

Minutes of the ELI Council Meeting 3–4 March 2025

Venue: University of Vienna, Juridicum, Schottenbastei 10-16,
1010 Vienna, Austria

Present:

Chair: Pichonnaz, Pascal (ELI President)

Council Members

Anagnostopoulou, Despoina (proxy for Pretelli, Ilaria on 4 March)
Başoğlu, Başak (proxy for Cockerill, Sara)
Beale, Hugh (proxy for Howells, Geraint)
Bielska-Sobkowitz, Teresa (proxy for Kubica, María Lubomira on 4 March)
Dollani, Nada (proxy for Toader, Camelia on 4 March)
Georgieva, Hristina
Gimeno-Ribes, Miguel (proxy for Santos Silva, Marta on 4 March)
Grasso, Gianluca (proxy for Maugeri, Maria Rosaria)
Janssen, André (proxy for Cannarsa, Michel)
Jiménez Muñoz, Francisco Javier (proxy for Calderai, Valentina)
Keane, Paul (proxy for Martin McKechnie, William)
Koch, Bernhard (proxy for Neumayr, Matthias)
Kramer, Xandra (proxy for Schulte-Nölke, Hans on 4 March)
Kubica, María Lubomira

Lehmann, Matthias
Machnikowski, Piotr
Mazepa, Svitlana
Patti, Francesco Paolo (proxy for Bechaalany, Sarah)
Poillot Peruzzetto, Sylvaine
Pretelli, Ilaria (proxy for Cavalier, Georges)
Rodríguez de las Heras Ballell, Teresa
Ruda, Albert
Santos Silva, Marta
Scherpe, Jens (proxy for Fountoulakis, Christiana)
Schroeter, Ulrich G
Schulte-Nölke, Hans
Shirvindt, Andrey (proxy for Skrjabina, Anna)
Szabados, Tamás (proxy for Pocar, Fausto)
Toader, Camelia (proxy for Bagińska, Ewa)
Tot, Ivan (proxy for Ruda, Albert on 4 March)
Valle, Laura (proxy for Machnikowski, Piotr on 4 March)
Wiewiorowska-Domagalska, Aneta

Ex-Officio Council Members

Pichonnaz, Pascal (President)
Gammeljord, Anne Birgitte (First Vice-President)
Sirena, Pietro (Treasurer)

Vos, Sir Geoffrey (Second Vice-President)
Uitdehaag, Jos
Buric, Manfred

Other Attendees

Andersen, Henrik
Bargelli, Elena
Gil Bazo, María Teresa
Gössl, Susanne
Larrourou, Thibaut
Mahoney, Paul
Reiling, Dory
Reinhard, Zimmermann
Ryngielewicz, Klaudiusz

Sanders, Anne
Stelma-Roorda, Rieneke
Thomsen, Steen
Twigg-Flesner, Christian
Ward, Adrian D
Wendehorst, Christiane (ELI Scientific Director)
Zünd, Andreas

Members of the ELI Secretariat

Wilcox, Vanessa (Secretary General)
Bianchi, Laura (keeper of the minutes)
Dudek, Tomasz
Franco, Leonor
Ivanova, Nia
Lages de Almeida, Marta
May Dolot, Regina

3 March 2025

The meeting commenced at 11:00.

I. Welcome and Approval of the Agenda

- (1) Pascal Pichonnaz welcomed those in attendance and expressed gratitude their commitment, recalling the significance of Council meetings.
- (2) **The agenda was approved.**

II. Report from ELI Presidency

- (3) Pascal Pichonnaz summarised key aspects of the above, including the increased number of ELI individual members due to the work of ELI Executive Committee and Secretary General. He also mentioned recent publications and dissemination efforts such as with respect to ELI's Principles Governing the Third Party Funding of Litigation, ELI-Mount Scopus European Standards of Judicial Independence, and on GPAI Principles on Co-Generated Data, which ELI supported.
- (4) Pascal Pichonnaz mentioned the upcoming Council elections and emphasised the importance of identifying suitable candidates in advance. He encouraged Council members to approach potential candidates and, if they are not yet part of ELI, to invite them to join. Finally, he highlighted the need for a more balanced representation within the Council and ELI more generally, including the need for a stronger presence of practitioners and judges alongside academics.

