

Minutes of the ELI Council Meeting 3 July 2023

Venue: Remote via Zoom

Present:

Chair: Pichonnaz, Pascal (ELI President)

Council Members

Anagnostopoulou, Despoina
Anderson, Ross
Augenhofer, Susanne
Bachmaier Winter, Lorena
Bagińska, Ewa
Başoğlu, Başak
Bechaalany, Sarah
Bielska-Sobkiewicz, Teresa
Bray, Robert
Dollani, Nada
Gilligan, Paul
Gimeno-Ribes, Miguel
Grasso, Gianluca
Guercio, Laura
Howells, Geraint
Jiménez Muñoz, Francisco Javier
Josipović, Tatjana (proxy for Bagińska, Ewa
(when absent))
Koch, Bernhard (proxy for Neumayr, Matthias)
Kramer, Xandra
Lehmann, Matthias

Machnikowski, Piotr (proxy for Koch, Bernhard
(after 18:45))
Malberti, Corrado (proxy for de Pretis, Daria)
McKechnie, William M
Patti, Francesco Paolo
Pocar, Fausto
Pretelli, Ilaria (proxy for Guercio, Laura (as of
19:10))
Rodríguez de las Heras Ballell, Teresa (proxy for
Twigg-Flesner, Christian (when absent))
Santos Silva, Marta
Scherpe, Jens (proxy for Tuori, Kaius)
Shirvindt, Andrey
Szabados, Tamás
Tot, Ivan (proxy for Povlakic, Meliha)
Tremosa, François
Twigg-Flesner, Christian
Vos, Sir Geoffrey
Wiewiorowska-Domagalska, Aneta (proxy for
Pozzo, Barbara)
Zalar, Aleš

Ex-Officio Council Members

Pichonnaz, Pascal
Gammeljord, Anne Birgitte

Sirena, Pietro
Lord Thomas, John

Other Attendees

Gössl, Susanne (for the part on Foreign
Filiations)

Lempen, Karine (for the part on the Right to
Disconnect)

Ørberg, Mark (for the part on Enterprise Foundations)

Ratti, Luca (for the part on the Right to Disconnect)

Sanders, Anne (for the part on Enterprise Foundations)

Thomsen, Steen (for the part on Enterprise Foundations)

Wendehorst, Christiane (ELI Scientific Director)

Members of the ELI Secretariat

Wilcox, Vanessa

Bones, Julia

Dudek, Tomasz (keeper of the minutes)

Fačková, Zuzana

Kolman, Katja

Papasodaro, Laura

The meeting commenced at 16:00 CEST.

I. Opening and Welcome

- (1) President Pichonnaz welcomed the participants.

II. Approval of the Agenda

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

III. Approval of the minutes of the Council meetings of 23–24 February 2023

- (3) **The above were approved.**

IV. Report from the ELI President

- (4) Pichonnaz presented the report and pointed to a new section on 'Impact', introduced by Secretary General Wilcox. He invited Council members to contact the Secretariat in case they are aware of any further examples of ELI's impact through its various reports.
- (5) Pichonnaz then focused on three successful schemes launched since the February 2023 Council meeting: High Level Fora (to ensure better dissemination of ELI output among high level stakeholders), Kick-Off webinars (organised at the beginning of ELI projects to attract the attention of potential stakeholders, inform our members about such projects and encourage them to join MCCs, where relevant, as well as to provide Reporters with further input) and ELI Members Day (to celebrate ELI's past and discuss an emerging legal topic). Pichonnaz recognised the ELI Secretariat's role in conceiving, enhancing and implementing these ideas and he thanked the team for that.

V. Algorithmic Contracts: Part 1

- (6) Co-Reporters, Teresa Rodriguez de las Heras Ballell and Christian Twigg-Flesner presented the developments in the project, focusing on the attribution to the consumer of decisions taken through a digital assistant. A discussion ensued.

VI. Guiding Principles on Implementing Workers' Right to Disconnect

- (7) Co-Reporters, Karine Lempen and Luca Ratti presented the developments in the project, focusing on the personal scope of application of the right to disconnect, in particular the inclusion of managerial staff. A discussion followed.

