with voting rights (Individual Fellows) and some with no such rights (Individual Observers), those present agreed.**

(27) **The majority voted against institutions becoming elected Council members (the current ex-officio Council members are fine)**. Where an institution has an ELI member that wishes to run for Council, that member is not barred from doing so. However, the member has to vote on the basis of their own personal and professional convictions without regard to the interests of particular stakeholders as mentioned in Article 7(2) of the ELI Statute.

(28) The Council turned to the question whether institutions which wish to become Fellows (ie have voting rights) should be asked to guarantee that they will not pursue the interests of particular stakeholders. It was recalled that the conflict of interest provision in the Statute applies to all members. **On the question as to whether they should be given a vote (one vote per organisation) in the membership, ie on projects, the dissolution of the Association, etc, without asking them to 'speak, vote and participate in activities carried out within the framework of the Association on the basis of their own personal and professional convictions without regard to the interests of particular stakeholders'** (see Article 7(2)), **the majority of the Council decided in favour. There is also no need to require them to sign a declaration stating the same.**

(29) **The next issue was whether Institutional Fellows have a right to elect the 56 elected Council members. The majority of those present were in favour of the motion.**

(30) There was **no current enthusiasm for a vote on giving a mandate to another drafting committee to include quotas on profession, gender, etc in the Association's Byelaw.**

(31) Schulte-Nölke turned to another issue, namely the group of Council members who were elected to the Council in 2013 and stepped down (either voluntarily or by drawing lots) in 2015. About 12 such members will have served eight years in the Council in September 2019. Article 10(2) of the Statute which reads, once 'a member has served two consecutive four-year terms that member is not eligible to stand as a Council member until four years have elapsed', is problematic since the above persons will have served not two consecutive four-year terms but two two-year periods and one four-year-term.

(32) Wendehorst proposed a vote on allowing or not allowing **Council members who drew lots or resigned** in 2015 to stand again in the 2019 elections. **The majority of those present voted against them standing again in 2019.**

(33) Wendehorst inquired into whether the Council **gives the Executive Committee and the Secretariat a mandate to strictly and only implement what was decided. The majority of the Council voted in favour of this.**

VI.   Report from the Treasurer and Secretary General

(34) Denis Philippe, the ELI Treasurer, presented the above report. Among other things he regretted the problem of non-payment of membership fees and said that some ELI members' membership will have to be terminated in mid-March 2019.

(35) Philippe continued that the ELI's financial situation is overall sound. He added that the Executive Committee decided to engage the services of Deloitte Austria. As the ELI transitions from a small to large and back to a small organisation for the purpose of Belgian accounting law, this will entail the engagement of a Belgian auditor whenever the organisation is considered large.

(36) Philippe reminded the Council that the ELI needs to stick strictly to the guidelines for reimbursement.

(37) During discussions, Azizi suggested that the Treasurer and the Executive Committee consider the possibility of exploiting donations to the ELI as eligible tax expenses. The Fundraising Committee might have an interest in exploring in which Member States humanities of this kind would be such an exception. Philippe welcomed the remark, following which Wendehorst thanked the Treasurer and Secretary General for their work.

VII.   Report from the Membership Committee

(38) Doralt presented the Membership Committee's report. He mentioned that the Membership Committee now has a 'co-chair' system and welcomed **Pichonnaz as the new co-chair**. This is in preparation of the termination of Doralt's Council membership in September and it will be up to the new Membership Committee whether it wishes to continue this practice.

(39) Doralt echoed that ELI membership numbers will decrease soon in light of impending terminations.

(40) Doralt asked for **a vote to ratify the past practice, tacitly agreed upon, of processing membership applications in the absence of two referees**. He added that **in the future**, as agreed with the Executive Committee, the Membership Committee will only process applications positively **upon the receipt of two references from ELI Fellows**. **The Council voted unanimously in favour of this point.**

(41) Doralt added that there will be a revision of the ELI membership application form. He also stressed the importance of SEPA mandates and invited those who have not yet done so to do that. He added the desire to set SEPA as a default for Euro-State members. Furthermore, he encouraged Council members to help the ELI by addressing its regional imbalances (particularly regarding members from

France, Luxembourg, all of Central and Eastern Europe, Scandinavia and Switzerland) and invited them to encourage suitable candidates for Council elections. He also called on them to encourage more jurists in practice to join.

(42) Wendehorst thanked the Membership Committee for their work. She added that the Council will change dramatically in the near future. She invited Council members to encourage strong colleagues and personalities to stand for Council elections.

VIII. Report from the Fundraising Committee

(43) Philippe presented the report. The Committee will try to address the issue of sponsorship, including by preparing different kinds of sponsorship options and a Statute for sponsors so that sponsors of the ELI have visibility and are able to assess clearly what they are agreeing to. Furthermore, the Committee identified new institutional members. Among others, the Brussels Bar has decided to join. Philippe mentioned that a Belgian-Luxembourg Hub will be launched in future. They are analysing whether they can obtain European funds for specific projects. They will also take a look at the possibilities for tax advantages in respect of donations to the ELI. Moreover, a specific ELI event in Greece has been proposed by one of the members.

(44) Bray disclosed how initiatives with the Bar Council and the Law Society of England of Wales have been pursued. There is a proposal to organise an event with Heads of Chambers at Middle Temple, where Lord Thomas will give a keynote address. Further, the Law Society for England and Wales has invited ELI to prepare an article for their London City Update newsletter. The article may also be published in the Scottish and Northern Irish edition. The Committee will pursue this with the help of the Secretariat and do so under the ELI President's signature. Bray added that Diana Wallis also agreed to give a presentation on the ELI.

(45) Bray welcomed the idea of a Belgian-Luxembourg Hub, which could be in a way a European Hub for the ELI. Moreover, the ELI should remain visible as a pan-European organisation for all legal professions. It would also be good to look around at which charitable organisations are promoting education and law, which might be willing to contribute to the ELI.

(46) Wendehorst thanked the Fundraising Committee for their immense work. She also informed the Council that the ELI just received €200,000 from the Fritz Thyssen Foundation (with a possibility to apply for another €100,000) going forward. The Council has in the past authorised such applications.

IX. Discussion on the Format of the ELI's Annual Conference

(47) Wendehorst informed Council members of some ideas the Executive Committee has on the format of the next Annual Conference, which will be held from 4–6 September 2019 in Vienna. She proposed the second conference day should be devoted to mini-conferences, mini-workshops with a specific subject focus, side meetings, MCC meetings, etc. However, the ELI is still under an obligation to present an attractive substantive programme. **The Council gave the Executive Committee a mandate to continue with their planning.**

(48) Doralt observed that ELI conferences tend to take place at the same time as the Society of Legal Scholars' annual event. Wendehorst added that this is also the case with the European Public Law Organization's annual reunions. The ELI should try to avoid that in future.

X.   Any Other Business

(49) Wendehorst encouraged Council members to promote the ELI Young Lawyers Award by disseminating relevant information electronically and distributing brochures. She thanked everyone engaged in this initiative.

(50) Wendehorst informed the Council about a message from Sir Geoffrey Vos who, for technical reasons, unfortunately could not present the idea for the project on EU Courts and ADR remotely. In light of time constraints, Wendehorst read through parts of the letter and suggested Sir Geoffrey be asked for permission to share it with members of the entire Council.

(51) Wendehorst thanked all the participants of the Council meeting for enriching the ELI with their expertise. She also thanked the ELI Secretariat for their support.

The meeting ended at 15:15.