III. Report from the ELI Treasurer

- (5) ELI's Treasurer, Pietro Sirena provided an update on the execution of the 2024 budget and outstanding Membership fees. He reported that 88 members had not paid their fees for two years and would receive a final payment reminder. If they fail to pay within the specified period, their Memberships will be terminated.
- (6) **The Council agreed to the above, as well as to discharge the ELI Members of their debts once their Memberships have been cancelled (46 voted in favour, none against and none abstained).**

IV. Report from the Membership Committee

- (7) Teresa Rodríguez de las Heras Ballell, Chair of the ELI's Membership committee, presented three key aspects of the above Report. She noted that the ELI Membership base is steadily expanding, both as regards individuals and institutions, despite some cancellations due to non-payment. She highlighted that ELI is not only growing in numbers but also in quality, gaining greater institutional presence and influence within the legal community. Additionally, she stressed the importance of enhancing Membership engagement, citing initiatives through which this is secured such as the ELI Innovation Paper and ELI Members' Day, while acknowledging the need for further efforts to strengthen participation.

V. Projects and Similar Activities

- (8) Pascal Pichonnaz provided a brief overview of the key developments in ELI projects and related activities, with particular emphasis on the ELI Use of Biometric Technologies and ELI Feedback on the Henri Capitant European Business Code. He invited Council members to suggest additional names for the Advisory Committee Members for both projects. Regarding the Henri Capitant European Business Code, he highlighted that additional names from Scandinavia, Eastern Europe, the Netherlands, and Poland would be included.

(a) Enforcement Against Digital Assets

- (9) Project Co-Reporters, Teresa Rodríguez de las Heras Ballell and Jos Uitdehaag, outlined the structure and the latest updates to the project's output.
- (10) A discussion ensued with the Project's Assessors, Matthias Lehmann and Aneta Wiewiórowska-Domagalska, and ELI's Scientific Director, Christiane Wendehorst, and other Council members including Maria Lubomira Kubica providing input. The draft received praise for its innovation and practical value, especially its concrete guidance for real-world situations. The effectiveness and the strength of its methodological approach were also highlighted. Paul Keane and Hugh Beale expressed their appreciation for the output and recommended the addition of an executive summary that clearly outlines the problem, as well as further illustrations.
- (11) The importance of including an executive summary in all ELI project outcomes, particularly for longer reports, was widely emphasised.
- (12) **The Council approved the ELI Enforcement of Digital Assets draft (44 voted in favour, none against and none abstained).**

(b) Enhancing Child Protection: Private International Law on Filiation and the European Commission's Proposal

- (13) Project Co-Reporters, Susanne Gössl and Ilaria Pretelli, presented the project's objectives, key proposals, timeline, and approach. They raised a misunderstanding regarding the annex received by the Council.
- (14) A discussion followed, featuring input from the Project's Assessors, Pietro Sirena, Francisco Javier Jiménez Muñoz, ELI's Scientific Director, and other Council members such as Laura Guercio (whose comments were read in her absence). Pietro Sirena welcomed the progress in the revised text, especially the introduction of the child's habitual residence as a general jurisdiction rule. However, he expressed the need for more concise, informative, and focused proposals, particularly for decision-makers. The need for a more impactful executive summary clearly listing key proposals was emphasised as was the need for more illustrations of what the Commission's proposals mean for those affected and the impact of ELI's proposals. Geoffrey Vos suggested anticipating substantive comments before articles in the text. He also suggested moving the recitals to the annex.
- (15) Questions were raised regarding the project's neutrality and the need to further elaborate how the concerns raised by LGBTI associations in relation to the text have been addressed.
- (16) **The Council did not approve ELI Enhancing Child Protection: Private International Law on Filiation and the European Commission's Proposal as the product was not evaluated as mature (41 voted in favour, none were against and two abstained).**

(c) Guiding Principles and Model Rules on Algorithmic Contracts

- (17) Project Co-Reporter, Christian Twigg-Flesner, provided an overview of the project's background and the process leading to the current draft. He further elaborated on the structure of the draft, expressing confidence that it is robust and will serve as a solid product for ELI.
- (18) A discussion ensued with Project's Assessors Marta Santos Silva and Başak Başoğlu, and other Council members, including Ivan Tot providing input and expressing satisfaction with the project. Several suggestions were raised on the draft's content, in particular concerning articles 1 (paragraph two of which, for example, could fit in with the introduction), 5 and 11. Ulrich Schroeter and Pascal Pichonnaz raised concerns, inter alia, regarding the documentation requirements on article 6. Among other things, alternative titles for the project were suggested which include the word 'digital assistance'.