VII. Enterprise Foundations

- (8) Project's Proposer, Steen Thomsen, presented the project proposal and the feasibility study. He explained that by 'Enterprise Foundations' the Team meant foundations that own companies and proceeded to give examples. He added that in light of the unclear legal framework and disparities between countries, the Team aims to increase clarity by providing a more precise definition of 'enterprise foundations', to explore present approaches to foundation law and try to come up with a model European enterprise foundation law, while considering barriers to implementing such a law at national level. Guidance on a model framework will also be provided.
- (9) Pichonnaz noted that the Proposers secured funding for the project, which is very welcome.
- (10) A discussion within the Council followed. **The proposal was adopted by the Council (37 votes in favour, one opposed and two abstentions).** Pichonnaz congratulated the Reporters and informed them that the Council **considered it of importance that other perspectives are taken into account by actively involving representatives of other countries in the Advisory Committee, including those that do not have regulations in this field as they can inform the Team of what the obstacles from their legal systems would be. In light of the existence of such projects in the past, the Council accepted the two-tier model, ie without a Project Team, provided the Reporters work very closely with the Advisors. Pichonnaz said that the Reporters would be informed by the Secretariat of what was discussed in more detail so that they fully reflect on the Council's concerns.**

VIII. ELI-UNIDROIT Contractual Aspects in the Global Value Chains Context

- (11) Pichonnaz reminded those present that, in February 2023, ELI signed a cooperation agreement with the International Institute for the Unification of Private Law (UNIDROIT), aimed at strengthening ties. He also recalled that in 2021, ELI submitted a number of project ideas to be pursued either jointly with UNIDROIT or independently by UNIDROIT under its 2023–2025 Work Programme.
- (12) Rodríguez de las Heras Ballell presented the above proposal, which focuses on 'Technology-Related Issues' in 'Corporate Sustainability Due Diligence in Global Value Chains', and explained how the narrower proposed ELI-UNIDROIT project would fit within the broader International Development Law Organisation (IDLO) and the European Bank for Reconstruction and Development (EBRD) one.
- (13) A discussion followed. **The proposal was adopted by the Council (37 votes in favour and one abstention), on the understanding that the ELI Council will still be given an opportunity to approve the full proposal, including names of Team members, in due course, but that fundamental aspects cannot be changed after UNIDROIT's Governing Council approves it.**

IX. Foreseeable Amendments to the European Commission Proposal on the Recognition of Foreign Filiations

- (14) Project Proposers, Ilaria Pretelli and Susanne Gössl presented the above. Among other things, they emphasised that this project presents an opportunity to discuss problems brought by technology in family law. EU Member States use public policy as an excuse to block filiations established in other Member States, resulting in the problem of status continuity. The European Commission established an expert group to address this and tabled a proposal. Given the tight schedule, among other things, the group was prevented from in-depth discussions. Through this project, ELI will have the chance to address the pitfalls of the proposal by focusing on children, LGBTIQ+ and women's fundamental rights as well as primary EU law.
- (15) A discussion followed. The Council decided that the **proposal should be dealt with at institutional level, as opposed to at Special Interest Group level (29 votes in favour, one opposed and eight abstentions). The proposal was adopted by the Council (32 votes in favour and six abstentions) on the condition that if the proposal need not be completed within the foreseen timeframe under the accelerated procedure, it will convert to the regular procedure, meaning it would need to be approved by the Fellows too. This would also allow the Reporters sufficient time to elaborate on useful improvements to the draft.**

X. Report from the Treasurer

- (16) Pietro Sirena, ELI Treasurer, presented ELI's 2022 accounts, following which **the Council approved them (34 votes in favour and one abstention).**
- (17) In light of time constraints, it was decided to vote on the ELI's revised Reimbursement Form and Guidelines electronically.

XI. Appointment of Assessors and MCC Chair

- (18) In light of time constraints, it was decided to vote on the above electronically.

XII. Advance Choices for Future Disablement: ELI as an ECtHR Intervener

- (19) In light of time constraints, it was decided to postpone the discussion on the above to the September 2023 meeting.

XIII. Any other business

- (20) Pichonnaz encouraged active Council members, whose mandate expires in September 2023 and are eligible to stand again for the Council, to do so. He also invited those present to encourage

other ELI Fellows, in particular those from underrepresented jurisdictions, vocations (practitioners and judges) and disciplines (including criminal and administrative law), to stand.

- (21) Pichonnaz thanked Executive Committee members, and in particular Vice-Presidents, Lord Thomas and Anne Birgitte Gammeljord, ELI's Scientific Director, Christiane Wendehorst, and ELI's Secretary General, Vanessa Wilcox, as well as members of the Secretariat, Tomasz Dudek, Katja Kolman, Laura Papasodaro, Zuzana Vadehra, Viktoriia Ivanova and Lucija Duzel for their work. He also thanked Council members for taking the time to attend and contribute to the meeting and for all their work and support.

The Council meeting ended at 19:10 CET.