- (19) **The Council approved the ELI Guiding Principles and Model Rules on Algorithmic Contracts under the Philippe motion (45 voted in favour, none were against and none abstained), to allow the project Co-Reporters to refine the above aspects of the draft.**

(d) Digitalisation of Civil Justice Systems in Europe

- (20) Lead Reporter, Dory Reiling, gave an overview of the project and explained its main takeaways.
- (21) A discussion followed with Project's Assessors Teresa Bielska-Sobkowicz and Geoffrey Vos along with other Council members providing input. The tension between the public right to information and the parties' right to privacy under the GDPR was mentioned. Geoffrey Vos commended the work done on the draft and proposed key additions, including on data standards and appropriate ADR mechanisms for a digital court environment, appropriate and inappropriate uses of AI and methodologies for open justice and anonymization within digital justice, press and public access to digital hearings and data, and court procedural rules in a digital environment. Despoina Anagnostopoulou suggested examining the digitalised system of the Court of Justice of the European Union as a potential reference.
- (22) **The Council stressed the need for clarity in the draft and invited the Project Reporters to prepare a brief document with a set of policy statements covering the various elements of the project and underlying the choices made.** These statements will serve as a basis for future discussion, enabling the Council to better define its position.

(e) Extra-Judicial Administration of Justice in Cross-Border Family and Succession Matters

- (23) Project Co-Reporter, Elena Bargelli explained the main updates on the project draft. Among other things, it was mentioned that a dissemination conference which took place on 14 February 2025 at the University of Vienna.
- (24) A discussion with the Council members followed. Tamás Szabados provided feedback on formulation. He questioned whether the principles cover mere private agreements or only those involving an authority, noting inconsistencies in the definition of 'act.' He suggested refining Principle 3 to specify that jurisdiction applies to 'courts of a Member State.' For Principle 5, he recommended clarifying that impartiality is ensured when both parties *can* be assisted by a lawyer and suggested referencing professional codes of conduct. Lastly, he noted a contradiction in terminology use and identified minor typographical errors.

- (25) The Council acknowledged the high level of quality of the draft and the work done by the Reporters, inviting them to further meetings with the ELI's Scientific Director to finalise the text, including the resolution of some terminology issues.

4 March 2025

VI. ELI Elections: Nominate Members of the Executive Committee and amendment of the ELI Election Byelaw

- (26) ELI's Senate member, Reinhard Zimmermann, announced the proposed candidates for key positions within the Executive: Teresa Rodríguez de las Heras Ballell as President, Geoffrey Vos as First Vice-President, Pietro Sirena as Second-Vice President, and Anne Birgitte Gammeljord as Treasurer. The candidates highlighted their key priorities should they be elected.
- (27) **The Council voted as follows: Teresa Rodríguez de las Heras Ballell, 49 voted in favour, none were against and none abstained; Vos, 48 voted in favour, 1 was against and none abstained; Pietro Sirena 46 voted in favour, 2 were against and 1 abstained; Anne Birgitte Gammeljord 43 voted in favour, 2 were against and 4 abstained.**
- (28) Reinhard Zimmermann explained that the above would take office in the September 2025.
- (29) Pascal Pichonnaz outlined the proposed amendments to the ELI Election Byelaw and invited the Council to approve them.
- (30) **The Council approved the amendment to the ELI Election Byelaw (47 voted in favour, none were against and none abstained).**

VII. Projects and Similar Activities

(f) Climate Justice – New Challenges for Law and Judges

- (31) Project Co-Reporter, Henrik Andersen, presented the project and explained the structure of the output.
- (32) A discussion followed with Council members providing input. Aneta Wiewiórska-Domagalska advocated for clearer principles and stressed the need to consider political developments when refining them. The draft should elucidate who can use these principles and for what purpose. Hans

Schulte-Nölke saw the draft as a strong start but echoed Aneta Wiewiórowska-Domagalska's concerns on clarity. Xandra Kramer highlighted that climate cases involve both public and private law, with private litigators playing a role alongside public authorities. She emphasised the need to clearly outline this spectrum, as the nature of the actions remains unclear. Ilaria Pretelli and Geoffrey Vos supported this distinction, noting that claims come from various actors, including individuals, corporations, and governments.

- (33) In conclusion, key areas of improvement identified by the Council include: clarifying the types of claims covered, distinguishing between public claims and those with a public interest, and addressing this in the commentaries; refining the structure of both the principles and their commentaries and improving definitions to enhance clarity and coherence.

(g) Advance Choices for Future Disablement

- (34) Project Co-Reporters Christiana Fountoulakis, Adrian D Ward, and Rieneke Stelma-Roorda presented the project's objectives, timeline, and approach, noting that Part 4 of the final report had been recently added.
- (35) Council members and ELI's Scientific Director, who provided input, congratulated the Reporters on their progress. Pietro Sirena expressed confidence that the project was on the right track. Ilaria Pretelli highlighted the need to consider varying legal philosophies across jurisdictions and to distinguish core principles among countries. Nada Dollani stressed the significance of the UNCRPD and the challenge of balancing past wishes with conflicting current preferences. She pointed out that this tension must be addressed in the draft. Christiane Wendehorst recommended a radical simplification of the model laws to improve accessibility, particularly since those applying and disapplying these laws may not be legal professionals. She also suggested revisiting key policy choices, questioning whether sufficient safeguards exist against financial abuse.
- (36) In summarising the Council's feedback, the key points included the need to keep the model laws concise and accessible and revisiting a couple of policy choices made in the text.

(h) Update of ELI's Detention of Asylum Seekers and Irregular Migrants and the Rule of Law: Checklists and European Standards

- (37) Project Co-Reporter María Teresa Gil Bazo provided an update on the project, noting that the adoption of the EU's New Pact on Asylum and Migration, including the reform/introduction of nine legislative instruments and the forthcoming EC communication on returns, had had an impact on the original timetable.

(38) A discussion ensued with Project’s Assessor Geoffrey Vos and other Council members who provided input. Vos noted that the report is very long and suggested adjusting the executive summary and introduction to ensure they clearly articulate the project’s purpose and the amendments made to previous outcomes. Ilaria Pretelli pointed out, among other things, that the language referring to women, LGBTQ+ individuals, and other groups as ‘vulnerable’ may be outdated, suggesting a shift in terminology to reflect resilience rather than vulnerability.

(39) The main takeaway from the discussion was the need to enhance the project's accessibility, ensuring clarity and coherence throughout the document.

(i) Enterprise Foundations in Europe

(40) Project Co-Reporters Steen Thomsen and Anne Sanders gave an overview of the project.

(41) A discussion ensued with Project’s Assessors Miguel Gimeno-Ribes, Ivan Tot, Matthias Lehmann and Anne Birgitte Gammeljord and other Council members widely praising the project. Miguel Gimeno-Ribes congratulated the Reporters and appreciated the extensive collection of data they amassed. However, he highlighted a few typos in the text and that the use of two different connotations of the word ‘control’ could be misleading. Gianluca Grasso cautioned against using these foundations for business activities unrelated to their nonprofit purpose, noting their legal and tax advantages. He also questioned whether the provisions on profit distribution in Article 7 adequately address their intended purpose.

(42) The Council expressed confidence that the project is on the right track.

VIII. Prospective Project on the Case-Overload at the European Court of Human Rights: An Update

(43) Prospective Project leads Thibaut Larrousurou, Paul Mahoney, Andreas Zünd, and Klaudiusz Ryngielewicz presented the above, which builds on ELI’s Statement Case Overload at the European Court of Human Rights of 2012. They also explained the proposed composition of the team.

(44) Camelia Toader accepted her nomination to join the project as an Assessor.

(45) The Council adopted the prospective project (36 voted in favour, none were against and none abstained).

IX. ELI Young Lawyers Award

- (46) Pascal Pichonnaz recalled the importance of engaging the younger generation in ELI's initiatives and asked those present to publicise ELI's YLA competition.

X. Any other business

- (47) Among other suggestions, Despoina Anagnostopoulou recommended strengthening ELI's network in South-Eastern Europe and proposed the establishment of a joint Greek-Cyprus Hub. Pascal Pichonnaz welcomed the proposal and invited her to liaise more closely with the Secretariat.

The Council meeting ended at 13:00.